

RESOLUTION NO. 72-98

A RESOLUTION APPROVING OCCUPANT PROTECTION TWIST CAMPAIGN CONTRACT

WHEREAS, the Grand Junction Police Department, on behalf of the City of Grand Junction, has submitted a letter of intent to the Colorado Department of Transportation, Office of Transportation Safety to receive Occupant Protection Twist Campaign Federal Highway Safety Grant funding from October, 1998 through September, 1999, spanning both the 1999 and 2000 federal fiscal years, for the promotion of seat belt and child safety seat use in Colorado and the enforcement of laws pertaining to use of occupant protection restraints, pursuant to 42-4-237 through 42-4-236, CRS; and

WHEREAS, the State has approved the Occupant Protection Twist Campaign and has prepared the Contract with the Grand Junction Police Department; and

WHEREAS, the Grand Junction Police Department has the authority and responsibility to fund and to sign contracts on behalf of the City of Grand Junction; and

WHEREAS, the Occupant Protection Twist Campaign Contract with the Grand Junction Police Department in the amount of \$4,800, has been presented to the City of Grand Junction for approval; and

WHEREAS, the Grand Junction Police Department understands that the project Contract term covers parts of 2 fiscal years (1999 + 2000), and that this Resolution is intended to approve the participation and obligation of the city/county for both fiscal years, subject to the availability of federal funding for the 2000 fiscal year;

WHEREAS, a resolution by the Grand Junction Police Department formally approving the Occupant Protection Twist Campaign Contract, and authorizing the proper signature to be affixed to the Contract indicating such approval is required by the State of Colorado.

NOW, THEREFORE, BE IT RESOLVED, the City of Grand Junction hereby approves the term, conditions and obligations of the Occupant Protection Twist Campaign Contract NC-27, and hereby authorizes the appropriate authority to sign the Contract on behalf of the Grand Junction Police Department.

ADOPTED AND APPROVED this 18th day of November, 1998.

Name /s/ Janet L. Terry

Title Mayor

Attest:

/s/ Christine English

Title: Acting City Clerk

DEPARTMENT OR AGENCY NUMBER:

CONTRACT ROUTING NUMBER:

CONTRACT

THIS CONTRACT, made this _____ day of _____, 199__, by and between the State of Colorado, for the use and benefit of the Colorado Department of Transportation, Office of Transportation Safety, 4201 East Arkansas Avenue, Denver, Colorado 80222 hereinafter referred to as the State or "CDOT OTS" and the City of Grand Junction, for the use and benefit of the Grand Junction Police Department, 625 Ute Avenue, Grand Junction, CO 81501 hereinafter referred to as the Contractor.

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number 400, Appropriation Code 303, Object Number 5110, Org. Unit 9822, Contract Encumbrance Number 9115, GBL NC27, and FEIN # 846000592G, for the financial obligation of the State under this Contract for the current federal fiscal year, ending 9/30/99. New numbers must be assigned and sufficient funds encumbered effective 7/1/98 for the financial obligation of the state under this contract for the succeeding fiscal year(s), ending 9/30/99; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, sections 42-4-236 and 237, C.R.S. (1996 Cum. Supp.), require the use of child restraint systems and safety belt systems in motor vehicles, under the conditions described therein;

WHEREAS, federal highway safety funds have been made available to the State under Title 23 U.S.C. Section 402 for increasing the enforcement and education of safety belt and child car seat use in Colorado; and

WHEREAS, the Colorado Department of Transportation (CDOT), Office of Transportation Safety (OTS) is responsible, under sections 24-42-103, 43-1-103(2), 43-1-105, and 43-4-402, C.R.S., and Title 23 U.S.C. Section 402 to administer those funds for that purpose; and

WHEREAS, the CDOT OTS has created the Occupant Protection Twist Campaign, to encourage local authorities to increase the use of safety belts, and the use of child restraint systems by the State's children by providing grants of Title 23 U.S.C. Section 402 federal highway safety funds to local law enforcement to aid in the enforcement and education of safety belt and child car seat use in Colorado; and

