



CITY OF GRAND JUNCTION, COLORADO

CONTRACT

This CONTRACT made and entered into this 20th day of May, 2021 by and between the City of Grand Junction, Colorado, a government entity in the County of Mesa, State of Colorado, hereinafter in the Contract Documents referred to as the "Owner" and Suncor Energy (U.S.A.), Inc. hereinafter in the Contract Documents referred to as the "Contractor."

WITNESSETH:

WHEREAS, the Owner advertised that sealed Bids would be received for furnishing all labor, tools, supplies, equipment, materials, and everything necessary and required for the Project described by the Contract Documents and known as Chip Seal Road Oil 2021 IFB-4882-21-DH.

WHEREAS, the Contract has been awarded for the CRS-2P product purchase only (no trucking/delivery) to the above named Contractor by the Owner, and said Contractor is now ready, willing and able to perform the scope/specifications specified in the Notice of Award, in accordance with the Contract Documents;

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, the mutual covenants hereinafter set forth and subject to the terms hereinafter stated, it is mutually covenanted and agreed as follows:

ARTICLE 1

Contract Documents: It is agreed by the parties hereto that the following list of instruments, drawings, and documents which are attached hereto, bound herewith, or incorporated herein by reference constitute and shall be referred to either as the "Contract Documents" or the "Contract", and all of said instruments, drawings, and documents taken together as a whole constitute the Contract between the parties hereto, and they are fully a part of this agreement as if they were set out verbatim and in full herein:

The order of contract document governance shall be as follows:

- a. The body of this contract agreement
b. Negotiated Terms and Conditions, as stated in e-mail correspondence dated March 11, 2021;
c. Solicitation Documents for the Project; Chip Seal Road Oil;

- d. Contractors Response to the Solicitation (which shall not include any of the exceptions to the City's terms and conditions that were originally submitted in the Contractor's submitted bid response);
- e. Field Orders;
- f. Change Orders.

ARTICLE 2

Definitions: The clauses provided in the Solicitation apply to the terms used in the Contract and all the Contract Documents.

ARTICLE 3

Contract Performance: The Contractor agrees to furnish all labor, tools, supplies, equipment, materials, and all that is necessary and required to complete the tasks associated with the scope/specifications described, set forth, shown, and included in the Contract Documents as indicated in the Solicitation Document.

ARTICLE 4

Contract Time: Time is of the essence with respect to this Contract. The Contractor hereby agrees to commence scope/specifications under the Contract on or before the date specified in the Solicitation from the Owner.

ARTICLE 5

Contract Price and Payment Procedures: The Contractor shall accept as full and complete compensation for the performance and completion of all of the scope/specifications specified in the Contract Documents, the unit per gallon price of **Two and 01/100 Dollars (\$2.01)**. If this Contract contains unit price pay items, the Contract Price shall be adjusted in accordance with the actual quantities of items completed and accepted by the Owner at the unit prices quoted in the Solicitation Response. The amount of the Contract Price is and has heretofore been appropriated by the Grand Junction City Council for the use and benefit of this Project. The Contract Price shall not be modified except by Change Order or other written directive of the Owner. The Owner shall not issue a Change Order or other written directive which requires additional work to be performed, which work causes the aggregate amount payable under this Contract to exceed the amount appropriated for this Project, unless and until the Owner provides Contractor written assurance that lawful appropriations to cover the costs of the additional work have been made.

Unless otherwise provided in the Solicitation, monthly partial payments shall be made as the product usage progresses. Applications for partial shall be prepared by the Contractor and approved by the Owner in accordance with the Solicitation.

ARTICLE 6

Contract Binding: The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants,

agreements and obligations contained in the Contract Documents. The Contract Documents constitute the entire agreement between the Owner and Contractor and may only be altered, amended or repealed by a duly executed written instrument. Neither the Owner nor the Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part its interest under any of the Contract Documents and specifically, the Contractor shall not assign any moneys due or to become due without the prior written consent of the Owner.

ARTICLE 7

Severability: If any part, portion or provision of the Contract shall be found or declared null, void or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having the authority thereover, only such part, portion or provision shall be effected thereby and all other parts, portions and provisions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, City of Grand Junction, Colorado, has caused this Contract to be subscribed and sealed and attested in its behalf; and the Contractor has signed this Contract the day and the year first mentioned herein.

The Contract is executed in two counterparts.

CITY OF GRAND JUNCTION, COLORADO

DocuSigned by:
By: Duane Hoff Jr., Senior Buyer - City of Grand Junction 5/20/2021 | 09:24 MDT
9F799E7D66F448C...
Duane Hoff Jr., Senior Buyer Date

Suncor Energy (U.S.A.), Inc.

DocuSigned by:
By: Sam Beuke - Suncor Energy (USA) Inc. 5/20/2021 | 07:02 MDT
BDA1B9C658BE0428...
Sam Beuke - Suncor Energy (USA) Inc. Manager Marketing Assets and Residual Oils Date



Purchasing Division

Invitation for Bid
IFB-4882-21-DH
Chip Seal Road Oil 2021

Responses Due:

March 2, 2021 prior to 3:00PM

Accepting Electronic Responses Only

Responses Only Submitted Through the Rocky Mountain E-Purchasing System (RMEPS)

<https://www.rockymountainbidsystem.com/default.asp>

(Purchasing Representative does not have access or control of the vendor side of RMEPS. If website or other problems arise during response submission, vendor MUST contact RMEPS to resolve issue prior to the response deadline. 800-835-4603)

IMPORTANT NOTICE:

Due to the recent developments with increased COVID-19 cases in Mesa County, public in-person bid openings are temporarily being suspended. Bid openings will still take place on their designated date and time virtually, and bid tabulations will still be posted for public view/access. Once the crisis has passed, public in-person bid openings will resume as normal. Attached is the virtual link and information to attend the bid opening. Public may addend through the link, or via phone.

Purchasing Representative:

Duane Hoff Jr., Senior Buyer

duaneh@gjcity.org

(970) 244-1545

This document has been developed specifically to solicit competitive responses for this solicitation, and may not be the same as previous City of Grand Junction solicitations. All vendors are urged to thoroughly review this solicitation prior to responding. Submittal by **FAX, EMAIL or HARD COPY IS NOT ACCEPTABLE** for this solicitation.

Invitation for Bids

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1. Instructions to Bidders

- 1.1. **Purpose:** The City of Grand Junction is soliciting competitive bids from qualified and interested companies for all labor, equipment, and materials required to provide road oil for the City's Chip Seal program. All dimensions and scope of work should be verified by Bidders prior to submission of bids.

IFB Questions:

Duane Hoff Jr., Senior Buyer
duaneh@gjcity.org

The City would like to remind all Contractors, Sub-Contractors, Vendors, Suppliers, Manufacturers, Service Providers, etc. that (with the exception of Pre-Bid or Site Visit Meetings) all questions, inquiries, comments, or communication pertaining to any formal solicitation (whether process, specifications, scope, etc.) must be directed (in writing) to the Purchasing Agent assigned to the project, or Purchasing Division. Direct communication with the City assigned Project Managers/Engineers is not appropriate for public procurement, and may result in disqualification.

- 1.2. **The Owner:** The Owner is the City of Grand Junction, Colorado and is referred to throughout this Solicitation. The term Owner means the Owner or his authorized representative.
- 1.3. **Procurement Process:** Procurement processes shall be governed by the most current version of the City of Grand Junction [Purchasing Policy and Procedure Manual](#).
- 1.4. **Submission:** *Each proposal shall be submitted in electronic format only, and only through the Rocky Mountain E-Purchasing website (<https://www.rockymountainbidsystem.com/default.asp>). This site offers both "free" and "paying" registration options that allow for full access of the Owner's documents and for electronic submission of proposals. (Note: "free" registration may take up to 24 hours to process. Please Plan accordingly.)* Please view our "Electronic Vendor Registration Guide" at <https://www.gjcity.org/501/Purchasing-Bids> for details. (Purchasing Representative does not have access or control of the vendor side of RMEPS. If website or other problems arise during response submission, vendor **MUST** contact RMEPS to resolve issue prior to the response deadline. **800-835-4603**)

Please join Solicitation Opening, IFB-4882-21-DH Chip Seal Road Oil 2021 on GoToConnect from your computer using the Chrome browser. <https://my.jive.com/meet/634015405>

**You can also dial in using your phone.
US: (571) 317-3116**

Access Code: 634-015-405

- 1.5. **Printed Form for Price Bid:** All Price Bids must be made upon the Bid Form attached, and should give the amounts both in words and in figures, and must be signed and acknowledged by the bidder.
- 1.6. **Exclusions:** No oral, telephonic, emailed, or facsimile bid will be considered
- 1.7. **Contract Documents:** The complete IFB and bidder's response compose the Contract Documents. Copies of these documents can be obtained from the City Purchasing website, <https://www.gjcity.org/501/Purchasing-Bids>
- 1.8. **Examination of Specifications:** Bidders shall thoroughly examine and be familiar with the project Statement of Work. The failure or omission of any Bidder to receive or examine any form, addendum, or other document shall in no way relieve any Bidder from any obligation with respect to his bid. The submission of a bid shall be taken as evidence of compliance with this section.
- 1.9. **Questions Regarding Statement of Work:** Any information relative to interpretation of Scope of Work or specifications shall be requested of the Purchasing Representative, in writing, in ample time prior to the response time.
- 1.10. **Addenda & Interpretations:** All Questions shall be submitted in writing to the appropriate person as shown in Section 1.1. Any interpretations, corrections and changes to this solicitation or extensions to the opening/receipt date shall be made by a written Addendum to the solicitation by the Owner. Sole authority to authorize addenda shall be vested in the Purchasing Representative. Addenda will be issued electronically through the Rocky Mountain E-Purchasing website at www.rockymountainbidsystem.com. Bidders shall acknowledge receipt of all addenda in their response and are solely responsible for obtaining all solicitation documents.
- 1.11. **Taxes:** The Owner is exempt from State retail and Federal tax. The bid price must be net, exclusive of taxes.
- 1.12. **Offers Binding 60 Days:** Unless otherwise specified, all formal offers submitted shall be binding for sixty (60) calendar days following opening date, unless the Bidder, upon request of the Purchasing Representative, agrees to an extension.
- 1.13. **Collusion Clause:** Each bidder by submitting a bid certifies that it is not party to any collusive action or any action that may be in violation of the Sherman Antitrust Act. Any and all bids shall be rejected if there is evidence or reason for believing that collusion exists among bidders. The Owner may, or may not, accept future bids for the same services or commodities from participants in such collusion.
- 1.14. **Public Disclosure Record:** If the bidder has knowledge of their employee(s) or sub-contractors having an immediate family relationship with an Owner employee or elected official, the bidder must provide the Purchasing Representative with the name(s) of these individuals. These individuals are required to file an acceptable "Public Disclosure Record", a statement of financial interest, before conducting business with the Owner.

