

PUBLIC SAFETY COMMITTEE

13-0572R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH ST. LOUIS COUNTY, TO ENABLE THE DULUTH CITY ATTORNEY'S OFFICE TO ACCESS A SHARED INTEGRATED CRIMINAL JUSTICE SYSTEM KNOWN AS NEMESIS AND DAMION SHIELD.

CITY PROPOSAL:

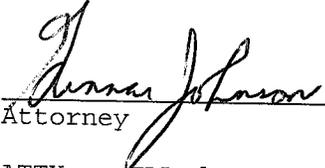
RESOLVED, that the proper city officials are hereby authorized to enter into an Agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with St. Louis County, Minnesota, to enable the Duluth city attorney's office to access the shared integrated law enforcement information system and integrated criminal justice applications known as NEMESIS (Northeastern Minnesota Enforcement & Safety Information System) consisting of DAMION SHIELD and local and state interfaces, in the amount of \$1,425 per year, terms net 30, payable from fund number 210-030-3109-5441 (special projects fund, finance, city attorney forfeitures, other services & charges).

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ATTY TLL:de 11/26/2013

STATEMENT OF PURPOSE: This resolution authorizes an agreement between the City of Duluth and St. Louis County. Under the terms of the agreement, St. Louis

County as the host of a shared integrated law enforcement information system and integrated criminal justice applications, will permit the Duluth City Attorney's Office to access the law enforcement data generated by the applicable law enforcement agencies. This ready access will enable the Duluth City Attorney's office to better fulfill its prosecutorial and other criminal justice-related duties.

**ST. LOUIS COUNTY NEMESIS
SHIELD ACCESS AGREEMENT**

This Agreement is entered into by and between the County of St. Louis, through its Sheriff, located at 100 North 5th Avenue West, Duluth, Minnesota, 55802, hereinafter referred to as "County," and the City of Duluth, a municipal corporation, acting through the Duluth City Attorney's Office, hereinafter referred to as "Subscriber."

WITNESSETH:

WHEREAS, County was awarded a CriMNet criminal justice grant to implement a shared integrated law enforcement information system and integrate criminal justice applications as the lead agency for the region; and

WHEREAS, County, as host, developed and implemented such a system in the Arrowhead Region with the active financial and in-kind assistance of its Charter Subscribers: The Duluth Police Department, the Hermantown Police Department, the Proctor Police Department, and the University of Minnesota Duluth Campus Police; and

WHEREAS, the law enforcement information system implemented entitled DAMION SHIELD is owned by Constellation Justice Systems, Inc., subject to ownership rights of County in the Arrowhead Region, as defined herein, and a perpetual licence granted to County that includes product updates and upgrades to DAMION SHIELD; and

WHEREAS, County and the Charter Subscribers created a shared integrated law enforcement information system known as NEMESIS (Northeastern Minnesota Enforcement & Safety Information System) consisting of DAMION SHIELD and local and state interfaces; and

WHEREAS, Subscriber wishes to be provided limited query access and usage rights to DAMION SHIELD and, to the extent possible, NEMESIS.

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties set forth herein, it is hereby agreed that:

I. DEFINITIONS

Arrowhead Region

For purposes of this Agreement, the "Arrowhead Region" shall consist of the following counties located in northeastern Minnesota: Carlton, Cook, Koochiching, Lake, and St. Louis.

DAMION SHIELD

The term DAMION SHIELD shall mean the law enforcement records management system software entitled DAMION SHIELD developed and owned by Constellation Justice Systems, Inc.

Interface

A programming interface consisting of the set of statements, functions, options, and other ways of expressing program instructions and data provided by a program or language for a programmer to use.

Named User

For purposes of this Agreement, the term “named user” shall consist of each individual with a user name and password.

NEMESIS

The term NEMESIS consists of the DAMION SHIELD application software defined herein and associated links and interfaces to other criminal justice systems.

Product Updates

The term “product update” shall mean those improvements and/or modifications to the software that Constellation Justice Systems, Inc., generally makes available as part of the annual maintenance program.

Product Upgrades

The term “product upgrades” means any product releases, including added functionality or major enhancement of the software, that Constellation Justice Systems, Inc., markets and licenses for additional fees separately from updates. The term includes new modules and applications marketed by Contractor that pertain to law enforcement information management.

II. ACCESS TO DAMION SHIELD AND NEMESIS

The County grants Subscriber a non-exclusive, non-transferable, limited license to access and use DAMION SHIELD and, to the extent available, NEMESIS through the Criminal Justice Data Network (CJDN) and any other means of feasible access that are developed by County or otherwise made available during the term of this Agreement. The access by the Duluth City Attorney’s Office is limited to access to data generated by the Duluth Police

Department, St. Louis County Sheriff's Office, Hermantown Police Department, UMD Police Department and Proctor Police Department. Subscribers shall comply with all state and federal security policies regarding access to protected data. Subscribers shall ensure that named users have annual training on compliance with state and federal security requirements. Subscribers shall ensure that named users do not share their user name and password with other employees. Subscribers are prohibited from accessing the data of any other law enforcement agency. The County shall have the right to conduct audits of use by the Subscriber as provided in Section V. Any violation of the terms of access shall result in immediate termination of the Agreement.

III. COMPENSATION

Charges payable by the Subscriber are in the amount of \$475.00 per named user per year commencing May 1, 2013, payable from fund number 210-030-3109-5441. The number of named users is set forth in Exhibit A. The initial payment will be on the first day of the month following execution of this Agreement. Subscriber will be sent an invoice setting forth all charges. Subscriber shall pay the full amount of all such charges within thirty (30) days after receipt of such invoice. If payment is not made, Subscriber may thereafter be charged up to the maximum legal interest on any unpaid balance. The annual fee shall be subject to any increase voted and approved for all SHIELD users by the NEMESIS SHIELD Committee.

