5458 069179

Contract # _____

STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES**: This contract is between the following agency of the State of Utah: Department of Transportation Agency Code: 810 Asphalt Testing Lab, Division referred to as (STATE), and the following CONTRACTOR:

Oxford Instruments
Name

300 Baker Avenue, Suite# 150
Address

Concord	MA	01742
City	State	Zip

LEGAL STATUS CONTRACTOR
[ ] Sole Proprietor
[ ] Non-Profit Corporation
[X] For-Profit Corporation
[ ] Partnership
[ ] Government Agency

Contact Person Beth Garneau Phone (978) 369-9933 Email garneau@ma.oxinst.com
Federal Tax ID# 043358144 Vendor # 91984C-A Commodity Code # 93895000000

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide: Three (3) year on-site preventative maintenance and inspection contract.

Service/Calibration on the Asphalt Research Rheometer (ARES) for UDOT Central Labs. The ARES is a computer driven testing instrument which requires yearly calibration and maintenance service. The calibration is required by the AMRL (National Laboratory Accreditation Bureau).

3. PROCUREMENT: This contract is entered into as a result of the procurement process on a pre-approved sole source authorization (from the Division of Purchasing) #: SS06215 FY 2006.

4. CONTRACT PERIOD: Effective date 07/01/2006 Termination date 06/30/2009 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal Options (if any): none.

5. CONTRACT COSTS: The CONTRACTOR will be paid a maximum of $38,100.00 for costs authorized by this contract.

6. **ATTACHMENT A**: Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work
ATTACHMENT C: Pricing
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED**:
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to #SS06215dated 06/05/2006.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Beth Garneau 6/13/06
Contractor's Signature Date

Beth Garneau / Marketing
Type or Print Name and Title

STATE

Tracie Montano Jun 9 2006
Tracie Montano, Procurement Services Manager Date

Brenda Valdevieso 6.26.06
Director, Division of Purchasing Date

FOR CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE JUN 27 2006
Director, Division of Finance

LaDonna Haslem	(801) 965- 4068	(801) 965-4073	lhaslem@utah.gov
Agency Contact Person	Telephone Number	Fax Number	Email Address

(Revision 08/26/2003)

ATTACHMENT A

STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.

2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees third party, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.

11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given thirty (30) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the

contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.

18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.

19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.

20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.

22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).

25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

ATTACHMENT B: SCOPE OF WORK

1. Scope of Services – GOLD- On Site Maintenance: Excludes Flexi Channel Detector. 6/13/06

   A. This support contract covers the entire MDX1080X-Ray Flourescent Spectrometer as supplied by Oxford Instruments unless exceptions are noted above. Labor, parts and travel related expenses will be provided at the expense of Oxford Instruments for the service of the specified equipment during the performance period subject to the terms and conditions set forth in the document.

   B. Oxford Instruments factory trained Field Support Engineers will provide on-call response to Customer's trouble call. The Field Support Engineer will diagnose problems and provide replacement of failed components on an exchange basis.

   C. Parts will include all Oxford Instruments supplied components including X-Ray tubes, Sample Probes, PC's, Monitor's, Printers and software originally supplied with Oxford Instrument.

   D. One Preventative Maintenance Servicing of each Instrument covered by this agreement will be performed annually within the final 6 months of each year of this agreement. Oxford may elect to perform this service in conjunction with an on site remedial visit. UDOT shall make equipment available for inspection after 48 hours notice from Oxford. The annual Preventative Maintenance Service will consist of but not be limited to Oxford Instruments current Preventative Maintenance schedules. The customer has the right to waive Preventative Maintenance contingent of acceptance of waiver by Oxford Instruments.

   E. Oxford Instruments shall provide software revisions and releases of the product purchased by the Customer at no charge for the Products listed on the attached schedule(s) during the specified term. Add-on products or upgrades to new Products are excluded.

   F. The customer will be responsible for the disposal of any and all unwanted materials, derived or resulting from on-site work, as directed by Oxford Instruments Personnel. This will include but not be limited to Metals, Plastics, Oils, Radiological or Biological contaminated materials, etc.

