

COUNCIL AGENDA ITEM



Meeting Date: March 21, 2016

Action Requested: Consider Approval of Joint Powers Agreement with Bemidji State University (MnSCU) for Pedestrian Rectangular Rapid Flashing Beacon (RRFB) System

**Prepared By: Craig J. Gray, P.E.
Director of Public Works/City Engineer**

A handwritten signature in black ink, appearing to read "CJG", is written over the printed name and title of the City Engineer.

Reviewed By: Nate Mathews, City Manager

Background:

On March 7, 2016 the city council approved a Cooperative Construction Agreement with MnDOT for the construction of a RRFB pedestrian crossing system that would be installed south of 17th Street to accommodate the pedestrians going between BSU and the University Heights development. The agreement with MnDOT called for the city to pay a local share of \$25,000 toward the project costs. The intent was that BSU would then reimburse the city that amount.

Last Friday, Karen Snorek, BSU VP Finance & Administration, sent over the attached agreement between MnSCU and the city that needs to be approved in order for us to receive the \$25,000 reimbursement. The exhibit A that is mentioned in the joint powers agreement is a copy of the MnDOT/City Agreement that was previously approved.

Recommendation

It is recommended that the city council pass a motion approving the Joint Powers Agreement and authorizing the Mayor and City Manager to sign the agreement on the city's behalf.

Craig Gray

From: Karen Snorek <KSnorek@bemidjistate.edu>
Sent: Friday, March 18, 2016 2:33 PM
To: Craig Gray
Subject: Bemidji State University
Attachments: Joint Powers Agreement with City of Bemidji.pdf

Craig

Attached is the form that we need to use for the MnDOT project. It is a Joint Powers Agreement.

If you could print three copies, sign them and then send them back to me that would be great. I will get it then signed off on and a purchase order encumbered. I will return to you a purchase order and a fully signed contract.

Thanks Craig and have a great weekend.

Karen

F.Y.	Cost Center	Obj. Code	Amount	Vendor #	P.O. #

STATE OF MINNESOTA
MINNESOTA STATE COLLEGES AND UNIVERSITIES
Bemidji State University
JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT, and amendments and supplements thereto, (hereinafter "contract") is between the State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Bemidji State University (hereinafter "MnSCU") address 1500 Birchmont Dr. NE, Bemidji, MN 56601, which is empowered to enter into joint powers agreements pursuant to Minnesota Statutes, Chapter 471.59, Subd. 10, and City of Bemidji, address 1351 5th Street Northwest, Bemidji, MN 56601 (hereinafter "CONTRACTOR"), which is empowered to enter into joint powers agreements pursuant to Minnesota Statutes, Chapter 471.59, Subd. 10;

WHEREAS, CONTRACTOR represents that it is duly qualified and willing to perform the services set forth herein.

NOW, THEREFORE, it is agreed

1. DUTIES & RESPONSIBILITIES

Reconstruction for the west sidewalk and mid-block crosswalk construction and other associated construction upon, along and adjacent to Trunk Highway No. 197 from 15th street to 18th street according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 0416-52. Perform the duties specified in Exhibit A, which is attached and incorporated into this contract.

- a. CONTRACTOR'S DUTIES. The CONTRACTOR shall: upgrade the sidewalk to meet ADA standards, to provide a boulevard for snow storage, and accommodate a safer pedestrian crossing with a flasher system. Perform the duties specified in Exhibit A, which is attached and incorporated into the contract.
- b. MnSCU'S DUTIES. MnSCU shall: Perform the duties specified in Exhibit A, which is attached and incorporated into this contract.

2. CONSIDERATION AND TERMS OF PAYMENT.

- a. Consideration for all services performed by the CONTRACTOR pursuant to this contract shall be paid by the MnSCU as follows: Twenty-Five Thousand and no /100 Dollars (\$25,000.00).
- b. Payment shall be made by MnSCU promptly after the CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by MnSCU's authorized representative. All services provided by the CONTRACTOR pursuant to this contract shall be performed to the

satisfaction of MnSCU, as determined at the sole discretion of its authorized representative, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The CONTRACTOR shall not receive payment for work found by MnSCU to be unsatisfactory or performed in violation of any applicable federal, state or local law, ordinance, rule or regulation. Invoices shall be presented by CONTRACTOR according to the following schedule:

Payment upon completion of project

3. CONDITIONS OF PAYMENT. All services provided by the CONTRACTOR pursuant to this contract shall be performed to the satisfaction of MnSCU, as determined at the sole discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations. The CONTRACTOR shall not receive payment for work found by MnSCU to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation
4. TERM OF CONTRACT. This contract shall be effective on June 6, 2016, or upon the date that the final required signature is obtained by MnSCU, whichever occurs later, and shall remain in effect until July 29, 2016, or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. The CONTRACTOR understands that NO work should begin under this contract until ALL required signatures have been obtained, and the CONTRACTOR is notified to begin work by MnSCU's Authorized Representative.
5. CANCELLATION. This contract may be canceled by MnSCU or the CONTRACTOR at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, the CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
6. MnSCU'S AUTHORIZED REPRESENTATIVE. MnSCU's Authorized Representative for the purposes of administration of this contract is:

Name: Karen Snorek
Address: 1500 Birchmont Dr, NE, Bemidji, MN 56601
Telephone: 218-755-2012
E-Mail: ksnorek@bemidjistate.edu
Fax: 218-755-3153

MnSCU's Authorized Representative shall have final authority for acceptance of the CONTRACTOR'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Clause 2, paragraph b.