- 1.15. Public Opening:** Responses shall be opened in the City Hall Auditorium 250 North 5th Street, Grand Junction, CO 81501 immediately following the solicitation deadline.

2. General Contract Conditions

- 2.1. The Contract:** This Invitation for Bid, submitted documents, and any negotiations, when properly accepted by the Owner, shall constitute a contract equally binding between the Owner and Bidder. The contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements. The contract may be amended or modified with Change Orders, Field Orders, or Amendment(s).
- 2.2. Execution, Correlation, Intent, and Interpretations:** The Contract Documents and/or Purchase Order shall be signed by the Owner (Owner) and Contractor. Owner will provide the contract/purchase order. By executing the contract/purchase order, the Bidder represents that they have familiarized themselves with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Contract Documents. The Contract Documents are complementary, and what is required by any one, shall be as binding as if required by all. The intention of the documents is to include all labor, materials, equipment and other items necessary for the proper execution and completion of the scope of work as defined herein. All drawings, specifications and copies furnished by the Owner are, and shall remain, Owner property. They are not to be used on any other project, and with the exception of one contract set for each party to the contract, are to be returned to the owner on request at the completion of the work.
- 2.3. The Owner:** The Owner is the City of Grand Junction, Colorado and is referred to throughout the Contract Documents. The term Owner means the Owner or his authorized representative. The Owner shall, at all times, have access to the work wherever it is in preparation or progress. The Contractor shall provide facilities for such access. The Owner will familiarize himself generally with the progress and quality of work and to determine, in general, if the work is proceeding in accordance with the contract documents. The Owner will not be responsible for the acts or omissions of the Contractor, and sub-Contractor, or any of their agents or employees, or any other persons performing any of the work.
- 2.4. Contractor:** The Contractor is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents. The term Contractor means the Contractor or his authorized representative. The Contractor shall carefully study and compare the General Contract Conditions of the Contract, Specification and/or Drawings, Scope of Work, Addenda and Modifications and shall at once report to the Owner any error, inconsistency or omission he may discover. Contractor shall not be liable to the Owner for any damage resulting from such errors, inconsistencies or omissions. The Contractor shall not commence work without clarifying Drawings, Specifications, or Interpretations.

- 2.5. Warranty:** The Contractor warrants to the Owner that all materials and equipment furnished under this contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards may be considered defective. If required by Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. If within ten (10) days after written notice to the Contractor requesting such repairs or replacement, the Contractor should neglect to make or undertake with due diligence to the same, the City may make such repairs or replacements. All indirect and direct costs of such correction or removal or replacement shall be at the Contractor's expense. The Contractor will also bear the expenses of curing all work of others, destroyed or damaged, by the correction, removal or replacement of defective work.
- 2.6. Permits, Fees, & Notices:** The Contractor shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the work. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the work. If the Contractor observes that any of the Contract Documents are at variance in any respect, the Contractor shall promptly notify the Owner in writing, and any necessary changes shall be adjusted by approximate modification. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, the Contractor shall assume full responsibility and shall bear all costs attributable.
- 2.7. Responsibility for Those Performing the Work:** The Contractor shall be responsible to the Owner for the acts and omissions of all their employees and all sub-contractors, their agents and employees, and all other persons performing any of the work under a contract with the Contractor.
- 2.8. Insurance Requirements:** The selected Contractor agrees to procure and maintain, at its own cost, policy(s) of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to this Section. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Section by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types. Contractor shall procure and maintain and, if applicable, shall cause any Subcontractor of the Contractor to procure and maintain insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Owner. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Minimum coverage limits shall be as indicated below unless specified otherwise:
- (a) Worker Compensation: Contractor shall comply with all State of Colorado Regulations concerning Workers' Compensation insurance coverage.
- (b) General Liability insurance with minimum limits of:

ONE MILLION DOLLARS (\$1,000,000) each occurrence and
TWO MILLION DOLLARS (\$2,000,000) per job aggregate.

The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(c) Comprehensive Automobile Liability insurance with minimum limits for bodily injury and property damage of not less than:

ONE MILLION DOLLARS (\$1,000,000) each occurrence and
TWO MILLION DOLLARS (\$2,000,000) aggregate

With respect to each of Contractors owned, hired, or non-owned vehicles assigned to be used in performance of the Work. The policy shall contain a severability of interests provision. The policies required by paragraph (b) above shall be endorsed to include the Owner, and the Owner's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Owner, its officers, or its employees, or carried by or provided through any insurance pool of the Owner, shall be excess and not contributory insurance to that provided by Bidder. No additional insured endorsement to any required policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Bidder shall be solely responsible for any deductible losses under any policy required above.

2.9. Indemnification: The Contractor shall defend, indemnify and save harmless the Owner, and all its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the Contractor, or of any Contractor's agent, employee, sub-contractor or supplier in the execution of, or performance under, any contract which may result from proposal award. Contractor shall pay any judgment with cost which may be obtained against the Owner growing out of such injury or damages.

2.10. Miscellaneous Conditions: Material Availability: Contractors must accept responsibility for verification of material availability, production schedules, and other pertinent data prior to submission of bid. It is the responsibility of the bidder to notify the Owner immediately if materials specified are discontinued, replaced, or not available for an extended period of time. OSHA Standards: All bidders agree and warrant that services performed in response to this invitation shall conform to the standards declared by the US Department of Labor under the Occupational Safety and Health Act of 1970 (OSHA). In the event the services do not conform to OSHA standards, the Owner may require the services to be redone at no additional expense to the Owner.

- 2.11. Time:** The Contract Time is the period of time allotted in the Contract Documents for completion of the work. The date of commencement of the work is the date established in the Contract Documents.
- 2.12. Progress & Completion:** The Contractor shall begin work on the date of commencement as defined in the Contract, and shall carry the work forward expeditiously with adequate forces and shall complete it within the contract time.
- 2.13. Payment & Completion:** The Contract Sum is stated in the Contract and is the total amount payable by the Owner to the Contractor for the performance of the work under the Contract Documents. Upon receipt of the product or written notice that the work is ready for final inspection and acceptance and upon receipt of application for payment, the Owner's Project Manager will promptly make such inspection and, when he finds the work acceptable under the Contract Documents and the Contract fully performed, the Owner shall make payment in the manner provided in the Contract Documents.
- 2.14. Protection of Persons & Property:** The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain, as required by existing safeguards for safety and protection, and all reasonable precautions, including posting danger signs or other warnings against hazards promulgating safety regulations and notifying owners and users of adjacent utilities. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct by the Contractor in the execution of the work, or in consequence of the non-execution thereof, the Contractor shall restore, at their own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or they shall make good such damage or injury in an acceptable manner.
- 2.15. Changes in the Work:** The Owner, without invalidating the contract, may order changes in the work within the general scope of the contract consisting of additions, deletions or other revisions, the contract sum and the contract time being adjusted accordingly. All such changes in the work shall be authorized by Change Order/Amendment and shall be executed under the applicable conditions of the contract documents. A Change Order/Amendment is a written order to the Contractor signed by the Owner issued after the execution of the contract, authorizing a change in the work or an adjustment in the contract sum or the contract time. The contract sum and the contract time may be changed only by Change Order/Amendment.
- 2.16. Claims for Additional Cost or Time:** If the Contractor wishes to make a claim for an increase in the contract sum or an extension in the contract time, the Contractor shall give the Owner written notice thereof within a reasonable time after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property in which case the Contractor shall precede in accordance with the regulations on safety. No such claim shall be valid unless

so made. Any change in the contract sum or contract time resulting from such claim shall be authorized by Change Order/Amendment.

