



**COUNTY OF EL DORADO  
Procurement & Contracts**

ATTN: Purchasing Agent  
360 Fair Lane  
Placerville, CA 95667

**INVITATION TO BID & BID #15-288-049**

**DUE: 3:00 PM – April 10, 2015**

Sealed Bids must be clearly marked on the outside of the package with:

**“BID #15-288-049, MAILROOM - DO NOT OPEN**

**ALL BIDS SUBJECT TO GENERAL TERMS AND CONDITIONS**

**PLANT MIX ASPHALT CONCRETE – WEST SLOPE**

**General:** The El Dorado County Procurement & Contracts Division is requesting bids for the purchase of Plant Mix Asphalt Concrete for the West Slope of El Dorado County. Purchases will be made on an “as requested” basis during the awarded twenty four (24-month) month period. Prices shall remain firm for the twenty-four (24-month) month period. Quantities indicated on the Quotation Schedule are an estimated annual usage; the County makes no guarantee as to the total amount to be purchased during the awarded period.

**Specifications:** Product specifications are provided on the Quotation Schedule on page eleven (11). The Director of Transportation, or authorized personnel, may reject material furnished which does not meet specifications contained in this Invitation to Bid.

**Information:** For additional information, contact Rick Blake, Sr. Buyer, at (530) 621-5873 (email [rick.blake@edcgov.us](mailto:rick.blake@edcgov.us)). Bidders shall direct all inquiries to the County Procurement and Contracts Division Purchasing Agent and shall not contact the requesting department directly regarding any matter related to this Invitation to Bid.

**ALL BIDS SHALL BE QUOTED FREIGHT PREPAID FOB DESTINATION**

*Prior to preparing your bid submittal, please note the General Terms and Conditions, Instructions to Bidders, Item #3 which states: Erasures, overwrites and the use of correction fluid or tape are NOT acceptable.*

Teichert Aggregates  
Firm Name  
PO Box 15002  
Mailing Address  
Sac., CA 95851  
City State Zip  
916-768-8847  
Phone

Jennifer Pasquetti  
Signature of Authorized Agent  
Jennifer Pasquetti Sales Rep  
Print Name & Title of Authorized Agent  
4-8-15  
Date  
916-379-0571  
Fax

Japasquetti@Teichert.com  
E-Mail Address

Copies of bids available at <http://www.edcgov.us>

**Bid Preparation / Submittal Checklist**

- All required bidder information on Page one (1) of the Invitation to Bid is completed and has the original signature of an authorized agent.
- Note that erasures, overwrites and the use of correction tape or fluid are NOT acceptable. Refer to Item #3 of the General Terms and Conditions for specific instructions.
- Any categories bid on the Quotation Schedule, Page eleven (11), are bid 100% complete.
- Note any prompt payment discounts available on the Quotation Schedule, Page twelve (12).
- A valid California Seller's Permit number is entered on Page six (6).
- All requirements of Invitation to Bid have been met.
- Local Vendor Preference Affidavit of Eligibility form submitted with bid; link to form information available on Page eight (8).

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## **General Terms and Conditions**

### *Instructions to Bidders:*

- (1) Bidders are responsible to see that the bid is received in the Procurement & Contracts Division prior to the bid opening deadline. Late bids will be returned unopened.
- (2) All bids must be submitted in ink on the bid form. Cover letters, additional sheets, etc. may be included. The total bid excluding sales tax must appear on the bid form as indicated.
- (3) Erasures, overwrites and use of correction fluid or tape are NOT acceptable. All changes (price, model numbers, part numbers, etc.) must be lined out and corrections inserted adjacent to and initialed by the bidder's authorized representative.
- (4) Vendor is required to quote "NEW" equipment, material or product. Recycled, remanufactured, or previously owned product will not be accepted unless otherwise stated in the Invitation to Bid.
- (5) All bids must include the company name and address and must be signed by an authorized representative of the company; signature must be an original signature, or an original signature stamp, on the County Bid Form.
- (6) Alternate or incomplete bids will NOT be accepted.
- (7) The County, at its sole option, may correct arithmetic or extension errors, and obtain clarification, if necessary.
- (8) If no terms discount is to be offered, the terms portion of the bid form shall state "NET".
- (9) If delivery specified is impossible, bidder must state best delivery available on the bid form. Number of days shall mean calendar days After Receipt of Order (ARO). Bids quoting delivery beyond the requirement may be rejected.
- (10) Bid modifications, corrections, or additions received beyond the bid deadline will NOT be considered.
- (11) Telephone, facsimile, or emailed bids will NOT be accepted.
- (12) Bid prices shall be firm for a minimum of sixty (60) calendar days from the bid opening unless otherwise indicated on the bid form.
- (13) By submitting a response to this Invitation to Bid, Bidder acknowledges and accepts the County's standard terms and conditions incorporated as Exhibit "A".
- (14) Any alteration to the Invitation to Bid must be added in addenda form, and must be issued by the County Purchasing Agent.

