

# Attachment A

## JOINT POWERS AGREEMENT for PETS UNDER POLICE SECURITY (“PUPS”)

This JOINT POWERS AGREEMENT (“Agreement”) is made and entered into pursuant to Minn. Stat. § 471.59 by the cities of Maple Grove, Brooklyn Center, Brooklyn Park, Champlin, Crystal, New Hope, Plymouth, and Robbinsdale (“Members”) as of the Effective Date specified herein.

WHEREAS, the Members acknowledge that in the course of operations of their respective municipal animal control efforts, they encounter animals that require safe, efficient, and economical impoundment;

WHEREAS, the Members desire and intend to maintain an organization by which they may jointly and cooperatively provide for the impoundment of such animals in a jointly operated animal control impound facility (“PUPS Facility”);

WHEREAS, the Members desire to provide for the joint use and shared financial responsibilities of operation of the PUPS Facility;

WHEREAS, the PUPS Facility is located at 11350 89th Ave N, Maple Grove, MN 55369;

BASED UPON AND IN CONSIDERATION OF THE FOREGOING, the Members agree as follows:

1. **Term.** This Agreement shall commence on January 1, 2023 (“Effective Date”) and expire on December 31, 2053 unless earlier terminated as specified herein. Upon expiration of the initial term, the Members may negotiate and may agree to extend this Agreement.
2. **Membership**
  - a. *Initial membership.* By executing this Agreement, municipalities noted above are the initial Members of PUPS and are subject to the terms and conditions of this Agreement.
  - b. *Additional members.* Any governmental unit may make application to become a member of PUPS. In order to apply, a governmental unit must contact the Board and inform the Board of the governmental unit’s intent to join. Applications will be considered in the sole discretion of the Board and according to terms and conditions set by the Board in accordance with this Agreement. The terms and conditions of additional membership shall be documented in an addendum to this Agreement.
  - c. *Withdrawal.* Members may elect to withdraw from PUPS upon written notice to the Board no later than June 30 in any year specifying an effective date no earlier than January 1 of the subsequent year. All obligations of the withdrawing Member continue through the effective date of withdrawal.

### 3. Board

- a. *Composition and voting.* The governing body of PUPS shall be a Board of Directors ("Board") consisting of one board member from each Member city. Each Member has one vote and proxy voting shall not be allowed. Maple Grove's representative shall be the board chair.
- b. *Meetings.* Except as otherwise provided in this Agreement, the Board shall meet either virtually or in person as often as it is deemed necessary and keep minutes, in either electronic or written form, of the substance of each meeting. Minutes of the Board meetings shall be made available to Members for their review.
- c. *Board authority.* The Board by majority vote of its members must approve the annual operation budget and any significant budgetary impacts or changes, any capital improvements, and any new members. The Maple Grove City Administrator may overturn any decision by the Board resulting in additional building maintenance expenditures, modification of the PUPS Facility, or increased capital improvement needs.

### 4. Management and Use

- a. *Animal Containment Coordinator.* Maple Grove will appoint, employ, and supervise an Animal Containment Coordinator for the PUPS Facility. The Animal Containment Coordinator will be employed by Maple Grove, the costs of which, including wages, benefits, and other related expenses, shall be proportionally paid for by the Members.
- b. *PUPS Facility Use.* The Animal Containment Coordinator, in consultation with the Board, will be responsible for setting the hours of operation, public hours, records management, and animal care subject to the rights and obligations of the Members.
- c. *Use by non-Members.* The Board will establish guidelines, policies, rates, and fees for any use of the PUPS Facility by non-Members.
- d. *Maintenance.* Maple Grove shall be responsible for all maintenance, repair, replacement, and upkeep of the PUPS Facility necessary to keep it in good repair and clean condition, the costs for which will be paid by the Members in proportion to their share set forth herein. If the Board determines that Maple Grove has failed to perform the maintenance or make any of the repairs or changes required by this Agreement, the Board shall notify Maple Grove in writing of the required maintenance, repairs, or changes. Maple Grove has 30 days after receipt of such notice to perform or make the required maintenance, repairs, or changes, after which time upon authorization by the Board any other Member may but are not obligated to perform or make the required maintenance, repairs, or changes, the costs of which shall be shared among all Members in proportion to their share set forth herein. In such event, Maple Grove shall allow reasonable access to the PUPS Facility to any person authorized by the Board to perform maintenance, repairs, or changes. If Maple Grove fails to timely cure under this Article, it shall be liable for any damage to property or loss sustained by the other Members, except damage or loss caused by any other Members' negligent or willful conduct. Maple Grove's failure to

timely cure under this Article shall not constitute a default of this Agreement unless such failure significantly impairs the other Members' use of PUPS.

