

CITY OF TOMBALL SERVICES AGREEMENT

THE STATE OF TEXAS
COUNTY OF HARRIS

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Description of Services: Meter Reading Services

This Agreement is made and entered into by the **City of Tomball** (referred to as the “City”), with an office at 501 James Street, Tomball, TX and, **Inframark, LLC** (the “Company”), a Texas limited liability company with an office at 2002 West Grand Parkway North, Suite 100, Katy, Texas 77449. City hereby engages the services of Company as an independent contract for meter reading services, upon the following terms and conditions.

1. SCOPE OF AGREEMENT

- 1.1. The City hereby agrees to employ Company and Company agrees to perform the necessary services as set forth in Exhibit A – Scope of Work and Exhibit B – Contract Pricing, attached hereto and incorporated herein for all purposes.
- 1.2. In the event of a conflict among the terms of this Agreement and the Exhibit A, the term set forth in this Agreement shall control.
- 1.3. The parties shall comply with Applicable Laws in performing their respective obligations hereunder.
- 1.4. Company shall perform the services set forth herein in accordance with the provisions of this Agreement, exercising the degree of skill and care ordinarily exercised by members of Company’s profession in the geographic region.

2. TERM OF AGREEMENT; TERMINATION

- 2.1. This Agreement shall be effective upon proper execution by the City. It shall be effective from **January 1, 2023 through September 30, 2023** (the “Initial Term”). After the Initial Term, the Agreement shall be renewed for successive one (1) year periods upon mutual agreement of the parties at least sixty (60) days prior to the expiration of the then current term. The City reserves the right to withdraw from the Agreement immediately if its governing body fails to appropriate funds necessary for the services as set forth in Exhibit A. ***Either party may terminate this Agreement for any reason with ninety days (90) written notice to the other party.***
- 2.2. The City’s obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas. Nothing contained herein shall ever be construed so as to require City to create a sinking fund or to assess, levy and collect any tax to fund its obligations under this Agreement.
- 2.3. Either party may terminate this Agreement by immediate written notice if the other has failed to comply with a material term, provided that the non-defaulting party has first given the defaulting party written notice to cure their default within thirty (30) days (the “Cure Period”) and the defaulting party has not done so. If a default cannot be cured within the Cure Period, the parties may agree to an extension of the time to cure provided the defaulting party provides reasonable evidence within the Cure Period that it has identified a means to cure and is pursuing it diligently. Should City pay an unpaid, undisputed invoice within the Cure Period, the termination notice under this provision will be deemed automatically withdrawn.

3. ENTIRE AGREEMENT

This Agreement represents the entire agreement between Company and the City and no prior or contemporaneous oral or written Agreements or representations shall be construed to alter its terms. No additional terms shall become part of this Agreement without the written consent of both parties and compliance with relevant state law. This Agreement supersedes all other prior agreements either oral or in writing.

4. ASSIGNMENT

Company shall not assign or subcontract its obligations under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld; however, such prior consent shall not be required for an assignment by Company to a parent, subsidiary, affiliate, or successor.

5. COMPENSATION

For and in consideration of the services rendered by the Vendor pursuant to this Agreement, the City shall pay the Vendor only for the actual work performed under the Scope of Work, on the basis set forth in Attachment "B," up to an amount not to exceed \$70,000.

Company shall hold firm the rates set forth in Attachment "B" for a period of one (1) year from the date of this Agreement. For subsequent years, the rates in Attachment "B" will be increased or decreased by the same percentage as any increase in the Urban Consumers – Water and Sewerage Maintenance (CPI-U) for the U.S. City Average, 1982-84=100 as published monthly by the U.S. Department of Commerce, Bureau of Labor Statistics (the "Price Index"), or any replacement to that index from time to time, during the preceding twelve (12) months. The increase in the Price Index shall be determined by calculating the percentage increase between the Price Index in effect as of the month of each and every anniversary of this Agreement date over the Price Index in effect as of the month of the previous anniversary date.

6. PENALTY CLAUSE

A misread meter due to Company's negligence, willful misconduct, or breach of this Agreement requiring a re-read by City Staff shall be grounds for an administrative penalty of \$25 per occurrence in excess of five-percent (5%) of the total meters read. If a meter is not provided to Company or identified by the City, such a missed read will not be considered a "misread" under this Section 6 and will not be subject to the administrative penalty. The maximum total administrative penalty imposed per month under this Section shall not exceed twenty percent (20%) of the compensation paid to the Company in that month.

