

JOINT POWERS AGREEMENT FOR PROSECUTION SERVICES

THIS AGREEMENT is entered into this _____ day of _____ 2011 by and between the CITIES OF BELLE PLAINE, ELKO NEW MARKET, JORDAN, NEW PRAGUE, PRIOR LAKE, SAVAGE, SHAKOPEE, and CREDIT RIVER Minnesota, all of which are Minnesota municipal corporations organized and operating under state law, hereinafter collectively referred to as the "CITIES."

This AGREEMENT supersedes all previous Joint Powers Agreements for Prosecution Services.

RECITALS

1. Each of the CITIES individually has the power and responsibility to prosecute criminal matters within its respective jurisdiction.
2. Each of the CITIES has previously contracted with private law firms or provided "in house" counsel for prosecution services but believes that such services can be obtained more conveniently and more economically on a joint basis by means of this Agreement.
3. The CITIES desire to enter into this Agreement for the purpose of providing for the joint exercise of their prosecutorial powers according to the authority and procedures set forth in Minnesota Statutes Section 471.59, the Joint Exercise of Powers Act.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- 1. Name.** The name of the joint powers entity created by this Agreement shall be the Scott Joint Prosecution Association (the "SJPA").
- 2. Members.** The initial members of the SJPA are the cities of Belle Plaine, Elko New Market, Jordan, New Prague, Prior Lake, Savage, Shakopee, and Credit River.
- 3. New members.** A municipality or other governmental entity, not party to this Agreement, may join the SJPA upon a concurring vote of all of the CITIES. Upon the addition of a new party, the cost sharing formula outlined in this Agreement shall be modified to incorporate the new member.
- 4. Governing Board.** A governing board shall be formed to oversee the operation of the SJPA and shall be known as the Joint Powers Municipal Prosecution Board (the "BOARD"). The BOARD may exercise its powers in order to accomplish the purposes of the Agreement consistent with Minnesota Statutes Section 471.59 and other applicable laws.

- a. Each participating city shall have one representative on the BOARD. The city's representative must be either the city's City Manager/Administrator or Police Chief. Resolutions or other documentation of designation shall be filed by the participating city with the BOARD. Each BOARD member shall serve until replaced by the member's respective city. Change of a city's BOARD member requires notice by the city of such change to the SJPA in writing. The Scott County Attorney shall serve as ex-officio non-voting member of the BOARD. Members of the BOARD shall not be deemed to be employees of the SJPA.
- b. A quorum of at least five voting representatives of the BOARD must be present at a meeting to conduct BOARD business. There shall be no voting by proxy; all votes must be cast in person at BOARD meetings by the participating city's representative.
- c. The BOARD may adopt bylaws to govern its operations that include the election of officers and the establishment of operating rules and procedures, meetings and committees. Such bylaws shall be consistent with this Agreement and applicable law.
- d. The BOARD shall meet at least **biannually**, unless cancelled by the chair.

5. Fiscal Agent. The Board may designate a member city by majority vote to serve as the fiscal agent of the SJPA ("Fiscal Agent"). The Fiscal Agent shall be responsible for the management of affairs of the SJPA as outlined in this Agreement and shall provide office space, supplies, payroll, and benefits to the SJPA and its staff. The Fiscal Agent shall be responsible for the custody of all of the SJPA's funds, for the keeping and storing of all records of the organization and for such other matters as are delegated by the BOARD. The Fiscal Agent shall provide the BOARD with an annual financial audit and accounting of all SJPA-related activities. The Fiscal Agent shall be responsible for collecting and preserving all records and data pursuant to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and shall be solely responsible for the data the SJPA generates, collects and maintains. The Fiscal Agent will be compensated and reimbursed by the SJPA for the services that it provides to the SJPA.

6. Powers and Duties of the BOARD. The powers and duties of the BOARD shall include the powers set forth in this Section. The BOARD may take the following actions as it deems necessary and appropriate to accomplish the general purposes of the organization:

- a. Provide criminal prosecution services for the CITIES within their respective jurisdictions. The BOARD shall adopt prosecution policies and make recommendations to the CITIES regarding improvement of criminal prosecution within their respective jurisdictions, stricter or less-strict plea bargains, and other matters related to the services being provided by the SJPA to the city pursuant to this Agreement. Each of the CITIES also may adopt its own prosecution policies which shall be followed by the SJPA prosecutor when handling cases from that city.

b. The BOARD may opt to contract with a separate entity for prosecution and support services under this agreement or may employ individuals to perform prosecution and support services under this Agreement. If the BOARD opts to hire employees to provide prosecution and support services under this Agreement, the BOARD shall have the authority to hire, fire, discipline and adopt personnel rules for employees of the BOARD. Under no circumstances shall the BOARD'S employees be deemed employees of the CITIES.

