

**LAKE WORTH DRAINAGE DISTRICT
PURCHASE ORDER TERMS AND CONDITIONS**

This **PURCHASE ORDER** constitutes a binding contract between the LAKE WORTH DRAINAGE DISTRICT (DISTRICT) and the VENDOR as named on the PURCHASE ORDER when accepted by the VENDOR either by express acknowledgment or by commencement of work or shipment without reservations.

INVOICES AND PAYMENTS. The VENDOR shall submit a separate invoice for each purchase order or purchase release after each delivery. Invoices for other than lump sum payments shall be substantiated by adequate supporting documentation, including an itemization of the date, hours expended, description of the deliverable and if applicable, transportation charges, the bill of lading and the freight waybill. The VENDOR's invoices shall reference the DISTRICT'S PURCHASE ORDER number and original invoices (clearly marked "Original") shall be emailed to accountspayable@lwdd.net or mailed to ACCOUNTS PAYABLE, Lake Worth Drainage District, 13081 S. Military Trail, Delray Beach, Florida 33484.

The VENDOR shall submit a W-9 form and completed Automatic Deposit Authorization Form authorizing the DISTRICT to submit electronic payment for goods and services. The time at which payment shall be due from the DISTRICT shall be thirty (30) days from receipt of required documentation, proper invoice and acceptance of deliverables.

INDEMNIFICATION. For value received, the VENDOR shall indemnify and hold the DISTRICT, its officers, directors, board members, agents, assigns, and employees harmless from liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the VENDOR and other persons employed or utilized by the VENDOR in the performance of the PURCHASE ORDER. The VENDOR further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, suppliers, agents, assigns, invitees and employees with the terms of this PURCHASE ORDER. This paragraph shall survive the expiration or termination of this PURCHASE ORDER.

TERMINATION FOR DEFAULT. If the VENDOR materially fails to fulfill its obligations under this PURCHASE ORDER, the DISTRICT will provide written notice of the deficiency by forwarding a Cure Notice citing the specific nature of the material breach. The VENDOR shall have thirty (30) days to cure the breach. If the VENDOR fails to cure the breach within the thirty (30) day period, the DISTRICT shall issue a Termination for Default Notice. Once the DISTRICT has notified the VENDOR that it has materially breached its PURCHASE ORDER with the DISTRICT, the DISTRICT'S Governing Board shall determine whether the VENDOR should be suspended from doing future work with the DISTRICT, and if so, for what period of time. Should the DISTRICT terminate for default in accordance with this provision, the DISTRICT shall be entitled to recover reprocurement costs in addition to all other remedies under law and/or equity.

TERMINATION FOR CONVENIENCE. The DISTRICT may terminate this PURCHASE ORDER with or without cause at any time for convenience upon thirty (30) calendar days prior written notice to the VENDOR. In the event of termination for convenience, the DISTRICT shall compensate the VENDOR for all authorized and accepted deliverables. The DISTRICT shall be relieved of any and all future obligations hereunder, including but not limited to lost profits and consequential damages, under this PURCHASE ORDER. The DISTRICT may withhold all payments to the VENDOR for such work until such time as the DISTRICT determines the exact amount due to the VENDOR. In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to nonbinding mediation.

RECORDS RETENTION/AUDIT. The VENDOR shall maintain all records, books and documents pertinent to the performance of this PURCHASE ORDER in accordance with generally accepted accounting principles consistently applied. The DISTRICT shall have inspection and audit rights to such records for a period of 5 years from final payment under this PURCHASE ORDER. Records relating to any legal disputes arising from performance under this PURCHASE ORDER shall be made available until final disposition.

NONDISCRIMINATION. The VENDOR hereby assures that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity hereunder. The VENDOR shall take all measures necessary to effectuate these assurances.

PUBLIC ENTITY CRIMES/SDN LIST. The VENDOR, by its execution of this PURCHASE ORDER or by commencement of shipment with reservations, acknowledges and attests that neither it, nor any of its suppliers, subcontractors or consultants who shall perform work which is intended to benefit the DISTRICT is included on the U.S. Department of Treasury's List of Specially Designated Nationals and Blocked Persons, is a State of Florida convicted vendor or is included on State of Florida's discriminatory vendor list; and if the VENDOR or any affiliate of the VENDOR has been convicted of a public entity crime or has been placed on the discriminatory vendor list, a period longer than 36 months has

passed since placement on one of either of these lists. The VENDOR further understands and accepts that this PURCHASE ORDER shall be either void or subject to immediate termination by the DISTRICT, in the event there is any misrepresentation or lack of compliance with the laws and regulations of the U.S. Department of Treasury and/or the mandates of Section 287.133 or Section 287.134, respectively, Florida Statutes. The DISTRICT, in the event of such termination, shall not incur any liability to the VENDOR for any work or materials furnished.

