

**RESOLUTION NO. 100515-06
CITY OF WAITE PARK**

**COUNCIL RESOLUTION APPROVING THE JOINT POWERS AGREEMENT WITH
ST. CLOUD STATE UNIVERSITY FOR THE IMPLEMENTATION AND OPERATION
OF THE UNDERAGE CONSUMPTION (IMPACT) DIVERSION PROGRAM**

WHEREAS, the City of Waite Park desires to enter into a Joint Powers Agreement with St. Cloud State University for the purpose of the implementation and operation of the underage consumption (IMPACT) Diversion Program; and

WHEREAS, the City and the University believe that this joint program will have a positive impact on their joint goal of reducing the harmful effects of high risk drinking as well as the underage consumption and over consumption of alcohol; and

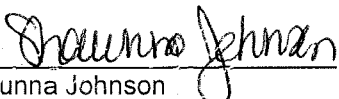
WHEREAS, an agreement has been negotiated pursuant to the authority contained in Minnesota Statutes, Section 471.59, commonly known as the Joint Powers Act.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WAITE PARK, MINNESOTA:

That the Joint Powers Agreement for Diversion Services is hereby approved by the City Council.

The Mayor and City Administrator-Clerk-Treasurer of the City of Waite Park are authorized to enter into and execute the Joint Powers Agreement for Diversion Services, attached hereto and incorporated herein, with St. Cloud State University.

Adopted by the Council this 5th day of October, 2015.



Shaunna Johnson
City Administrator-Clerk-Treasurer



Charles S. Schneider
Acting Mayor

ACTION ON THIS RESOLUTION:

Motion for adoption: Acting Mayor Schneider
Seconded by: Member Theisen
Voted in favor of: Acting Mayor Schneider, Members Schulz, Theisen
Voted against: Member Linqvist
Abstained: None
Absent: Mayor Miller
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Waite Park City Council at a duly authorized meeting held on October 5, 2015.



Shaunna Johnson
City Administrator-Clerk-Treasurer

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

STATE OF MINNESOTA

MINNESOTA STATE COLLEGES AND UNIVERSITIES

St. Cloud 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 St. Cloud State University (hereinafter "STATE"), which is empowered to enter into joint powers agreements pursuant to Minnesota Statutes, Chapter 471.59, Subd. 10, and City of Waite Park, MN, address 19 - 13th Avenue North, Waite Park, MN 56387 (hereinafter "CITY"), which is empowered to enter into joint powers agreements pursuant to Minnesota Statutes, Chapter 471.59, Subd. 10;

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

NOW, THEREFORE, it is agreed

- I. A. CITY'S DUTIES. (Attach additional page(s) if necessary which is incorporated by reference and made a part of this agreement.) The CITY shall:
 - A. The City of Waite Park will make all reasonable efforts to divert eligible underage consumption offenders into the University's IMPACT Diversion alcohol education program. Eligible consumption offenses are first and second offenses. A third offense is not eligible for this program. Additionally, an individual only qualifies for the program once. The CITY retains full discretion and ultimate decision-making authority to determine whether a particular case will be diverted into the IMPACT program. The CITY will also consult with the STATE from time to time on whether a particular case is appropriate for diversion.
 - B. The City of Waite Park will prepare a long form complaint and summons for every underage consumption offense for which it has jurisdiction. Underage consumption offenses have been designated "payable" by the State judiciary. This means that an individual who is issued an underage consumption citation (regardless of prior offenses) may simply mail in a fine payment without ever having to appear in court. An offense becomes a mandatory appearance only when the prosecuting authority prepares a summons and complaint.
 - C. The City of Waite Park will provide all "eligible" adult arrest and incident data relating to underage consumption.

D. Upon successful completion of the IMPACT Diversion alcohol education program and the payment of the fees, the City of Waite Park will file a dismissal of the complaint and charges in district court.

B. STATE'S DUTIES. (Attach additional page(s) if necessary which is incorporated by reference and made a part of this agreement.) STATE shall:

A. The University will conduct IMPACT Diversion alcohol education for all individuals diverted through the program.

B. The University will notify the City of Waite Park whether each individual diverted into the program successfully completes the program.

