



## FLEET SERVICES MASTER AGREEMENT

This Fleet Services Master Agreement for selected fleet related services together with any addenda (“Agreement”) is hereby made and entered into as of the 1<sup>st</sup> day of September, 2023, by and between Merchants Automotive Group, LLC, a New Hampshire limited liability company doing business at 14 Central Park Drive, 1<sup>st</sup> Floor, Hooksett, New Hampshire 03106 (the “Service Provider”), and New Braunfels Utilities, a corporation together with its divisions and subsidiaries with a principal office at 263 Main Plaza, New Braunfels, Texas 78130 (the “Service User”).

In consideration of the mutual covenants hereinafter contained, the parties hereto agree for themselves, their heirs, executors, administrators, representatives, successors and assigns, as follows:

1) **Term.** This Agreement will be effective on the latest date subscribed below (the “Effective Date”) and will remain in full force and effect for from September 1, 2023 to August 31, 2024 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for two successive one-year terms (each, a “Renewal Term”), unless either party provides written notice of its intent to terminate the Agreement to the other party at least thirty (30) days prior to the expiration of any term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement will remain in full force and effect. In no event will the contract Terms extend beyond August 31, 2026.

2) **Billing Period.** The Service User agrees to pay the Service Provider the monthly charges as set forth on the Fee schedule for each vehicle, beginning the month of the date of the enrollment. Service Provider will invoice the Service User in the format and frequency mutually agreed upon. Late payments fees will be charged 1.5%, or the highest legal rate whichever is less, per month or applicable portion of a month. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. Service User shall notify Service Provider promptly of any disputed charges and every reasonable effort to resolve such disputes will be made prior to the due date of the invoice. If disputed charges are not resolved prior to the due date the Service User shall pay the entire amount due and Service Provider will promptly endeavor to substantiate the charges or credit the Service User’s account if the invoice was in error.

3) **Performance Warranty and Disclaimer.** Service Provider warrants that the Services provided under this Agreement shall conform to the professional standards performed by entities regularly rendering this type of service.

4) **Disclaimer of Warranties.** THE SERVICE PROVIDER IS NOT THE MANUFACTURER OR DISTRIBUTOR OF THE GOODS AND SERVICES PURCHASED FROM THIRD PARTIES PURSUANT TO THIS AGREEMENT AND MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO SUCH GOODS AND SERVICES WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THE SERVICE PROVIDER HEREBY DISCLAIMS ANY SUCH WARRANTY. THE SERVICE PROVIDER IS NOT RESPONSIBLE FOR ANY REPAIRS OR SERVICE TO THE VEHICLES, DEFECTS THEREIN OR FAILURES IN THE OPERATION THEREOF AND THE SERVICE USER AGREES TO LOOK SOLELY TO THE MANUFACTURER OR DISTRIBUTOR OF

SUCH GOODS AND SERVICES AND HEREBY WAIVES ANY CLAIMS, INCLUDING PRODUCT LIABILITY CLAIMS, AGAINST SERVICE PROVIDER.

5) **Service User's Liability to Service Provider.** SERVICE USER WILL HOLD HARMLESS SERVICE PROVIDER AGAINST ANY LOSS, LIABILITY, OR CLAIM, DIRECTLY OR INDIRECTLY RELATED TO THE GOODS AND SERVICES OBTAINED FROM THIRD PARTIES PURSUANT TO THIS AGREEMENT. THE HOLD HARMLESS IS UNCONDITIONAL AND ABSOLUTE AND INCLUDES CLAIMS OF NEGLIGENCE, STRICT LIABILITY AND BREACH OF WARRANTY. THIS HOLD HARMLESS WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6) **Termination. Default. Remedies.**

a. Termination. This Agreement may be terminated by Service User for any reason upon thirty (30) days' written notice by Service User to Service Provider. Upon termination for convenience, Service Provider will be paid for the services performed to the termination date.