- (15) Protest Procedure: Award of bid will be published on the County's website:

<http://edcapps.edcgov.us/contracts/bidresults.asp>

Bidders have ten (10) business days from the date of the posting to submit a letter of protest to the Purchasing Agent. Letter must be signed by an authorized representative stating specific reason(s) for the protest including all relevant facts (law, rule, regulation, criteria).

*Brands:*

- (1) The use of brand and/or manufacturer names in the bid specification is for descriptive purposes only. Unless otherwise specified, products of comparable quality and performance will be considered.
- (2) Bidders offering other than the referenced brands are to note their brand name and catalog model number on the bid form.

*Guarantees:*

- (1) All items purchased shall be guaranteed against defects when used for the purposes for which they were designed for.

*Taxes:*

- (1) Bidders shall NOT include Federal Excise Taxes. An exemption certificate will be furnished to the successful bidder upon request.
- (2) Applicable taxes and fees will be added when the purchase order is issued.

*Samples:*

- (1) Samples of items, when required, must be furnished to the County at the bidder's expense. If possible, samples will be returned upon request and at the bidder's expense. Samples of selected items may be retained for comparison.

*Bonds:*

- (1) The County reserves the right to require the successful bidder to provide a performance bond in an amount determined by the County. Unless specifically required on the bid form, a performance bond will NOT be required.
- (2) Certification of the performance bond shall be required following bid award and prior to the release of a purchase order.
- (3) Unless specifically required on the form, bidder's bonds will NOT be required.

*Award:*

- (1) Regardless of amount, unless specifically approved by the County Board of Supervisors, award shall be made to the lowest responsive, responsible qualified bidder.
- (2) In determining the successful bidder, consideration will be given to quality, delivery, warranty, compatibility with existing equipment, and any other information considered to be in the best interests of the County.
- (3) It is unlawful for any person to furnish supplies or services or transact any kind of business in the unincorporated territory of EL Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070. Contact Tax Collector's Office, 360 Fair Lane, Placerville, CA 95667, telephone (530) 621-5800, for further information.
- (4) In accordance with Board Policy, 5.7.1, effective October 11, 2006, the local vendor preference is 5%. Vendor shall have established a place of business within El Dorado County prior to publication of the call for bids.
- (5) The County of El Dorado is an equal opportunity employer (EOE). Minorities, Females and Handicapped are encouraged to participate (M/F/H).
- (6) If the bid is on an "All or Nothing" basis, bidder shall so state. The County reserves the right to make awards on individual items of a multiple item bid if deemed to be in the best interest of the County.
- (7) The County reserves the right to reject any and all bids, or to waive any informality or nonsubstantial irregularity in any bid.
- (8) The County reserves the right to purchase quantities by necessity only regardless of approximate quantities indicated on the bid form. Bidder shall also have the right to refuse sale in reduced quantities; in such instances, the award shall go to the next lowest qualified bidder.
- (9) In case of default by vendor, the County may procure the articles or service from other source and may recover the loss occasioned thereby from any unpaid balance due the vendor or by proceeding against performance bond of vendor, if any, or by legal process against vendor. The prices paid by County shall be considered the prevailing market price at the time such purchase is made.

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**Requirement:** Bidders failing to comply with any of the following requirements will not be considered for the evaluation and award process:

1. Product must be in accordance with State of California Standard Specifications.
2. Bidders must be the producers of the material.
3. Quantities indicated are approximate. The County makes no guarantee as to the total amount to be purchased
4. To be considered for Bid Evaluation and Award, ***Bidders must quote 100% for each Category*** listed on the Quotation Schedule on page eleven.

