FI84 9/96
Division of Finance

CONTRACT # 059105

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following Agency of the State of Utah:

Dept. of Transportation (Agency Name) | 810 (Agency Code) | Proc./Richfield District (Division) referred to as STATE and the following:

CONTRACTOR Hales Sand & Gravel Inc. (Name)
408 West 100 South (Address)
Redmond (City) | UT (State) | 84652 (Zip Code)
Tom Hales (Contact Person) | (435) 529-7434 (Phone Number)
870294346 (Federal ID#) | 33050F (Vendor Number) | 74514140821, 74514140845, 74514140868 (Commodity Code(s))

LEGAL STATUS OF CONTRACTOR
____ Sole Proprietor
____ Non-Profit Corporation
X For-Profit Corporation
____ Partnership
____ Government Agency

2. CONTRACT TYPE AND PURPOSE:

This is a requirements contract to provide the State with winter patch materials. A performance bond in the amount of $6,982.50 is required.

3. PROCUREMENT: This contract is entered into as a result of the Procurement process on bid RF5040, Requisition # 810 56000000030, FY 2005.

4. CONTRACT PERIOD: Effective date 01-Oct.-2004. Termination date 01-Oct.-2006, unless terminated early or extended in accordance with the terms of this contract. Renewal Options (if any) None.

5. CONTRACT COSTS: This is a requirements contract. See Attachment C for pricing.

6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions.
ATTACHMENT B: Scope of Work.
ATTACHMENT C: Itemized Price List.
ATTACHMENT D: Special Terms and Conditions.
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 responses to Bid # RF5040 dated 14-Sept.-2004.

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

CONTRACTOR
SEE ATTACHED
Contractor's Signature
JOHN HALES
Contractor's Name
PRESIDENT
Title

STATE OF UTAH
David K. Miles, Operations Engineer
NOV 03 2004
Director, Division of Purchasing
CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE
Director, Division of Finance
JUL 19 2005

ENT'D FEB 28 2005

Debra Boulton	(801) 965-4070	(801) 965-4073	dboulton@utah.gov
Agency Contact Person	Phone Number	Fax Number	Email Address

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.

August 13, 2002

SECTION 02754S (Maintenance)
ASPHALT PATCH MATERIAL

PART 1 GENERAL

1.1 SECTION INCLUDES

A. Asphalt patch material.
B. Asphalt crack filling material.
C. Asphalt crack sealing material.

1.2 REFERENCES

A. AASHTO T 30: Mechanical Analysis of Extracted Aggregate

B. AASHTO T 44: Solubility of Bituminous Materials.

C. AASHTO T 48: Flash and Fire Points by Cleveland Open Cup

D. AASHTO T 49: Penetration of Bituminous Materials.

E. AASHTO T 51: Ductility of Bituminous Materials.

F. AASHTO T 170 Recovery of Asphalt from Solution by Abson Method

G. AASHTO T 201: Kinematic Viscosity of Asphalts.

H. AASHTO T 228: Specific Gravity of Semi-Solid Bituminous Materials.

I. AASHTO T 240: Effect of Heat and Air on a Moving Film of Asphalt (Rolling Thin-Film Oven Test).

J. AASHTO T 300: Force Ductility of Bituminous Materials.

K. AASHTO T 301: Elastic Recovery Test of Bituminous Materials by Means of a Ductilometer.

L. ASTM D 1190: Concrete Joint Sealer, Hot-Applied Elastic Type.

M. ASTM D 2007: Characteristic Groups in Rubber Extender and Processing Oils and Other Petroleum-Derived Oils by the Clay-Gel Absorption Chromatographic Method.

N. ASTM D 3405: Joint Sealants, Hot-Applied, for Concrete and Asphalt Pavements.

O. ASTM D 4402: Standard Test Method for Viscosity Determination of Asphalt at Elevated Temperatures Using a Rotational Viscometer

P. ASTM D 5167: Melting of Hot-Applied Joint and Crack Sealant and Filler for Evaluation.

Q. ASTM D 5329: Sealants and Fillers, Hot-Applied, For Joints and Cracks in Asphaltic and Portland Cement Concrete Pavements.

