

TERMS AND CONDITIONS

I. DEFINITIONS:

1. **"BUYER"** means agent for El Paso County.
2. **"VENDOR"** means the party, its agents, employees, contractors or subcontractors, with whom the **BUYER** is contracting. Any reference to "Seller", "Subcontractor", "Contractor" or "Supplier" shall also mean **"VENDOR"**.
3. Purchase **ORDER** or **"ORDER"**, means the name or title of the instrument for contracting, including all documents, exhibits and attachments reference therein, and, once accepted by **VENDOR**, constitutes the entire agreement between **BUYER** and **VENDOR** for the sale and purchase of those goods, supplies, materials, articles, items, parts, components or services herein specified.

II. CONDITIONS OF PERFORMANCE:

(A) ACCEPTANCE:

1. This **ORDER** is **BUYER'S** offer to purchase the goods and/or services described on the reverse hereof from **VENDOR**. **BUYER'S** placement of this **ORDER** with **VENDOR** is expressly conditioned upon **VENDOR'S** acceptance of all terms and conditions of purchase contained on or attached to this **ORDER**.
2. Any additional or different terms or conditions which may appear in any communication from **VENDOR** are hereby expressly objected to by the Procurement & Contracts Department, and no such additional or different terms or conditions in any printed form of **VENDOR'S** shall become part of this contract despite **BUYER'S** acceptance of goods or services unless agreed to in writing by **BUYER**.
3. Any goods and/or services provided by **VENDOR** prior to issuance of a valid **ORDER** by **BUYER** shall be at **VENDOR'S** risk.
4. **VENDOR'S** commencement of work or delivery of the goods or services subject to this **ORDER** shall be deemed an effective mode of acceptance of this Purchase **ORDER**.
5. All goods and/or services purchased under this **ORDER** must be received and invoiced by December 31.
6. When required, **VENDOR** shall obtain, at its own expense, proof of insurance coverage, to include worker's compensation, property damage, public liability, personal injury and employer's liability, and any other applicable insurance deemed necessary by **BUYER**. The Certificate of Insurance shall name El Paso County as additional insured and shall contain a notice of cancellation date of not less than thirty (30) days. The El Paso County Contracts & Procurement Division must receive this Certificate of Insurance before an **ORDER** will be issued to **VENDOR**.

(B) **TERMINATION:** **BUYER** reserves the right to terminate this **ORDER**, or any part hereof, for its sole convenience. **BUYER** also reserves the right to terminate this **ORDER**, or any part hereof, for cause in the event of any default by **VENDOR** if the **VENDOR** fails to comply with any of the terms and conditions of this **ORDER**. In such event, a Notice of Termination will be served upon **VENDOR**. After receipt of such Notice of Termination, **VENDOR** will not be paid for any goods or services, or for any costs incurred by **VENDOR** that **VENDOR** could reasonably have avoided.

(C) **SHIPPING INSTRUCTIONS:** All goods are to be shipped freight prepaid, F.O.B. destination, unless otherwise stated. Where **BUYER** has so authorized in writing, goods may be shipped F.O.B. shipping point, but **VENDOR** shall prepay all shipping charges.

(D) **DELIVERY:** Time is of the essence. This **ORDER** may be terminated if delivery is not made or services are not performed by the date specified on the reverse side hereof.

(E) **INVOICING:** **VENDOR** shall submit invoices in duplicate to billing address shown on face of **ORDER**.

(F) **INDEMNIFICATION:** **VENDOR** shall defend, indemnify and hold harmless **BUYER** against all damages, claims or liabilities and expenses (including attorney's fees) arising out of, or resulting in any way from, any defect in the goods or services purchased hereunder, or from any act or omission by **VENDOR**. **VENDOR** shall take precautions to protect **BUYER'S** property and persons from damage or injury arising out of its work and shall comply with all fire, safety and other applicable regulations prescribed by any governmental agency and by **BUYER**.

(G) **TAXES:** El Paso County is exempt from all Federal, State and local taxes. A tax-exempt certificate will be supplied upon request.

(H) **ASSIGNMENT:** **VENDOR** shall not assign this contract, or the right to payment due hereunder, without **BUYER'S** prior written consent.

(I) **LIENS, CLAIMS AND ENCUMBRANCES:** **VENDOR** warrants and represents that all goods will, when delivered hereunder, be free and clear of all liens, claims or encumbrances of every kind.

(J) **INSPECTION/REJECTION:** All goods and services purchased hereunder are subject to **BUYER'S** inspections and approval. Payment for the goods delivered or services performed shall not constitute acceptance thereof. **BUYER** shall have the right to inspect such goods or services and to reject any or all that are, in **BUYER'S** judgment, defective or non-conforming.

(K) **WARRANTIES:** **VENDOR** warrants and guarantees to El Paso County that the items furnished under this Purchase **ORDER** are free from all defects in workmanship and materials. The **VENDOR** further warrants and agrees to remedy any defects found and replace the item(s), if necessary, at its expense and at no cost to El Paso County.

(L) **INFRINGEMENTS:** **VENDOR** warrants that **BUYER'S** purchase, installation and/or use of goods or services covered hereby will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property right.

(M) **DRAWINGS OR SPECIFICATIONS:** Any drawing or specifications prepared by **VENDOR** are to become the property of **BUYER** and shall be marked "Property of El Paso County" and shall be stored separately when not in use. Such drawings or specifications will be sent to the Contracts & Procurement Division 210 S. Tejon Street, Suite 138, Colorado Springs, CO 80903, ATTN: Division Manager, when **ORDER** is

(N) OTHER CONDITIONS:

1. **VENDOR** shall carry on its work so that the premises shall at all times be clean, orderly and free from debris and, upon completion, shall remove all equipment and unused materials from the project.
2. **VENDOR** shall abide by **BUYER'S** work and safety rules when work or services are performed on **BUYER'S** premises. **BUYER** has the right to exclude personnel from **BUYER'S** premises who do not abide by such rules, and at **BUYER'S** election, to declare a default under the **ORDER**.
3. **VENDOR** shall comply with all applicable requirements contained in federal, state and local government statutes and their rules, regulations and ordinances while performing on this project.

(O) LAW:

The laws of the State of Colorado shall govern this **ORDER**, and the venue of any action brought hereunder may be laid in or transferred to the County of El Paso, State of Colorado.

III. PROCUREMENT NOTES:

(A) Include the **ORDER** number on all invoices against this order and: (1) This **ORDER**, along with any additional change orders, expires at midnight, December 31st of the year it is issued. This clause shall suffice as written notification for termination where a written notice is required unless this agreement is terminated earlier for any reason. (2) Financial obligations of the **BUYER** payable after the current fiscal year are contingent upon funds for this project/item being appropriated, budgeted and otherwise made available.

(B) This Change Order cancels the original **ORDER** and its value in its entirety.

(C) Change Order. All other terms and conditions of the original **ORDER/Contract** remain unchanged, except as stated therein. *****CONFIRMATION - DO NOT DUPLICATE*****

(D) The deliveries of fuel must be accompanied by a bill of lading. The invoice must agree with the bill of lading on the total gallons received in order to be paid. **BUYER** reserves the right to take test samples from any shipment received at its facilities and to reject unsuitable materials. See also paragraph II.(K) above. *****CONFIRMATION - DO NOT DUPLICATE*****