

PUBLIC SAFETY COMMITTEE

11-0684R

RESOLUTION AUTHORIZING AGREEMENT WITH ST. LOUIS COUNTY
CO-TENANCY AGREEMENT FOR JOINT MAINTENANCE AND USE OF
THE PUBLIC SAFETY BUILDING.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into a grant agreement with St. Louis County, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, for the joint occupancy, maintenance and use of the new public safety building by the city's police department along with the St. Louis County Sheriff's Department, with the City's share of costs therefore to be payable from Fund 110-160-1610-5460 (General, Police, Administration and Investigation).

Approved:



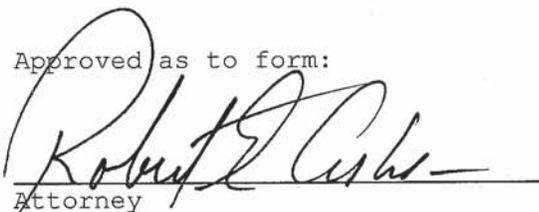
Department Director

Approved for presentation to council:



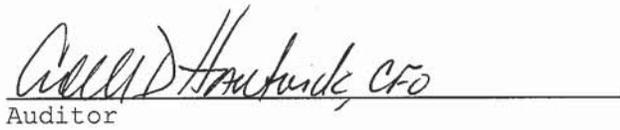
Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

DPD/ATTY REA:dma 12/09/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement with St. Louis County for the joint operation, maintenance and use of the new Public Safety Building and the sharing of the costs of the joint operation.

The St. Louis County Sheriff's Department has occupied a public safety building on the old work farm site adjacent to the Chris Jensen Home facility for a number of years. The City recently leased a portion of the property from the County for the purpose of constructing a new and more adequate facility to serve the needs of its police department operations. To secure the best economies of operation for both jurisdictions, the new building was designed to integrate into the

existing county facility, providing for joint use of facilities wherever possible and allowing free flow of traffic in so far as possible. The result is a facility that can be used jointly by both parties to their mutual benefit.

Because of the joint use of facilities and operations, the most beneficial way to operate the existing County facility and the new City facility is to operate them as one unit and to share the costs of that operation. Based on present anticipated uses, the City will have exclusive use of about 43% of the combined facility, the County will have exclusive use of about 17% of the facility and about 40% of the facility will be used jointly by both parties. The agreement allocates the costs of operation between the parties based on the space that they will have exclusive use of and each party will pay one-half of the costs of the jointly-used space. There is a mechanism to adjust these allocations if and when the relative uses of the parties changes.

The Agreement is for a term of 50 years, reflective of the life of the buildings and the fact that the facilities were designed to be used together.

**CO-TENANCY AGREEMENT BETWEEN
COUNTY OF ST. LOUIS AND CITY OF DULUTH**

THIS AGREEMENT, entered on the _____ day of _____, 2011, by and between the County of St. Louis, a body politic and corporate (hereinafter "County"); and the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (hereinafter "City"), referred to collectively as the parties.

WHEREAS, County is the owner of property located at 2030 North Arlington Avenue in Duluth, Minnesota, upon which is located the St. Louis County and City of Duluth Public Safety Building; and

WHEREAS, City has constructed a new facility in which to locate headquarters for the City Police Department; and

WHEREAS, the parties entered into a Lease Agreement dated March 25, 2010 (identified as DAMION # 2010-5651) for the purposes constructing the new facility for the City Police Department at the site and it is physically connected to the St. Louis County Public Safety Building (hereinafter "Campus"); and

WHEREAS, the parties agree that joint maintenance of the Campus is in the best public interest and agree to pay their fair share of the cost of operations, repair, and maintenance incurred directly because of the joint use of the Campus; and

WHEREAS, the parties desire to establish an agreement setting forth the rights and obligations of the parties regarding cost sharing and service policies and procedures;

WHEREAS, for clarification purposes, attachments cited and silent in this agreement, relating to the Public Safety Building operations are identified as; **Attachment A** - original land lease with access road considerations, **Attachment A-1** - GSC building vacate, **Attachment A-2**, **Attachment B** - graphic drawings identifying shared spaces, day one, **Attachment C** - Information Technologies (IT) operational details, **Attachment D** - storm water maintenance agreement, **Attachment D-1** - storm water system maps, **Attachment E** - 2012 staffing levels, **Attachment F** - Impound Lot agreement, **Attachment G** – Proportional Share calculations.