R. ASTM D 5801: Toughness and Tenacity of Bituminous Materials.

1.3 SUBMITALS

A. For each shipment of material, supply a vendor-prepared bill of lading showing the following information as applicable:
   1. Type and grade of material
   2. Type and amount of additives, used, if applicable
   3. Destination
   4. Consignee's name
   5. Date of Shipment
   6. Railroad car or truck identification
   7. Project number
   8. Loading temperature
   9. Net weight in English units (or net gallons corrected to 60 degrees F, when requested)
   10. Specific gravity
   11. Bill of lading number
   12. Material Safety Data Sheet
   13. Manufacturer of asphalt material

1.4 DELIVERY, STORAGE AND HANDLING

A. Each shipment of asphalt material must:
   1. Be uniform in appearance and consistency.
   2. Have a label affixed to each container identifying product name, manufacture date, MSDS warnings, contact information and manufacturer name and address.

B. Do not supply shipments contaminated with other asphalt types or grades than those specified.

1.5 GRADE OF MATERIAL

A. The Engineer determines the grade of material to be used based on the supply source designated by the Contractor when the bid proposal lists more than one grade of asphalt material.

PART 2 PRODUCTS

2.1 CONTAINERIZED PATCH TYPE A

A. Supply Type A patch in sealed reusable plastic 3-1/2 to 5 gallon containers.

B. Minimum shelf storage life - 24 months

C. Free flowing from inverted bucket at room temperature. Unaffected when heated by external non-flame heat source.

D. Patch material seals to sound existing asphalt pavement edge without tack or adhesive

E. Meet the following specifications:

Table 1

CONTAINERIZED PATCH TYPE A PROPERTIES		
Property	**Test Method**	**Limits**
Viscosity, cSt, 140°F(60°C), (1)	AASHTO T 201	1900-2000
Ductility 77°F (25°C), 5 cm/mm, cm (1)	AASHTO T 51	100
Penetration @ 77°F, 1 mm (1)	AASHTO T 49	76
Flash Point, COC, °F (1)	AASHTO T 48	486 min
Asphaltenes, percent weight (1)	ASTM D 2007	12.0 - 13.0
Polars, percent weight (1)	ASTM D 2007	42.2
Bitumens, percent weight (1)	ASTM D 2007	5.4
Bitumens, naturally occurring, percent weight (1)	ASTM D 2007	100
Natural Resins, percent weight (1)	ASTM D 2007	0.6

Polar Compounds, percent weight (1)	ASTM D 2007	40 min
Natural Sands, percent weight	AASHTO T 30	32 min passing 100 mesh screen
Natural Clay, percent weight	AASHTO T 30	3-4 min passing 400 mesh screen
Filler Material crushed, percent weight	AASHTO T 30	0
Filler Material naturally occurring, percent weight	AASHTO T 30	50-70
(1) Residue from AASHTO T 170 Recovery of Asphalt from Solution by Abson Method		

E. **Performance** - field applied patch remain in place under normal traffic conditions for 36 months from original installation date. Contractor supplies replacement material for patches that come out of the pothole in less than 36 months from original installation date.

2.2 WINTER PATCH TYPE B

A. Patch material contains 5.5 percent bituminous by weight by weight.

B. Bituminous material is MC-250.

C. Bid price may be adjusted after testing by UDOT Materials Division upwards or downwards by $0.25 cents for each 0.1 percent of bitumen adjusted.

D. Supply Winter Patch Type B material in bulk.

E. Minimum storage life in covered open shed - 12 months

F. Free flowing from inverted loader bucket at 40 °F. Unaffected when heated by external non-flame heat source.

G. Patch material seals to sound existing asphalt pavement edge with tack oil

H. Meet the following specifications:

Table 2

WINTER PATCH TYPE B PROPERTIES		
Property	**Test Method**	**Limits**
Viscosity, cSt, 140°F(60°C), (1)	AASHTO T 201	1900-2000
Ductility 77°F (25°C), 5 cm/mm, cm (1)	AASHTO T 51	100
Penetration @ 77°F, 1 mm (1)	AASHTO T 49	76
Flash Point, COC, °F (1)	AASHTO T 48	486 min
Asphaltenes (1)	ASTM D 2007	12.0 - 13.0
Polars, percent weight (1)	ASTM D 2007	42.2
Bitumens, percent weight (1)	ASTM D 2007	5.4
Bitumens, naturally occurring, percent weight	ASTM D 2007	100
Natural Resins, percent weight (1)	ASTM D 2007	0.6
Polar Compounds, percent (1) weight	ASTM D 2007	40 min
Natural Sands, percent weight	AASHTO T 30	32 minimum passing 100 mesh screen
Natural Clay, percent weight	AASHTO T 30	3-4 minimum passing 400 mesh screen
Filler Material crushed, percent weight	AASHTO T 30	0
Filler Material naturally occurring, percent weight	AASHTO T 30	50-70
(1) Residue from AASHTO T 170 Recovery of Asphalt from Solution by Abson Method		