WHEREAS, the State is authorized to allocate the occupant protection enforcement mini-grant funds by contract to local authorities (cities and counties) to benefit the health and safety of persons in Colorado by the implementation of local programs developed by the local authorities for occupant protection enforcement; and

WHEREAS, the parties anticipate that the federal highway safety grant funds may cover several fiscal years, and the parties desire to Contract for that entire term, provided that succeeding fiscal years of that term shall be made subject to the availability and budgeting of federal funds for that purpose.

WHEREAS, the Contractor has submitted a Letter of Intent to accept such federal highway safety grant funds and to perform such enforcement work, pursuant to the terms of this Contract; and

WHEREAS, the Contractor has available the technical ability to properly perform the project and to address the occupant protection enforcement objectives of the CDOT OTS; and

WHEREAS, this Contract is executed by the State under authority of 29-1-203, 24-42-103, 43-1-103(2), 43-1-105, and 43-4-402, C.R.S., and Title 23 U.S.C. Section 402, and by the Contractor under sections 29-1-203 and 30-11-101, 31-15-101 C.R.S. or home rule charter, as applicable, and the attached resolution.

NOW THEREFORE, it is hereby agreed as follows:

1. The Contractor's Letter of Intent, the CDOT OTS Contract Management Manual dated October 1, 1994, the State Highway Safety Rules at 2CCR 602-1, and Attachments A, B and C are incorporated into this Contract by this reference as terms and conditions. The Contractor acknowledges that it has received copies of the CDOT OTS Contract Management Manual, the Application Guidelines, and the State Highway Safety Rules. The Contractor shall comply with all terms and conditions of this Contract. In the event of a conflict between the terms of this Contract and the terms of the incorporated materials, the following priority shall be used to resolve such conflict:

- A. State Highway Safety Rules; then
- B. CDOT OTS Contract Management Manual and Guidelines; then
- C. This Contract, proper; then
- D. Attachment A - Contract Objectives and Tasks; then
- E. Letter of Intent.

2. The Contractor shall carry out the program and shall perform the activities which are specifically described in the Contract and are generally described in Attachment A (collectively, "the project").

3. The Contractor shall submit timely reports to the State detailing the performance of each one of the "enforcement waves", as described in Activity # 3 of Attachment A, according to the contract specifications and reporting criteria described in Attachment A, page 1.

4. Project Funding Provisions. The total budget amount authorized by this Contract for the actual costs of the project work is \$800 per wave, as described in Attachment A, page 4. The State shall pay this total budget amount, as provided herein.

a. State's total share (1999) \$4,800

4. A. Provided, that if Contractor does not perform any one or more of the "enforcement waves", as described in Activity # 3 of Attachment A and within the specific dates provided therefore, according to the contract specifications and reporting criteria described in Attachment A, then the Contractor shall not be reimbursed for any wave or waves that it did not so perform. Provided, further, that the State's obligation for the total share for future fiscal years shall be contingent upon those federal funds being appropriated, budgeted, and otherwise made available to CDOT OTS therefore, and the Contractor shall not perform any part of the future fiscal year services described herein until CDOT OTS provides written notice to the Contractor that such funds are available. Any such work performed by the Contractor without that notice shall be at Contractor's sole expense and shall not be reimbursed by CDOT OTS.

4. B. The Contractor has agreed to provide the services and at the rates and on the terms as described herein as needed to satisfactorily perform and complete the Contract work for the full term of this Contract, subject to the availability of funding. Funds are currently available and encumbered for the work for the 1999 Fiscal Year in the amount specified above, but no funds are currently encumbered for future Fiscal Years. The State may add funds, and/or exercise options to extend the period of performance or to order additional services, and/or to order additional enforcement tasks, as described below:

Funding Letter

The State, unilaterally, has the right to increase the amount of available funds under this Contract. In that event, the State will notify the Contractor thereof by Funding Letter. The Funding Letter will be in a form substantially equivalent to that in Attachment D, and it shall not be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate.

