4840

Contract # 069079

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, Division: Traffic & Safety, referred to as (STATE), and the following CONTRACTOR:

Interwest Safety Supply, Inc.
Name

724 East 1860 South
Address

Provo	**UT**	**84606**
City	State	Zip

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

Contact Person	**Bryce Sorenson**	Phone # **(801) 375-6321**	Email: **bryce@iwsafety.com**
Federal Tax ID	**#87-0427710**	Vendor **#24618A**	Fax # (801) 377-2739
Commodity Code	**80183000000**		

2. **GENERAL PURPOSE OF CONTRACT: Requirements contract to provide the State with Sign Panel Overlays or Complete Signs.**

3. **PROCUREMENT**: This contract is entered into as a result of the procurement process on RX#, **810-66-023**, FY **05** Bid# **GL6016**.

4. **CONTRACT PERIOD**: Effective date: **1 November, 2005** Termination date: **31 October 2006** unless terminated early or extended in accordance with the terms and conditions of this contract. **Renewal Options** (if any) **three one-year.**

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: Pricing
ATTACHMENT ~~C~~ D: Special Terms & 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 response to Bid **#GL6016**, dated **September 16, 2005.**

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

CONTRACTOR

11/14/05
Contractor's signature Date

Bryce C. Sorenson, President

STATE

Kelvin Thacker 9 Nov 05
Kelvin Thacker, Procurement Manager Date

JAN 26 2006
Director, Division of Purchasing Date

CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE

JAN 27 2006
Director, Division of Finance Date

Tracie Montano	**(801) 964-4534**	**(801) 965-4073**	**tmontano@utah.gov**
Agency Contact Person	Telephone Number	Fax Number	Email Address

(Revision 08/26/2003)

2/4/2006

ATTACHMENT A: STATE OF UTAH 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 from and against any and all loss, 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 ten (10) 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. 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 (major credit 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 (63-56-1002, 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 Additional Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: July 5, 2005)

ATTACHMENT B: SCOPE OF WORK
SIGN PANEL OVERLAYS OR COMPLETE SIGNS

GENERAL DESCRIPTION Requirements contract to provide the state with Sign Panel Overlays or Complete Signs as specified by UDOT, for a period of one year with three one-year renewal options

1.0 PRODUCT REQUIREMENTS/REFERENCES

1.1 This contract shall consist of providing Sign Panel Overlays or Complete Signs as specified by UDOT.

1.2 It is anticipated the majority of the signs will be for freeway applications.

1.3 Signs and materials shall be in conformance with the State's Standard Specification #02891, except as noted in this section.

1.3.1 Traffic Signs, Section 1.4-D. "Sign: A complete assembly comprised of frame-and panel." For this contract, posts will not be a required component of a sign,

1.3.2 Sign panels shall be either Type b, Legend b (reflective legend, symbols, and borders on reflective sheeting on plywood), or Type b, Legend a (non-reflective legend, symbols, and borders on reflective sheeting on plywood), as specified.

1.3.3 Sign panel overlays will be sized according to the Department's work order.

1.3.4 Installation of panel overlays is not a part of this contract.

1.3.5 Sign panels shall be mounted to sign frames as part of this contract for a complete sign.

1.3.6 All work orders will be submitted to the Contractor from the Department's Sign Shop Supervisor, the Division of Traffic and Safety's Operations Engineer, or their designees. A design of the required work will be transmitted to the Contractor.

2.0 DELIVERY SCHEDULE

2.1 Sign Panel Overlays are to be delivered within 14 calendar days.

2.2 Complete Signs are to be delivered within 21 calendar days.

ATTACHMENT B: SCOPE OF WORK
SIGN PANEL OVERLAYS OR COMPLETE SIGNS

2.3 Complete Signs and Sign Panel Overlays shall be delivered to the following address:

UDOT Sign Shop
4501 South, 2700 West
Salt Lake City, Utah 84119

2.4 Contact the Sign Shop Supervisor at (801) 965-4184 three days prior to schedule delivery. The Department will furnish equipment at the delivery site to unload the material.

2.5 At the Department's discretion, Complete Signs and Sign Panel Overlays may alternately be picked up at the Contractor's yard. The contractor will load the material onto the Department's vehicle as part of the Contract.

3.0 CONTROL OF WORK

3.1 AUTHORITY AND DUTIES OF THE DEPARTMENT

A. The State will decide all questions regarding the quality and acceptability of materials furnished, work performed, rate of work progress, interpretation of the contract documents, and the acceptable fulfillment of the contract.

B. The State has the authority by written order to suspend the work without liability to the Department wholly or in part if the Contractor fails to:
   a. Correct conditions unsafe for project personnel or the public.
   b. Complete contract provisions.
   c. Comply with the Department's orders.

