

**ADDITIONAL TERMS AND CONDITIONS  
UNDER COOPERATIVE CONTRACT 597-19**

**AGREEMENT:** This set of Additional Terms and Conditions is incorporated into BuyBoard's Construction, Road and Bridge, Ditching, Trenching, and Other Equipment Contract No., 597-19 in its entirety and, upon execution by New Braunfels Utilities, a Texas municipally owned utility ("NBU"), and Vermeer Texas-Louisiana, Inc., a Texas corporation ("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 **Quotes number Q01927 and Q01928**, both dated 09/14/2022, at the time of sale includes all costs incurred by Vendor for shipment of all goods under this Agreement, copies of which are attached hereto. In the event of any price reduction between execution of the Agreement and delivery of the goods, NBU shall be entitled to such reduction.

**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 **Quotes number Q01927 and Q01928**, both dated 09/14/2022. 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 **Quotes number Q01927 and Q01928**, both dated 09/14/2022. 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.

**WARRANTIES / GUARANTEES:** Vendor expressly warrants that the items and services covered hereunder shall be free of defects in workmanship and shall be performed in a good and workmanlike manner consistent with industry standards ("Services Warranty"). A minimum of a ninety (90)-day product or service guaranty of the manufacturer's standard commercial warranty, whichever is greater, will apply to all awarded products and services. All warranties shall run to NBU, its customers and subsequent owners of items or services covered hereunder.

**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.

**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.

**INSURANCE:** Per Section E(2) of the BuyBoard General Terms and Conditions, Vendor will secure and maintain appropriate and sufficient insurance throughout the term of this Agreement necessary to protect NBU from all claims for bodily injury, death, or property damage that might arise from the performance of the Agreement.

Vendor at its sole expense, shall obtain and maintain insurance in at least the following minimum limits:

**COMMERCIAL GENERAL LIABILITY:**

Amounts of coverage shall be no less than:

- \$1,000,000 Per Occurrence
- \$2,000,000 General Aggregate

**AUTOMOBILE LIABILITY:**

Amount of coverage shall be no less than:

- \$1,000,000 Per Accident

**WORKERS' COMPENSATION**

Amounts of coverage shall be no less than:

- Statutory Limits
- \$1,000,000 Each Accident, Employee, and Disease

All insurance (except Workers' Compensation) must include NBU, its agents, representatives, officers, directors, officials, and employees as an additional insured (CG 2010 1001 and CG 2037 1001 or an equivalent on the general liability policy) to the fullest extent permitted by law for claims arising out of the performance of this Agreement. Any coverage afforded to the additional insured shall be primary and non-contributory. All policies shall contain a waiver of rights of recovery (subrogation) against NBU, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the services performed under this Agreement.

Vendor shall furnish NBU with satisfactory evidence that all insurance required by this Agreement has been obtained and paid for and will continue in full force and effect until the completion of the work. Evidence of insurance includes, but is not limited to, certificates of insurance, endorsements, schedule of forms and endorsements, or other policy language, but acceptance and reliance on such information will not waive or alter any way the insurance requirements or obligation under this Agreement. Vendor shall provide a minimum of five (5) days' written notice to NBU in the event of cancellation.

**PAYMENT:** Invoices will be paid within 30 days after receipt of the items or completion of required services. 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 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

**VENDOR:**  
**VERMEER TEXAS-LOUISIANA, INC.,**  
a Texas corporation

By: \_\_\_\_\_  
Name:   Ian Taylor    
Title:   CEO  

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