- 2.17. Minor Changes in the Work:** The Owner shall have authority to order minor changes in the work not involving an adjustment in the contract sum or an extension of the contract time and not inconsistent with the intent of the contract documents. This may be accomplished through a Field Order.
- 2.18. Uncovering & Correction of Work:** The Contractor shall promptly correct all work rejected by the Owner as defective or as failing to conform to the contract documents whether observed before or after substantial completion and whether or not fabricated installed or completed. The Contractor shall bear all costs of correcting such rejected work, including the cost of the Owner's additional services thereby made necessary. If within one (1) year after the date of completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the contract documents, any of the work found to be defective or not in accordance with the contract documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discover of condition. All such defective or non-conforming work under the above paragraphs shall be removed from the site where necessary and the work shall be corrected to comply with the contract documents without cost to the Owner. The Contractor shall bear the cost of curing all work of separate Contractors destroyed or damaged by such removal or correction. If the Owner prefers to accept defective or non-conforming work, Owner may do so instead of requiring its removal and correction, in which case a Change Order/Amendment will be issued to reflect an appropriate reduction in the payment or contract sum, or, if the amount is determined after final payment, it shall be paid by the Contractor.
- 2.19. Change Order/Amendment:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All Change Orders/Amendments to the contract shall be made in writing by the Owner.
- 2.20. Assignment:** The Contractor shall not sell, assign, transfer or convey any contract resulting from this Solicitation, in whole or in part, without the prior written approval from the Owner.
- 2.21. Cancellation of Solicitation:** Any solicitation may be canceled by the Owner or any solicitation response by a vendor may be rejected in whole or in part when it is in the best interest of the Owner.
- 2.22. Compliance with Laws:** Bids must comply with all Federal, State, County and local laws governing or covering this type of service and the fulfillment of all ADA (Americans with Disabilities Act) requirements.
- 2.23. Confidentiality:** All materials submitted in response to this Solicitation shall ultimately become public record and shall be subject to inspection after contract award. "**Proprietary or Confidential Information**" is defined as any information

that is not generally known to competitors and which provides a competitive advantage. Unrestricted disclosure of proprietary information places it in the public domain. Only submittal information clearly identified with the words "**Confidential Disclosure**" and uploaded as a separate document shall establish a confidential, proprietary relationship. Any material to be treated as confidential or proprietary in nature must include a justification for the request. The request shall be reviewed and either approved or denied by the Owner. If denied, the proposer shall have the opportunity to withdraw its entire proposal, or to remove the confidential or proprietary restrictions. Neither cost nor pricing information nor the total response shall be considered confidential or proprietary.

2.24. Conflict of Interest: No public official and/or Owner employee shall have interest in any contract resulting from this Solicitation.

2.25. Contract Termination: This contract shall remain in effect until any of the following occurs: (1) contract expires; (2) completion of work; (3) acceptance of work or, (4) for convenience terminated by either party with a written *Notice of Cancellation* stating therein the reasons for such cancellation and the effective date of cancellation.

2.26. Employment Discrimination: During the performance of any services per agreement with the Owner, the Contractor, by submitting a response, agrees to the following conditions:

2.26.1. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a legitimate occupational qualification reasonably necessary for the normal operations of the Contractor. The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2.26.2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an Equal Opportunity Employer.

2.26.3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2.27. Immigration Reform and Control Act of 1986 and Immigration Compliance: The Contractor certifies that it does not and will not during the performance of the contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986 and/or the immigration compliance requirements of State of Colorado C.R.S. § 8-17.5-101, *et seq.* (House Bill 06-1343).

2.28. Ethics: The Contractor shall not accept or offer gifts or anything of value nor enter into any business arrangement with any employee, official, or agent of the Owner.

- 2.29. Failure to Deliver:** In the event of failure of the Contractor to deliver work in accordance with the contract terms and conditions, the Owner, after due oral or written notice, may procure the work from other sources and hold the Contractor responsible for any costs resulting in additional purchase and administrative services. This remedy shall be in addition to any other remedies that the Owner may have.
- 2.30. Failure to Enforce:** Failure by the Owner at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Owner to enforce any provision at any time in accordance with its terms.
- 2.31. Force Majeure:** The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by the contract due to legal strikes, fires, riots, rebellions, and acts of God beyond the control of the Contractor, unless otherwise specified in the contract.
- 2.32. Independent Contractor:** The Contractor shall be legally considered an Independent Contractor and neither the Contractor nor its employees shall, under any circumstances, be considered servants or agents of the Owner. The Owner shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, or agents. The Owner shall not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security Tax or any other amounts for benefits to the Contractor. Further, the Owner shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the Owner for its employees.
- 2.33. Nonconforming Terms and Conditions:** A response that includes terms and conditions that do not conform to the terms and conditions of this Solicitation is subject to rejection as non-responsive. The Owner reserves the right to permit the Contractor to withdraw nonconforming terms and conditions from its response prior to a determination by the Owner of non-responsiveness based on the submission of nonconforming terms and conditions.

Items for non-responsiveness may include, but not be limited to:

- a. Submission of the Bid on forms other than those supplied by the City;
- b. Alteration, interlineation, erasure, or partial detachment of any part of the forms which are supplied herein;
- c. Inclusion of unauthorized additions conditional or alternate Bids or irregularities of any kind which may tend to make the Bid incomplete, indefinite, or ambiguous as to its meaning;
- d. Failure to acknowledge receipt of any or all issued Addenda;
- e. Failure to provide a unit price or a lump sum price, as appropriate, for each pay item listed except in the case of authorized alternative pay items;

- f. Failure to list the names of Subcontractors used in the Bid preparation as may be required in the Solicitation Documents;
- g. Submission of a Bid that, in the opinion of the Owner, is unbalanced so that each item does not reasonably carry its own proportion of cost or which contains inadequate or unreasonable prices for any item;
- h. Tying of the Bid with any other bid or contract; and
- i. Failure to calculate Bid prices as described herein.

2.34. Evaluation of Bids and Offerors: The Owner reserves the right to:

- reject any and all Bids,
- waive any and all informalities,
- take into account any prompt payment discounts offered by Bidder,
- negotiate final terms with the Successful Bidder,
- take into consideration past performance of previous awards/contracts with the Owner of any Contractor, Vendor, Firm, Supplier, or Service Provider in determining final award. and
- disregard any and all nonconforming, nonresponsive or conditional Bids.

Discrepancies between words and figures will be resolved in favor of words. Discrepancies between Unit Prices and Extended Prices will be resolved in favor of the Unit Prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. The corrected extensions and totals will be shown in the tabulation of Bids.

The Owner may consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the work as to which the identity of Subcontractors and other persons and organizations must be submitted. Operating costs, maintenance considerations performance data, and guarantees of materials and equipment may also be considered by the Owner.

The Owner will conduct such investigations as deemed necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Offeror, proposed Subcontractors and other persons and organizations to do the Work in accordance with the *Contract Documents* to the City's satisfaction within the Contract Time.

The Offeror shall furnish the Owner all information and data requested by the Owner to determine the ability of the Offeror to perform the Work. The Owner reserves the right to reject the Bid if the evidence submitted by, or investigation of such Offeror fails to satisfy the Owner that such Offeror is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein.

By submitting a Bid, each Offeror authorizes the Owner to perform such investigation of the Offeror as the Owner deems necessary to establish the responsibility, qualifications and financial ability of the Offeror and, by its signature thereon, authorizes the Owner to obtain reference information concerning the Offeror and releases the party providing such information and the Owner from any and all liability to the Offeror as a result of such reference information so provided.

The Owner reserves the right to reject the Bid of any Offeror who does not pass any evaluation to the Owner's satisfaction.

If the Contract is to be awarded, it will be awarded to the Offeror who, by evaluation, the Owner determines will best meet the Owner's interests.

- 2.35. The Owner reserves the right to accept or reject the Work contained in any of the Price Bid Schedules or alternates, either in whole or in part.
- 2.36. **Ownership:** All plans, prints, designs, concepts, etc., shall become the property of the Owner.
- 2.37. **Patents/Copyrights:** The Contractor agrees to protect the Owner from any claims involving infringements of patents and/or copyrights. In no event shall the Owner be liable to the Contractor for any/all suits arising on the grounds of patent(s)/copyright(s) infringement. Patent/copyright infringement shall null and void any agreement resulting from response to this Solicitation.
- 2.38. **Remedies:** The Contractor and Owner agree that both parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code.
- 2.39. **Venue:** Any agreement as a result of responding to this Solicitation shall be deemed to have been made in, and shall be construed and interpreted in accordance with, the laws of the City of Grand Junction, Mesa County, Colorado.
- 2.40. **Expenses:** Expenses incurred in preparation, submission and presentation of this Solicitation are the responsibility of the company and cannot be charged to the Owner.
- 2.41. **Sovereign Immunity:** The Owner specifically reserves its right to sovereign immunity pursuant to Colorado State Law as a defense to any action arising in conjunction to this agreement.
- 2.42. **Non-Appropriation of Funds:** The contractual obligation of the Owner under this contract is contingent upon the availability of appropriated funds from this fiscal year budget as approved by the City Council or Board of County Commissioners from this fiscal year only. **State of Colorado Statutes prohibit obligation of public funds beyond the fiscal year for which the budget was approved.** Anticipated expenditures/obligations beyond the end of the current Owner's fiscal year budget shall be subject to budget approval. Any contract shall be subject to, and must contain, a governmental non-appropriation of funds clause.

2.43. Cooperative Purchasing: Purchases as a result of this solicitation are primarily for the Owner. Other governmental entities may be extended the opportunity to utilize the resultant contract award with the agreement of the successful provider and the participating agencies. All participating entities shall be required to abide by the specifications, terms, conditions and pricings established in this Solicitation. The quantities furnished in this bid document are for only the Owner. It does not include quantities for any other jurisdiction. The Owner shall be responsible only for the award for its jurisdiction. Other participating entities shall place their own awards on their respective Contract/Purchase Orders through their Purchasing Office or use their Purchasing Card for purchase/payment as authorized or agreed upon between the provider and the individual entity. The Owner accepts no liability for payment of orders placed by other participating jurisdictions that choose to piggy-back on our solicitation. Orders placed by participating jurisdictions under the terms of this solicitation shall indicate their specific delivery and invoicing instructions.