7. INDEMNITY AND LIABILITY

7.1. DEFINITIONS

For the purpose of this section the following definitions apply:

- a. "City" shall mean all officers, agents, and employees of the City of Tomball.
- b. "Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.
- c. "Company" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.
- d. "Company's employees" shall mean any employees, officers, agents, subcontractors, licensees, and invitees of Company.
- e. "Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure, or loss of any and every nature, including but not limited to:
 - i. injury or damage to any property or right

- ii. injury, damage, or death to any person or entity
 - iii. attorneys' fees, witness fees, expert witness fees and expenses,
 - iv. any settlement amounts; and
 - v. all other costs and expenses of litigation
- f. "Premise Defects" shall mean any defect, real or alleged, which now exists, or which may hereafter arise upon the premises.

7.2. Indemnity

COMPANY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY FROM AND AGAINST LIABILITY FOR ANY THIRD PARTY CLAIMS FOR BODILY INJURY, WRONGFUL DEATH, OR PROPERTY DAMAGES TO THE EXTENT ARISING OUT OF THE COMPANY'S NEGLIGENT WORK AND ACTIVITIES CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

COMPANY IS AN INDEPENDENT CONTRACTOR AND IS NOT, WITH RESPECT TO ITS ACTS OR OMISSIONS, AN AGENT OR EMPLOYEE OF THE CITY.

COMPANY MUST AT ALL TIMES EXERCISE REASONABLE PRECAUTIONS ON BEHALF OF, AND BE SOLELY RESPONSIBLE FOR, THE SAFETY OF COMPANY'S EMPLOYEES WHILE IN THE VICINITY WHERE THE WORK IS BEING DONE. THE CITY IS NOT LIABLE OR RESPONSIBLE FOR THE NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF COMPANY OR COMPANY'S EMPLOYEES.

THE CITY ASSUMES NO RESPONSIBILITY OR LIABILITY FOR DAMAGES WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO PREMISE DEFECTS.

THE CITY AND COMPANY MUST PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY COVERED EVENT WHICH IN ANY WAY AFFECTS OR MIGHT AFFECT THE COMPANY OR CITY. THE CITY HAS THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS. THE INDEMNITY OBLIGATIONS HEREIN SHALL SURVIVE THE TERMINATION OF THE AGREEMENT FOR ANY REASON AND SHALL SURVIVE THE COMPLETION OF THE WORK.

7.3. Limit of Liability.

In the event that claims(s) raised by City against Company on account of this Agreement, or on account of the Services performed hereunder is/are covered under Company's insurance policies required of hereunder, Company shall not be responsible to City for any loss, damage or liability beyond the amounts contractually required hereunder and actually paid pursuant to the limits and conditions of such insurance policies. With respect to any causes of action and/or claims raised against Company by City that are not covered by the insurance policies required hereunder, Company's liability to City shall not exceed an aggregate amount equal to four times the compensation paid to Company by the City under this Agreement in the year in which such cause of action and/or claim is raised.

7.4. Waiver of Damages.

Notwithstanding any provision to the contrary contained in this Agreement, in no event shall either party be liable, either directly or indirectly, for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit even if such party has been advised of the possibility of such damages.

7.5. Cyber Security.

Company shall not be liable for any liabilities, losses, damages, expenses, fines, or penalties incurred by the City or any third party as a result of a data security breach or other cyber security breach to the City's computer systems, operating systems, and all other technological or information systems related to the services provided hereunder, except to the extent such liability, loss, damage, expense, fine, or penalty is the direct result of Company's willful or negligent acts or omissions.

8. INSURANCE

8.1. AMOUNTS OF INSURANCE

Company agrees to provide and to maintain the following types and amounts of insurance, for the term of this Contract:

| TYPE | AMOUNT |
|--|---|
| (a) Workers Compensation Employer's Liability | (where required – Statutory by State Law) \$100,000 per occurrence |

(b) Commercial (Public) Liability, including but not limited to:

- a. Premises/ Operations Combined Single Limit
- b. Independent Contractors
- c. Personal Injury
- d. Products/Completed Operations
- e. Contractual Liability (insuring above indemnity provisions)

All insured at combined single limits for bodily injury and property damage at \$500,000 per occurrence.

(c) Comprehensive Automobile Liability, in include coverage for:

- a. Owned/Leased Automobiles
- b. Non-owned Automobiles
- c. Hired Cars

All insured at combined single limits for bodily injury and property damage for \$500,000 per occurrence.

8.2. OTHER INSURANCE REQUIREMENTS

Company understands that it is its sole responsibility to provide the required Certificates. The insurance requirements set forth in this section shall not be subject to the thirty (30) day cure period contained in Section 2.3.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Contract for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Company further agrees that with respect to the above required liability insurances, the City shall:

- a. Be named as an additional insured;
- b. Be provided with a waiver of subrogation, in favor of the City,

- c. Be provided with 30 days advance written notice of cancellation, nonrenewal, or reduction in coverage (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate); and
- d. Prior to execution of this Agreement, be provided through the office of the City Attorney with their original Certificate of Insurance evidencing the above requirement.