C. The State can suspend the work wholly or in part for:
   a. Any condition or reason determined to be in the State's interest.

4.0 CONTRACTOR'S COOPERATION

4.1 Facilitate progress of the work and cooperate with the Department.

4.2 Supply all necessary resources to complete contract regardless of the amount of work sublet.

ATTACHMENT B: SCOPE OF WORK
SIGN PANEL OVERLAYS OR COMPLETE SIGNS

5.0 DUTIES OF THE DEPARTMENT

5.1 Supervisors and leads are authorized to inspect all work and material furnished.
5.2 Inspection may extend to the preparation, fabrication or manufacture of the materials to be used.
5.3 Supervisors and leads are not authorized to alter or waive the contract provisions, to issue instructions contrary to the contract, or act as foreman for the Contractor.
5.4 Supervisors and leads are authorized to reject work or materials until any issue in question can be referred to and decided by the Department.
5.5 The Division of Traffic and Safety's Operations Engineer will be the Department's representative for purposes of this contract.

6.0 INSPECTION OF THE WORK

Provide safe access to all parts of the work and provide information and assistance to the State to ensure a complete and detailed inspection.

7.0 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

Remove any replace any unacceptable work. Work will be considered unacceptable if it fails to meet the contract requirements.

8.0 LOAD RESTRICTIONS

8.1 Observe legal load restrictions when hauling materials on public roads.
- a. A special permit does not decrease Contractor liability for damage.
- b. Refer to the "Utah Regulations for Legal and Permitted Vehicles".
- c. Do not exceed legal gross weight limits on any public roads, structures, or on any component of the pavement structure.
- d. Suspend operations when load restriction violations are observed until the Department approves acceptable corrective measures.

ATTACHMENT C: ITEMIZED PRICE LIST

ITEM #	ITEM DESCRIPTION	UNITS	UNIT PRICE
1	Sign Panel Overlay	Sq. Ft.	$ 7.40
2	Complete Sign	Sq. Ft.	$24.60

ATTACHMENT D: SPECIAL TERMS AND CONDITIONS

A. **CONTRACT ACCEPTANCE**: At the time the bid form is signed by the Offeror, the signature of the Offeror will be used as a legally binding signature, if awarded the contract. When signed by the Division of Purchasing/General Services and a Utah Department of Transportation representative and assigned a contract number, this document will become a legally binding contract for the period specified.

B. **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 as though set forth in full herein.

C. **QUANTITY OR AMOUNT ESTIMATES**: The State does not guarantee to purchase any amount under this contract. Estimated amounts are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.

D. **PRICING**: The Contractor agrees that the prices bid on materials/services in this contract shall be guaranteed for one year.

ANY CHANGE REQUEST ON PRICES MUST GUARANTEE THE PRICE FOR THE SAME LENGTH OF TIME AS INDICATED ABOVE AND MUST BE MADE AT LEAST THIRTY (30) DAYS PRIOR TO THE REQUESTED EFFECTIVE DATE. ANY SUCH REQUEST MUST INCLUDE SUFFICIENT DOCUMENTATION SUPPORTING THE REQUEST. REQUESTS FOR CHANGE ON ANY PRICING IN THIS CONTRACT SHALL NOT BE EFFECTIVE UNTIL IT IS APPROVED BY THE PROCUREMENT SUPERVISOR OR THE PROCUREMENT MANAGER OF THE UTAH DEPARTMENT OF TRANSPORTATION.

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

F. **NON-ASSIGNMENT**: The Contractor shall not sublet, assign or transfer any part of the contract without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation. The provision of monies due under this contract shall not be assignable without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation.

ATTACHMENT D: SPECIAL TERMS AND CONDITIONS

G. **NON-COMPETE CLAUSE**: The Contractor represents its officers and employees are free to contract with the State and are not subject to restrictions by the terms of their present employment including, but not limited to an agreement not to compete for a period of time unless disclosure has been made. A Contractor must disclose to the State any possible conflict, 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 - Standard Terms and Conditions and will not provide 30 day prior notice to the Contractor.

H. **INVOICING**:

THE CONTRACT NUMBER AND ORDER NUMBER MUST APPEAR ON ALL INVOICES, BILLS OF LADING, PACKAGES AND ALL CORRESPONDENCE RELATING TO EACH ORDER AND DELIVERY.

The State reserves the right to adjust incorrect invoices. The Contractor shall submit invoices to the following:
Utah Department of Transportation
Division of Traffic and Safety
Box 143200
Salt Lake City, Utah, 84114-3200.
The State will remit payment by mail.