2.44. Keep Jobs in Colorado Act: Contractor shall be responsible for ensuring compliance with Article 17 of Title 8, Colorado Revised Statutes requiring 80% Colorado labor to be employed on public works. Contractor shall, upon reasonable notice provided by the Owner, permit the Owner to inspect documentation of identification and residency required by C.R.S. §8-17-101(2)(a). If Contractor claims it is entitled to a waiver pursuant to C.R.S. §8-17-101(1), Contractor shall state that there is insufficient Colorado labor to perform the work such that compliance with Article 17 would create an undue burden that would substantially prevent a project from proceeding to completion, and shall include evidence demonstrating the insufficiency and undue burden in its response.

Unless expressly granted a waiver by the Owner pursuant to C.R.S. §8-17-101(1), Contractor shall be responsible for ensuring compliance with Article 17 of Title 8, Colorado Revised Statutes requiring 80% Colorado labor to be employed on public works. Contractor shall, upon reasonable notice provided by the Owner, permit the Owner to inspect documentation of identification and residency required by C.R.S. §8-17-101(2)(a).

2.44.1. "Public Works Project" is defined as:

- (a) any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any maintenance programs for the upkeep of such projects
- (b) for which appropriate or expenditure of moneys may be reasonably expected to be \$500,000.00 or more in the aggregate for any fiscal year
- (c) except any project that receives federal moneys.

2.45. Definitions:

2.45.1. The term "Work" includes all labor, materials, equipment, and/or services necessary to produce the requirements of the Contract Documents.

2.45.2. "Contractor" is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents. The term Contractor means the Contractor or his authorized representative.

The Contractor shall carefully study and compare the General Contract Conditions of the Contract, Specification and Drawings, Scope of Work, Addenda and Modifications and shall at once report to the Owner any error, inconsistency or omission he may discover. Contractor shall not be liable to the Owner for any damage resulting from such errors, inconsistencies or omissions. The Contractor shall not commence work without clarifying Drawings, Specifications, or Interpretations.

2.45.3. “Sub-Contractor is a person or organization who has a direct contract with the Contractor to perform any of the work at the site. The term sub-contractor is referred to throughout the contract documents and means a sub-contractor or his authorized representative.

3. Statement of Work

3.1. General: The City of Grand Junction is soliciting competitive bids from qualified and interested companies to provide an estimated 226,000 gallons of CRS-2P Cationic Rapid Setting Emulsified Asphalt Polymer Modified road oil for the City’s 2021 Chip Seal Program. Pricing shall be all inclusive and include freight/shipping charges.

3.2. Special Conditions & Provisions:

3.2.1 Pricing: Pricing shall be all inclusive to include but not be limited to: all labor, equipment, supplies, materials, freight (F.O.B. Destination – Freight Pre-paid and Allowed to each site), travel, mobilization costs, fuel, set-up and take down costs, and full-time inspection costs, and all other costs related to the successful completion of the project.

The Owner shall not pay nor be liable for any other additional costs including but not limited to: taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

Supplier shall state length of “pricing valid” dates and shall state dates beyond the stated period that pricing may be increased/decreased.

3.2.2 Freight/Shipping: All freight/shipping shall be F.O.B. Destination – Freight Pre-Paid and Allowed to the project site(s), Grand Junction, CO.

Contractor must meet all federal, state, and local rules, regulations, and requirements for providing such services.

3.2.3 Delivery Location: Streets Division / Dan Thorne, 333 West Avenue, Building A, Grand Junction, CO 81501.

3.2.4 Estimated Quantities: The quantities indicated in this Invitation for Bid are estimates that pertain to the total aggregate quantities that may be ordered throughout the stated contract period. Variation of quantities may increase or decrease. The estimates do not indicate single order amounts unless otherwise

stated. The City of Grand Junction makes no guarantees about single order quantities or total aggregate order quantities. Flexibility in quantities ordered daily from supplier is required. Supplier must be able to meet daily order quantities of up to 20,000 gallons.

3.2.5 Rejection of Materials: The City of Grand Junction reserves the right to return partially used quantities due to flaws and/or batch imperfections. Judgment of defects will be at the discretion of the City of Grand Junction purchasing representative.

3.2.6 Contract: A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the bidder's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the City's Purchasing Department's acceptance of the bid by "Notice of Award" or by "Purchase Order". All Exhibits and Attachments included In the IFB shall be incorporated into the contract by reference.

A. The contract expresses the complete agreement of the parties and, performance shall be governed solely by the specifications and requirements contained therein.

B. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the bidder and the City Purchasing Division or by a modified Purchase Order prior to the effective date of such modification. The bidder expressly and explicitly understands and agrees that no other method and/or no other document, including acts and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

3.2.7 Contract Period: The original contract period shall be as stated in the Invitation for Bid (IFB). The contract shall not bind, nor purport to bind, the City for any contractual commitment in excess of the original contract period which is April 1, 2021 to December 31, 2021. The Purchasing Manager shall have the right to renew the contract for 3 (three) additional one-year periods, or any portion thereof.

3.2.8 Packing Slips or Delivery Tickets: All shipments or deliveries shall be accompanied by Packing Slips or Delivery Tickets, and shall contain the following information for each item delivered:

- The purchase order number
- The name of the article and stock number
- The quantity ordered
- The quantity shipped
- The quantity back ordered
- The name of the vendor(s)

3.2.9 Authorized Representatives of the City: Those authorized to represent the City shall include Purchasing Agent, Engineers, and Inspectors employed by the City, only.

3.3. Specifications:

3.3.1. CRS-2P CATIONIC RAPID SETTING EMULSIFIED ASPHALT POLYMER MODIFIED

Polymerized emulsions for chip seals shall conform to the requirements listed in the revised CDOT table 702-3. Emulsions for chip seals shall be an emulsified blend of polymerized asphalt, water, and emulsifiers. The asphalt cement shall be polymerized prior to emulsification and shall contain at least 3 percent polymer by weight of asphalt cement. The emulsion standing undisturbed for a minimum of 24 hours shall show no white, milky separation but shall be smooth and homogenous throughout. The emulsion shall be pump able and suitable; for application through a distributor.

**Table 702-3
POLYMERIZED EMULSIONS FOR CHIP SEALS**

Property		CRS-2P	CRS-2P	HFMS-2P	AASHTO Test No.
Tests on Emulsion:					
Viscosity, at 50 °C, Saybolt-Furol, s	min	50	50	50	T 59
	max	450	450	450	
Storage stability, 24 hr, % max		1.0	1.0	1.0	T 59
Particle charge test		Positive	Positive		T 59
Sieve test, % max		0.10	0.10	0.10	T 59
Demulsibility ¹ , % min		40	40		T 59
Oil Distillate by volume, % max or range		3.0	3.0	3.0	T-59
Residue by distillation/ evaporation, % min ³		65 ³	65 ³	65 ³	T 59/ CP-L 2212 ²
Tests on residue:					
Penetration, 25 °C, 100g, 5s, min, dmm		70	70	70	T 49
Penetration, 25 °C, 100g, 5s, max, dmm		150	150	150	
Ductility, 25 °C, 5 cm/min, cm, min		40		75	T 51
Ductility, 4 °C, 5 cm/min, cm, min					
Solubility, in trichloroethylene% min ⁴		97.5 ⁴	97.5 ⁴	97.5 ⁴	T 44
Elastic Recovery, 25 °C min				58	T 301
Float Test, 60 °C, s min				1200	T 50
Toughness, in-lbs, min			70		CP-L 2210
Tenacity, in-lbs, min			45		CP-L 2210

¹If successful application is achieved in the field, the Engineer may waive this requirement.

² CP-L 2212 is a rapid evaporation test for determining percent residue of an emulsion and providing material for tests on residue. CP-L 2212 is for acceptance only. If the percent residue or any test on the residue fails to meet specifications, the tests will be repeated using the distillation test in conformance with AASHTO T-59 to determine acceptability.

³ For polymerized emulsions the distillation and evaporation tests will be in conformance with AASHTO T-59 or CP-L 2212 respectively with modifications to include 205 ± 5 °C (400 ± 10 °F) maximum temperature to be held for 15 minutes.

⁴ Solubility may be determined on the base asphalt cement prior to polymer modification.

3.3.2. Add Alternate: The City of Grand Junction desires to have the option of the supplier providing two trailers to be left onsite to swap out with road oil orders. The purpose

of this add alternate is to allow proper storage and usage amounts to keep pace with our streets chip seal program. The city currently has two storage trailers of its own that store 10,000 gallons each and desires the option of increasing the amount by two more trailers provided by supplier.

3.4. Contractor Bid Documents: For Contractor’s convenience, the following is a list of forms/items to be submitted with the Contractor’s bid response. However, should a form/item not be listed in this section, but required in the solicitation documents, it is the Contractor’s responsibility to ensure all forms/items are submitted.

