

**CITY OF TOMBALL  
SERVICES AGREEMENT RENEWAL**

**THE STATE OF TEXAS** §

**COUNTY OF HARRIS** §

**Description of Services: Vactor Services**

This Renewal 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, **Source Point Solutions, LLC** (the “Company”), with an office at **P.O. Box 280, Tomball, TX 77377** City hereby engages the services of Company for Vactor services, upon the following terms and conditions.

**1. SCOPE OF AGREEMENT RENEWAL**

- 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 most favorable to the City, in the City’s sole discretion, shall control.

**2. TERM OF AGREEMENT RENEWAL; TERMINATION**

- 2.1. This Agreement Renewal shall be effective upon proper execution by the City. It shall be effective from **January 1, 2024 through December 31, 2024, with One (1) additional one-year renewal options remaining.** The City reserves the right to withdraw from the Agreement immediately if its governing body fails to appropriate funds necessary for the satisfaction of its contractual obligations. ***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. The City reserves the right to enforce the performance of this Agreement in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of any provision of this Agreement, including immediate termination of this Agreement.

**3. ENTIRE AGREEMENT RENEWAL**

This Agreement Renewal 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.

5. COMPENSATION

For and in consideration of the services rendered by the Company pursuant to this Agreement, the City shall pay the Company 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 **\$60,000**.

6. MODIFICATION OF RATES

Base Rate adjustments for changes in the Consumer Price Index (CPI) will be considered by the City no more than once per year during the renewal term of the Contract, during the month of October of each Contract Year.

7. IDEMNITY

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 CLAIMS FOR DAMAGES ARISING OUT OF THE COMPANY'S 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.**

**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:

<b>TYPE</b>	<b>AMOUNT</b>
(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 b. Independent Contractors c. Personal Injury d. Products/Completed Operations e. Contractual Liability (insuring above indemnity provisions)	Combined Single Limit

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 and that failure to timely comply with the requirements of this article shall be a cause for termination of this Contract.

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

Any suit or claim or cause of action regarding this Agreement shall be brought in Harris County, Texas, as the choice of venue and jurisdiction and site of performance by the parties. If the City is the prevailing party in any such action, the City may recover reasonable costs, including costs of court, attorney's fees, expert witnesses' fees, and trial consultants' fees. 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.

#### 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 address:

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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

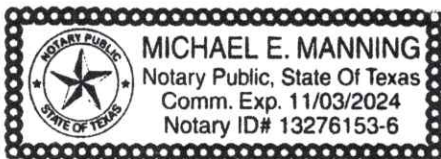
AGREED to and ACCPETED this 24 day of Jan, 2024.

Source Point Solutions, LLC  
Company  
[Signature]  
Signature  
Jim Allied  
Print Name  
Division Manager  
Title

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on this 24 day of January, 2024,  
by Michael E. Manning, on behalf of said entity.



[Signature]  
Notary Public, State of Texas

AGREED to and ACCPETED this \_\_\_\_ day of \_\_\_\_\_, 2024.

City of Tomball

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David Esquivel, PE  
City Manager

**Attest:**

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Tracylynn Garcia  
City Secretary

## EXHIBIT A

### MINIMUM SPECIFICATIONS VACTOR SERVICES & REGULAR MAINTENANCE OF SEWER SYSTEM COMPONENTS

Bid Number 2019-09

The City of Tomball is accepting sealed bids to provide Vactor Services and regular maintenance of sewer system components such as lift station wet wells, aeration basins, chlorine contact basins, digesters and sanitary sewer overflows (SSO) for the City of Tomball, as herein specified.

It is the intention of the City of Tomball to enter into a contract with a reliable company to furnish vactor services in accordance with the following specifications beginning January 1, 2020 and ending December 31, 2020. The City will have the right and option to extend the term for five (5) additional one-year periods with the same terms and conditions. The City of Tomball will also have the right and option to terminate the contract upon thirty days written notice.