- c. Accept gifts, apply for and use grants, or use property from the state, or any other governmental units or organizations.
- d. Provide for the prosecution and defense or other participation in actions or proceedings at law in which the SJPA may have an interest.
- e. Acquire, hold and dispose of real and personal property.
- f. Contract for space, materials, supplies, equipment and personnel.
- g. Establish the annual budget for the organization as provided in this Agreement.
- h. Make contracts and enter into agreements as it deems necessary to make effective any power to be exercised by the SJPA pursuant to this Agreement.

If the BOARD opts to be an employer:

7. SJPA Staff and Administration.

A. The BOARD shall have the authority to contract for all services necessary to achieve the goals of this Agreement, including, but not limited to, prosecutor, administrative support, and fiscal agency services.

1). The CITIES shall assign all rights and interests to fine, penalty and fee monies arising out of the prosecutions handled under this Agreement to the BOARD and further agree that the BOARD shall have the authority to assign or use said monies to finance activities under this Agreement.

2). If at any time it is determined that the funds set out above are insufficient to pay for the services contemplated herein, the CITIES shall contribute a sum of money as set forth below to cover each City's proportionate share of the costs of performing prosecutorial services under this Agreement. None of the work or services covered by this Agreement shall be subcontracted without the prior approval of the BOARD, except in an emergency.

B. As an alternative to contracting work, the BOARD may opt to act as the employer, in which case it may advertise for and hire one or more prosecuting attorneys, secretaries, and legal assistants who shall be employees of the SJPA. All SJPA attorneys must be licensed and qualified

to perform their job duties. Under this option, the BOARD shall designate one of the prosecutors as the Chief Prosecutor who shall administer the daily affairs of the SJPA and report to the BOARD. The number or staff hired and whether they are part or full-time shall depend on the case load to be handled. The SJPA staff shall report to and be supervised by the Chief Prosecutor on behalf of the BOARD. None of the work or services covered by this Agreement shall be subcontracted by the cities or the SJPA staff without the prior approval of the BOARD, except in an emergency. Under this option, the City of Savage shall be the administrative and fiscal agent for the Board and shall provide office space, supplies, payroll, and benefits for BOARD staff. All hiring, firing, and other personnel decision relating to BOARD staff shall be made by the BOARD and payment shall be the same as set out above.

8. Cost Sharing. When revenues do not cover expenses, costs will be shared by averaging the total number of files opened and arraignments over the previous three years. The percent of the three-year average of files opened and arraignments will be a city's cost share of expenses not covered by revenues.

- a. To implement this change in cost sharing, each City will be responsible for 50%\$ of their cost share in 2022, and 100% of their cost share in the year 2023 and after. For the purposes of calculating the cost share, the year 2020 will be omitted due to the pandemic.
- b. The BOARD or SJPA staff will keep track of the number of calendar calls for each city at all times.
- c. The BOARD or SJPA staff will bill each of the CITIES detailing the amount due for that city's proportionate share of the SJPA costs. Within 30 days of the date of the bill, the city shall pay the billed amount.

9.

10. Budget. The fiscal year of the SJPA shall be the calendar year. Each year, the BOARD shall prepare a proposed budget, which shall be forwarded by the Board to each city's representative for review no later than August 1st. Any city objecting to the proposed budget shall so notify the BOARD.

11. Civil Matters. Where the BOARD has opted to act as an employer: A city may request that the SJPA staff handle its civil legal matters, such as zoning enforcement, personnel issues, liquor licensing questions, ordinance preparation, contract review, etc. Such requests shall be handled on a time-available basis only, and shall be billed back by the SJPA to the requesting city at actual cost on an hourly basis. Funds received by the SJPA from performing civil matters shall be used to offset the total prosecution budget.

12. Exchange of Data. All information, data, and reports as are existing, available and necessary for the SJPA to carry out services under this Agreement, including police reports and arrest records, shall be furnished by the city to SJPA staff without charge. The CITIES shall cooperate in every way possible in carrying out SJPA

services. Any reports, data, or similar information given to, prepared or assembled by the SJPA or the SJPA staff under this Agreement, which the SJPA or any of the CITIES requests to be kept confidential, shall not be made available to any individual or organization by the SJPA, SJPA staff, or any of the CITIES without prior written approval of the concerned party, consistent with the Minnesota Government Data Practices Act or other applicable statutes. This paragraph shall not apply to documents which are required to be public under the Government Data Practices Act or other applicable law. Upon withdrawal by a city or dissolution of this Agreement, all records pertaining to a particular city shall be returned by the SJPA to that city. All other general SJPA records shall remain with the Fiscal Agent as custodian of such records. The records may be retained, stored, or disposed of by the Fiscal Agent according to state law and the Fiscal Agent's records retention policies. Any city may copy any SJPA public records at its own expense.

12. Minnesota Government Data Practices Act. The CITIES agree to comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data created, collected, received, stored, used, maintained or disseminated by the SJPA. If a city receives a request to release the data referred to in this paragraph, it must immediately notify the Fiscal Agent. The Fiscal Agent will give the city who has received the data request instructions concerning the release of the data to the requester before the data is released.

13. Audit. The books, records and documents relevant to this Agreement are subject to audit by the CITIES and the State of Minnesota at reasonable times upon written notice.