- **Contractor’s Bid Form**
- **Price Bid Schedule**

3.5. IFB Tentative Time Schedule:

- Invitation for Bids available February 17, 2021
- Inquiry deadline, no questions after this date February 25, 2021
- Addenda Issued by February 26, 2021
- Submittal deadline for proposals March 2, 2021
- City Council Approval March 17, 2021
- Contract execution (unless Council approval required) March 18, 2021

3.6. Questions Regarding Scope of Services:

Duane Hoff Jr., Senior Buyer
duaneh@gjcity.org

4. Contractor's Bid Form

Bid Date: _____

Project: IFB-4882-21-DH "Chip Seal Road Oil 2021"

Bidding Company: _____

Name of Authorized Agent: _____

Email _____

Telephone _____ **Address** _____

City _____ **State** _____ **Zip** _____

The undersigned Bidder, in compliance with the Invitation for Bids, having examined the Instruction to Bidders, General Contract Conditions, Statement of Work, Specifications, and any and all Addenda thereto, having investigated the location of, and conditions affecting the proposed work, hereby proposes to furnish all labor, materials and supplies, and to perform all work for the Project in accordance with Contract Documents, within the time set forth and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the Contract Documents, of which this Contractor's Bid Form is a part.

The undersigned Contractor does hereby declare and stipulate that this offer is made in good faith without collusion or connection to any person(s) providing an offer for the same work, and that it is made in pursuance of, and subject to, all terms and conditions of the Instructions to Bidders, the Specifications, and all other Solicitation Documents, all of which have been examined by the undersigned.

The Contractor also agrees that if awarded the Contract, to provide insurance certificates within ten (10) working days of the date of Notification of Award. Submittal of this offer will be taken by the Owner as a binding covenant that the Contractor will be prepared to complete the project in its entirety.

The Owner reserves the right to make the award on the basis of the offer deemed most favorable, to waive any formalities or technicalities and to reject any or all offers. It is further agreed that this offer may not be withdrawn for a period of sixty (60) calendar days after closing time. Submission of clarifications and revised offers automatically establish a new thirty day (30) period.

Prices in the bid proposal have not knowingly been disclosed with another provider and will not be prior to award.

- Prices in this bid proposal have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition.
- No attempt has been made nor will be to induce any other person or firm to submit a bid proposal for the purpose of restricting competition.
- The individual signing this bid proposal certifies they are a legal agent of the offeror, authorized to represent the offeror and is legally responsible for the offer with regard to supporting documentation and prices provided.
- Direct purchases by the City of Grand Junction are tax exempt from Colorado Sales or Use Tax. Tax exempt No. 98-903544. The undersigned certifies that no Federal, State, County or Municipal tax will be added to the above quoted prices.
- City of Grand Junction payment terms shall be Net 30 days.
- Prompt payment discount of _____ percent of the net dollar will be offered to the Owner if the invoice is paid within _____ days after the receipt of the invoice. The Owner reserves the right to take into account any such discounts when determining the bid award.

RECEIPT OF ADDENDA: the undersigned Contractor acknowledges receipt of Addenda to the Solicitation, Specifications, and other Contract Documents. State number of Addenda received: _____.

It is the responsibility of the Bidder to ensure all Addenda have been received and acknowledged.

By signing below, the Undersigned agree to comply with all terms and conditions contained herein.

Company: _____

Authorized Signature: _____

Title: _____

PRICE BID SCHEDULE: IFB-4882-21-DH Chip Seal Road Oil 2021

Item	Unit	Description	Unit Price
1	Gallon	CRS-2P Cationic Rapid Setting Emulsified Asphalt Polymer Modified road oil for the City's 2021 Chip Seal Program, as per specifications stated in the solicitation documents.	

Item 1 Unit Price Written: _____

Pricing Valid Dates: from: _____ **to** _____

Pricing Adjustments may occur: _____

Add Alternate:

Item	Unit	Description	Unit Price
2	Each	Trailer Rental Per Day. *Does not include oil as it is separate bid in item 1.	

Item 2 – Alternate 1 Bid Price Written:

Company: _____

Authorized Signature: _____

Title: _____



Purchasing Division

ADDENDUM NO. 1

DATE: February 18, 2021
FROM: City of Grand Junction Purchasing Division
TO: All Offerors
RE: Chip Seal Road Oil IFB-4882-21-DH

Offerors responding to the above referenced solicitation are hereby instructed that the requirements have been clarified, modified, superseded and supplemented as to this date as hereinafter described.

Please make note of the following clarifications:

1. Q. Would it be possible to add CRS-2R to the bid?
 - A. For this solicitation, CRS-2P Cationic Rapid Setting Emulsified Asphalt Polymer Modified will be the only road oil accepted.

The original solicitation for the project noted above is amended as noted.

All other conditions of subject remain the same.

Respectfully,

A handwritten signature in black ink, appearing to read "Duane Hoff Jr.", written over a thin vertical line.

Duane Hoff Jr., Senior Buyer
City of Grand Junction, Colorado

4. Contractor's Bid Form

Bid Date: March 2, 2021

Project: IFB-4882-21-DH "Chip Seal Road Oil 2021"

Bidding Company: Suncor Energy (USA) Inc.

Name of Authorized Agent: Sam Beuke

Email: sbeuke@suncor.com

Telephone: 303-241-5280

Address: 717 17th Street, Suite 2900

City: Denver **State:** CO **Zip:** 80202

The undersigned Bidder, in compliance with the Invitation for Bids, having examined the Instruction to Bidders, General Contract Conditions, Statement of Work, Specifications, and any and all Addenda thereto, having investigated the location of, and conditions affecting the proposed work, hereby proposes to furnish all labor, materials and supplies, and to perform all work for the Project in accordance with Contract Documents, within the time set forth and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the Contract Documents, of which this Contractor's Bid Form is a part.

The undersigned Contractor does hereby declare and stipulate that this offer is made in good faith without collusion or connection to any person(s) providing an offer for the same work, and that it is made in pursuance of, and subject to, all terms and conditions of the Instructions to Bidders, the Specifications, and all other Solicitation Documents, all of which have been examined by the undersigned.

The Contractor also agrees that if awarded the Contract, to provide insurance certificates within ten (10) working days of the date of Notification of Award. Submittal of this offer will be taken by the Owner as a binding covenant that the Contractor will be prepared to complete the project in its entirety.

The Owner reserves the right to make the award on the basis of the offer deemed most favorable, to waive any formalities or technicalities and to reject any or all offers. It is further agreed that this offer may not be withdrawn for a period of sixty (60) calendar days after closing time. Submission of clarifications and revised offers automatically establish a new thirty day (30) period.

Prices in the bid proposal have not knowingly been disclosed with another provider and will not be prior to award.

- Prices in this bid proposal have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition.
- No attempt has been made nor will be to induce any other person or firm to submit a bid proposal for the purpose of restricting competition.
- The individual signing this bid proposal certifies they are a legal agent of the offeror, authorized to represent the offeror and is legally responsible for the offer with regard to supporting documentation and prices provided.
- Direct purchases by the City of Grand Junction are tax exempt from Colorado Sales or Use Tax. Tax exempt No. 98-903544. The undersigned certifies that no Federal, State, County or Municipal tax will be added to the above quoted prices.
- City of Grand Junction payment terms shall be Net 30 days.
- Prompt payment discount of _____ percent of the net dollar will be offered to the Owner if the invoice is paid within _____ days after the receipt of the invoice. The Owner reserves the right to take into account any such discounts when determining the bid award.

RECEIPT OF ADDENDA: the undersigned Contractor acknowledges receipt of Addenda to the Solicitation, Specifications, and other Contract Documents. State number of Addenda received: _____.

It is the responsibility of the Bidder to ensure all Addenda have been received and acknowledged.

By signing below, the Undersigned agree to comply with all terms and conditions contained herein.***

Company: Suncor Energy (USA) Inc.

Authorized Signature: _____

Samuel Beuke

Digitally signed by Samuel Beuke
DN: cn=Samuel Beuke, o=Suncor Energy (USA) Inc., email=sbeuke@suncor.com

Title: Manager Marketing Asphalt and Residual Oils

***Bidder is submitting this bid on the express understanding that, if Bidder is selected, all transactions between Bidder and Owner will be conducted solely pursuant to a Confirmation issued pursuant to and governed by that certain Master Product Purchase and Sale Agreement, dated October 28, 2011, between Bidder and Owner (the "MPPSA"), attached hereto. This bid is an offer to sell the products at the prices set forth herein, subject to the terms and conditions of the MPPSA and Bidder expressly disclaims and rejects all terms and conditions except those set forth on Page 20 of this bid and those set forth in the MPPSA. Furthermore, Bidder can only supply up to 2 truckloads (12,000 gallons) of CRS-2P per day, not 20,000 gallons as requested.

PRICE BID SCHEDULE: IFB-4882-21-DH Chip Seal Road Oil 2021

Item	Unit	Description	Unit Price
1	Gallon Ton	CRS-2P Cationic Rapid Setting Emulsified Asphalt Polymer Modified road oil for the City's 2021 Chip Seal Program, as per specifications stated in the solicitation documents.	\$2.26/gal \$530.00/ton

Item 1 Unit Price Written: Two dollars twenty six cents per gallon or Five hundred thirty dollars per ton.

Pricing Valid Dates: from: March 1, 2021 to December 31, 2021

Pricing Adjustments may occur: Annually beginning March 1, 2022

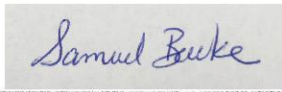
Item	Unit	Description	Unit Price
2	Each	Trailer Rental Per Day. *Does not include oil as it is separate bid in item 1.	NA

Item 2 – Alternate 1 Bid Price Written:

No trailers available.

Company: Suncor Energy (USA) Inc.