Table 3

WINTER PATCH TYPE B AGGREGATE PROPERTIES		
Test Method	Test Number	½" Max Aggregate
One Fractured Face, percent	ASTM D 5821	90 min
Fine aggregate angularity, percent	AASHTO T 304	45 Min
Flat and Elongated Ratio	ASTM D 4791	20 max
L. A. Wear, percent loss	AASHTO T 96	40 max
Sand Equivalency	AASHTO T 176	45 min
Natural fines		none

Table 4

WINTER PATCH TYPE B AGGREGATE GRADATIONS	
Nominal Sieve Size (inch)	Percent Passing
1	
3/4	
1/2	90 - 100
3/8	< 90
No. 4	
No. 8	28-58
No. 200	2-10

2.3 WINTER PATCH TYPE C

A. Material is a specialized winter patch material used for repairing potholes during winter months.

B. Combination of liquid asphalts (oils) and natural or synthetic aggregates

C. Bituminous material is 3-7 percent by weight

D. Remains flexible and adhesive at temperatures down to 0 °F.

E. Acceptable products approved for use in these applications by the Utah Department of Transportation include:
   1. UPM High Performance Cold Mix
   2. QPR 2000 (U.S. Pro Tec)
   3. Pro Patch (Standard American Oil Company)
   4. Bond - X (Seaboard Asphalts)

F. Do not us limestone or limestone derived aggregates

G. Contractor removes and replaces material showing stripping in stockpile within ten days of notification by UDOT at own cost.

Table 5

WINTER PATCH TYPE C PROPERTIES		
Property	**Test Method**	**Limits**
Viscosity, cSt, 140°F(60°C), (1)	AASHTO T 201	1900-2000
Ductility 77°F (25°C), 5 cm/mm, cm (1)	AASHTO T 51	100
Penetration @ 77°F, 1 mm (1)	AASHTO T 49	76
Flash Point, COC, °F (1)	AASHTO T 48	486 min
Asphaltenes (1)	ASTM D 2007	12.0 - 13.0
Polars, percent weight (1)	ASTM D 2007	42.2
Bitumens, percent weight (1)	ASTM D 2007	5.4
Polar Compounds, percent weight (1)	ASTM D 2007	40 min
(1) Residue from AASHTO T 170 Recovery of Asphalt from Solution by Abson Method		

Table 6

AGGREGATE GRADATION	
Sieve Size (inch)	Percent Passing
1/2	100
3/8	90-100
# 4	5-55
# 8	5-30
# 16	0-10
# 50	0-5

2.4 HOT-POUR CRACK SEALANT FOR BITUMINOUS CONCRETE

A. Combine a homogenous blend of materials to produce a sealant meeting properties and tests in Table 2.

B. Packaging and Marking: Supply sealant pre-blended, pre-reacted, and pre-packaged in lined boxes weighing no more than 30 lb.
   1. Use a dissolvable lining that will completely melt and become part of the sealant upon subsequent re-melting.
   2. Deliver the sealant in the manufacturer's original sealed container.
   3. Clearly mark each container with the manufacturer's name, trade name of sealant, batch or lot number, and recommended safe heating and application temperatures.

Table 7

Hot-Pour Bituminous Concrete Crack Sealant			
Application Properties:			
Workability:	Pour readily and penetrate 0.25 in and wider cracks for the entire application temperature range recommended by the manufacturer.		
Curing:	No tracking caused by normal traffic after 45 minutes from application.		
Asphalt Compatibility: ASTM D 5329, Sec 14.	No failure in adhesion. No formation of an oily ooze at the interface between the sealant and the bituminous concrete or softening or other harmful effects on the bituminous concrete.		
Material Handling:	Follow the manufacturer's safe heating and application temperatures.		
Test Method	**Property**	**Minimum**	**Maximum**
AASHTO T51	Ductility, modified, 1cm/min, 39.2°F(4°C),cm	30	
UDOT method 967	Cold Temperature Flexibility	no cracks	
AASHTO T 300 (a)	Force-Ductility, lbf		4
ASTM D 5329	Flow 140°F(60°C), 5 hrs 75 ° angle, mm		3
ASTM D 3405 (b)	Tensile-Adhesion, modified	300%	
AASHTO T 228	Specific Gravity, 60°F(15.6°C)		1.140
ASTM D 5329	Cone Penetration, 77°F(25°C), 150 g, 5 sec., dmm		90
ASTM D 5329	Resilience, 77°F(25°C), 20 sec., percent	30	
ASTM D 4402	Viscosity, 380°F(193.3°C), SC4-27 spindle, 20 rpm, cP		2500
ASTM D 5329	Bond as per ASTM D 1190, Section 6.4		Pass

(a) Maximum of 4 lbf during the specified elongation of 30 cm @ 1 cm/min , 39.2°F(4 °C).

