

## ATTACHMENT A

### **MAMMOTH COMMUNITY WATER DISTRICT PURCHASE ORDER TERMS AND CONDITIONS**

**1. Acceptance.** By accepting this Purchase Order (PO), the vendor identified on the face page of this PO (Vendor), agrees to comply with these terms and conditions. Written acceptance or shipment of all or any portion of the materials or supplies, and the performance of all or any portion of services, covered by this PO shall constitute unqualified acceptance of all its terms and conditions. Vendor shall sell and deliver, and the Mammoth Community Water District (District) shall purchase, the goods, materials, services and/or items described herein (Goods and Services). The Goods and Services must comply with this PO and any solicitation or notice inviting bids/quotes and information to bidders, or RFP/RFQ and Vendor's response (if any). The Goods and Services shall be sold and purchased at prices set forth in this PO.

**2. Delivery.** Vendor's carrier shall deliver the Goods and Services FOB destination unless specified otherwise at the location set forth in this PO free from any claims, debts, or demands whatsoever. Vendor shall notify District about delivery in writing or by telephone at least 24 hours before delivery. Goods and Services shall be delivered no later than the date set forth herein. No charges for transportation, packing, drayage, etc. will be allowed unless stated herein.

**3. Compliance with Law.** The design and manufacture of the Goods and performance of all Services shall comply with all applicable federal, state and local laws and regulations. Vendor will comply with all applicable laws, rules and regulations including, but not limited to, the requirements of Labor Code Section 3700 regarding Workers' Compensation Insurance.

**4. Governing Law.** All questions of validity, interpretation or performance of any of the terms or of any rights or obligations of the parties to this agreement shall be governed by California law; and any action brought by either party to enforce any of the terms of the agreement shall be filed with the Superior Court of the County of Mono, California or the federal district court having jurisdiction over the Town of Mammoth Lakes, California.

**5. Risk of Loss.** Vendor shall bear the risk of loss of or damage to Goods until such time as District takes actual possession of Goods by moving them from the point of delivery.

**6. Substitutions.** No substitution will be permitted without the written consent of District. If Vendor proposes any substitution, Vendor guarantees that the substitution is equal in quality, capacity, durability, ease of maintenance, and ease of installation to the Goods and Services originally specified and must be accepted by District in advance.

**7. Changes.** District, by written order, may delete Goods and Services to be supplied under this PO, and the PO price will be equitably reduced. District, by written order, may order an increase in Goods and Services to be supplied, and the PO price will be equitably increased. If unit prices are stated, the reduction or increase shall be calculated based on the unit prices stated in the PO. If no unit prices are stated, Vendor shall promptly, at the request of District, quote prices, and District shall promptly accept or reject the quote.

**8. Inspection and Testing.** All Goods and Services will be subject to final inspection and approval promptly after delivery. Payment for the Goods and Services will not constitute final acceptance. Vendor at its cost shall remove and replace any Goods and Services that District designates as non-conforming or defective.

**9. Insurance.** (a) Vendor, at its sole cost and expense, shall procure and maintain for the duration of this PO and any subsequent warranty period products liability insurance with limits of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate and automobile liability insurance with limits of at least \$1,000,000 for bodily injury and property damage per occurrence. The policy shall be endorsed to name the District, and its directors, officers, employees, contractors, and agents, as additional insureds regarding liability arising out of the products supplied by Vendor to District. The coverage shall contain no special limitations on the scope of protection afforded to District, and its directors, officers, employees, contractors, and agents. Vendor's coverage shall be primary and shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. District's insurance, if any, shall be excess to and shall not contribute with Vendor's insurance.

(b) Vendor is to place the insurance with insurers licensed to do business by and in good standing with the California Department of Insurance, with a current A.M. Best's rating of A:VII or better unless otherwise acceptable to District. Prior to delivering the products provided for herein, Vendor shall provide to District original endorsements evidencing this insurance signed by a person authorized to bind coverage on behalf of the insurer. The certificates and policy shall provide that 30 days' written notice of any material change, reduction of coverage or cancellation of the insurance policy will be provided to District. The requirements as to the types, limits, and District's approval of insurance coverage to be maintained by Vendor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Vendor under this PO.

**10. Independent Contractor.** It is expressly understood and agreed by District and Vendor that Vendor's relationship to District is that of an independent contractor. All persons hired by Vendor and providing any products or services under this PO, including any site visits, inspection of any installations of the products provided, or any other services performed for or on behalf of District, shall be Vendor's employees or agents. District shall not be obligated in any way to pay any wages or other claims by any such employees or agents or any other person by reason of this PO. Vendor shall be solely liable to such employees and agents for losses, costs, damages, or injuries to or caused by said employees or agents concerning the products delivered under, or during the course of any services provided or work performed in the fulfillment or furtherance of, this PO.

**11. Indemnification.** Vendor shall indemnify, defend (with District-approved counsel), protect, and hold harmless District, and its Directors, officers, employees, and agents from and against any and all liability, losses, claims, damages, expenses, demands, lawsuits, administrative proceedings, arbitrations, and costs (including, but not limited to, attorney, expert witness and consultant fees and expenses, and litigation costs) of every nature arising out of a breach of this PO or the negligent or wrongful conduct of Vendor in its performance of this PO. This indemnification provision shall not apply to claims, liability, loss or damage caused by the sole negligence or willful misconduct of District.

**12. Warranty.** Vendor warrants that all Goods and Services to be supplied by it under this PO are fit and sufficient for the purpose intended; that all Goods and Services will conform to the specifications, drawing samples or other descriptions specified or approved by District; that the Goods are new, merchantable, good quality and free from defects (whether patent or latent) in material and workmanship; that all performance of Services and Goods to be provided are of the best workmanship, grade and quality; and, that Vendor has good and clear title to all Goods to be supplied by it to District and the same are free and clear from all liens, encumbrances and security interests. For a period of one year after delivery of the Goods and Services, Vendor shall at its own expense replace, repair or re-perform defective Goods and Services as requested by District.

**13. Invoices.** Invoices shall contain the following information: Vendor's Federal Tax I.D. number, PO number, invoice date and number, item number, description of Goods and Services provided,

quantities and units of measure, unit prices and extended totals. Sales and use tax, if applicable, must be shown on the invoice as a separate line item.

**14. Payment Terms.** Unless otherwise agreed, payment terms are net 30 days upon acceptance of Goods and Services and receipt of a complete and accurate invoice by District. District may withhold 10% of the price until the Goods and Services are installed, performed, tested, and operating. District shall pay any applicable sales and use taxes.

**15. Termination.** District may terminate this PO in any of the following circumstances: (1) if Vendor fails to deliver the Goods and Services within the time specified; (2) if Vendor fails to perform any other provision of this PO; or if Vendor is adjudged bankrupt or it makes a general assignment for the benefit of its creditors, or if a receiver is appointed for Vendor.

**16. Integration.** This PO constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this PO, except those other documents that are expressly referenced in this PO. The terms of any proposal referred to herein are included and made a part of the order only to the extent it specifies the materials, supplies, or services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this PO.

**17. Waiver.** The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this PO shall not be deemed a waiver with respect to any subsequent default or matter. No payment by District to Vendor shall be considered or construed to be an approval or acceptance of any defective goods or any other breach or default.