b. Default. If Service User shall fail to make payments within fifteen (15) days of the due date or after ten (10) days' written notice shall fail to perform or observe any of its other covenants, conditions or obligations under this Agreement, or Service User or any guarantor shall (i) make an assignment for the benefit of creditors, or suffer a receiver or trustee to be appointed, or file or suffer to be filed any petition under any bankruptcy or insolvency law of any jurisdiction; or (ii) discontinue business; or

(iii) cease its corporate, partnership or legal existence or die; or (iv) be in default under any other agreement it may have with Service Provider or any parent, subsidiary or affiliate of Service Provider; or (v) undergo a change in controlling ownership; or

(vi) suffer a material adverse change in operating or financial condition which impairs Service User's ability to perform its obligations hereunder; or (vii) make any representation or warranty herein, or in any document delivered to Service Provider in connection herewith (including, without limitation, financial information) or filed with any governmental entity and obtained by Service Provider in connection herewith, which shall prove to be false or misleading in any material respect; then in such event, Service User shall be in default under this Agreement. A default under the terms of this Agreement shall constitute a default under any other agreement Service User has with Service Provider or any parent, subsidiary or affiliate of Service Provider.

c. Remedies. In the event of default by Service User, Service Provider shall have the right to: (i) immediately discontinue all services being provided under this Fleet Service Master Agreement and related addenda; (ii) collect all amounts due including amounts invoiced prior to the default which remain unpaid and all charges incurred but not yet invoiced; (ii) cancel any payment instruments then in possession of the Service User and its employees and reasonable attorneys' fees incurred by Service Provider for enforcement of Service Providers rights. In addition, Service Provider shall have the right to cancel this Agreement and shall retain all rights and remedies available at law or in equity; all such rights and remedies to be cumulative and not exclusive.

7) **Assignment.** Service User may not assign any interest in this Agreement to any party without the prior written consent of the Service Provider. This Agreement and all rights of the Service Provider hereunder shall be freely assignable by the Service Provider, in whole or in part, to any Assignee without notice to the Service User. Any such assignment shall not relieve the Service Provider of its obligations hereunder unless specifically assumed by the Assignee, and the Service User agrees the Service User shall not assert any defense, rights of set-off or counterclaim against any Assignees, nor hold or attempt to hold such Assignee liable for any of the Service Provider's obligations hereunder. No such assignment shall materially increase the Service User's obligations hereunder.

8) **Miscellaneous.** If Service User performs work under a prime contract, or any subcontract, with the United States government, and as a result, Executive Order 13658 is applicable to Service User, then

Executive Order 13658 establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause, are incorporated by reference into this contract (or any subcontracts hereto) as if fully set forth in this contract. See Appendix A to 29 C.F.R. Part 10 (available at <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=27843&Month=10&Year=2014>).

9) **Enforceability and Governing Law.** Any provisions of this Agreement which are unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof. To the extent permitted by applicable law, the Service User hereby waives any provisions of law which render any provision hereof unenforceable in any respect.


THIS AGREEMENT AND THE LEGAL RELATIONS OF THE PARTIES HERETO SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES REGARDING THE CHOICE OF LAW. THE SERVICE USER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS AND THE FEDERAL DISTRICT COURT FOR THE DISTRICT THAT INCLUDES NEW BRAUNFELS, TEXAS FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF ITS OBLIGATIONS HEREUNDER, AND EXPRESSLY WAIVES ANY OBJECTIONS THAT THE SERVICE USER MAY HAVE TO THE VENUE OF SUCH COURTS.

**Any action by the Service User against the Service Provider for any cause of action relating to this Agreement shall be brought within two (2) years after any such cause of action first arises.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized representatives.

**SERVICE PROVIDER**  
**MERCHANTS AUTOMOTIVE GROUP, LLC**

**SERVICE USER**  
**NEW BRAUNFELS UTILITIES**

By:   
(signature)

By: \_\_\_\_\_  
(signature)

Name: Paul Danielson  
(printed name)

Name: \_\_\_\_\_  
(printed name)

Title: General Counsel

Title: \_\_\_\_\_

Date: July 25, 2023

Date: \_\_\_\_\_

In an effort to better service your account, please complete and sign the attached ACH forms included in this package. ACH offers a variety of benefits to you by simplifying the invoice payment processing, saving you money on postage and processing, and payment is reliable, accurate, on time and confidential.