**Authorized
Signature:**



Digitally signed by Samuel Beuke
DN: cn=Samuel Beuke ou=Users and Groups
Reason: I am the author of this document
Location:
Date: 2021-02-26 09:59:07-00

Title: Manager Marketing Asphalt and Residual Oils



MASTER PRODUCT PURCHASE AND SALE AGREEMENT

City of Grand Junction
(Customer Name)

This Master Product Purchase and Sale Agreement (the "Agreement"), is entered into and effective as of the 28th day of Oct, 2011 (the "Effective Date"), by and between Suncor Energy (U.S.A.) Inc., a Delaware corporation ("Suncor") and City of Grand Junction, Colorado, a(n) municipality ("Counterparty"). Suncor and Counterparty may hereinafter be collectively referred to as the "Parties," and each individually as a "Party."

In consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Scope of Master Agreement - Acceptance of General Terms and Conditions. Except as expressly provided in a separate written purchase and sale agreement executed by both of the Parties, this Agreement shall govern any and all transactions or agreements entered into or consummated between the Parties on or after the Effective Date hereof for the purchase and sale of any petroleum product (including without limitation gasoline, distillate, asphalt, resid, slurry oil, propane, or butane), where Suncor is the seller and Counterparty is the purchaser, and the General Terms and Conditions attached hereto as Exhibit A shall be incorporated into, form a part of, and apply to any such transaction or agreement, including without limitation those governed by a Confirmation (as defined in Section 2 below).
2. Confirmation Procedure. Each of the Parties agrees that it shall be legally bound to any transaction or agreement agreed to by the Parties (orally or otherwise) for the purchase and sale of any petroleum products, where Suncor is the seller and Counterparty is the purchaser, pursuant to the terms set forth in a transaction or agreement confirmation delivered by Suncor to Counterparty pursuant to Section 3 hereof (each a "Confirmation"), provided that Counterparty does not deliver written Notice of its objection to any terms of the Confirmation to Suncor within two (2) business days after its receipt of the Confirmation, after which deadline the Confirmation shall be binding on Counterparty whether or not Counterparty executes and returns the Confirmation to Suncor. If Counterparty provides a timely Notice objecting to, changing, or proposing any new terms in or to a Confirmation, Suncor shall not be bound by any such proposed changes or new terms unless and until Suncor agrees to such changes or new terms in a writing signed by Suncor. If Counterparty accepts, takes delivery of, or purchases any petroleum products from Suncor pursuant to a purported transaction or agreement documented by a Confirmation which Counterparty has timely objected to, altered, or proposed new terms for, but which changes or new terms have not been assented to in writing by Suncor as set forth above, the terms of the original Confirmation delivered by Suncor (together with the General Terms and Conditions attached hereto) shall govern any such transaction or agreement and all sales thereunder. In the event that Counterparty accepts, takes delivery of, or purchases any petroleum products from Suncor without a valid Confirmation or separate purchase and sale agreement between the Parties, the General Terms and Conditions to this Agreement shall nonetheless govern such sales. The Parties agree that this Section shall govern in accordance with C.R.S.

41 Nov 6 -

Signatures
needed, pls.

Thanks! K

3. Notice. All notices required or permitted under this Agreement (each, a "Notice") shall be in writing and shall be delivered by e-mail, facsimile, or certified mail return receipt requested, at the contact information provided below. All Notices shall be deemed delivered upon the day of actual receipt by the receiving Party or confirmation of such receipt (whichever occurs first) if occurring on or before 5:00 p.m. Mountain Time, and on the day following such receipt or confirmation of receipt if occurring after 5:00 p.m. Mountain Time. Each Party may change any of its contact information below upon written notice to the other Party.

To Suncor: Suncor Energy (U.S.A.) Inc.
717 17th Street, Suite 2900
Denver, Colorado 80202
Attn: Contract Coordinator
Fax: 303.793.8054
e-mail: contractcoordinator@suncor.com

To Counterparty: City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
Attn: Dan Thorne
Fax: 970-244-1426
e-mail: danth@gjcity.org

4. Conflicts. To the extent, and only to the extent, that the terms in any Confirmation or other valid written purchase and sale agreement subject to this Agreement expressly contradict or are inconsistent with those set forth in Exhibit A hereto, the terms of the Confirmation or other purchase and sale agreement shall govern and control. Otherwise, any additional rights or obligations set forth in Exhibit A, even if relating to a subject matter addressed in the Confirmation or other purchase and sale agreement, shall be binding on both Parties.
5. Exhibits. The General Terms and Conditions attached hereto as Exhibit A are, by this reference, expressly incorporated into and made a part of this Agreement.
6. Confidentiality. This Agreement is to be maintained strictly confidential by the Parties pursuant to Section 23 of Exhibit A.
7. Counterparts. This Agreement may be executed on one or more counterparts, all of which taken together shall be deemed to constitute one and the same instrument. Each counterpart to this Agreement may be delivered by any method permitted in the Section 3 above, including facsimile or e-mail, and each counterpart so delivered shall constitute an original.

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of the Effective Date.

SUNCOR ENERGY (U.S.A.) INC.

By: Nutt Ahlber

Print Name: Norbert Schreiber

Title: Manager, Asphalt Sales

COUNTERPARTY:

City of Grand Junction

By: Scott Hackens

Print Name: Scott Hackens

Title: Purchasing Supervisor

Exhibit A
Suncor Energy (U.S.A.) Inc.
General Terms and Conditions

1. General. For purposes of these General Terms and Conditions, the term "Agreement" shall mean and include these General Terms and Conditions and the applicable Master Product Purchase and Sale Agreement between the Parties ("MPPSA"), Confirmation(s) (as defined in the MPPSA), and/or other purchase and sale agreement(s) between the Parties to which these General Terms and Conditions expressly form a part. Unless otherwise defined herein, all capitalized terms herein (including "Suncor" and "Counterparty") shall be defined pursuant to the terms of the MPPSA, Confirmation, and/or other mutually executed purchase and sale agreement, as applicable, to which this Exhibit A forms a part.

2. Measurement.

Tank Truck/Tank Car Deliveries. Suncor shall read its meters at the time Product is loaded into the receiving tank trucks or tank cars, as applicable, to determine bill of lading volume(s) for each delivery of Product. If meters are not available at or near the loading point, the driver or tank car loader, as applicable, shall innage/ullage each tank truck and/or tank car immediately before and immediately after delivery of the Products to determine the volume(s) of Products delivered. These innages/ullages shall be converted to net delivered gallons based on each tank truck's or tank car's official calibration tables.

Pipeline Deliveries. At the time of delivery, the operator shall read the applicable meters installed on the pipeline(s) at or near the Delivery Point(s) to determine the volume(s) of Products delivered.

Other. If the applicable measurement method(s) described above are not available, the Parties shall establish another mutually acceptable method for determining the volume of Product(s) delivered.

All volumes of delivered product(s) shall be corrected for temperature to 60 degrees Fahrenheit in accordance with then current ASTM standards and revisions, which, as of the effective date of this Agreement, is ASTM D-1250 / Petroleum Measurement Table 6B or ASTM D-4311-04 Table 2, as applicable for the product(s) purchased and sold hereunder. The term "barrel" means 42 U.S. gallons of 231 cubic inches per gallon. All measurements and/or tests shall be made in accordance with the latest standards or guidelines published by the API or ASTM. The meter operator shall, upon request, allow the other Party to witness meter proving and review and copy relevant meter proving records.

3. Demurrage. Counterparty is responsible for any and all demurrage and detention charges incurred on rail tank cars in connection with the loading or unloading of Product(s) pursuant to this Agreement, and shall pay in accordance with Section 5 all such demurrage and detention charges that are incurred by Suncor and invoiced to Counterparty. Without limitation or duplication of the foregoing, Suncor shall have the right (but not the obligation) in its sole discretion to charge Counterparty demurrage at the rate of \$50.00 per rail tank car per day for any rail tank car that is transported with Product purchased under this Agreement, beginning with the sixth day after the day the rail tank car is placed at the point designated by Counterparty, or constructively placed, through and including the day such rail tank car is released. In addition, Suncor shall also have the right (but not the obligation) in its sole discretion to charge Counterparty a storage charge for any rail tank car that is placed for loading at Suncor's Hudson, Colorado terminal storage tracks or at the Denver, Colorado Union Pacific Railroad 36th Street Yard at the rate of \$50.00 per rail tank car per day, beginning with the sixth day after the day Suncor provides notice to Counterparty of the incurrence of such storage charges until the day such rail tank car is removed. Suncor may, in its sole discretion, increase the daily demurrage and/or storage rates in this Section 3 by notice to Counterparty to a rate not to exceed the maximum daily demurrage rate charged to Suncor by any rail carrier. As used in this Section 3, a "day" means any full or partial day, beginning at 12:01 a.m., Denver, Colorado time; a rail tank car shall be deemed "constructively placed" when, because of some disability on the part of any person or entity other than Suncor, the rail tank car cannot be placed for loading or unloading at the designated point and is placed elsewhere (in which case it shall be subject to demurrage to the same extent as if it was actually placed at the designated point); and a rail tank car shall be deemed "released" when advice is provided by Counterparty to the authorized personnel of Suncor that such rail tank car is unloaded and available.