II. COLLECTION AND DISBURSEMENT OF DIVERSION FEES.

A. **IMPACT Diversion Fees**. The University will collect \$230 from each individual participating in the IMPACT Diversion program. This fee has been set so as to cover the costs associated with administering and providing UCHOOSE alcohol education and to cover the costs of administering the diversion program. The Diversion fee will be disbursed as follows:

1. St. Cloud State University will disburse to the City of Waite Park \$25 per individual that pays for the IMPACT Diversion alcohol education program. Total amount not to exceed \$16,250.
2. St. Cloud State University will retain the remainder of the fees generated by the Diversion program.

B. **Invoice and disbursement**.

1. The University will disburse to the City its portion of Diversion Fees on or before the last day of the fiscal year. The City of Waite Park will provide an invoice form pre-approved program related expenses and pre-approved expenses associated with conferences prior to June 30. The University will reimburse the City for pre-approved expenses within 30 days of submission of the invoice in the same manner and in no greater amount that provided in the current Commissioners' Plan promulgated by the Commissioner of Employee Relations attached hereto.

III. CONDITIONS OF PAYMENT. All services provided by the CONTRACTOR pursuant to this contract shall be performed to the satisfaction of the STATE, 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 the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

IV. TERM OF CONTRACT. This contract shall be effective on _____, or upon the date that the final required signature is obtained by the STATE, whichever occurs later, and shall remain in effect until June 30, 2016, or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. This agreement can be renewed annually upon mutual written agreement. The CITY understands that NO work should begin under this contract until ALL required signatures have been obtained, and the CITY is notified to begin work by the STATE'S Authorized Representative.

- V. CANCELLATION. This contract may be canceled by the STATE 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.
- VI. STATE'S AUTHORIZED REPRESENTATIVE. The STATE'S Authorized Representative for the purposes of administration of this contract is Dr. Wanda I. Overland – Vice President, Student Life & Development.
- VII. The CONTRACTOR'S Authorized Representative for the purposes of administration of this contract is Gordon H. Hansmeier, City Attorney for the City of Waite Park. The STATE'S Authorized Representative shall have final authority for acceptance of the CITY'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Clause II, paragraph B.
- VII. ASSIGNMENT. The CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE.
- VIII. 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.
- IX. LIABILITY. The CONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by the STATE, 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 the STATE'S failure to fulfill its obligations pursuant to this contract.
- X. 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.
- XI. GOVERNMENT DATA PRACTICES ACT. The CONTRACTOR must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the STATE 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 Section 13.08, apply to the release of the data referred to in this Article by either the CONTRACTOR or the STATE. In the event the CONTRACTOR receives a request to release the data referred to in this Article, the CONTRACTOR must immediately notify the STATE. The STATE will give the CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released. DATA PRACTICES ACT. The CONTRACTOR shall comply with the Minnesota Data Practices Act as it applies to all data provided by the STATE in accordance with this contract and as it applies to all data created, gathered, generated or acquired in accordance with this contract.
- XII. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS.
- A. The STATE 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, 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 ("MATERIALS").

- B. The CONTRACTOR hereby assigns to the STATE all rights, title and interest to the MATERIALS. The CONTRACTOR shall, upon request of the STATE, execute all papers and perform all other acts necessary to assist the STATE 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 the STATE by the CONTRACTOR, its employees and any subcontractors. The CONTRACTOR, its employees, and any subcontractors 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 the STATE'S authorized representative.

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 will indemnify and defend the STATE at the CONTRACTOR'S expense from any action or claim brought against the STATE 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 the STATE'S opinion is likely to arise, the CONTRACTOR shall at the STATE'S discretion either procure for the STATE 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.

- XIII. 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 the STATE as the sponsoring agency and shall not be released prior to receiving the approval of the STATE'S authorized representative.

- XIV. OTHER PROVISIONS. (Attach additional page(s) as necessary):

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
ST. CLOUD STATE UNIVERSITY**


By (authorized college/university/office of the chancellor initiating agreement)
Title
Date


2. VERIFIED AS TO ENCUMBRANCE

By (authorized college/university/office of the chancellor initiating agreement)
Title
Date

3. CITY (Governmental Entity):

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

By (authorized signature)

Title <i>ACTIVE MGR</i>
Date <i>10-15-2015</i>

By (authorized signature)

Title <i>City Administrator</i>
Date <i>10-15-15</i>

4. AS TO FORM AND EXECUTION:

By (authorized college/university/office of the chancellor initiating agreement)
Title
Date

MnSCU006
Revised 07/07/03