1. Kindly return the executed ORIGINAL ACH FORMS – enclosed herein along with an ORIGINAL VOIDED BLANK CHECK from the checking account you select for regular payments.
2. Mailing address for return of documents:  
 Merchants Fleet  
 PO Box 16415  
 14 Central Park Dr, 1<sup>st</sup> Floor  
 Hooksett, NH 03106  
 Attention: Alison Hutcheson

Please be advised of the following arrangements associated with the ACH process:

- Your lease payment invoices, due on the first day of the month, will be withdrawn on the first business day of the month.
- All other invoices that come due during the month, through the 15<sup>th</sup> of the month, will be paid via ACH on the first working day of the *following* month, at the same time as the next lease payment is due.

*For example:* any invoices that are issued prior to June 15<sup>th</sup> will be withdrawn via ACH on the first business day of July, along with the July lease payment that is due on July 1<sup>st</sup>. Any invoices issued after June 16<sup>th</sup>, will be drawn ACH on the first working day of August.

- Please do not send a physical check to pay for the invoices you receive from Merchants Automotive Group. All invoices will be stamped "Do not Pay – Paid via ACH". If you are uncertain what the disposition on an invoice is, please contact me and I will be happy to assist you with more details.

<b>AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH DEBITS)</b>			
Company Name _____	Company FEIN Number _____		
I (we) hereby authorize _____, hereinafter called COMPANY, to initiate debit entries to my (our) <input type="checkbox"/> Checking Account/ <input type="checkbox"/> Savings Account (select one) indicated below at the depository financial institution named below, hereafter called DEPOSITORY, and to debit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.			
Depository Name _____	Branch _____		
City _____	State _____	Zip _____	
Routing Number _____	Account Number _____		
This authorization is to remain in full force and effect until COMPANY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.			
Name(s) _____ (Please Print)			
Date _____	Signature(s) _____		

**Along with this signed document, please attach an ORIGINAL VOIDED BLANK CHECK and return to the attention of your Client Service Representative. Thank you.**  
**Please attach voided check here.**



## ADDENDUM TO FLEET SERVICES MASTER AGREEMENT FUEL CARD PROGRAM AND MANAGEMENT

The Fleet Services Master Agreement made and entered into as of the 1<sup>st</sup> day of September 2023, by and between Merchants Automotive Group, LLC, a New Hampshire corporation with a principal place of business at 14 Central Park Dr, 1<sup>st</sup> Floor, Hooksett, NH 03106 (the “Service Provider”), and New Braunfels Utilities, a corporation (the “Service User”) together with its divisions and subsidiaries with a principal office at 263 Main Plaza, New Braunfels, Texas 78130, is hereby amended to include the following Fuel Card Program and Management Addendum:

**WHEREAS**, the Service Provider, provides a (“Fuel Card”) to assist in managing fuel purchases for fleet vehicles (the “Fuel Management Program”);