Options (Performance Extension) ***Options (Additional Services)***

The State may require continued performance for a period of [one year] of any services within the limits and at the rates specified in the contract. The State may exercise the option by written notice to the contractor deposited in the mail before the end of the performance period of the contract using a form substantially equivalent to Attachment E. [The State shall give the contractor twenty days preliminary written notice of its intent to execute the option. Preliminary notice does not commit the State to an extension.] If the State exercises this option, the extended contract shall be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

Options (Additional Services) ***Options (Contract Extension)***

The State may increase the quantity of services called for in Paragraph 2, Attachment A at the unit price specified therein. The State may exercise the option by written notice to the contractor deposited in the mail [within twenty days of execution of the contract] [not later than 90 days prior to the expiration of the contract, including any of its extension terms], using a form substantially equivalent to Attachment F. Performance of the added services shall continue at the same rate and under the same terms as the like items called for under the contract. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

Task Order Contract

Individual enforcement waves may be defined, negotiated, and ordered from time to time by agreement of the parties based on the previously agreed to rates, such task orders hereinafter referred to as orders. Amendments to terms and conditions, the ceiling amounts specified herein for task orders, or other provisions of the contract other than as specified in this paragraph shall be by formal amendment processed and executed in compliance with the Fiscal Rules and signed by the State Controller or his designee. Orders processed in accordance with this paragraph to add enforcement waves shall occur as follows:

A. If the State has need of enforcement wave services, and the contractor agrees to provide those services, the State will provide a definition of the requirement to the contractor. The contractor will propose a [price] [cost ceiling] for the task using the rates agreed to. The proposal shall include the estimated number of hours, material costs, and amount of other elements of cost fixed by the parties in agreed to rates, as well as the proposed time for performance, in a form acceptable to the State.

B. Upon negotiation and agreement by the parties about the scope of the task, the [price] [cost ceiling], and the time for performance, the task order letter attached as Attachment G shall be prepared and signed by the parties.

C. Performance of the work, and payment for that work, shall be governed by the standards, procedures, and terms set forth in this contract. Upon negotiation and acceptance of the task order, the contractor warrants that performance will be successfully completed within the time and [price] [cost ceiling] identified in the task order. The State's financial commitment memorialized by the task order letter shall not be effective until signed by the Controller or such assistant as he may designate.

D. The cumulative "not to exceed" amount for all additive tasks under this paragraph shall be \$4,800. The State's financial obligation is limited by this amount, and the contractor shall accept no orders which result in a cumulative contract value which exceeds the "not to exceed" value. Amendments to the "not to exceed" amount, and any other modification or amendment to the terms and conditions of this contract other than specified in this paragraph, must be in writing, executed in accordance with the State Fiscal Rules, and be approved by the Controller or his designee.

4. C. The State shall use the occupant protection mini-grant funds exclusively to pay 100% of the actual costs incurred by the Contractor for the project work up to the State's maximum share amount of 100% of \$4,800 TOTAL. Provided, however, that the State's maximum share shall not exceed the amount of \$4,800 for any reason, including if the Contractor voluntarily pays more than the minimum amount required of the Contractor under this contract, unless this contract is supplemented in writing to that effect prior to the incurring of any cost in excess of the total budget amount.

4. D. It is anticipated that the Contractor may voluntarily provide either payment of actual costs or in-kind services exceeding its contract amount requirement in order to establish the project on a permanent basis, provided that it is expressly understood that any such voluntary payment or services shall not increase the State's maximum share under this contract.

4. E. If the Contractor incurs project costs which exceed the budget amount without first obtaining an approval in that amount by written contract amendment, the Contractor shall be solely responsible for the payment of such excess costs.