NOW, THEREFORE, the parties agree as follows:

I. TERM OF AGREEMENT

The language in this Agreement supersedes any language in any other Agreement to the extent that such language conflicts with the language contained in this Agreement and the terms of this Agreement shall be deemed to commence on the date of issuance of the occupancy certificate for the Campus (Anniversary Date), and shall run for a term of Fifty

(50) years thereafter.

II. DEFINITIONS

The following words, when used in this Agreement, shall have the following meanings:

- A. "Campus" shall mean and refer to the real property, as legally described in Attachment A-2, which is attached hereto and incorporated herein upon which is located at the Public Safety Building and all structures existing or to be constructed on that real property.
- B. "Public Safety Building" shall mean the shared structure located on the Campus as described in Attachment B, attached hereto and incorporated herein.
- C. "Shared Areas" shall mean and refer to the areas of the Public Safety Building which are open to the common use by the parties as indicated on Attachment B.
- D. "Individual Areas" shall mean and refer to the areas of the Public Safety Building which are designated for the sole use of an individual party to this Agreement as indicated on Attachment B, or otherwise referenced herein.
- E. "Campus Manager" shall mean the County's Property Manager or his or her designee who shall have the primary responsibility for the day to day operations, maintenance, repairs, and improvements of the campus.
- F. "City Area" shall mean that portion of the Public Safety Building shown as the City Area on Attachment B, occupied and used solely by the City's Police Department.
- G. "County Area" shall mean that portion of the Public Safety Building shown as the County Area on Attachment B, occupied and used solely by the County's Sheriff's Office.
- H. "Proportional Share" attributed to each party shall mean a percentage for each party determined pursuant to the following formula during any period of allocations of costs. The Proportional Share of the City from the effective date of this Agreement until changes in City Areas and/or County Areas and/or Shared Areas pursuant to Paragraph IV above, and is hereby stipulated to be 63%, and for the County to be 37%, all set forth in Attachment G:

$$\frac{\text{Subject Party's Individual Area (square feet)}}{92,085 \text{ square feet (total area)}} = \text{Percent Figure A}$$

$$\frac{\text{Shared Areas (square feet)}}{2} = \text{Percentage Figure B}$$

Percent Figure A + Percent Figure B = **Subject Party's Proportional Share**

III. OCCUPANCY

A. CAMPUS

All parties will have equal access and use of the Shared Areas of the Campus. However, no party's access and use of the Campus shall unreasonably interfere with the access and use by the other party in such a way as to result in a material negative effect on such party's carrying out its law enforcement functions.

B. PUBLIC SAFETY BUILDING

County shall have the right to occupy and use the County Area and Shared Areas as designated in Attachment B. City shall have the right to occupy and use the City Area and Shared Areas as designated in Attachment B.

IV. MANAGEMENT COMMITTEE

The Campus shall have a Management Committee responsible for the operation and maintenance of the Campus, and for resolution of issues and disputes relating to the operation and maintenance of the Campus. The Management Committee shall have the right to reallocate and change the designation of any space in the Public Safety Building as between County Area, City Area, or Shared Area, subject to the limitations contained in paragraph IV-C below to reflect actual needs and usage of the parties. In the event of any such change, such changes will be memorialized by means of a written resolution of the Management Committee, to which is attached a modified and dated Attachment B, which resolution and modified Attachment B shall be sent to the parties in a manner provided for in Paragraph XIV below.