PUBLIC ACCESS. The VENDOR shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the VENDOR assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the VENDOR.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CH. 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 561.498.5363, info@lwdd.net; 13081 S. Military Trail, Delray Beach, FL 33484.

DISTRICT'S TAX EXEMPTION. The VENDOR shall not utilize the DISTRICT'S exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with the DISTRICT. The VENDOR shall be responsible and liable for the payment of all applicable FICA/Social Security and other taxes resulting from this PURCHASE ORDER.

ASSIGNMENT/GUARANTOR. The VENDOR shall not assign, delegate or otherwise transfer its rights and obligations as set forth in this PURCHASE ORDER without the prior written consent of the DISTRICT. Any attempted assignment in violation of this provision shall be null and void. The VENDOR shall not pledge the DISTRICT'S credit or make the DISTRICT a guarantor of payment of surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. Pledging the DISTRICT'S credit shall also be construed to include the use of "factoring agents" or the practice of selling business accounts receivables to a third party at a discount for the purpose of obtaining funding which is also expressly prohibited.

FORCE MAJEURE. Notwithstanding any provisions of this PURCHASE ORDER to the contrary, the parties shall not be held liable for any failure or delay in the performance of this PURCHASE ORDER that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this PURCHASE ORDER shall otherwise remain in effect.

AMENDMENTS. This PURCHASE ORDER may be amended or rescinded only with the written approval of the parties hereto.

ORDER OF PRECEDENCE. Any inconsistency in this PURCHASE ORDER shall be resolved by giving precedence in the following order: (1) PURCHASE ORDER terms and conditions; (2) Specifications; (3) all other documents, including, but not limited to, drawings, descriptions, sample(s).

ENTIRE AGREEMENT. This PURCHASE ORDER states the entire understanding and agreement between the parties and no course or prior dealing, usage of the trade or extrinsic or parole evidence shall be relevant to supplement, vary or explain any term used with respect to this PURCHASE ORDER. The Florida Uniform Commercial Code (Chapters 671-679, Florida Statutes) shall control definitions. The acceptance or acquiescence of any course of performance rendered under this PURCHASE ORDER shall not be construed as a waiver nor shall it be relevant to define or vary any term stated herein. This PURCHASE ORDER shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

ADDITIONAL TERMS AND CONDITIONS FOR COMMODITIES:

COMPLIANCE. The VENDOR, its employees, subcontractors or assigns shall comply with all applicable federal, state and local laws and regulations relating to the performance of the PURCHASE ORDER. The DISTRICT undertakes no duty to ensure such compliance but will attempt to advise the VENDOR, upon request, as to any such laws of which it has present knowledge.

APPLICABLE LAW/VENUE. The laws of the State of Florida shall govern all aspects of the PURCHASE ORDER, including but not limited to the provisions of the Florida Uniform Commercial Code, Chapters 671-679, Florida Statutes, for any terms and conditions not specifically stated in this PURCHASE ORDER. In the event it is necessary for either party to initiate legal action regarding the PURCHASE ORDER, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.

DISTRICT'S TITLE TO MATERIALS, DOCUMENTS & PACKAGING. All materials, drawings or other items provided by the DISTRICT to the VENDOR remain the property of the DISTRICT and will be returned to the DISTRICT upon demand. All containers, reels or pallets shipped with goods by the VENDOR are to remain the property of the DISTRICT unless otherwise agreed to in writing.

SHIPMENT UNDER RESERVATION PROHIBITED. VENDOR is not authorized to ship the goods with any reservations and no tender of a bill of lading will substitute as a tender of the goods.