4. F. The State's share of the total budget amount will be provided solely from the occupant protection enforcement mini-grant application funds. Any obligation of the State under this Contract is contingent upon occupant protection enforcement mini-grant application funds being available for this Contract and upon the Contractor carrying out the scheduled "enforcement waves".

4. G. The State will pay the Contractor for the State's share of actual costs incurred on a monthly basis, subject to prior review and approval by the State of work performance and pursuant to payment procedures contained in the CDOT OTS Contract Management Manual. The Contractor shall maintain an itemized accounting of all billings and other records to support all costs charged to the Contract and shall present same to the State upon request.

4. H. The obligation of the Contractor for all or any part of the payment obligations set out herein shall only extend to monies duly and lawfully appropriated for the purpose of this Contract by the Governing Body of the Contractor. The Contractor hereby represents and warrants that the monies to pay for the Contractor's obligations described herein have already been legally appropriated through 9/30/99 by the Governing Body for the purpose of this Contract. Continuation of this project through September 30, 1999 will be solely dependent on available federal funds in fiscal year 1999.

5. The effective date of this contract shall be the date the Controller of the State of Colorado approves this contract, or such later date specified herein. The Contract shall begin after October 1, 1998 and terminate on September 30, 1999.

6. The Contractor agrees that any subcontracts entered into by the Contractor under this Contract must meet all applicable State and Federal requirements and must be approved by the Office of Transportation Safety prior to execution by the Contractor.

7. a) Termination Due to Loss of Funding. The parties hereto expressly recognize that the Contractor is to be paid, reimbursed, or otherwise compensated solely with certain funds provided to the State for the purpose of contracting for the services provided for herein. Therefore, the Contractor expressly understands and agrees that all its rights, demands and claims to compensation arising under this Contract are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State or Contractor may immediately terminate this Contract.

b) Termination for Cause. If, through any cause, either party shall fail to fulfill in a timely and proper manner the obligations under this Contract, or if either party shall violate any of the covenants, agreements or stipulations of this Contract, the non-breaching party shall thereupon have the right to terminate this Contract for cause by giving written notice to the breaching party such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the breaching party shall not be relieved of liability to the non-breaching party for any damages sustained by the non-breaching party by virtue of a breach of the Contract by the breaching party, and the State may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the State from the Contractor is determined, if the Contractor is a breaching party.

c) Termination for Convenience. Either party may terminate this Contract at any time that it determines that the purpose of the distribution of monies under the Contract would no longer be served by completion of the Project. Such party shall effect such termination by giving written notice of termination to the other party and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

8. The Contractor shall adopt a resolution substantially in the form presented by the State, which approves this Contract, and authorizes a signatory to execute this Contract. A copy of such resolution shall be attached to and made a part of this Contract.

9. INDEPENDENT CONTRACTOR RELATIONSHIP. THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE, OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES

AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKER'S COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

10. The Special Provisions are attached hereto and hereby made a part hereof as terms and conditions of this contract.

11. The Local Agency/Contractor shall be cognizant of and fully comply with all federal requirements applicable to the performance of the Work, and/or applicable to any procurement for the Work, under this federally funded contract, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this contract.

62. Grant Assurances

Such requirements include Title 49, Code of Federal Regulations, Part 18, unless other applicable federal requirements are more specific and therefore supersede the provisions of 49 CFR Part 18. Part 18 requirements include, without limitation:

- a) the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
- b) the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;
- c) the Local Agency/Contractor shall comply with section 18.37 concerning any sub-grants;
- d) to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 subcontract procedures, as applicable;
- e) the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(l) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

IN WITNESS WHEREOF, the parties hereto have caused the foregoing contract to be executed by their duly authorized officers the day and year first above written.