**California Sales & Use Tax Requirement:** Any bidders located outside of the State of California selling goods to the County must possess a valid and current California Seller's Permit at the time of bidding and maintain such permit in good standing throughout the awarded period.

Provide California Seller's Permit Number: SZKH28-850355

**Delivery:** The Transportation Division will pick up the material from the awarded vendor's plant location.

**Incomplete and Altered Bids:** Incomplete or altered bids, and bids containing items not called for in the bid may be rejected. Bids submitted on forms other than those furnished by the County will not be considered.

**Terms and Conditions:** The County will not consider any terms and conditions other than the terms and conditions contained in the subject bid. Bidders submitting their own terms and conditions will not be considered and will be rejected. Any bid response containing alterations to the General Terms and Conditions or terms and conditions contained in the subject bid, will not be considered and will be rejected.

**Merchantability:** There shall be an implied warranty of merchantability and fitness of an intended use. Any bid submittals taking exception to this requirement may, at the County's option, be considered non-responsive.

**County's Rights:** The Purchasing Agent reserves the right to not enter into any agreement, cancel this process at any time, amend this process at any time, or to award more than one contract to the lowest, responsive, responsible bidders if it is in the best interest of the County

**Pricing:** Bid prices shall remain firm for the awarded twenty-four (24-month) month period. In case of default by the awarded vendor, the County may procure the product from another source and may recover the loss by legal process. Please refer to the "General Terms and Conditions," under "Award," Item #9.

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**Escalation Clause:** Price increases from the manufacturer to the successful vendor may be passed on during the life of this bid only when the following conditions are met: (1) Vendor must submit notification to the Procurement & Contracts Division of the price increase along with a new updated vendor's price list; (2) Proof of the price increase from the manufacturer shall be provided to the Procurement & Contracts Division prior to any increase being approved; and (3) Price increase(s) shall commence seven (7) days after the approval and acceptance from the Purchasing Agent. Acceptance of the price increase(s) shall be in writing signed by the Purchasing Agent.

No price change related to cost other than raw material costs will be considered as a basis for price adjustment consideration.

Failure to comply with the above requirements shall deem the bid prices to be in effect for the entire awarded period.

**Returns:** The County reserves the right to return product within thirty (30) days of receipt by the County for credit or refund without a shipping or restocking fee. Product returned shall be in good condition and in the original package (if applicable). Defective product or product under warranty may not always be returned in the original package.

**Federal, State, and Local Laws:** The successful bidder must operate in conformity with all applicable, federal, state, and local laws. It is the responsibility of the awarded bidder to ensure that all permits and/or licenses required for operation are valid and current. Failure to comply with this provision may cause to cancel any contract awarded, and award will be made to the next lowest, responsive, responsible bidder.

**Business License:** It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070. Contact the Tax Collector's Office at 360 Fair Lane, Placerville, CA 95667, or phone (530) 621-5800, for further information. El Dorado County is an equal opportunity employer (EOE). Minorities, females, and handicapped are encouraged to participate.

It is not a requirement to possess a County business license at the time of bid submittal. Successful bidders may be required to possess a County business license to award bid.

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**Local Vendor Preference:** In accordance with Board of Supervisor's Policy C-17, Section 5.7.1, a local preference credit of 5% for El Dorado County businesses will be permitted when evaluating bids for supplies and equipment that are not part of a public project.

In order to qualify for the local preference authorized by this section, the vendor seeking such preference shall be required to submit with its bid a statement containing relevant information which demonstrates compliance with the provisions of this section. The statement shall be on a form provided by the Purchasing Agent and shall be signed under penalty of perjury. Any person, firm, corporation or entity intentionally submitting false information to the County in an attempt to qualify for local preference may be prohibited from bidding on El Dorado County products and services for a period of one (1) year from the date of the false submittal. Bidders claiming local vendor preference must submit the Affidavit of Eligibility with their bid response. The Affidavit may be downloaded by clicking on the following link:

<http://edcgov.us/Contracts/Forms/LocalVendorForm.aspx>

Where state sales tax will be paid for the purchase, the local business must possess a valid resale license from the State Board of Equalization showing evidence of a local business address within El Dorado County. If the local business has more than one office in the State of California, the office located in El Dorado County shall be the point of sale credit for the purpose of sales tax calculation.