14. Indemnification. The SJPA shall be considered a separate and distinct public entity to which the CITIES have transferred all responsibility and control for actions taken pursuant to this Agreement. To the fullest extent permitted by law, actions by the CITIES pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the CITIES that they shall be deemed a "single governmental unit" for purposes of liability as set forth in Minnesota Statutes Section 471.59, subdivision 1 a (a); provided further that for purposes of that statute, each city expressly declines responsibility for the acts or omissions of the other party. The CITIES are not liable for the acts or omissions of the other CITIES except as to the extent to which they have agreed in writing to be responsible.

The SJPA shall defend, indemnify and hold harmless the CITIES against all claims, losses, liabilities, suits, judgments, costs and expenses arising out of action or inaction of the SJPA, the BOARD, SJPA representatives, the Chief Prosecutor and other employees or agents of the SJPA pursuant to this Agreement. The SJPA shall defend and indemnify the employees of the CITIES acting pursuant to this Agreement except for any act or omission for which the city's employee is guilty of malfeasance, willful neglect of duty or bad faith. This Agreement to defend and indemnify does not constitute a waiver by the SJPA or any city of the limitations of liability provided Minnesota Statutes Chapter 466.

15. Liability. The BOARD shall purchase general liability and directors' and officers' errors and omissions insurance and such other insurance as it deems necessary to defend the SJPA and its members for actions arising out of this Agreement. The BOARD shall also purchase professional liability insurance for each attorney

hired by the SJPA. This insurance shall cover professional liability, personal injury liability, and disciplinary proceedings costs.

16. Notices. All notices required or permitted in this Agreement and required to be in writing shall be given by first class mail addressed to any of the CITIES at their respective city hall.

17. Duration, Renewal, Withdrawal and Dissolution. This Agreement shall automatically renew on an annual basis and shall be valid for the next calendar year, unless there is a withdrawal or it is dissolved as set forth below:

a. Withdrawal. Any city may withdraw from participation in the SJPA in the following circumstances:

i. At the end of any calendar year upon providing six months prior written notice to the BOARD;

ii. At any time with the express approval of all other parties hereto;

iii. After giving 120 days prior written notice to the BOARD on or before October 1st for objection to the proposed budget;

iv. After giving 90 days prior written notice to the BOARD for cost overrun reasons.

Prior to a city giving notice of withdrawal to the SJPA, the proposed reasons for withdrawal shall be presented by the city to the BOARD. The BOARD shall discuss these reasons and determine whether specific action should be requested to resolve the issue.

Upon the effective date of withdrawal, the SJPA shall return the withdrawing city's proportional share of any existing SJPA fund balance. Any SJPA fund balance maintained by the SJPA prior to the withdrawing city becoming a member of SJPA shall not be considered for purposes of determining the amount of the withdrawing city's proportional share for refund.

b. Dissolution. The SJPA shall be dissolved only by a two-thirds (2/3) vote of all members of the BOARD. Upon dissolution, the payment of all of the SJPA outstanding obligations shall be paid and then the remaining assets of the SJPA shall be distributed among the then existing CITIES in proportion to their contribution percentage. If, upon dissolution, there is an organizational deficit, such deficit shall be charged to and paid by the CITIES based upon their contribution percentage. Each city's contribution percentage shall be calculated by averaging its percentage established in paragraph 8 above for the previous six months.

c. Return of Property. All fixed assets that are purchased by a city that were provided to the SJPA shall be returned by the SJPA to the city which purchased them upon withdrawal by the city from the SJPA or dissolution of the SJPA.

18. Amendment. This Agreement sets forth all understandings of the CITIES. All prior agreements, understandings, representations whether consistent or inconsistent, verbal or written, concerning this Agreement, are merged and superseded by this Agreement. No modification or amendment to this Agreement shall be binding unless all CITIES agree in writing to the proposed modification or amendment.
19. Certification. Each of the CITIES certifies, by signing below, that this Agreement has been approved by that particular city's governing body.
20. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
21. Severability. In the case where any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.
22. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and the CITIES waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year above written.

CITY OF SAVAGE

CITY OF BELLE PLAINE

By: _____
Its: Mayor Date

By: _____
Its: Mayor Date

By: _____
Its: City Administrator Date

By: _____
Its: City Administrator Date

CITY OF PRIOR LAKE

CITY OF ELKO NEW MARKET

By: _____
Its: Mayor Date

By: _____
Its: Mayor Date

By: _____
Its: City Administrator Date

By: _____
Its: City Administrator Date

CITY OF JORDAN

CITY OF SHAKOPEE

By: _____
Its: Mayor Date

By: _____
Its: Mayor Date

By: _____
Its: City Administrator Date

By: _____
Its: City Administrator Date

CITY OF NEW PRAGUE

CITY OF CREDIT RIVER

By: _____
Its: Mayor Date

By: _____
Its: Mayor Date

By: _____
Its: City Administrator Date

By: _____
Its: City Administrator Date