DELIVERY TERMS & TRANSPORTATION CHARGES. Delivery is "F.O.B. Destination" unless delivery terms are otherwise specified in the PURCHASE ORDER. If the DISTRICT agrees in writing to reimburse the VENDOR for transportation costs, the DISTRICT shall have the right to designate the method of shipment. In either case, the title and all risk of loss of the goods shall remain with the VENDOR until the goods are received and accepted by the DISTRICT. Rejected materials will be returned to the VENDOR at the VENDOR's risk and expense.

VENDOR TO PACKAGE GOODS. VENDOR will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (1) VENDOR's name and address; (2) consignee's name, address and Purchase Order or Purchase Release number; (3) container number and total number of containers, e.g. box 1 of 4 boxes; and (4) the number of the container bearing the packing slip. VENDOR shall bear the cost of packaging unless otherwise specified in the PURCHASE ORDER.

PRICES QUOTED. The VENDOR's price will be the lowest prevailing market price and under no circumstances will the price be higher than specified, without the express written authorization of the parties, as evidence by an amendment to the PURCHASE ORDER.

DISTRICT'S RIGHT TO CANCEL. The DISTRICT reserves the right to cancel all or part of this PURCHASE ORDER, without obligation, if acceptance is not expressed by the VENDOR either through written notice or by delivery of items ordered, within the specified time(s) and date(s).

VENDOR NOT TO LIMIT WARRANTY. The VENDOR shall not limit or exclude any express or implied warranties and any attempt to do so shall render this PURCHASE ORDER void, at the option of the DISTRICT. The VENDOR warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the offering document or to the sample(s) furnished.

TERMS/PROVISIONS. Should any term or provision of this PURCHASE ORDER be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this PURCHASE ORDER, that the PURCHASE ORDER shall remain operable, enforceable and in full force and effect to the extent permitted by law.

ADDITIONAL TERMS AND CONDITIONS FOR SERVICES:

STATEMENT OF SERVICES. The VENDOR shall, to the satisfaction of the DISTRICT, fully and timely perform all work items described in the "Statement of Work," attached to this PURCHASE ORDER and incorporated herein.

COMPENSATION/CONSIDERATION. The total consideration for all work required by the DISTRICT pursuant to the PURCHASE ORDER shall not exceed the amount indicated on the PURCHASE ORDER. Such amount includes all expenses the VENDOR may incur and therefore no additional compensation shall be authorized. The VENDOR, by executing the PURCHASE ORDER or by commencement of work without reservations, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete and current at the time of contracting.

If the total consideration for this PURCHASE ORDER is subject to multi-year funding allocations, funding for each applicable fiscal year of this PURCHASE ORDER will be subject to DISTRICT Governing Board budgetary appropriation. In the event the DISTRICT does not approve funding for any subsequent fiscal year, this PURCHASE ORDER shall terminate upon expenditure of the current funding, notwithstanding other provisions in this PURCHASE ORDER to the contrary. The DISTRICT will notify the VENDOR in writing after the adoption of the final DISTRICT budget for each subsequent fiscal year if funding is not approved for this PURCHASE ORDER.

INSURANCE. The VENDOR shall procure and maintain, through the term of this PURCHASE ORDER, insurance coverage reflecting, at a minimum, general liability and automobile liability each with a limit of not less than \$300,000.00, and all Florida statutory workers' compensation insurance. The coverage required shall extend to all employees and subcontractors of the VENDOR. The VENDOR must provide a Certificate of Insurance completed in full, indicating the producer, insured, carrier's name, and BEST rating, policy numbers and effective and expiration dates of each type of coverage required. The Certificate of Insurance shall be signed by an authorized representative and shall identify the DISTRICT as added insured as required. No work is authorized until such time as the DISTRICT has received a Certificate of Insurance in compliance with the above requirements. Vendor shall also provide proof of Workers' Compensation policy coverage.

OWNERSHIP. The DISTRICT shall retain exclusive title, copyright and other proprietary rights in all work items, including, but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the VENDOR under this PURCHASE ORDER. The VENDOR shall grant to the DISTRICT a perpetual, non-transferable, non-exclusive right to use any proprietary software, if any. Any equipment purchased by the VENDOR with DISTRICT funding shall be returned and title transferred from the VENDOR to the DISTRICT upon expiration or termination of the PURCHASE ORDER.