**Compliance:** Late, incomplete, incorrect deliveries or excessive back orders will be documented, and performance evaluated when considering contract continuation or extension. Inaccurate or erroneous billing will also be documented and monitored for the purpose of evaluating performance when considering continuation or extension of contract. Failure to meet quoted delivery time frames, or inaccurate or erroneous invoices (as determined by the Purchasing Agent) may be cause for the County to cancel the balance of the awarded blanket purchase order and award will be made to the next lowest bidder. Failure to receive County concurrence for substitutions or alternates will be documented and considered when evaluating continuation or extension of contract.

**Invoices and Payment Terms:** Invoices are to be mailed to the County department(s) specified on the resulting purchase order, blanket purchase order or contract. All invoices must include the purchase order number, blanket purchase order number, or contract number; County stock numbers when applicable; product description; and reference to back ordered items. Invoices must be exclusive of product other than bid items. Failure to comply may result in delayed payments.

The County will make payment on a Net thirty-day (30-day) basis unless a cash discount of one-half percent (1/2%) or greater, which amounts to \$2.50 or more, is allowed for payment within not less than twenty (20) days. The payment term shall begin on the date the merchandise is inspected, delivered and accepted by the County, or on the date a correct invoice is received in the office specified in the order, whichever is later. Prompt payment discounts shall be considered earned if payment is postmarked or personally delivered within the prescribed term. The beginning date described above shall be considered day zero for the purposes of counting days in the prescribed term.

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**El Dorado County Web Site Requirements:** It is the bidder's responsibility to monitor the County's website for possible addenda to this bid to inform him/herself of the most current specifications, terms, and conditions, and to submit his/her bid in accordance with the original bid requirements and all addenda. All available bids and related addenda can be found at:

<http://edcapps.edcgov.us/contracts/invite.asp>

Failure of bidder to obtain this information shall not relieve him/her of the requirements contained therein. Those bidders not acknowledging and returning addenda as required will not be considered and will be rejected as "non-responsive."

**Public Agency:** It is intended that other public agencies (i.e., city, special district, public authority, public agency and other political subdivisions of the State of California) shall have the option to participate in any agreement created as a result of this Invitation to Bid with the same terms and conditions specified therein, including pricing. The County shall incur no financial responsibility in connection with a purchase order from another public agency. The public agency shall accept sole responsibility for placing orders and making payment to the vendor.

**Addenda:** Addenda to this bid are valid only if in writing and issued by the Procurement & Contracts Division and are required to be acknowledged and returned by participating bidders in order for the bidder to be considered further in the evaluation process. Unless otherwise indicated, those bidders not acknowledging and returning Addenda as required will not be considered and will be rejected as "non-responsive."

**Non-Collusion:** The bidder certifies that this bid response is made without any previous understanding, agreement or connection with any person, firm or corporation making a bid for the same project, and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action.

**Conflict of Interest:** Bidder states that no County officer or employee, nor any business entity in which they have an interest, has an interest in the bid award been employed or retained to solicit or aid in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract.

**Evaluation:** Bids will be evaluated based on meeting or exceeding minimum specifications. Bids submitted on the basis of "All or Nothing" may be rejected. Bid evaluation shall include applicable prompt payment terms discount. If payment cannot be made within the discount period, payment terms shall revert to Net thirty (30) days

Bids shall be evaluated by determining low material cost, plus total costs to County for hauling. Hauling costs will be determined using the round trip hauling rate of \$1.67 per mile and assuming an average load size of 12 tons for Category I.

Example: 50 mile round trip with average load size of 10 tons per load

50 miles x 1.67 per mile = \$83.50 per round trip/load  
500 tons (estimated annual) / 10 tons per load = 50 loads  
Hauling Costs: \$83.50 per trip/load x 50 loads = \$4,175.00

**Award:** The bid may be recommended by grand total, to the lowest responsible and responsive bidder complying with the provisions of the Invitation to Bid. In determining whether a bid is lowest and responsive, and the bidder is responsible, the following may be considered by the County: (a) Ability to perform the service required within the specified time; (b) Reputation, judgment and experience; (c) The quality of performance in previous contracts; (d) Previous compliance with laws as well as employment practices; (e) Financial ability to perform the contract; (f) The quality, availability and adaptability of the supplies or the contractual services to the particular use required; (g) Ability to provide maintenance and service; (h) Whether the bidder is in arrears to the County, in debt on contract, is a defaulter on surety to the County or whether the bidder's taxes or assessments are delinquent; (i) The resale value and life cycle costs of the items; and (j) Such other information as identified in the Purchasing Ordinance having bearing on the decision to make the award. The decision of the County Board of Supervisors shall be final in determining the successful bidder.