4. Warranty. Suncor warrants it has the right to dispose of all Product sold and transferred under this Agreement, and that the Product delivered hereunder shall conform to the specifications and descriptions contained in the Agreement and that such Product will be delivered to Counterparty free from all lawful security interests, liens and adverse claims including taxes and royalties created by, through, or under Suncor. **THE ABOVE IS SUNCOR'S ONLY WARRANTY CONCERNING THE PRODUCTS AND THIS AGREEMENT, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF SUCH PURPOSES ARE KNOWN TO SUNCOR.**

5. **Payment.** Unless otherwise agreed to in writing, Suncor shall furnish Counterparty with invoices for all Product sold and delivered to Counterparty hereunder, and Counterparty shall, upon receipt of each invoice, make payment to Suncor immediately in accordance with the terms of payment provisions of this Agreement without any deduction or set-off. If the due date falls on a Saturday, Sunday, or bank holiday, Counterparty shall make payment on the following business day. Suncor shall deliver each invoice to Counterparty by facsimile or electronic transmission, unless otherwise agreed in writing by the Parties. Each invoice shall be deemed received upon successful transmission of the invoice by Suncor to Counterparty or actual receipt by Counterparty, whichever occurs first. All payments hereunder shall be made by Electronic Funds Transfer ("EFT") or Automated Clearing House ("ACH") into such account(s) as designated by Suncor, unless otherwise agreed by the Parties. Counterparty agrees to execute an EFT or ACH authorization agreement in a form approved by Suncor from time to time. In the event that Counterparty fails or ceases to make payment to Suncor pursuant to the manner and method set forth above, Suncor shall have the right to immediately cease supplying or selling Product to Counterparty and to terminate this Agreement.

6. **Taxes.** Counterparty shall pay, in addition to applicable prices hereunder, any and all applicable taxes, duties, imposts or other charges imposed by any governmental or regulatory authority or agency in connection with the sale of the Products to the Counterparty (excluding any taxes on the income of Suncor). Failure of Suncor to add any such tax, fee or charge to the invoice shall not relieve Counterparty from liability therefore. Counterparty shall reimburse Suncor for any interest and/or penalty assessed by any governmental or regulatory authority or agency when the penalty and/or interest is assessed as the result of false, incorrect or delinquent certification(s) made to Suncor by Counterparty. In the event Counterparty seeks to claim any tax exemption status in connection with its purchases hereunder, Counterparty shall provide to Suncor all proper exemption certificates prior to delivery of all applicable Products that is licensed to engage in tax free transactions with respect to the Products under all international, federal, or state laws which may apply to this Agreement and the Products to be delivered hereunder.

7. **Rules and Regulations; Compliance with Laws.** All of the terms and provisions of this Agreement shall be subject to the applicable laws, orders, rules, regulations, and ordinances of all governmental authorities and regulatory bodies having jurisdiction, and each Party agrees to comply with all such laws, orders, rules, regulations, and ordinances during the term of this Agreement.

8. **Warning. THE PRODUCT SOLD BY SUNCOR MAY BEAR OR CONTAIN HAZARDOUS CHEMICALS, RESIDUES OR OTHER HAZARDOUS MATERIALS WHICH MAY BE, OR MAY BECOME BY CHEMICAL REACTIONS OR OTHERWISE, DIRECTLY OR INDIRECTLY HAZARDOUS TO LIFE, HEALTH OR PROPERTY BY REASON OF TOXICITY FLAMMABILITY, EXPLOSIVENESS, OR FOR OTHER SIMILAR OR DIFFERENT REASONS DURING TRANSPORTATION, USE, HANDLING, REMOVAL, REFINING, CLEANING OR RECONDITIONING.**

Suncor has provided or shall, upon Counterparty's written request, provide Counterparty with Material Safety Data Sheets concerning the Products, which shall be made a part of this Agreement and which contain information regarding health risks and recommendations for the safe use and handling of the Product. Counterparty shall read and comply with such Material Safety Data Sheets and the above warning, and undertake to exercise the degree of care required to protect persons and properties from all hazards of the Product disclosed in the Material Safety Data Sheets and warning, including but not limited to, by: (i) providing employees of the Counterparty and its affiliates who may be handling the Products with appropriate safety equipment and ensuring such safety equipment is adequately maintained and properly used and (ii) warning third parties who may purchase or come into contact with the Products or who handle or transport the Products on behalf of the Counterparty of the aforesaid hazards of the Products.

9. **Allocation.** The amount of Products to be supplied to Counterparty shall be subject to any good faith allocation program which Suncor may find necessary to effect for any reason, including but not limited to shortage of Products or government regulation. Suncor may equitably allocate its available Products to its customers (including Counterparty). When an allocation program is in place, Suncor shall have the right to impose a surcharge on any Products purchased which exceed 100% of Counterparty's allocation upon twenty-four (24) hours prior notice, which notice may be provided by e-mail or facsimile. In the event Suncor's inventory, ability to refine or sources of supply of crude petroleum or refined petroleum products are not sufficient to meet demand at Suncor's normal or assigned supply sources (regardless of whether Suncor may have diverted supply to other supply sources to alleviate shortages at such other supply sources), Suncor shall not be bound to acquire by purchase or otherwise additional quantities of crude petroleum or refined petroleum products from other suppliers or to take any other action which is uneconomic for Suncor. Suncor may, but is not obliged to, designate a temporary alternate source of supply and/or offer Counterparty temporary substitute Products. No allocation pursuant to this Section shall operate to extend the period of this Agreement and Suncor shall not be obligated to make available any quantities omitted due to any allocation program.

10. **Force Majeure.** If either Party to this Agreement fails to observe or perform any of the covenants or obligations herein, in whole or part, to the extent that such failure is occasioned by war, flood, fire, explosion, extreme heat or cold, earthquake, storm, riot, labor dispute causing work stoppage, strike, lockout, act of God, governmental regulation, disruption or breakdown of

production facilities, refining or transportation facilities, failure of transportation providers to furnish transportation, failure of suppliers to furnish supplies, any law, rule, order or action of any court, agency, or instrumentality of the federal, state, or municipal government, or any other cause or causes, whether similar or dissimilar, without enumeration, beyond the reasonable control of such Party, but excluding lack of funds or inability to pay, such failure shall be deemed not to be a breach of the covenants or obligations under this Agreement, provided that the Party claiming such failure shall give the other written notice, as soon as reasonably practicable, of the occurrence affecting it. This Section shall not, however, relieve any Party from any obligations, including obligations to pay for Products, incurred prior to validly invoking force majeure. The Parties further agree at the conclusion of any force majeure event, neither Suncor nor Counterparty shall have any obligation to each other with respect to any quantities of Product not purchased or delivered as a result of such force majeure event. No condition of force majeure shall operate to extend the term of this Agreement or any renewal thereof.

11. Indemnity. Counterparty shall defend, indemnify, and hold Suncor, its parent, subsidiaries, affiliated companies and their officers, directors, employees, and agents (the "Indemnified Parties") harmless from and against any and all liabilities, claims, actions, suits, damages, fines, penalties, judgments, losses, costs and expenses (including, without limitation, reasonable attorney's fees, court costs, and all other legal expenses) of every type and character (collectively, "Claims"), including, without limitation, for personal injury to or death of any person (including, without limitation, Counterparty's or Suncor's employees, carriers, agents, or customers) or for damage to, loss of, or destruction of any personal or real property caused by, arising out of, or resulting from the willful or negligent acts or omissions of Counterparty, its employees, agents, or representatives (the "Counterparty Parties") with respect to this Agreement or the Products purchased and sold hereunder, including, without limitation, the storage, handling, commingling, transportation, resale, or use of such Products. Counterparty also agrees to defend, indemnify, and hold the Indemnified Parties harmless from and against any and all Claims caused by, arising out of, or resulting from any breach of this Agreement by any of the Counterparty Parties or the failure of any of the Counterparty Parties to comply with any and all applicable laws and regulations. The foregoing indemnity shall not apply to the extent that any Claim is caused by the negligence or willful misconduct of any of the Indemnified Parties.

12. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, ARISING UNDER THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. Suncor's liability with respect to this Agreement, any Products delivered hereunder, or any action relating to the same (whether in contract, equity, tort, or otherwise) shall be limited to, and shall not exceed, the lesser of: (i) the actual amount of direct damages incurred, or (ii) the actual amount paid by Counterparty for the applicable Products giving rise to such liability. Further, any actions to enforce any rights or obligations under this Agreement must be filed against the other Party in a court in the State of Colorado no later than one (1) year after the date that the Party had actual or constructive knowledge of the events giving rise to the alleged breach of this Agreement, or such rights shall be deemed expressly waived.

13. Applicable Law; Forum Selection; Waiver of Right to Jury Trial. This Agreement shall be governed by and construed in accordance with laws of the State of Colorado, without regard to conflicts of laws principles. Each of the Parties irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of Colorado and of the United States of America located in the City of Denver, Colorado for any actions, suits, or proceedings arising out of or relating to this Agreement or the transactions contemplated thereby, and each of the Parties further agrees not to commence any action, suit, or proceeding except in such courts. Each of the Parties also hereby irrevocably and unconditionally waives any objection to the laying of venue of any such proceedings in such courts located in the State of Colorado, and waives and agrees not to plead or to make any claim that any proceeding brought in any court in the State of Colorado has been brought in an improper or inconvenient forum. EACH OF THE PARTIES HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

14. Assignment. No rights or obligations arising under this Agreement shall be assigned by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned, or delayed; provided, however, Suncor and its successors and assigns may, without the consent of or notice to the Counterparty, sell, transfer and/or assign from time to time any part of, or any interest in, the indebtedness of Counterparty to Suncor pursuant to this Agreement, together with any security interests, liens, property, guarantees and other agreements or arrangements supporting or securing payment of same, and/or declare that another person has a beneficial interest therein. Notwithstanding the foregoing, either Party may, without the consent of or notice to the other, assign its rights and obligations hereunder to any subsidiary or affiliate, provided that in no event shall such assignment relieve the assigning Party of its obligations hereunder.