A. MEMBERSHIP

Each party to this Agreement may appoint two representatives to the Management Committee and replace its designated representatives to the Committee, at its sole discretion. In the event that either party shall determine to appoint representatives other than those named below, such representatives shall be approved by the County's "County Administrator" (County's Management Committee Representatives), or by the City's "Chief Administrative Officer" (City's representative) respectively. The initial representatives to the Management Committee are as follows:

1. St. Louis County Sheriff, or their designee
2. St. Louis County Director of Property Management, or their designee
3. City of Duluth Police Chief, or their designee

4. City of Duluth Property Manager, or their designee

B. MEETINGS OF THE MANAGEMENT COMMITTEE

The Management Committee shall meet on a frequency, “as deemed necessary”, for Campus operational decisions, and a minimum of one time annually during the remaining term of the Agreement. Meetings shall be called at the request of any two (2) members of the Committee, but a quorum for action by the Committee shall be four (4) members

C. VOTING

Each member shall have one (1) vote.

A majority vote of the members shall constitute the decision of the Management Committee, and in the event consensus on an issue is not reached, the terms of the Agreement for such issue, defaults to the preceding year’s Agreement provided for in that paragraph of the Agreement or Attachment.

D. DUTIES OF THE MANAGEMENT COMMITTEE

The Campus Management Committee shall have the following powers and duties:

1. The Committee shall establish and as necessary, review and/or modify the management, operations, and use policies for the Shared Facilities as identified in Attachment A-2, subject to provisions in this Agreement.
2. The Committee may reallocate use of space, or reallocate space in the Public Safety Building (Attachment B) as provided for in paragraph IV above.
3. The Committee may determine, as necessary, the appropriate level of maintenance and janitorial services to be provided to the shared facilities, and determine the number and type of personnel necessary (County staff or City staff or private contractors) to maintain the Campus at acceptable levels which do not negatively compromise the building’s life cycle, operational efficiency, proper maintenance, safety, or levels of cleanliness.
4. The Committee shall review and approve the annual facility budget as provided by the Campus Manager.
5. The Committee shall review and approve all joint capital improvement projects to the Campus to determine if they are necessary, prudent, or

advantageous to the facility's operations, County Sheriff's Office, and Duluth Police Department. All major capital improvement projects are subject to both parties Purchasing rules, policies, and procedures.

6. They shall review and approve the annual reconciliation of all operational, repair, and maintenance costs as submitted by the Campus Manager.

E. **DUTIES OF THE CAMPUS MANAGER**

Subject to review by the Management Committee, the Campus Manager shall set, develop, implement, and manage:

1. Policies and procedures for the operation, maintenance, repair, and use of the Campus not otherwise addressed by the Management Committee or this Agreement.
2. Maintain ongoing communication with the Management Committee.
3. Policies and Procedures pertaining to Campus signage.
4. Oversee supervision of maintenance and janitorial staff subject to Paragraph IV -D -3 of this Agreement.
5. Oversee procurement of all materials, supplies, and consumables required for Campus operations, maintenance, and repairs.
6. Annual operational & capital budget development/ preparation and presentation to the Management Committee.
7. Annual reconciliation of all operational/repair/maintenance costs and presentation to the Management Committee.
8. All aspects, responsibilities, and duties required for the daily operation of the Campus.

V. **OPERATION, MAINTENANCE, AND CAPITAL IMPROVEMENTS OF CAMPUS AND MAINTENANCE FACILITY**

- A. The staffing needs and types will be determined by the Management Committee as provided for in Paragraph IV-D-3 above. The County and City agree that the staffing and the cost allocations for operations, repair, and maintenance for the Campus from the date of this agreement until modified or changed by the Management Committee, shall be as set forth in Attachment E.