**Bid Results:** The Procurement and Contracts Division does not mail out hard copy letters advising participating bidders of the bid results. For bid results, please visit our website at:

<http://edcapps.edcgov.us/contracts/bidresults.asp>

Bid results will be posted approximately ten (10) to fourteen (14) business days after the bid opening deadline date or when the evaluation is complete.

**Bid Submittal:** *All bidders are advised to read the General Terms and Conditions starting on Page three (3) through five (5) of this Invitation to Bid prior to submitting a bid.*

Bids must be submitted in a sealed container or envelope clearly marked on the outside:

**"BID #15-288-049 MAILROOM DO NOT OPEN"**

Bids will be accepted Monday through Friday from 8:00 a.m. to 5:00 p.m. Bids must be received in the Procurement & Contracts Division by **3:00 p.m., April 10, 2015:**

**Mailing/Physical (Fed Ex, UPS, etc.)**  
EL DORADO COUNTY  
PROCUREMENT & CONTRACTS (PURCHASING)  
360 FAIR LANE  
PLACERVILLE, CA 95667

It is the responsibility of the bidder to ensure that the bid is received in the Procurement & Contracts Division prior to the bid opening deadline date and time. Bids received beyond the bid opening deadline will not be accepted and will be returned unopened. The time stamp clock located in the office of the Procurement and Contracts Division will serve as the official time clock.

Late bids, unsealed bids, unlabeled bids, incomplete bids, or bids otherwise not in compliance with the General Terms and Conditions of this Invitation to Bid, will be rejected.

By submitting a response, bidder acknowledges and accepts the General Terms and Conditions and all terms and conditions contained in this Invitation to Bid.

**QUOTATION SCHEDULE**

**Category 1 - Plant Mix Asphalt Concrete – West Slope**

Estimated Annual Usage (Tons)	Description	Unit Price Per Ton
3,000	3/8" A.C. (PG 64-16 or equivalent)	\$ 58.00 /ton
13,000	1/2" A.C. (PG 64-16 or equivalent)	\$ 50.00 /ton
1,500	3/4" A.C. (PG 64-16 or equivalent)	\$ 47.00 /ton
150	3/8" Type A A.C. (PG 70-10 or equivalent)	\$ 60.00 /ton

Erasures, overwrites, and the use of correction fluid/tape are NOT acceptable.  
Refer to #3 of the General Conditions for specific instructions

Vendor's Plant Address: Teichert Perkins  
8760 Kiefer Blvd.  
Sac., CA 95864

One-way mileage from Vendor's Plant to Placerville, CA: 34.1 Miles

Community Development Agency  
Transportation Division  
2441 Headington Road  
Placerville, CA 95667

Bids shall be evaluated by determining low material cost, plus total costs to County for hauling. Hauling costs will be determined using the round trip hauling rate of \$1.67 per mile and assuming an average load size of 12 tons.

**Example: 50 mile round trip with average load size of 10 tons per load**

50 miles x 1.67 per mile = \$83.50 per round trip/load  
500 tons (estimated annual) / 10 tons per load = 50 loads  
Hauling Costs: \$83.50 per trip/load x 50 loads = \$4,175.00

The example above is for illustrative purposes only.

**PROMPT PAYMENT DISCOUNT TERMS**

Indicate percentage discount for prompt payment.

*(Note: Discount of less than 2% or with payment terms of less than twenty (20) days will not be accepted and will not be considered for evaluation purposes.)*

1.5 % Discount if paid within Net 10th Prox days from date invoice is stamped dated in  
by Department.

**Indicate "Net" if no Prompt Payment Discount Terms are offered**

Erasures, overwrites and use of correction fluid or tape are NOT acceptable.  
Refer to Item #3 of the General Terms and Conditions for specific instructions.

**DELIVERY**

Indicate the number of days after receipt of order (ARO) for delivery: 1  
Refer to Page six (6), "Delivery," for specific delivery requirements.

Erasures, overwrites and use of correction fluid or tape are NOT acceptable.  
Refer to Item #3 of the General Terms and Conditions for specific instructions.