15. Title and Risk of Loss. Title to and risk of loss of the Product shall pass to Counterparty (and delivery and purchase of such Product shall be deemed to occur) at and upon delivery at the Delivery Point specified in this Agreement. It is expressly understood and agreed by the Parties that the passage of title and risk of loss as set forth above is not conditioned upon the delivery or receipt of Bills of Lading or pipeline meter tickets.

16. **Credit.** Suncor, at its sole and absolute discretion, may extend credit or a line of credit to Counterparty on such terms as Suncor shall specify from time to time, and Counterparty shall pay Suncor for Products strictly in accordance with such terms and any other payment terms applicable at the time of delivery. Suncor reserves the right to modify or withdraw such credit and/or credit terms at any time without prior notice to Counterparty.

17. **Security.** If Suncor, in its sole discretion, believes that it has grounds for insecurity regarding the performance of any obligation under this Agreement by Counterparty (whether or not then due) for any reason (including, without limitation, the occurrence of a Material Change in the creditworthiness of Counterparty, Counterparty's failure to timely pay any invoice, or Counterparty's breach of any credit terms extended by Suncor), Suncor shall have the right to do one or more of the following: (a) without notice, suspend indefinitely any and all sales of Product to Counterparty, (b) without notice, suspend, withdraw, alter, or terminate any credit or line of credit previously extended to Counterparty, and (c) make Performance Assurance (as defined below) a condition precedent to the further supply of Product and/or extension of credit to Counterparty, which Counterparty shall provide and maintain during the term of the Agreement or any extension thereof or until such requirement is waived by Suncor.

In this Section, "Performance Assurance" shall mean sufficient security in a form, amount, and term acceptable to Suncor, in its sole discretion, which may include, without limitation, a standby irrevocable letter of credit, a prepayment, a security interest in one or more assets, or a performance bond, and "Material Change" shall mean that the senior long-term debt or deposits of Counterparty, or in the event of reorganization, the resulting, surviving or transferee of Counterparty is or are, as the case may be, rated less than BBB by Standard & Poor's Corporation or Baa2 by Moody's Investors Service, Inc.

18. **Default.** In the event (each an "Event of Default") either Party (the "Defaulting Party"): (i) makes an assignment for any general arrangement for the benefit of creditors; (ii) files a petition or otherwise commences, authorizes, or acquiesces in the commencing of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise becomes bankrupt or insolvent (however evidenced); (iv) is unable to pay its debts as they fall due; (v) has a receiver, provisional liquidator, conservator, custodian trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fails to provide Performance Assurance within two (2) business days (being any day other than a Saturday, Sunday or statutory holiday in Colorado) after a written request by Suncor; (vii) has breached or defaulted in the performance of any term or condition of this Agreement, and failed to have cured such breach or default within ten (10) days of receiving written notice from the other Party, or (viii) has not paid any amount due on or before the second business day following the due date for such amount; then the other Party (the "Non-Defaulting Party") shall, in addition to any other rights or remedies which it may have at law or in equity, have the right, at its sole discretion, to (a) immediately withhold and/or suspend the delivery or acceptance of Product upon notice, or (b) terminate this Agreement and/or any transactions hereunder.

19. **Quality and Quantity Claims.** Counterparty agrees to give Suncor written notice of any claims of defect in quality or shortage in quantity within seven (7) days after the relevant Product is delivered. Counterparty shall inspect the Products and, whenever possible, any equipment used to make the delivery of such Products in order to determine the cause of any defects or shortages and notify Suncor within above-specified time period. IF COUNTERPARTY FAILS TO PROVIDE SUNCOR WITH WRITTEN NOTICE OF ANY CLAIM OF DEFECT OR SHORTAGE WITHIN SEVEN (7) DAYS AFTER DELIVERY OF THE PRODUCT, COUNTERPARTY AGREES THAT IS WILL HAVE WAIVED THE RIGHT TO MAKE OR PURSUE SUCH CLAIM(S). If Counterparty gives Suncor timely notice of a defect in quality, Counterparty shall give Suncor the opportunity to test the Product in question. If the Product is found to have been contaminated while in Suncor's custody, Suncor shall pay for such test. If the Product is found to have been contaminated after it has left Suncor's custody, Counterparty shall pay for such test.

20. **Interest.** Counterparty shall pay interest on all amounts that are owing to Suncor and overdue at the rate of twelve percent (12%) per annum. Interest shall be calculated from the date that the amount becomes overdue, regardless of whether Suncor has made demand for payment from the Counterparty. Counterparty shall pay all of Suncor's costs and expenses (including reasonable attorney's fees, court costs, and all other legal expenses) of collecting past due payments.

21. **Notices.** Notices, invoices and reports given under this Agreement shall be in writing and delivered by fax, e-mail, or other telecommunication device, or mailed by prepaid post, addressed to the Parties at the addresses given in this Agreement.

22. **Set-Off.** If any amount payable by Counterparty hereunder is not paid as and when due, Counterparty authorizes Suncor to proceed without prior notice by way of set-off, counterclaim or otherwise against any assets of Counterparty that may at any time be in the possession of Suncor, including without limitation against any amounts owing from Suncor to Counterparty.

23. **Confidentiality.** Suncor and Counterparty each agrees to hold in the strictest confidence the terms of this Agreement or any information containing any of the terms of this Agreement, including pricing and volume information (collectively, "Confidential Information"), and not to disclose it to any third party without the prior written consent of the other Party, unless required by law or government request subject to Section 24 (Subpoenas) below. Suncor and Counterparty shall be entitled to

disclose Confidential Information to its attorneys, tax advisors, and its employees, provided that prior to any such disclosure, such persons agree to be bound by the terms of this Section. In the event either Party breaches the confidentiality obligations set forth herein, the other Party shall have the right to immediately terminate this Agreement upon notice to the other Party. This Section shall survive any termination, expiration, or non-renewal of this Agreement for a period of two (2) years.

24. Subpoenas. In the event that either Party receives a subpoena or other legal process requesting it to produce any documents or tangible things relating to this Agreement, including any Confidential Information (collectively, a "Subpoena"), the subpoenaed Party agrees that it shall: (a) immediately provide the other Party notice of and a copy of any Subpoena; (b) if permitted by law, not produce any documents or tangible things until it receives an order from the relevant court or administrative body, or written consent from the other Party, and (c) in any event, shall only produce such documents and tangible things as are expressly required by the Subpoena or order of the court, strictly construed.

25. Records and Audit Rights. Each Party agrees to maintain all records created in the course of such Party's performance under this Agreement for a period of three (3) years, and shall continue to maintain such records for a period of two (2) years after the expiration of this Agreement. Each Party shall have the right to inspect and audit the other Party's books and records, at the initiating Party's sole cost and expense, upon written notice and at such times so as not unreasonably interfere with the other Party's business, as to be mutually agreed upon by the Parties. However, a Party can only conduct one audit per year, and the same year cannot be re-audited. This Section shall survive any termination, expiration, or non-renewal of this Agreement for a period of two (2) years.

26. Ethics, Commissions and Gifts. No director, officer, employee, or agent of either Party in their individual capacity shall give or receive any commission, fee, or rebate to or from any director, officer, employee, or agent of the other Party. Neither Party shall enter into business arrangements with the directors, officers, or employees of the other Party, unless such directors, officers, or employees are acting as representatives of the other Party.

27. Waiver. The delay or failure of any Party to enforce any of its rights under this Agreement arising from any default or breach by the other Party shall not constitute a waiver of any such default, breach, or any of the Party's rights relating thereto. No custom or practice which may arise between the Parties in the course of operating under this Agreement will constitute to waive any Parties' rights to either ensure the other Party's strict performance with the terms and conditions of this Agreement, or to exercise any rights granted to it as a result of any breach or default under this Agreement. Neither Party shall be deemed to have waived any right conferred by this Agreement or under any applicable law unless such waiver is set forth in a written document signed by the Party to be bound, and delivered to the other Party. No express waiver by either Party of any breach or default by the other Party shall be construed as a waiver of any future breaches or defaults by such other Party.

28. Headings. The headings used in this Agreement are for convenience only and shall not be used for the purpose of construction or interpretation. When the context so requires, the singular shall include the plural and vice-versa.

29. Entire Agreement; Modification. This Agreement reflects the entire agreement between the Parties with respect to its subject matter, and supersedes any previous agreement between the Parties relating to its subject matter. There are no oral or written agreements, inducements, statements, representations, promises, or understandings between the Parties except as expressly set forth herein. No amendment or modification to this Agreement shall be of any force or effect unless it is: (1) in writing, (2) expressly indicates that it modifies the Agreement, (3) reflects the effective date of the modification, and (4) is signed by both Parties.

30. Severability. Each provision of this Agreement shall be interpreted to make it effective under applicable law. If any provision of this Agreement is contrary to law, void, or unenforceable, such provision shall be ineffective only the extent of such invalidity or modified so as to conform to law, and the remainder of such provision and the Agreement shall remain in full force and effect.

31. No Third Party Beneficiaries. This Agreement is solely between Suncor and Counterparty and intended for the sole use and benefit of such Parties. No other person or party is a third party beneficiary under this Agreement.

32. Effectiveness. This Agreement shall not be binding on Suncor until Suncor signs it, and prior sales shall not be construed as a waiver by Suncor of this requirement. After Suncor has signed this Agreement, any prior sales not otherwise covered by contract shall be deemed to have been made under this Agreement.

33. Survival. The following Sections of this Exhibit A shall survive termination, cancellation, or non-renewal of this Agreement: Sections 5, 6, 11, 12, 13, 19, 20, 21, 23, and 25.

- End of Exhibit A -