## 5. Operations

- a. *Owner-Operator.* Maple Grove shall be the owner, operator, and fiscal agent of PUPS, subject to the rights and obligations of the Members set forth in this agreement. Maple Grove shall control all PUPS operations including but not limited to staffing and billing. No Member shall take any action to install equipment or modify the PUPS Facility or the real property on which the PUPS Facility is located without express, written, advance approval from the Board.
- b. *Operating Costs.* Operating Costs include all expenses and costs incurred and normally required with respect to repair, replacement, maintenance, and operation of the PUPS Facility and equipment, improvements, sidewalk, driveways, and parking facilities. Operating costs shall include but are not limited to the following:
  - i. Wages, salaries, benefits, and related expenses of all employees engaged in the operation, management, maintenance, and care of animals within the PUPS Facility, including, without limitation, the Animal Containment Coordinator;
  - ii. All supplies and materials used in the operation and maintenance of the PUPS Facility;
  - iii. Cost of utilities, including but not limited to water, sewer, heating, lighting, electricity, air conditioning, and ventilation for the PUPS Facility;
  - iv. Maintenance and service agreements for PUPS and the maintenance, service, and replacement of the equipment in the PUPS Facility or parking facilities;
  - v. Costs of all insurance for PUPS, including but not limited to premiums, deductibles, and the costs to purchase and maintain fire, property, casualty, and liability insurance;
  - vi. Any and all common area maintenance costs related to public areas of the PUPS Facility, including but not limited to all bathrooms, sidewalks, landscaping, drives, and, service areas;
  - vii. Capital expenditures including but not limited to the cost to maintain, repair, or replace all structural components of the PUPS Facility, fixtures, equipment, and site improvements.
- c. *Operating Budget.* Maple Grove shall provide Members and the Board a copy of the proposed budget of the estimated Revenue and Operating Costs for PUPS (the "Operating Budget") by June 1 for the following calendar year. The Board shall approve the operating budget on or before August 31 of each year.
- d. *Cost Sharing.* Members shall share in all Operating Costs for PUPS. The Board must adopt an annual Operating Budget by June 1 of each year and provide each Member a reasonable opportunity to comment on the proposed budget before adoption. Notification of the adopted budget must be provided promptly to the chief administrative officer of each member. Cost sharing shall be determined

based on the actual number of impounded animals per Member or according to other methodology adopted by a 2/3 majority of the Board. Each Member shall pay Maple Grove the Member's share of Operating Costs in two equal installments due on May 31 and August 31. The final operations bill back will be due on February 28 of the following year. Maple Grove shall submit an invoice to the Members approximately 30 days in advance to assure timely payment. If a Member ceases to be a Member at any time other than the end of a calendar year, the exiting Member's portion of Operating Costs shall be reallocated to the remaining Members according to their Percentage Share.

- e. *Unanticipated Expenses.* An "unanticipated expense" is an expenditure that is not included in an approved Operating Budget but is necessary for the continued operation of PUPS. Maple Grove shall have discretion in consultation with the Board to approve and incur any unanticipated expense.
- f. *Reconciliation and Reserve Account.* On or before June 30 of each year, Maple Grove shall provide the other Members documentation of the net surplus or deficit of Operating Costs in relation to payments made in the preceding year. Any such surplus or deficit in payments shall be treated as follows:
  - i. If there is an actual deficit, each Member will be responsible for its Percentage Share of the deficit.
  - ii. If there is an actual surplus, the amount overpaid by the Members shall be deposited into a PUPS account to be maintained by Maple Grove (the "PUPS Capital") and used by Maple Grove for PUPS-related expenses. If Maple Grove cancels this Agreement as provided in Paragraph 12, any funds remaining in the PUPS Account at the time of such cancellation or termination shall be distributed to all Members in accordance with their Percentage Share determined at that time. Upon any other termination or cancellation of this Agreement, Maple Grove shall retain all funds in the PUPS Account.
- g. *Capital Contribution.* All Members shall by June 30 of each year make a collective annual capital investment in the PUPS Facility of \$25,000, or in a different amount as may be determined by the Board, divided among membership according to the following percentage formula: the total annual number of animal impounds attributable to the Member divided by the total annual number of all PUPS animal impounds in the prior year. Partial year capital contributions will be prorated.
  - e.g. PUPS impounds 900 animals in a given year, including 100 animals from Maple Grove. Maple Grove is responsible for 11.1% of the total impounds. Maple Grove's capital contribution for that year would be \$2,775 (11.1% of \$25,000).
- h. *Inspection.* Maple Grove agrees that Members, at their own expense and through their duly authorized representatives, at any time during normal business hours and as often as reasonably necessary, shall have the right to examine, audit, excerpt, and transcribe any books and records which are pertinent to or involve transactions relating to this Agreement, including

verification of amounts and types of expenses which appear on the Operating Budget or statements of actual Operating Costs.