ATTACHMENT C: PRICING

Model	Serial#	Performance Period	Price
MDX1080	MX1142	07/01/2006 TO 06/30/2007	$12,700.00/per Year
MDX1080	MX1142	07/01/2007 TO 06/30/2008	$12,700.00/per Year
MDX1080	MX1142	07/01/2008 TO 06/30/2009	$12,700.00/per Year
Total		Not to Exceed	$38,100.00

STATE
Division (

Division of Purchasing Tracking

03)

SOLE SOU

#SS06215

Sole Source Procurement is appropriate only if a purcl
single supplier or if it otherwise qualifies under the attached Utah Administrative

RUSH

ALL SOLE SOURCE REQUESTS OVER $1,000 MUST BE PRE-APPROVED BY STATE PURCHASING.

NOTE: THIS WORD DOCUMENT IS DESIGNED TO ALLOW THE REQUESTOR TO COMPLETE EACH SECTION WITH AS MUCH INFORMATION AS APPROPRIATE TO FULLY RESPOND.

It is anticipated the procurement will result in a (check one):

___X___ Agency Contract — email this form to johndavis@utah.gov prior to contract negotiations. No RX is required. Requested term of contract (include any renewal options): Three (3) years ~~with Two (2) one year renewals~~ B.V.

_____ Purchase Order — Enter RX into Finet, insert the RX Number _____, email this form to the appropriate State Purchasing Agent and send a copy of the quotation from the vendor.

Department Requesting Authorization: Division: Construction and Materials
Contact Person and Title: Sara Carlock, Chemist
email address: scarlock@utah.gov
Phone number:801-965-4298

Product/service to be purchased: on-site preventive maintenance and inspection contract

Cost: $12700/year for a total of $38,100.00 for Three years. (please see attached quote#060418.55.1

Recommended Supplier: Oxford Instruments
Contact Person: Beth Garneau
email address: garneau@ma.oxinst.com
Phone number: (978) 369-9933
Address including zip code: 300 Baker Avenue, Suite 150, Concord MA 01742

Finet vendor number: 91984C (they currently are the vendor on our contract# 049079 which expires 06/30/06).

Complete the following if no Finet number exists. Federal Tax ID# (TIN) or Social Security #: 043358144
(must be 9 digit number) (If submitting a Social Security #, the persons' name must appear as it does on Social Security card.)

Type of Supplier(check one): ___x___ corporation _____ medical provider (all types) _____ proprietorship/individual _____ partnership _____ government _____ other

Sole source request is based on which of the following (check all that apply):

_____x___ Compatibility of equipment/service (please complete sections A and B)

_____ Trial or Testing (please complete section C)

_____ Equipment/service is only available from a single supplier in the U.S. (please complete section A)

_____ Compatibility of professional services (please complete section A)

Section A. GENERAL INFORMATION

1. What is unique about this product/service to justify a sole source? **The PMI contract is for preventive maintenance and repair of an x-ray fluorescence spectrometer used for chemical testing. It is a highly technical piece of equipment, which requires the expertise of the manufacturer for service and repair. The service also includes the cost of parts, which are only available from the manufacturer.**
2. Could the product/service be reasonably modified to allow for competition? **No**
3. Explain the market research performed to make the sole source recommendation? **(I wouldn't even know where to begin looking for someone else who might provide such a service contract for this piece of equipment)**
4. List the names of suppliers contacted, contact person and a summary of their response?
5. Complete disclosure must be included with this request if the requestor has any personal, financial or fiduciary relationship with the recommended supplier. N/A

Section B. COMPATIBILITY OF EQUIPMENT/SERVICE

1. Describe the existing equipment that this purchase must be compatible with; original purchase price and date of purchase. **The PMI contract is for preventive maintenance and repair of an x-ray fluorescence spectrometer (XRF) used for chemical testing. The XRF was purchased in March 1997, cost of $97,900.**
2. What is the remaining life expectancy of the existing equipment? **10 years**
3. What procurement method was used to purchase the existing equipment? Provide the solicitation number, RX number or sole source number: **PO#PC8107000000187**.

Section C. TRIAL OR TESTING

1. Why is the trial use or testing necessary?
2. What is the anticipated end result of the trial or test?
3. Do any other suppliers provide this product or service?
   a. If yes, list the company names:
   b. Will their products be tested?
6. What criteria were used to choose this supplier?
7. What is the scope/size and location of test or trial?

Requested by:

LaDonna Haslem — 05/16/2006
Agency Signature — Date

Title:

Approved:

D Richins 6/5/06
Douglas G. Richins, Director — Date

Utah Division of Purchasing & General Services

NOTE: When submitted by email, type requestors' name on the signature line. The email will constitute the electronic signature.