COMPLIANCE/LICENSES. The VENDOR, its employees, subcontractors or assigns, shall obtain, at its own expense, all licenses, permits and other authorizations necessary to comply with all applicable federal, state and local laws and regulations relating to the performance of the PURCHASE ORDER. The DISTRICT undertakes no duty to ensure such compliance but will attempt to advise the VENDOR, upon request, as to any such laws of which it has present knowledge.

APPLICABLE LAW/VENUE. The laws of the State of Florida shall govern all aspects of the PURCHASE ORDER. In the event it is necessary for either party to initiate legal action regarding the PURCHASE ORDER, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justifiable in federal court.

INDEPENDENT CONTRACTOR. The VENDOR shall be considered an independent contractor and nothing in this PURCHASE ORDER shall be interpreted to establish any relationship other than that of an independent contractor between the parties and their respective employees, agents, subcontractors or assigns, during or after the term of the PURCHASE ORDER. Both parties are free to enter into contracts with other parties for similar services. The DISTRICT assumes no duty with regard to the supervision of the VENDOR and the VENDOR shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of performance under the PURCHASE ORDER. In the event the VENDOR is a sole proprietor, the VENDOR is responsible for submitting legally required returns to the Federal Government.

SEVERABILITY. Should any term or provision of this PURCHASE ORDER be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this PURCHASE ORDER, to the extent that the PURCHASE ORDER shall remain operable, enforceable and in full force and effect to the extent permitted by law.

DISPUTES. In the event a dispute arises which the project managers cannot resolve between themselves, the parties shall have the option to submit to nonbinding mediation. The mediator or mediators shall be impartial, shall be selected by the parties and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

IMMIGRATION. The VENDOR shall be responsible for verifying employee authorization to work in the U.S. and certifying that a good faith effort has been made to properly identify employees by timely reviewing and completing appropriate documentation, including but not limited to, USCIS Form I-9. Written verification shall be kept by the VENDOR and made available for inspection on demand by the DISTRICT. The hourly rate of pay for each employee shall comply with State law and industry standards for similar work performed under the PURCHASE ORDER. The VENDOR shall maintain records verifying

the rate of pay for each employee working on this PURCHASE ORDER and make such records available for inspection on demand by the DISTRICT. Failure to comply with these provisions shall be a material breach of the PURCHASE ORDER and cause for termination of the VENDOR.

BACKGROUND CHECKS. The VENDOR shall conduct thorough background checks for all of the VENDOR'S employees or hired workers who will be working on the DISTRICT site. The background checks shall consist of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status in accordance with the above provision title "IMMIGRATION". After reviewing the results of the background check, the VENDOR shall determine whether the VENDOR'S employees and/or hired workers meets the necessary criteria for the position sought to be filled by the DISTRICT. The DISTRICT will rely on the VENDOR'S assessment of its employees' or hired workers' suitability to be hired for the position(s) sought to be filled by the DISTRICT, based on the background check conducted by the VENDOR. Prior to allowing any employees or hired workers to work on-site at DISTRICT facilities the VENDOR will provide written verification to the DISTRICT that a complete background check, as described above, was conducted for any such employee or hired worker. The VENDOR will place the above language in any contract that it has with its subcontractors and is responsible for its enforcement.

EMPLOYMENT BENEFITS. VENDOR expressly understands and agrees that VENDOR, its officers, agents, and employees are not entitled to any employment benefits

from the DISTRICT. VENDOR expressly and voluntarily waives and agrees not to make any claim to participate in any of the DISTRICT's employee benefits or benefit plans should VENDOR or any of its officers, agents, or employees be adjudicated for any reason to be an employee of the DISTRICT. In the event VENDOR is self-employed, VENDOR expressly represents that VENDOR is an independent VENDOR and hereby waives any entitlement to overtime or other benefits that VENDOR may be entitled to receive should VENDOR be adjudicated for any reason to be an employee of the DISTRICT.

STOP WORK ORDER. The DISTRICT may order that all or part of the work stop if circumstances dictate that this action is in the DISTRICT's best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the DISTRICT's Board of Supervisors, a condition of immediate danger to DISTRICT employees, or the possibility of damage to equipment or property. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the VENDOR to the DISTRICT. If this provision is invoked, the DISTRICT shall notify the VENDOR in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The VENDOR shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the DISTRICT is received. If deemed appropriate by the DISTRICT and in the event work is resumed, the DISTRICT may amend this Purchase Order to reflect any changes to the Statement of Work and/or the project schedule.