IV. ANNUAL SUPPORT

St. Louis County Management Information Systems will be responsible for support of all servers established for NEMESIS and all service requests to Constellation Justice Systems, Inc. As such, St. Louis County will provide first call support of DAMION SHIELD.

V. SECURITY; AUDIT

Subscriber will make reasonable efforts to make ensure compliance with the terms of this Agreement. Subscriber will take reasonable action to restrict and control all use of the data bases and the software and permit access only to authorized named users. Subscriber grants County the right to audit, during regular business hours, use of the software to ensure compliance with this Agreement.

VI. DURATION

The term of this Agreement shall commence upon execution by all of the parties and continue in effect for three (3) years and shall thereafter be automatically renewed for three-year periods unless terminated as provided in Section VII.

VII. NOTICE OF TERMINATION

Either party may terminate this Agreement at any time upon ninety (90) days written notice. Written notice of termination shall be made by certified mail or personal delivery directed to the other party specified in the Notice section of this Agreement. Notices are deemed effective upon delivery to the authorized representative.

VIII. EFFECT OF TERMINATION

Termination of this Agreement shall not discharge any liability, responsibility, or right of any party which arises from the performance or failure to adequately perform the terms of this Agreement prior to the effective date of termination, nor shall termination discharge any obligation which by its nature would survive after the date of termination.

IX. ASSIGNMENT

Neither party shall assign any of its rights or transfer any of its obligations under this Agreement without the prior written consent of the other party, nor shall either party's consent be unreasonably withheld. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

X. DATA PRACTICES

Pursuant to Minnesota Statutes Chapter 13, County and Subscriber agree that they will continue to be responsible authorities for data created by their agency. Nothing in this Agreement shall result in any change in responsibilities for data practices' requests, data access procedures, and compliance responsibilities of the individual agencies. County and Subscriber agree that the originator of the data continues to own the data and responsibilities attendant to creation and maintenance of such data. All requests will be forwarded to the originating agency.

Subscriber agrees to comply with the Minnesota Government Data Practices Act.

XI. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

XII. ENTIRE AGREEMENT AND REMEDY

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties, or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest, or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver, or estoppel.

XIII. MINNESOTA LAW

This Agreement shall be governed by the laws of the State of Minnesota. Any litigation regarding this Agreement or its contents shall be filed in the County of St. Louis, in the City of Duluth, if in state court, or in the federal district court nearest to St. Louis County, if in federal court.

XIV. AUTHORITY

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity, person, or firm and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, County hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Subscriber is obligated, which breach would have a material effect hereon.

XV. INDEMNIFICATION

Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party against any and all claims, liability, loss, damage or expenses arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of the Indemnifying Party or those of the Indemnifying Party's officers, employees or agents. Under no circumstances will the Indemnifying Party be required to pay on behalf of itself and the other party any amounts in excess of the limits of liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for all parties may not be added together to determine the maximum amount of liability for either party. The intent of this paragraph is to impose on each party a limited duty to defend and indemnify each other subject to the limits of liability under Minnesota law. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts among the parties. Nothing in this Agreement will be construed as a waiver by either party

of any immunity defenses or other limitations on liability to which either party is entitled by law.

XVI. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

The County's goods and services provided pursuant to this Agreement are provided "as is," without warranties of any kind, express or implied, including, but not limited to, the warranties of performance, merchantability and fitness for a particular purpose. The County shall have no liability whatsoever to Subscriber for any claim(s) relating in any way to (1) Subscriber's inability or failure to perform legal, professional, or other research or related work or to perform such work properly or completely, even if assisted by the County; or (2) any consequential, exemplary, incidental, indirect, or special damages relating in whole or in part to Subscriber's rights hereunder or use of or inability to use NEMESIS even if the County has been advised of the possibility of such damages.

XVII. SOFTWARE AND EQUIPMENT RESPONSIBILITY

The Subscriber is responsible for providing its own network, personal computers and software, including a personal computer suitable for use as a document server. Word processing software and operating systems must be acceptable to St. Louis County. NEMESIS will support either WordPerfect or Word word processing software and contemporary Microsoft operating systems.

XVIII. FORCE MAJEURE

The County's performance hereunder is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies, and the like.

XVIX. NOTICES

All notices hereunder shall be sent to the following parties:

Subscriber

Duluth City Attorney
City Hall, Room 410
411 West First Street
Duluth, MN 55802

St. Louis County

St. Louis County Sheriff
St. Louis County Courthouse
100 North 5th Avenue West
Duluth, MN 55802

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this Agreement effective this _____ day of _____, _____.

CITY OF DULUTH

By: _____
Mayor

Attest:

By: _____
City Clerk

Date: _____

Countersigned:

By: _____
City Auditor

Approved as to form:

City Attorney

2013-_____
8/8/13

ST. LOUIS COUNTY

By: _____
ROSS LITMAN
Sheriff

By: _____

Its: _____

APPROVED AS TO FORM & EXECUTION:

LESLIE E. BEIERS
Assistant County Attorney

EXHIBIT A

Pursuant to the St. Louis County Nemesis Shield Access Agreement, the Subscriber, City of Duluth, through the City Attorney's Office, agrees to pay an annual subscriber fee per named user as follows:

3 named users x \$475 = \$1,425 per year