**WHEREAS**, Service User desires to obtain Fuel Cards and/or enroll certain vehicles in the Fuel Management Program;

**NOW THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the parties agree to the following:

- Fuel Card Issuance.** Service Provider shall provide the Fuel Cards to the Service User as requested from time to time by the Service User, and as approved by the Service Provider. The Fuel Cards are issued by the Issuing Bank and shall remain the property of the Issuing Bank.
- Fuel Card Use and Users.** Service User shall use the Fuel Cards for commercial purposes and in accordance with the terms of this Addendum. Prior to receipt of the Fuel Card(s), the Service User will identify the individual or vehicle associated with the individual Fuel Card(s) issued to the Service User.
- Fuel Card Restrictions and Customization.** Prior to the issuance of the Fuel Card(s), the Service User shall define the purchasing restrictions of the Fuel Card(s) by electing restricted and/or unrestricted Fuel Card(s). A restricted card means a card that may be used only for fuel purchases at a fuel station. An unrestricted Fuel Card means a card that may be used to purchase any products or services offered for sale at a fuel station. Service Provider shall set up the Fuel Management Program account for the Service User, and the Service User shall select the features for each card offered under the Fuel Management Program, including the definition of controls and restrictions based on either: (a) a specific number of authorizations/transactions per day, (b) a specific dollar purchase limit per day, or (c) the day of the week and/or the time of day.
- Web Portal and Access.** Service Provider shall provide the Service User access to its secure Web portal to allow the Service User to manage the assigned Fuel Cards, obtain invoice information, generate reports on card usage, etc.
- Fees.** Service User shall pay the fees set forth in the applicable sections of the Fee Schedule attached to the Fleet Service Master Agreement. Service Provider employs a third-party vendor to facilitate fuel cards, any costs incurred by these vendors due to shipping or express mailing that is requested by Service User, will be passed through to the Service User.
- Liability and Payment.** Service User is liable for all charges incurred in connection with the use of the assigned Fuel Card(s). Service User shall pay all such charges to the Service Provider in accordance with the terms set forth on the applicable Fee Schedule attached to the Fleet Service Master Agreement. In the event that the Service User is in breach of the Fleet Service Master Agreement or this Addendum, or if the Service User

fails to pay any amount when due pursuant to the applicable Fee Schedule, in addition to any and all remedies available to the Service Provider under the Fleet Service Master Agreement and applicable law, the Service Provider shall have the absolute right to immediately suspend or revoke the Service User's right to use the Fuel Cards.

7. **Late Fees and Default Interest.** If Service User does not make full payment of the Total Amount Due on the due date, then Late payments fees will be charged 1.5%, or the highest legal rate whichever is less, per month or applicable portion of a month.

8. **Lost or Stolen Cards.** Service User shall notify the Service Provider immediately if a Fuel Card is lost or stolen, or if the Service User suspects the card is being used without the Service User's permission. Service Provider shall immediately suspend or revoke the Fuel Card in question upon receipt of such notice from the Service User, provided, however, that the Service User shall remain liable for any charges incurred on the Fuel Card, whether fraudulent or not, prior to the Service Provider's suspension or revocation of the Fuel Card.

9. **Renewal and Replacement Cards.** Service User's account will be valid through the expiration date printed on the fuel card. Replacement cards may be obtained by notifying the Service Provider, who will arrange to have a replacement card issued by the Issuing Bank. The Service Provider or the Issuing Bank will continue to issue replacement cards as the older cards expire, unless the Service User instructs the Service Provider in writing to not issue a renewal and replacement card.

10. **Amendment.** Notwithstanding the terms of the Fleet Service Master Agreement, Service Provider reserves the right to amend this Addendum at any time by providing prior written notice to the Service User. Service User will be deemed to have accepted such amendment(s) if the Service User keeps or uses the Fuel Card after it receives such notice. Service Provider may assign this agreement at any time without notice.

11. **Termination.** This Addendum may be terminated by either party in accordance with the terms of the Fleet Service Master Agreement. Without limiting the generality of the foregoing, the Service Provider may revoke the Service User's rights to use the Fuel Card(s) at any time with or without cause, including in the event of the Service User's breach of this Addendum or the Fleet Service Master Agreement, or if the Service Provider believes that any purchases made with a Fuel Card were not authorized.

