

PUBLIC SAFETY COMMITTEE

14-015-0

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING POLICE CHIEF TO EXECUTE FITNESS FACILITY USE AGREEMENTS WITH ST. LOUIS COUNTY SHERIFF'S EMPLOYEES.

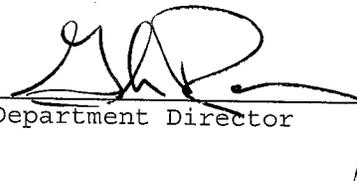
CITY PROPOSAL:

The city of Duluth does ordain:

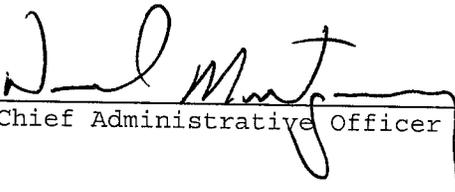
Section 1. That pursuant to the provisions of Section 32 of the Duluth City Charter, the chief of police is hereby authorized to enter into fitness center use agreements in substantially the form of that on file in the office of the city clerk as Public Document No. \_\_\_\_\_ with employees of the St. Louis County sheriff's department to allow said employees to use the city's fitness facilities located in the Public Safety Building and to deposit all amounts paid therefore into Fund 110-160-1610-4644 (general fund, police department, administration and investigation, miscellaneous fees, sales and services).

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

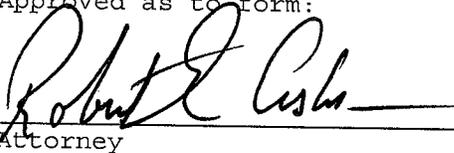
Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

DPD/ATTY REA:de 02/27/2014

STATEMENT OF PURPOSE: The purpose of this ordinance is to authorize the police chief to enter into agreements with employees of the St. Louis County Sheriff's Department to use the fitness facilities in the Public Safety Building and to contribute to the cost of its operation.

When the City designed and built the Public Safety Building to serve as headquarters for the Police Department, it included an excellent fitness and training facility to assist officers in staying fit for duty and minimize on-the-job injuries. At times the capacity of the facility exceeds the current demands being placed on it by city employees and employees of the Sheriff's Department have requested authorization to use it.

The department has determined that it is in the best interests of the City to allow such use, not only in the spirit of cooperation with the County and its law enforcement officers, but also because City and the County enforcement personnel often are called upon to act in cooperation in addressing enforcement-related issues.

Therefore the Department has requested that it be authorized to allow Sheriff's Department employees to use the facility. In return, those users would contribute to the cost of maintaining and operating the facility and its equipment. In order to avoid the need to bring each agreement for use to the Council the ordinance authorizes the Chief to enter into the agreements on behalf of the City.

## FITNESS FACILITY

### USE AGREEMENT

THIS AGREEMENT, effective as of its date of execution as shown below, between the CITY OF DULUTH, through the Chief of its Police Department, hereinafter referred to as “City”, and \_\_\_\_\_, hereinafter referred to as “User”.

WHEREAS, as part of its leased premises at the Public Safety Building occupied jointly by the Duluth Police Department and the St. Louis County Sheriff’s Department, the City has built, equipped and operates a physical fitness facility used and usable various forms of physical exercise and physical training for members of the Department; and

WHEREAS, User, along with other employees of the St. Louis County Sheriff’s Department have requested to be allowed access to and use of the Facility and the fitness equipment located thereon (the “Equipment”) for physical exercise and physical training purposes; and

WHEREAS, the aforesaid Chief has secured from the City authority to permit such access and use conditioned upon execution of this Use Agreement by any such user.

NOW, THEREFORE, in consideration of the mutual terms of this Agreement, the Chief, as herein defined, and the User hereby agree as follows:

1. For the purposes of this Agreement the term, Chief’ shall mean the Chief of the City’s Police Department or such other of the Chief’s subordinates as the Chief shall designate from time to time in writing.
2. Subject to the terms of this Agreement, the Chief hereby grants to User the right to use the Facility and the Equipment located therein for the purposes of physical exercise and physical training on a first come-first served basis during such times as the Facility is made available to members of the Duluth Police Department. The Chief shall have the right, in the exercise of his or her discretion to close the Facility to use at any time when he or she determines it is in the best interests of the City to do so; any such closure shall not entitle User to the return of any portion of the User Fee.
3. In consideration of being granted the right to use the Facility and the Equipment, User hereby agrees to pay to City a User Fee in the amount of \$ 60.00 per calendar year or portion thereof. Said User Fee shall be payable on or before the first day of the calendar year to which it is attributable or the first day of the calendar year on which User has the right to use the Facility and the Equipment, whichever is later. The User Fee shall be payable to Fund \_\_\_\_\_ or to such other City fund as the City’s Auditor shall direct

and shall be for the purpose of defraying a portion of the cost of operating, maintaining and equipping the Facility.

4. User agrees to use the Facility and the Equipment only for their intended purposes and in a manner which will not damage the Facility or the Equipment and which will not pose or create a hazard to other users of the Facility and the Equipment. User agrees that he or she will restore to its appropriate storage location and condition any Equipment used by User and will keep the premises in a neat, clean and orderly condition and will appropriately dispose of all materials used by User in the course of his or her use of the Facility.
5. The City makes no warranty or guaranty of any kind whatsoever with regard to the condition of the Facility or the Equipment, including warranties as to fitness for use or fitness for a particular purpose. User accepts use of the Facility and the Equipment in "as is-where is" condition. If User becomes aware of any condition of the Facility or any of the Equipment which constitutes or which User believes constitutes a condition of disrepair or unsafe to any user including but not limited to User, User shall immediately discontinue use of the Facility and the Equipment and shall immediately notify the Chief of such condition.
6. User hereby agrees to release the City and its officers, agents, servants and employees, to the fullest extent permitted by law, from any and all claims of every kind whatsoever, direct, indirect, consequential or otherwise arising in any way out of User's use of the Facility or the Equipment or both, including loss of life, personal or bodily injury and lost of or damage to property. User further agrees to defend, indemnify and safe harmless the City and its officers, agents, servants and employees from and against any and all claims, costs and expenses, including attorney's fees in any way related to the foregoing. User further agrees that the provisions of this paragraph shall survive the termination of this Agreement and shall apply to your successors and assigns.
7. City will not be responsible for any loss of, theft of, damage to or destruction of any personal property of User on the premises of the Facility and the risk thereof shall be solely that of User.
8. In the event that the Chief determines, in the sole and unfettered exercise of his or her discretion that the User has violated any of the terms of this Agreement or has conducted himself or herself in a manner inimical to the Facility, to other users of the Facility or to the best interests of the City, the Chief may terminate this Agreement and User's right to use the Facility and the Equipment, either by written notice or by oral notice followed by written notice and thereafter User's right to use the Facility and the Equipment shall immediately cease. In the event of such termination, User shall not be entitled to the return of any portion of the User Fee paid as provided for above.

9. User's address for the purposes of giving notice hereunder shall be \_\_\_\_\_  
\_\_\_\_\_.

10. This Agreement is made in the State of Minnesota and shall be interpreted in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have executed this Agreement the date set forth below.

CITY OF DULUTH

By: \_\_\_\_\_  
Chief of Police

\_\_\_\_\_  
"User"

Date: \_\_\_\_\_

Date: \_\_\_\_\_