

Purchase Order

DO NOT INVOICE TO THIS ADDRESS
City and County of Denver
 Purchasing Division
 201 West Colfax Avenue Dept 304
 Denver CO 80202
 United States
 Phone: 720-913-8100 Fax: 720-913-8101



CHANGE ORDER

Dispatch via Print

Purchase Order	Date	Revision	Page
PWOPS-0000004769	02/15/2011	1 - 04/18/2011	1 of 3
Payment Terms	Freight Terms	Ship Via	
Net30	DESTINATION	Common	
Buyer	Phone	Origin	
Kenton Janzen	303 342 2183	REG	

Vendor: 0000077961 Phone: Fax:

SUNCOR ENERGY USA INC
 7800 E ORCHARD RD STE 300
 GREENWOOD VILLAGE CO 80111
 United States

Ship To:
 Asphalt Plant
 5440 Roslyn
 Denver CO 80216
 United States

Bill To:
 Accounts Payable
 201 West Colfax Ave Dept 908
 720/913-8811
 Denver CO 80202
 United States

Tax Exempt? Y Tax Exempt ID: 98-02890-000

Line-Sch	Vendor Part #/Description	Mfg ID	Quantity	UOM	PO Price	Extended Amt	Due Date
1- 1	LIQUID ASPHALT CEMENT PG-64-22		1.00	LOT	4,000,000.00	4,000,000.00	12/31/2011
Schedule Total						<u>4,000,000.00</u>	
Req ID: 0000052689						Item Total	<u>4,000,000.00</u>

Purchase Made Under the Provisions of Section 20-64(A)(1) of the Revised Municipal Code.

This Purchase Order shall be in effect immediately and continue through December 31, 2011.

Purchases up to \$499,999.00 are authorized to commence immediately. Expendure of remaning funds for this Purchase Order is contingent on Council action in accordance with 3.2.6 (e) of the City Charter and is void without such action.

This PO is for Liquid Asphalt Cement PG-64-22. The Terms and Conditions of the Attached Master Purchase and Sales Agreement Supercede the Terms and Conditions of this Purchase Order. The City will pickup material with City Trucks as needed.

Current Price for February for PG 64-22 is \$440/ton.

Pricing may flucuate based upon the local Denver market conditions and may be adjusted monthly according to market conditions.

Total PO Amount 4,000,000.00

Any Discrepancies must be reconciled with the Purchasing Division Buyer before this order is filled.

This Purchase Order may contain an item or items issued pursuant to a Master Purchase Order(s) ("MPO") previously agreed to between the City and the Vendor. All of the terms and conditions of the MPO(s) referenced above shall govern the purchase of the related item(s). The Vendor acknowledges and agrees by accepting this Purchase Order: a) that for any item referencing an MPO and where the terms and conditions stated in this Purchase Order differ from the MPO(s) the PO terms are void and of no effect [unless agreed to in a separate written or electronic acknowledgment between the Vendor and the Director of Purchasing] and b) that where there is no MPO referenced above, the Vendor agrees to be bound by all of the terms and conditions of this Purchase Order.

GENERAL CONDITIONS OF PURCHASE:

1. Non-Exclusive: This Purchase Order is non-exclusive. City does not guarantee any minimum purchase other than as provided herein
2. Inspection and Acceptance: Vendor shall perform all services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services. City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or (3) reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Purchase Order.
3. Shipping, Taxes and Other Credits and Charges: Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all notices necessary and incidental to the fulfillment of this Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by D.R.M.C. § 20-107, et seq. The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall pay all sales and

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use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.