- B. The Campus Manager shall operate and maintain the Campus and pay all associated costs within the Management Committee's budget limits, subject to the right of the Campus Manager to request an amendment thereto by the Management Committee and to emergencies beyond the reasonable anticipation or control of the Campus Manager. In the event of such an emergency, the Campus Manager shall immediately notify the Management Committee, request a meeting if necessary, shall secure confirmation of costs incurred, and amend the annual Campus budget to identify the additionally incurred costs.
- C. On a monthly basis the County will prepare the financial documents setting forth the amount and description of the previous month's expenses incurred for the Campus, and provide these documents to the City as provided for in Paragraph XIV below. The City shall promptly reimburse the County for its Proportional Share of such costs and expenses, subject to the right of the City's Finance Director to request and receive such additional documentation of such expenses as she/he shall reasonably request. The County will keep and maintain files, records, and documents for all such costs and expenses, to be available upon request by either party.
- D. Cost of operation and maintenance shall include, but not limited to, all costs of contracted services, fully burdened costs of Campus operational, janitorial, maintenance staff, trash disposal, equipment, consumables, inspection fees, permit fees, licensing fees, life safety related costs, hazardous waste costs, other regulatory agency fees, and other ancillary costs of Campus operations and maintenance providing benefit to the Campus.
- E. The parties agree that the payments of utilities metered and consumed for the operation and benefit the portions of the Public Safety Building constructed by each of the party shall be the responsibility of such party. Costs of metered utilities shall not be included as part of the costs pursuant to Paragraph C above.
- F. All other costs not specifically addressed herein shall be governed by Article VI of the Lease Agreement (DAMION # 2010-5651 - Attachment A).
- G. The County has the right to build or make improvements, including the construction of buildings upon the Campus at its own expense provided the improvements or buildings do not prohibit the access, occupancy or operations of the City. It is understood that in the event the County does make improvements, including the construction of buildings solely for County use pursuant to this provision, the County will be solely responsible for any and all other costs and expenses associated with the improvement or construction, including but not

limited to maintenance, repair, and utilities. Any County initiated capital improvements that are connected to, part of, or affect the Public Safety Building are subject to article V-D of this agreement.

VI. SHARED DATA CENTER

- A. See Information Technology - Attachment C

VII. GENERAL OPERATING POLICIES

- A. The Campus shared areas shall be available for use by the parties to this Agreement, 24 hours per day, every day of the year, provided the use is approved by the Management Committee.
- B. The Public Safety Building shall be a non-smoking building.
- C. Each party shall use all reasonable precautions to prevent waste, damage, or injury to all areas of the Public Safety Building and Campus.
- D. No party shall interfere with the other parties' use of the Public Safety Building or Campus.

VIII. MATERIALS AND SUPPLIES

- A. Any party to this agreement purchasing materials and supplies for the operation of maintenance of the Campus shall comply with all State laws and regulations when purchasing materials and supplies, subject to Paragraph B below.
- B. Each party shall be responsible for purchasing its own office supplies, office furniture, office equipment, and other equipment in Individual Areas.
- C. The parties agree to maintain the material safety data sheets (MSDS) for their individual activities and functions. These are necessary to comply with the Employee Right-To-Know Act.

IX. LIABILITY

- A. The parties agree that any and all persons employed by or on behalf of a party to perform any work or duties as an agent of a party, shall not be considered employees of the other party. In particular, the liability of the parties, under the circumstances set forth below, shall be as follows:
 - 1. Each party shall be liable for damages arising out of the acts or omissions of its own officers, agents, servants, employees and contractors wherever said acts or omissions occur on the Campus.