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**STATEMENT OF NO RESPONSE**

If Vendor is not submitting a response to this BID, RFP, RFI, RFQ, etc., please complete and return this form to: El Dorado County Procurement and Contracts, 330 Fair Lane, Placerville, CA 95667, or fax to (530) 295-2537. Failure to respond to a BID, RFP, RFI, RFQ, etc., or submit a 'Statement of No Response' three (3) times in succession will result in removal from the County's bidders list.

*Board of Supervisors Procurement Policy C17, Section 8.2:*

*Removal of a vendor from the bidders list may be for:*

- (a) Failure to respond to more than three (3) consecutive formal invitations to bid; or*
- (b) Failure to respond responsibly to more than three (3) notices to bid; or*
- (c) Failure to perform after an award of a bid; or*
- (d) Other reasons that show the bidder to be a non-responsive or non-responsible bidder.*

*The Purchasing Agent must review and approve the removal of a vendor from the bidders list. The Purchasing Agent shall notify the vendor in writing that said vendor has been removed from the bidders list. Vendors removed from the bidders list shall have an opportunity to request reinstatement at any time, and may submit a bid notwithstanding if they have been removed from the list. The request for reinstatement must be submitted to the Purchasing Agent on such forms as provided by the Purchasing Agent.*

Invitation # (BID, RFP, RFI, RFQ, etc.): \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Date: \_\_\_\_\_

The above has declined to submit a bid response for the following reason(s) (please check all that apply):

- We do not offer this commodity and/or service or an equivalent.
- Insufficient time to respond to the RFP.
- Our schedule would not permit us to perform.

Remarks:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Exhibit "A" STANDARD TERMS AND CONDITIONS

*By shipping on an order, the Vendor warrants that they have read and are in compliance with these instructions.*

**1. Taxes:** County is exempt from payment of Federal Excise Tax; Federal tax should not be included in any prices contained herein.

**2. Alterations:** No alteration in any of the terms, conditions, delivery, price, quantities, specifications or services of this contract will be effective without prior consent of the Purchasing Agent of the County.

**3. Failure to Deliver:** If Vendor fails to deliver an article or service of the quality or quantity, in the manner or within the time called for by this contract: such article or service may be bought from any source by Purchasing Agent and if a greater price than named in the contract be paid for such article or service, the excess price will be charged to and collected from Vendor or sureties on its bond if bond had been required; or, the County may terminate the contract for default; or, the County may return deliveries already made and receive a refund. For any exception to the delivery date as specified on this Purchase Order, the Vendor shall give prior notification and obtain approval thereto from the Purchasing Agent of the County. Failure or refusal of Vendor to perform any work or service or do any act required under this contract shall constitute a default.

**4. Force Majeure:** Vendor shall not be liable for any delay or failure to deliver any or all the goods if that delay or failure is caused by labor disputes, strikes, war, riots, insurrection, civil commotion, fire, flood, accident, storm or any act of God. The County shall not be liable for failure to take delivery of the goods attributable to any of the causes specified in this paragraph if they render it commercially impractical for the County to receive the goods. When either Vendor or the County claims an excuse for nonperformance under this paragraph, they must give reasonable notice to the other party.

**5. Proposal, Quotation and Attachments:** This contract incorporates by reference on the face of this form, the provisions of any related bid request issued by County, any bid submitted by Vendor, or both. This contract incorporates by reference on the face of this form, the provision of any attachments. Vendor agrees that in the event of conflicting language between this contract and Vendor's printed form, the provisions of this contract shall take precedence. This section shall supersede any language in the Vendor's terms and conditions attempting to nullify County terms and conditions or to resolve language conflicts in favor of the Vendor's terms and conditions.

### **6. Warranty:**

**6.1 Warranty For Goods:** Vendor warrants to the County and/or County customers that any and all goods covered by this contract will be new unless otherwise specified and will conform to the drawings, specifications, samples, description and time provisions furnished by the County and will be of first-class material and workmanship and free from defect. In the event of a defect, malfunction or failure of the goods to conform with this warranty, the County shall have the right to require the Vendor to repair or replace the goods without charge within five (5) business days from being notified of the defect. If the Vendor cannot replace the goods and repair either is not commercially practicable or cannot be made within such five (5) business day period, the County shall have the right to require the Vendor to refund the purchase price. Defective goods rejected by the County may, without prejudice to any other legal remedy (including, without limitation, incidental and consequential damages) be held at Vendor's risk and returned to Vendor at Vendor's expense. This warranty shall not be deemed to be waived by the County for any reason, including, without limitation, the County's acceptance of the goods or the County's failure to notify Vendor thereof. Further, the failure of the County to reasonably specify any defects in rejected goods shall not prevent the County from relying on the defect to establish a breach, even though the Vendor could have cured the defect on proper notification.