**Specific Requirements:**

**The Contractor must meet the following requirements:**

1. Vendor shall perform services on both scheduled and emergency basis in order to complete the necessary task.
2. The Vendor must be subject to 24-hour on call notice, 365 days per year for emergency call outs.
3. The Vendor must respond within two (2) hours of notification for emergency call outs.
4. Vendor must provide the City with normal, weekend, and emergency telephone numbers.
5. Vendor must be able to schedule a regular maintenance request within two-weeks of notification.
6. Vendor shall provide proof of any applicable federal, state and local permits.
7. Vendor will be responsible for all spillage of product that includes liquid, solids, fuels, and lubricants.
8. The Vendor shall be responsible to ensure that all spills or damage caused by spillage are corrected immediately at the Vendors own expense. Correction of spills or damage shall be executed in a manner approved by a representative of the City of Tomball.
9. The Vendor will supply the City of Tomball with a manifest ticket for each load transported. This manifest ticket shall contain the following information:
  - a. Name and address of the site services by Vendor;
  - b. Name, address, TCEQ and EPA registration numbers, where applicable, of site where vactor truck is emptied;



- c. Approximate volume load;
- d. Date and time of pickup;
- e. Name and address of hauler;
- f. Date and time of disposal; and
- g. Signature verifying disposal date and time.

10. Upon completion of loading of vehicle(s), the Vendor shall be responsible for all contents loaded onto the vehicle during transportation to legally approved disposal site.
11. The Vendor shall be responsible for any and all damage that may be caused by their transport vehicle(s) while loading, transporting, and disposing.
12. Vendor shall have the ability to pump approximately 20,000 gallons minimum per day for a large request clean-out.
13. Any service requested that requires plant disruption shall be completed within three (3) consecutive days.

**The Vendors transport vehicle(s) must meet the following requirements:**

1. Vendor vehicle must be currently licensed and must meet all federal, state, county, and Department of Transportation requirements. Vehicle must be of sound quality and in good working condition.
2. Vendor transport vehicle(s) must have the minimum holding capacity of 2,500 gallons; minimum service call paid shall be for the 1,250 gallons.

**Insurance Requirements:**

Successful firm shall provide a certificate of insurance executed by an insurance company authorized to do business in Texas, and shall contain the amount specified herein, and shall be executed prior to award of contract.

- a. Workman's Compensation Insurance as required by laws and regulations applicable to and covering employees of Vendor engaged in the performance of the work under this agreement;
- b. Employer's Liability Insurance protecting Vendor against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than \$100,000;
- c. Comprehensive General Liability Insurance including products/completed operation with limits of liability of not less than: Bodily Injury \$100,000 per each person, \$300,000 per each occurrence/aggregate; Property Damage \$100,000 per each occurrence;
- d. Excess Liability Insurance, Comprehensive General Liability, Comprehensive Automobile Liability and coverages afforded by the policies above, with the minimum limits of \$500,000 excess of specified limits.

**EXHIBIT B**

**BID NUMBER 2019-09: Vactor Services & Regular Maintenance of Sewer System Components**

**COST FOR VACTOR SERVICES**

Item	Description	Cost per Gallon
1	Cost per Gallon for Vactor Services during normal business hours (Mon-Fri, 8am-5pm), including haul, disposal & all trip cost (trip charge, service call, mileage, etc.)	\$1.28
2	Cost per Gallon for Vactor Services outside normal business hours including haul, disposal & all trip cost (trip charge, service call, mileage, etc.)	\$1.50
3	Minimum Service Charge - service resulting from a service call requiring less than 1,250 gallons, which will serve as the minimum charge for this service	\$1.28

**LARGE VACTOR SERVICES**

Item	Service	Cost per Gallon
1	Large Vactor Service will include scheduling the equipment, personnel, and all other necessary items to complete the service request for the lift station wet well, aeration basins, chlorine contact basins, digesters, and sanitary sewer overflow clean-outs.	\$1.28

prices should include all charges associated with performed work including haul, disposal, trip charge, etc.