2. Each party shall be liable for costs or expenses related to their own officers, agents, servants, employees and contractors arising under the Minnesota Workers Compensation Law occurring anywhere on the Campus.
 3. As between the parties hereto, each party shall be responsible for any and all liability arising out of claims based on the design and construction of any portion of the Campus which said party designed or constructed. Provided that nothing herein shall be deemed to create any liability to any third party where such liability did not already exist.
 4. In the event that either party contracts for the performance of services of any kind to occur on the Campus, it shall include the other party as an indemnified and additionally insured party in any contract for such services in the same manner and amount as the contracting party is indemnified and insured.
- B. The liability of County and City is governed by Minn. Stat. Chapter 466 and Article XII of the Lease Agreement (DAMION # 2010-5651).
- C. Each party shall be responsible for complying with applicable Federal and State regulatory rules and requirements. Each party shall be responsible for any penalties imposed for its violation of those rules and regulations.
- D. In the event that the Occupational Safety and Health Administration (OSHA), Minnesota Pollution Control Agency (PCA), or Environmental Protection Agency (EPA) issues a violation citation that exists in any Shared Area or on the grounds of the Campus and it can be determined which individual party is responsible for the violation, that party shall be responsible for all fines and related costs, including fines levied against the non-violating party. If a violation citation is issued to all parties and it cannot be determined who is responsible for the violations, each party shall be responsible for their own fines and related costs as determined by the issuing agency.

X. **MERGER, ASSIGNMENT, AND AMENDMENTS**

This Agreement, the Lease Agreement identified as DAMION # 2010-5651 (Attachment A), and the storm-water management agreement identified as DAMION # 2010-5941(Attachment D) collectively constitute the Contract Documents. The Contract Documents are the final expression regarding the use and occupancy of the Campus and Public Safety Building between the parties and the complete and exclusive statement of

the terms agreed upon, and shall supersede all prior negotiations, understandings, or agreements. Any amendments to or deletions from this Agreement shall be made in writing and properly executed by the parties.

XI. AUDIT

Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the parties relevant to this Agreement shall be subject to examination by the County, City, Legislative Auditor, or State Auditor. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if Federal funds are used for any work under this Agreement. The parties agree to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

XII. NONDISCRIMINATION

Civil Rights Assurances

Both parties and their officers, agents, servants and employees as part of the consideration under this Agreement, do hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

XIII. DISPUTE RESOLUTION

The parties agree that they shall, in good faith, attempt to settle any dispute arising with respect to the terms of this Agreement but that in the event they are unable to do so it is hereby agreed that:

- A. Mediation: the parties shall attempt to resolve the dispute through mediation. The parties shall agree to the identity of a qualified mediator within twenty days of either party's demand for mediation; if they are unable to do so, either party may request that the Chief Judge of the District Court for the 6th Judicial District appoint a mediator to mediate the dispute. The mediation costs will be split evenly between both parties. If the dispute is not resolved by mediation then:

Arbitration: the parties shall submit the dispute to binding arbitration administered by the American Arbitration Association. There shall be one arbitrator agreed to by the parties within twenty (20) days of an unsuccessful mediation and the cost of arbitration shall be split evenly between both parties.

XIV. NOTICE

Whenever notice is required by the terms hereof, it shall be in writing and directed to:

In the case of the County: St. Louis County
 Property Manager
 100 North 5th Avenue West
 Room 2, Court House
 Duluth, MN 55802

In the case of the City: City of Duluth
 Property Manager
 Rm. 208, City Hall
 Duluth, MN 55802

XV. COMPLIANCE WITH LAWS

The parties shall abide by all Federal, State, and local laws, statutes, ordinances, rules, and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which the parties are responsible. This includes, but is not limited to, all applicable Alcohol, Tobacco, Firearms regulations, Federal and State OSHA regulations, MPCA, EPA, NFPA (National Fire Protection Association), and Collective Bargaining contracts..

XVI. APPLICABLE LAW

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

XVII. TERMINATION OF LEASE

In the event that the Lease Agreement referenced in the "Whereas" clauses of this Agreement is terminated, this Agreement shall terminate coextensively therewith; provided that both parties shall continue to be responsible to fulfill all payment obligations incurred up to the date of termination which were entered into in reliance upon this Agreement.