**SERVICE PROVIDER**  
**MERCHANTS AUTOMOTIVE GROUP, LLC**

**SERVICE USER**  
**NEW BRAUNFELS UTILITIES**

By: Paul Danielson  
(signature)

By: \_\_\_\_\_  
(signature)

Name: Paul Danielson  
(printed name)

Name: \_\_\_\_\_  
(printed name)

Title: General Counsel

Title: \_\_\_\_\_

Date: July 25, 2023

Date: \_\_\_\_\_



**ADDENDUM TO FLEET SERVICES MASTER AGREEMENT  
FEE SCHEDULE**

The Fleet Services Master Agreement made and entered into as of the 1<sup>st</sup> day of September, by and between Merchants Automotive Group, LLC, a New Hampshire corporation doing business at 14 Central Park Dr, 1<sup>st</sup> Floor, Hooksett, NH 03106 (the “Service Provider”), and New Braunfels Utilities, a corporation (the “Service User”) together with its divisions and subsidiaries with a principal office at 263 Main Plaza, New Braunfels, Texas 78130 is hereby amended as follows:

The following are agreed upon Fees associated with the signed Fleet Services Addenda:

**Fuel Card Program:**

Per fuel card per month admin Fee	\$0.00 per card per month
Billing Cycle	<b>Weekly</b>
Payment Type	<b>ACH Pull</b>
Due date from date of invoice	Immediate
Expedited Shipping	\$25.00 per card, per occurrence

Due date outlined above for fuel services SUPERSEDES THE PAYMENT DUE DATE OUTLINED IN SECTION 2 OF THE MASTER FLEET SERVICE AGREEMENT

**SERVICE PROVIDER**  
**MERCHANTS AUTOMOTIVE GROUP, LLC**

**SERVICE USER**  
**NEW BRAUNFELS UTILITIES**

By:   
(signature)

By: \_\_\_\_\_  
(signature)

Name: Paul Danielson  
(printed name)

Name: \_\_\_\_\_  
(printed name)

Title: General Counsel

Title: \_\_\_\_\_

Date: July 25, 2023

Date: \_\_\_\_\_

**ADDITIONAL TERMS AND CONDITIONS  
UNDER COOPERATIVE CONTRACT #030122-MAG**

**AGREEMENT:** This set of Additional Terms and Conditions is incorporated into **Fleet Management Contract #030122-MAG** in its entirety and, upon execution by New Braunfels Utilities, a Texas municipally owned utility (“NBU”), and Merchants Automotive Group, LLC dba Merchants Fleet (“Vendor”), constitutes the Parties’ Agreement (“Agreement”). No change, modification or revision to the Agreement shall be binding unless made in writing and signed by the Parties.

**COMPLETION:** Time is of the essence in the performance of this Agreement. If Vendor fails to effect delivery or performance of the associated goods or services required by NBU in accordance with the requirements of this Agreement, in addition to its other rights and remedies hereunder, NBU shall have the right to terminate this Agreement by notice effective when received by Vendor or after the expiration of five (5) days from the date of mailing of such notice, whichever occurs first. Such termination shall be effective as to goods not yet received by NBU or services not yet rendered, regardless of their transit status.

**PRICES:** Vendor warrants that the prices quoted to NBU in the Service Agreement Addendum Number 1 at the time of sale includes all costs incurred by Vendor for shipment of all goods under this Agreement. In the event of any price reduction between execution of the Agreement and delivery of the goods, NBU shall be entitled to such reduction. NBU shall pay the Vendor for fuel card services in an amount not to exceed \$567,000, for the initial term and \$612,360, for the first renewal term of the Agreement and \$661,349, for the second renewal term of the Agreement. In the event additional funds must be authorized by NBU to comply with this Agreement, NBU and Vendor shall mutually agree to an increase in these not to exceed amounts. In no event shall NBU’s internal authorization process impact the receipt of funds owed to Vendor under this Agreement.

**SHIPMENT AND DELIVERY:** All goods made the subject hereof are to be suitably prepared and packaged for shipment in accordance with good commercial practice so as to effect safe delivery and freedom from weather or other damage and to meet the carrier’s requirements. All damages to such goods occurring prior to delivery will be charged to Vendor. No charges will be allowed for packing, crating or carriage unless stated in the Agreement. If, in order to comply with NBU’s required delivery date, it becomes necessary for Vendor to ship by a more expensive way than specified in the Agreement any such increased transportation costs shall be paid by Vendor. All deliveries shall be f.o.b point designated in these Additional Terms and Conditions or as specified in writing by NBU. Cost of all return shipments, for whatever reason returned, shall be borne by Vendor with title and risk of loss passing at NBU’s point of shipment, unless otherwise specified by NBU at the time of return.