The insurance requirements set out in this section are independent from all other obligations of Company under this Agreement and apply whether or not required by any other provision of this Agreement.

9. PAYMENT AND PERFORMANCE

Payment for services described in this Agreement will be made in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code, or as subsequently amended.

10. VENUE; RECOVERY OF FEES; DISPUTE RESOLUTION; CHOICE OF LAW

In the event of any disputes, the parties shall first attempt to resolve the situation by good faith discussions which shall take place in a timely manner. If the dispute cannot be resolved within sixty (60) days, the parties shall mediate their dispute before a mediator acceptable to both parties, and if they cannot agree, they shall ask the Director of the Federal Mediation and Conciliation Service to nominate a mediator. The parties shall bear their own costs of the mediation, but the parties shall share equally the costs of the mediator and the mediation facilities. The parties further agree that the law of the State of Texas shall govern any interpretation of the terms of this Agreement.

11. COMPANY CERTIFICATIONS

Company certifies that neither it, nor any of its agents or employees, have or will offer or accept gifts or anything of value, or enter into any business arrangement, with any employee, official, or agent of the City.

Company certifies, pursuant to Texas Government Code Chapter 2270, that it does not boycott Israel and will not boycott Israel during the term of this Agreement. Company further certifies, pursuant to Texas Government Code Chapter 2252, Subchapter F, that it does not engage in business with Iran, Sudan, or a foreign terrorist organization as may be designated by the United States Secretary of State pursuant to his authorization in 8 U.S.C. Section 1189.

In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

12. NO WAIVER OF IMMUNITY

The City does not waive any statutory or common law right to sovereign immunity by virtue of the execution of this Agreement.

13. NOTICES

Any written notice provided under this Agreement or required by law shall be deemed to have been given and received on the next day after such notice has been deposited by Registered or Certified Mail with sufficient postage affixed thereto and addressed to the other party to the Agreement; provided, that this shall not prevent the giving of actual notice in any manner.

Notice to Company may be sent to the following addresses:

Inframark, LLC
2002 West Grand Parkway North, Suite 100
Katy, Texas 77449
ATTN: Todd Burrer

With copy to:

Inframark, LLC
220 Gibraltar Road, Suite 200
Horsham, Pennsylvania 19044
ATTN: Legal Department

14. CONTRACT ADMINISTRATOR

This Agreement shall be administered on the City's behalf by the Project Manager, and all notices, questions, or documentation, arising under this Agreement shall be addressed to the Project Manager at:

City of Tomball, Texas
Attn: Project Manager
501 James Street
Tomball, Texas 77375

15. NON-SOLICITATION

Neither party may actively solicit, for hire, the employees of the other party during the term of this Agreement or for one (1) year after termination of this Agreement.

16. INDEPENDENT CONTRACTOR

The relationship of Company to City is that of independent contractor for all purposes under this Agreement. This Agreement is not intended to create, and shall not be construed as creating, between Company and City, the relationship of principal and agent, joint venturers, co-partners or any other similar relationship, the existence of which is hereby expressly denied.

17. FORCE MAJEURE

Any event of Force Majeure that directly or indirectly causes a party to be unable to perform its obligations under this Agreement shall not be deemed a breach of this Agreement. The occurrence of such event shall suspend the obligations of the affected party for only so long as the impact of such event continues. The obligation to pay amounts due and owing shall not be suspended by such event. The party affected will use commercially reasonable efforts to mitigate the effect of the event. "*Force Majeure*" means any act, event or condition to the extent that it adversely affects the cost or the ability of a party to perform its obligations in accordance with the terms of this Agreement if such act, event or condition, in light of any circumstances that should have been known or reasonably believed to have existed at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party so affected. Force Majeure includes but is not limited to: (a) acts of God; (b) flood, fire, earthquake, hurricane or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Contract; (f) action by any governmental authority; (g) national or regional

emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances, other than those involving the affected parties employees; (i) shortage of adequate power or transportation facilities.

18. WAIVER

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

AGREED to and ACCPETED this _____ day of _____, ²⁰²³~~2022~~.

City of Tomball


David Esquivel, PE
City Manager

Attest:

City Secretary

AGREED to and ACCPETED this 17 day of JANUARY, ²⁰²³~~2022~~.

Inframark, LLC


Todd Burrer
Vice President

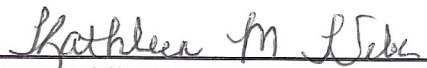
THE STATE OF TEXAS

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COUNTY OF HARRIS

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This instrument was acknowledged before me on this 17th day of January, ²⁰²³~~2022~~,
by Todd Burrer, on behalf of said entity.


Notary Public, State of Texas