- Risk of Loss:** Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.
- Invoice:** Each invoice shall include: (i) the purchase order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v) an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.
- Payment:** Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, et seq. after City accepts the goods/services. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Purchase Order, encumbered for the purpose of this Purchase Order and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may setoff against any payments due to Vendor any claims and/or credits it may have against Vendor under this Purchase Order.
- Amendments/Changes:** Only the Manager of General Services or his delegate is authorized to change or amend this Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Purchase Order to exceed the amount appropriated and encumbered for this Purchase Order is expressly prohibited and no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. The Vendor has no authority to bind City on any contractual matters.
- Warranty:** Vendor warrants and guarantees to City that all goods furnished under this Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used. For any goods furnished under this Purchase Order which become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall either, at City's election and to City's satisfaction, remedy any and all defects or replace the defective goods at no expense to City within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.
- Indemnification/Limitation of Liability:** Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Purchase Order or that are caused by or the result of any act or omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost for those goods/services that have been accepted by City under this Purchase Order up to the Total Purchase Order Amount. Notwithstanding anything contained in this Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, et seq.
- Termination:** City may terminate this Purchase Order, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.
- Interference:** Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.
- Venue, Choice of Law and Disputes:** Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C. § 56-106. Director of Purchasing shall render the final determination.
- Assignment/No Third Party Beneficiary:** Vendor shall not assign or subcontract any of its rights or obligations under this Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Purchase Order is intended solely for the benefit of City and Vendor with no third party beneficiaries.
- Notice:** Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.
- Compliance With Laws:** Vendor shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules, regulations and executive orders related to its performance under this Purchase Order. City may immediately terminate this Purchase Order, in whole or in part, if Vendor or an employee is convicted, plead nolo contendere, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.
- Vendor shall secure, before delivery of any goods/services, the following insurance covering all operations, goods and services provided to City. Vendor shall keep the required insurance coverage in force at all times during the term of the Purchase Order, or any extension thereof, during any warranty period, and for three (3) years after termination of this Purchase Order. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A-VIII or better." Each policy shall contain a valid provision stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Vendor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, City must be notified by Vendor. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of Vendor. Vendor shall provide a copy of this Purchase Order to its insurance agent or broker. Vendor may not commence services or work relating to the Purchase Order prior to placement of coverage. Contractor certifies that the attached certificate of insurance attached to the Purchase Order documents, preferably an ACORD certificate, complies with all insurance requirements of this Purchase Order. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Purchase Order shall not act as a waiver including but not limited to policies and endorsements. Vendor's insurer shall name as Additional Insured to its Commercial General Liability and Business Auto Liability policies the City and County of Denver, its elected and appointed officials, employees and volunteers. Vendor's insurer shall waive subrogation rights against the City. All sub-contractors and sub-consultants (including independent contractors, suppliers or other entities providing goods/services required by this Purchase Order) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Vendor. Vendor shall include all such entities as insureds under its policies or shall ensure that they all maintain the required coverages. Vendor shall provide proof of insurance for all such entities upon request by City. For Workers' Compensation Insurance, Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor expressly represents to City, as a material representation upon which City is relying, that none of the Vendor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Purchase Order, and that any such rejections previously effected, have been revoked. Vendor shall maintain Commercial General Liability coverage with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Vendor shall maintain Business Auto Liability coverage with limits of \$1,000,000 combined single limit**

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applicable to all owned, hired and non-hired vehicles used in performing services under this Purchase Order. For Commercial General Liability coverage, the policy must provide the following: (i) That this Purchase Order is an Insured Contract under the policy; (ii) Defense costs in excess of policy limits; (iii) A severability of interests, separation of insureds or cross liability provision; and (iv) A provision that coverage is non-contributory with other coverage or self-insurance provided by City. For claims-made coverage, the retroactive date must be on or before the first date when any goods or services were provided to City. Vendor must advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

17. **Severability:** If any provision of this Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.

18. **Survival:** All terms and conditions of this Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period. Bonds shall survive as long as any warranty period.

19. **No Construction Against Drafting Party:** No provision of this Purchase Order shall be construed against the drafter.

20. **Status of Vendor/Ownership of Work Product:** Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, software, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction.

21. **Records and Audits:** Vendor shall maintain for three (3) years after final payment hereunder, all pertinent books, documents, papers and records of Vendor involving transactions related to this Purchase Order, and City shall have the right to inspect and copy the same.

22. **Remedies/Waiver:** No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.

23. **No Discrimination in Employment:** Vendor shall not refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor shall insert the foregoing provision in any subcontracts hereunder.

24. **Use, Possession or Sale of Alcohol or Drugs:** Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Purchase Order or barring Vendor from City facilities or from participating in City operations.

25. **Conflict of Interest:** No employee of City shall have any personal or beneficial interest in the goods/services described in this Purchase Order; and Vendor shall not hire or contract for services any employee or officer of City which would be in violation of City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

26. **Advertising and Public Disclosure:** Vendor shall not reference the goods/services provided hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Manager of General Services.

27. **PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS TO PERFORM WORK UNDER THIS PURCHASE ORDER:** This Purchase Order is subject to Article 17.5 of Title 8, Colorado Revised Statutes, as now existing or hereafter amended, (the "Certification Statute"). Compliance by the Contractor and its subcontractors with the Certification Statute is expressly made a contractual condition of this Purchase Order. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Purchase Order. The Contractor shall not enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien or that fails to certify to the Contractor that it does not knowingly employ or contract with an illegal alien to perform work under this Purchase Order. The Contractor represents, warrants, and agrees that: (a) It has verified or attempted to verify that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the U.S. Social Security Administration and U.S. Department of Homeland Security ("Basic Pilot Program" or "BPP"), as defined in § 8-17.5-101(1), C.R.S., or that if it is not accepted into the BPP prior to entering into this Purchase Order, it shall apply to participate in the BPP every three months until either it is accepted into the BPP or its has completed its obligations under this Purchase Order, whichever occurs first; (b) It will not use the BPP to undertake pre-employment screening of job applicants while performing its obligations under this Purchase Order; (c) If it obtains actual knowledge that a subcontractor performing work under this Purchase Order knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days, and terminate such subcontractor if within three days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien; (d) It shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S. If the Contractor fails to comply with any provision of this Section 35, the City may terminate this Purchase Order for breach and the Contractor shall be liable for actual and consequential damages to the City. Contractor shall certify the above by signing the certification attached to this Purchase Order as Exhibit A.

28. **In order to receive payment, a complete and responsive invoice must be submitted as required by the City's Prompt Payment Ordinance Article VII of Chapter 20, D.R.M.C., which includes clearly stating the City-generated purchase order or contract number on the invoice and complying with the City's invoicing instructions, including delivery of the invoice to the proper City official or agency.**

Authorized Signature