**INSPECTION:** NBU shall have a reasonable time after delivery or performance to inspect the items delivered or the services performed. All such items or services must conform to the specifications, instructions, drawings and data set forth in the Agreement and Service Agreement Addendum Number 1. NBU may reject and refuse acceptance of any items or services which do



not so conform. NBU shall notify Vendor of such rejection by either notice in writing and by the return to Vendor of the rejected items at Vendor's expense and risk.

**REJECTION OF MATERIALS AND WORKMANSHIP:** NBU shall have the right to reject furnished materials and workmanship that are defective or otherwise fail to meet the terms and conditions of the Agreement and require their correction. Rejected goods shall be satisfactorily replaced with proper materials without charge to NBU, and Vendor shall promptly segregate and remove rejected materials from the point designated. If Vendor does not correct defective workmanship or replace the rejected materials within a reasonable time, NBU may do so and charge all costs, damages, fees, and expenses to Vendor including, without limitation actual, consequential and incidental damages.

**SHOP DRAWINGS, SUBMITTALS, QUALITY OF GOODS:** Vendor shall confirm that all materials are in strict accordance with the Agreement and Service Agreement Addendum Number 1. Where required, prior to shipment, Vendor shall provide shop drawings or submittals sufficient to demonstrate compliance with the Agreement for NBU's review and approval. A failure of NBU during the progress of the work to discover or reject materials not in accordance with the Agreement shall not be deemed an acceptance thereof or a waiver of defects therein. No payment or use of goods provided by Vendor shall be construed as an acceptance of materials which are not strictly in accordance with the Agreement.

**INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS NBU AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEY'S FEES, ENGINEERING OR OTHER CONSULTANTS' FEES, OF ANY KIND RESULTING FROM VENDOR'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT, FAILURE OF GOODS, OR ACTS RESULTING IN BODILY INJURY OR PROPERTY DAMAGE, BUT ONLY TO THE EXTENT OF THE NEGLIGENCE OR OTHER FAULT OF VENDOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER. FOR CLARITY, FUELING STATIONS ARE NOT SUBCONTRACTORS OF VENDOR.**

**NO DAMAGES FOR DELAY:** Vendor shall have no right to claim any damages against NBU, including consequential or incidental damages, as a result of delay. Extension of time for Vendor's performance is conditioned upon NBU's approval of an extension of time to the contract or delays claimed by Vendor. Failure of Vendor to make a claim promptly shall be deemed a waiver of the right to a claim for an extension of time for the particular cause.

**TERMINATION:** NBU may terminate this Agreement or any part thereof for cause in the event of any default by Vendor, or if Vendor fails to comply with any of the terms and conditions of this Agreement. The Uniform Commercial Code of the State of Texas ("UCC") shall apply to NBU's rights and remedies under commercial transactions. NBU reserves all rights, remedies, and warranties, express and implied, under the UCC. Vendor may not terminate this Agreement unless NBU fails to provide payment for goods and/or associated services expressly accepted by NBU.

**TAXES:** NBU is exempted from all city, state, and federal excise taxes. DO NOT include tax on your invoice. NBU's Federal ID Number is 74-6001783. However, NBU agrees taxes assessed on fuel purchases while using the fuel card(s) provided by Vendor are acceptable charges that NBU will fully reimburse to Vendor.

**INSURANCE:** Per the Agreement, Vendor will secure and maintain throughout the term of this Agreement at least the minimum insurance coverages specified in the Agreement. Promptly, upon execution of this Agreement and upon future request from NBU, Vendor shall provide proof of such insurance coverage by providing a Certificate of Insurance demonstrating compliance with the insurance coverages to NBU. Vendor will provide an updated Certificate of Insurance to NBU upon request.