City of Grand Junction

STATE OF COLORADO
ROY ROMER, GOVERNOR

Contractor: _____
Position: Mayor/Commissioner

By
FOR THE EXECUTIVE DIRECTOR
COLORADO DEPARTMENT OF
TRANSPORTATION

Contractor:
Position: Sheriff/Chief

APPROVED AS TO FORM:

City of Grand Junction
Attorney

ATTEST:

ATTEST:

City of Grand Junction
Clerk

Chief Clerk
Department of Transportation

APPROVALS

CLIFFORD W. HALL
Controller

GALE NORTON
Attorney General

By _____
GEORGE MCCULLAR
Controller
Department of Transportation

By
BARRY B. RYAN
Assistant Attorney General
Civil Litigation Section

Attachment D (Contract Funding Letter)

Date:

TO:

SUBJ: Contract Funding Letter

In accordance with Paragraph 4. A. and 4. B., between the State of Colorado, Department of Transportation (CDOT) and the _____ covering the period of October 1, 1998 through September 30, 1999, the undersigned commits the following funds to the contract:

The amount of funds available and specified in paragraph 4. C. is increased by \$_____ to a new total funds available of \$_____ to satisfy orders, or to complete the performance of work, under the contract. Paragraph 4. C. is hereby modified accordingly.

This funding letter does not constitute an order for services under this contract.

This funding letter is effective upon approval by the State Controller or such assistant as he may designate.

State of Colorado:
Roy Romer, Governor

By:
FOR THE EXECUTIVE DIRECTOR
COLORADO DEPARTMENT OF
TRANSPORTATION

APPROVALS:

FOR THE STATE CONTROLLER
Clifford W. Hall

By:
State Controller or Designee

Sample Option Exercise Letter/Services

Attachment F

Date:

TO: [Contractor]
[Address]

SUBJ: Option Exercise Letter

In accordance with Paragraph _____ of contract routing number _____, FAA ADA _____, between the State of Colorado, Department of Transportation, (_____ division and [Contractor]

covering the period of _____ the State hereby exercises the option for

[maintenance services for _____ at the prices specified in Exhibit ____]; or

The maximum amount payable by the State in Paragraph _____ is (increased/decreased) by (\$ amount of change) to a new total of (\$ _____). The first sentence in Paragraph _____ is hereby modified accordingly.

State of Colorado:
Roy Romer, Governor

For the Executive Director
Colorado Department of Transportation

Title

APPROVALS: FOR THE STATE CONTROLLER
Clifford W. Hall

By: _____ By: State Controller or Designee
For _____ Division

Sample Task Order Letter
Attachment G

Date:

State Fiscal Year 1999

Task Order Letter No.

In accordance with Paragraph ____ of contract routing number _____, FAA ADA _____, between the State of Colorado, Department of Transportation (_____ division) and [Contractor] covering the period of _____ through _____ the undersigned agree that the services affected by this change letter are modified as follows:

Task Order Description

The contractor shall perform the _____ task in accordance with [the following specifications/statement of work] [the contractor's task order proposal dated _____, as amended by amended task order proposal dated _____, both of which are hereby incorporated by reference].

Price/Cost

The [price] [maximum amount payable by the State] for [service [supply] _____ described above is (\$ _____) for a new contract total of (\$ _____).

Performance Period

The contractor will complete the performance in this task order by _____ [date].

This task order is executed pursuant to paragraph ____ of the original contract. The parties agree that all work shall be performed according to the standards, procedures, and terms set forth in the original contract. In the event of any conflict or inconsistency between this amendment and the original contract, such conflict or inconsistency shall be resolved by reference to these documents in the following order: Special Provisions, original contract, attachments/exhibits to the original contract, this task order letter, attachments/exhibits to this task order letter.

This task order is effective as of _____. In no event shall it be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate.

Please sign, date, and return all copies of this letter on or before _____ 19__.

Contractor Name:

State of Colorado:
Roy Romer, Governor

By: _____
Name: _____
Title: _____

By:
For the Executive Director
Colorado Department of Transportation

APPROVALS:

FOR THE STATE CONTROLLER
Clifford W. Hall

By: _____
For: _____ Division

By:
State Controller or Designee