7. The CONTRACTOR'S Authorized Representative for the purposes of administration of this contract is:

Name: Craig Gray
Address: 1351 5th Street NW, Bemidji, MN 56601
Telephone: 218-333-1851
E-Mail: craig.gray@ci.bemidji.mn.us
Fax:

8. ASSIGNMENT. The CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of MnSCU.

9. AMENDMENTS. Any amendments to this contract shall be in writing, and shall be executed by the same parties who executed the original contract, or their successors in office.
10. LIABILITY. The CONTRACTOR shall indemnify, save, and hold MnSCU, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by MnSCU, arising from the performance of this contract by the CONTRACTOR or CONTRACTOR'S agents or employees. This clause shall not be construed to bar any legal remedies the CONTRACTOR may have for MnSCU's failure to fulfill its obligations pursuant to this contract.
11. STATE AUDITS. The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor.
12. GOVERNMENT DATA PRACTICES ACT. The requirements of Minnesota Statutes § 13.05, subd. 11 apply to this contract. The CONTRACTOR and MnSCU must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MnSCU in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the CONTRACTOR in accordance with this contract. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this clause by either the CONTRACTOR or MnSCU.

In the event the CONTRACTOR receives a request to release the data referred to in this clause, the CONTRACTOR must immediately notify MnSCU. MnSCU will give the CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released.

13. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS.

- a. MnSCU shall own all rights, title and interest in all of the materials conceived or created by the CONTRACTOR, or its employees or subcontractors, either individually or jointly with others and which arise out of the performance of this contract, created and paid for under this contract, including any inventions, reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form (hereinafter MATERIALS).

The CONTRACTOR hereby assigns to MnSCU all rights, title and interest to the MATERIALS. The CONTRACTOR shall, upon request of MnSCU, execute all papers and perform all other acts necessary to assist MnSCU to obtain and register copyrights, patents or other forms of protection provided by law for the MATERIALS. The MATERIALS created under this contract by the CONTRACTOR, its employees or subcontractors, individually or jointly with others, shall be considered "works made for hire" as defined by the United States Copyright Act. All of the MATERIALS, whether in paper, electronic, or other form, shall be remitted to MnSCU by the CONTRACTOR, its employees and any subcontractors, and the CONTRACTOR shall not copy, reproduce, allow or cause to have the MATERIALS copied, reproduced or used for any purpose other than performance of the CONTRACTOR'S obligations under this contract without the prior written consent of MnSCU's authorized representative.

- b. The CONTRACTOR represents and warrants that MATERIALS produced or used under this contract do not and will not infringe upon any intellectual property rights of another, including, but not limited to, patents, copyrights, trade secrets, trade names, and service marks and names. The CONTRACTOR shall indemnify and defend, to the extent permitted by the Attorney General, MnSCU at the CONTRACTOR'S expense from any action or claim brought against MnSCU to the extent that it is based on a claim that all or part of the MATERIALS infringe upon the

intellectual property rights of another. The CONTRACTOR shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including, but not limited to, reasonable attorney fees arising out of this contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in the CONTRACTOR'S or MnSCU's opinion is likely to arise, the CONTRACTOR shall, at MnSCU's discretion, either procure for MnSCU the right or license to continue using the MATERIALS at issue or replace or modify the allegedly infringing MATERIALS. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

14. PUBLICITY. Any publicity given to the program, publications, or services provided resulting from this contract, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the CONTRACTOR or its employees individually or jointly with others, or any subcontractors shall identify MnSCU as the sponsoring agency and shall not be released prior to receiving the approval of the MnSCU's authorized representative.
15. OTHER PROVISIONS. NONE

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

APPROVED:

1. MINNESOTA STATE COLLEGES AND UNIVERSITIES

Bemidji State University

By (authorized college/university/system office initiating agreement)
Title
Date

2. VERIFIED AS TO ENCUMBRANCE

By (authorized college/university/system office initiating agreement)
Title
Date

3. CONTRACTOR (City of Bemidji):

Contractor certifies that the appropriate person(s) have executed the contract on behalf of the contractor as required by applicable articles, by-laws, resolutions, or ordinances.

By (authorized signature)
Title
Date

By (authorized signature)
Title
Date

4. AS TO FORM AND EXECUTION:

By (authorized college/university/system office initiating agreement)
Title
Date