**PAYMENT:** Invoices will be paid as outlined in Vendors Master Services Agreement and mutually executed. Payment for the goods delivered under this Agreement shall not be acceptance of such goods. Goods shall only be deemed accepted when they have actually been counted, inspected, and tested by NBU and found to be in conformance with this Agreement. However, failure to inspect or test by NBU shall not relieve Vendor of any responsibility hereunder.

**REMEDIES:** The rights and remedies reserved to NBU herein, except where expressly stated to be exclusive, shall be cumulative and in addition to any other or further rights and remedies provided by law or equity. No waiver of any breach of these provisions shall be deemed to constitute a waiver of any other breach.

**DISPUTE RESOLUTION:** The Agreement shall be governed by the laws of the State of Texas. In the event that a dispute arises between NBU and Vendor, the parties agree to submit said disputes to a court of competent jurisdiction in Comal County, Texas for resolution.

**TEXAS PUBLIC INFORMATION ACT:** Vendor recognizes that NBU is subject to the disclosure requirements of the Texas Public Information Act (the "PIA"). As part of its obligations under this Agreement, Vendor agrees, at no additional cost to NBU, to cooperate with NBU for any particular needs or obligations arising out of the NBU's obligations under the PIA. This acknowledgement and obligation are in addition to and complimentary to the NBU's audit rights.

This provision applies if the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by NBU in a fiscal year of NBU.

Vendor must (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to NBU for the duration of the Agreement; (2) promptly provide to NBU any contracting information related to the Agreement that is in the custody or possession of Vendor on request of NBU; and (3) on completion of the Agreement, either:

- (i) provide at no cost to NBU all contracting information related to the Agreement that is in the custody or possession of Vendor; or

- (ii) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to NBU.

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Vendor agrees that the Agreement can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

**ELECTRONIC SIGNATURES:** Pursuant to Chapter 322 of the Texas Business and Commerce Code, as amended, the parties agree to the use of electronic signatures herein and that the use of an electronic signature, whether digital or encrypted, is intended to have the same force and effect as a manual signature. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures.

**REPRESENTATIONS:**

Prohibition on Contracts with Companies Boycotting Israel. Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, does not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement as described in Chapter 2271 of the Texas Government Code, as amended. The foregoing verification is made solely to comply with Section 2271.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations Prohibited. Vendor represents that neither it nor any of its parent company, wholly-or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, as amended, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law and excludes Vendor and each of its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime

relating to a foreign terrorist organization. Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

Prohibition on Contracts with Companies in China, Iran, North Korea, or Russia. To the extent this Agreement relates to critical infrastructure in the State of Texas, Vendor represents the following:

- (A) it is not owned by or the majority of stock or other ownership interest in Vendor is not held or controlled by:
  - i. individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the Texas Government Code, as amended (“designated country”); or
  - ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or
- (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country.

The foregoing representation is made solely to comply with Chapter 2274 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal or State law. As used in the foregoing verification, “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

Prohibition on Contracts with Companies Boycotting Energy Companies. Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, “boycott energy companies” has the meaning used in Section 809.001 of the Texas Government Code, as amended. Vendor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Vendor hereby verifies that it and its parent company, wholly-or majority owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate against a firearm entity or firearm trade association during the term of this Agreement as described in Chapter 2274 of the Texas Government Code, as amended.

The foregoing verification is made solely to comply with Section 2274.002 of the Texas Government Code, as amended, and to the extent such Section does not contravene applicable federal and State law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning used in Section 2274.001(3) of the Texas Government Code, as amended. Vendor understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with Vendor and exists to make a profit.

**NBU:**  
**NEW BRAUNFELS UTILITIES,**

a Texas municipally owned utility

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VENDOR:**  
**Merchants Automotive Group, LLC dba**  
**Merchants Fleet,**

a New Hampshire limited liability company  
authorized to transact business in Texas

By: Paul Danielson  
Name: Paul Danielson  
Title: General Counsel