(b) Use ASTM D 3405, Section 6.4.1. Delete bond and substitute tensile-adhesion test in accordance to D 5329.

PART 3 EXECUTION

C. Deliver product to address shown on purchase order.
   1. Type A - minimum order 4 buckets
   2. Type B - Minimum one ton loose
   3. Type C - minimum order 4 containers
   4. Hot Crack Sealant - 30 pound boxes, palletized

END OF SECTION

ATTACHMENT C: ITEMIZED PRICE LIST

DELIVERY POINT	PHONE #	TYPE	UNIT PRICE
Sta. 4325 Panguitch 4700 East Center SR89 RP131.2	435-676-2301	B	$ 50.60/ton
Sta. 4327 Sevier 760 South Old Hwy 89 RP192	435-896-1719	B	$42.50/ton

Pick up by State Forces

Type B $ 37.50/ton

ATTACHMENT D: SPECIAL TERMS AND CONDITIONS

1. **CONTRACT PURCHASE:** This is a requirements contract to provide the State with various types of winter patch material for a period of two (2) years.

2. **CONTRACT ACCEPTANCE:** At the time the bid form is signed by the offeror, the signature of that offeror will be used as a legally binding signature, if awarded the contract. When signed by the Division of Purchasing, a Utah Department of Transportation Representative and assigned a contract number, this document will become a legally binding contract with the offeror for the contract period specified.

3. **CONTRACT INCLUSION:** The bid document, its terms and conditions as well as any counter offers which are accepted/acceptable to the State, shall be incorporated into and by reference become a part of this contract.

4. **QUANTITY OR AMOUNT ESTIMATES:** Estimated contract quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.

5. **PRICING:** The Contractor agrees that the prices bid on materials in this contract shall be guaranteed for the term of the contract.

   REQUESTS FOR A PRICE CHANGE MUST BE SUBMITTED FOR APPROVAL ALONG WITH SUPPORTING DOCUMENTATION TO THE STATE A MINIMUM OF 45 DAYS PRIOR TO THE PROPOSED DATE OF CHANGE. ONLY ONE PRICE INCREASE SHALL BE ALLOWED EACH YEAR.

6. **WAGES:** The Contractor shall be responsible for all applicable company wages in accordance with the federal, state and local laws and ordinances.

7. **LICENSING:** The Contractor agrees to secure and maintain all necessary licenses, permits and bonds that may be required by the State or local authorities to perform said services.

8. **INVOICING:** THE CONTRACT NUMBER AND ORDER NUMBER MUST APPEAR ON ALL INVOICES, BILL OF LADING, PACKAGES AND ALL CORRESPONDENCE.

   The Contractor shall submit invoices to the Utah Department of Transportation, ordering Region. The State will remit payment by mail.

ATTACHMENT D: SPECIAL TERMS AND CONDITIONS

9. **NON-COMPETE CLAUSE:** The Contractor represents its officers and employees are free to contract with the State and are subject to restrictions by the terms of their present or past employment including, but not limited to an agreement not to compete for a period of time unless disclosure has been made. Contractor must disclose to the State any possible conflicts, in writing, before the contract is signed and the State will evaluate whether to continue with contract execution. The State may elect to terminate a contract immediately with a Contractor who is subsequently determined to be subject to such restrictions without liability to the State. If the State elects to terminate a contract for this reason, the State will supersede paragraph #12 in Attachment A - Standards Terms and Conditions and will not provide the specified notice to the Contractor.

10. **DELIVERY:** Material is to be delivered and stockpiled by the Contractor at various locations. Delivery of material shall be coordinated with a State designated agent.

    Certified weight tickets approved by the district Maintenance Engineer shall be provided by the Contractor. The Contractor shall provide written certification stating the material delivered complies to specifications.

11. **PERFORMANCE BOND:** The Contractor shall provide a performance-payment bond amounting to fifteen percent (15%) of the annual contract amount guaranteeing performance, product and payment.