**6.2 Warranty for Services:** Vendor warrants to County that any and all materials and equipment furnished under this contract will be new unless otherwise specified and that all services will be of good quality, free from faults and defects and in conformance with the contract. Neither final payment nor inspection of Vendor's services shall constitute an acceptance of services not done in accordance with this contract or relieve Vendor of liability in respect to any express warranties or responsibilities for faulty material or workmanship. Upon request of County, Vendor shall immediately remedy any defects in the services, materials and/or equipment and pay for any damage resulting therefrom. The County shall have the unqualified option to make any needed replacement or repairs itself or to have such replacement or repairs done by the Vendor. In the event the County elects to have said work performed by the Vendor, the Vendor agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the County; however, in no event shall such period exceed fifteen (15) calendar days. If the Vendor shall fail or refuse to comply with its obligations under this section, the County shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of the said failure or refusal.

**7. Termination:** At any time and without cause, the County shall have the right, at its sole discretion, to terminate this contract by giving seven (7) calendar days written notice to Vendor. In the event of such termination, Vendor shall only be entitled to payment for those goods that have been delivered and accepted by the County or services satisfactorily rendered through the date of termination.

**8. Identification:** Purchase Order number must appear on all invoices, packing lists, shipping notices, instruction manuals, and any correspondence. Invoices must be fully itemized and show date, weights, sizes, quantities, discounts, etc. Render separate invoices for each Purchase Order.

**9. Cash Discounts:** In connection with any cash discount specified in this contract, time will be computed from the date of completed delivery of the goods or the completion of the performance of services as specified, or from the date that correct invoices are received if the latter date is later than the date of delivery and/or performance. For the purpose of earning the discount, payment shall be deemed to have been made on the date of mailing of the County warrant or check. Payment shall be made within thirty- (30) days following County's receipt of itemized invoices in triplicate. Payment shall be made at the prices stipulated herein for goods or materials delivered or services rendered and accepted less deductions, if any, as herein provided. Payment on partial deliveries or services may be made whenever amounts due so warrant or when requested by the Vendor and approved by the County.

**10. Assignment:** This contract may not be assigned in whole or in part without the prior written consent of the County.

**11. Independent Capacity:** In the performance of this Purchase Order, agents and employees of the Vendor shall act in an independent capacity and not as officers, employees or agents of the County.

**12. Indemnity:** The Vendor shall defend, indemnify and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees and the public, or damages to property or any economic or consequential losses, which are claimed to or in any way arise out of, or connected with the Vendor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Vendor and employee(s) or any of these, except for the sole or active negligence of the County, its officers and employees, or as expressly proscribed by statute. This duty of Vendor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

**13. Nondiscrimination:** Vendor shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this contract are incorporated by this reference.

**14. Patent Indemnity:** The Vendor agrees to hold the County, its officers, agents, servants and employees harmless from liability of any nature or kind because of use of any copyrighted, or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used under this contract, and agrees to defend, at Vendor's sole expense, any and all actions brought against the County or the Vendor because of the unauthorized use of such articles.

**15. Applicable Law and Forum:** This contract shall be construed and interpreted according to the substantive law of the State of California excluding the law of conflicts. Any action to enforce the terms of this contract or for the breach thereof shall be brought and tried in the County of El Dorado.

**16. Funding:** Funds for this Purchase Order are available on a fiscal year basis. Should funds not be available, this Purchase Order shall be cancelled in its entirety.

**17. Business License:** It is unlawful for any person to furnish supplies or services or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070. Contact Tax Collector's Office, 360 Fair Lane, Placerville, CA 95667, telephone (530) 621-5800, for further information.

**18. Returns:** The County reserves the right to return product within thirty (30) days of receipt by the County for credit or refund without a shipping or restocking fee. Product returned shall be in good condition and in the original package (if applicable). Defective product or product under warranty may not always be returned in the original package.

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