6. **Compliance with Rules and Regulations.** The Members agree to comply with all applicable federal, state, municipal, and local laws, ordinances, and regulations while occupying PUPS. The Members shall comply with Maple Grove's reasonable rules for the safety, care, cleanliness, and preservation of good order of PUPS, provided that the rules are submitted to them in writing and do not conflict with the terms of this Agreement.
7. **Insurance.** Maple Grove will, at all times during the Term and any renewal period of this Agreement, either self-insure or have and keep in force a single limit or excess umbrella commercial general liability insurance policy of an amount not less than \$500,000 per claimant for death, bodily injury, personal injury, property loss and/or damages and \$1,500,000 for total personal injury, bodily injury, property loss and/or damages arising from any one occurrence or greater limits which may be subsequently allowed under Minn. Stat. §§ 466.02 and 466.04, as amended. Maple Grove will furnish Members with Certificates of Insurance documenting the insurance coverage required by this Agreement upon request. All Certificates shall provide that the insurance company shall give 10 days written notice to the Members of cancellation, non-renewal, or any material change in the policy.
8. **Liability.**
  - a. *Cooperative Activity.* Pursuant to Minn. Stat. § 471.59, subd. 1a(a), as amended, this Agreement is intended to be and shall be construed as a "cooperative activity" and it is the intent of the Members that they shall be deemed a "single governmental unit" for the purposes of liability; provided, however, that each Member expressly declines responsibility for the acts or omissions of the other Member. Nothing in this Agreement shall be construed to waive or limit any immunity from, or limitation on, the liability of either Member as provided by law.
  - b. *Third Party.* To the extent that tort damages or other related costs or fees become payable to a third party as a result of this Agreement or the activities carried out pursuant to this Agreement, the Members shall each pay an amount equal to their respective percentage of liability. Notwithstanding the foregoing, this Agreement is solely for the benefit of the Members, it being the express intent of the Members that no other entity or person shall have any right, claim, or interest in this Agreement.
  - c. *Employee Liability Limitation.* No Member shall be responsible or liable for injuries or death of the other Members' employees or officers. Each Member will maintain worker's compensation coverage to the extent required by law on its employees and officers who perform work or use the PUPS Facility pursuant to this Agreement.
  - d. *No Immunity Waiver.* Nothing in this Agreement is intended or should be construed in any manner as a waiver of any Member's immunities or of the tort limits contained in Minnesota Statutes chapter 466.

9. **Indemnification.** Subject to the limitations, immunities, and defenses in Minnesota Statute chapter 466, each Member shall defend, indemnify, and hold harmless the other Members and their officers and employees from and against any and all liability, loss, damages, costs, and expenses which it or its employees or agents may hereafter sustain, incur, or be required to pay arising out of or resulting from the performance of this Agreement, provided that any such claim, damage, loss, or expense is (1) attributable to personal or bodily injury, sickness, disease, or death or to injury to or destruction of tangible property including the loss of use therefrom; and (2) caused by any negligent acts or omissions of the indemnifying Member or its employees, agents, or any other person or entity for whose actions it may be liable.
10. **Dispute Resolution; Applicable Law; Venue.** In the event some or all of the Members are unable to reach agreement regarding interpretation of their rights and obligations under this Agreement, the disagreeing Members shall participate in mediation pursuant to the Minnesota Civil Mediation Act, as amended (currently codified at Minn. Stat. § 572.31 et seq.) prior to initiating any other form of dispute resolution, including legal action. This Agreement is created under and shall be read and construed according to Minnesota law. Any legal action between the Members related to this Agreement shall be venued in a court of competent jurisdiction in Hennepin County, Minnesota.
11. **Default.** If any payment by a Member required by this Agreement remains unpaid for 30 days after written notice or a Member fails to comply with any of the terms and conditions of this Agreement and such failure continues for 30 days after written notice, such Member shall be deemed in default. Upon the occurrence of such default, Maple Grove may in its discretion in consultation with the Board terminate the defaulting Member's membership in this Agreement and recover damages from the defaulting Member including but not limited to all unpaid amounts due and owing under this Agreement plus any sum of money as may be determined fair and equitable by a court having jurisdiction over this matter, plus interest at the maximum rate allowed by law.
12. **Termination By Maple Grove.** Maple Grove may, in its sole discretion, elect to terminate this Agreement upon written notice to the Members. Such notice shall provide for no less than one full budget year (January 1 – December 31) prior to its effective date of termination e.g. if notice under this provision were provided on March 1, 2026, the effective date of termination could be no earlier than January 1, 2028.
13. **Miscellaneous Provisions**
- a. *Waiver.* Failure by any Member to insist, in any one or more instances, upon strict performance of any term, covenant, or condition of this Agreement or to exercise any option contained in this Agreement shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition, or option, but the same shall continue and remain in full force and effect. The Members shall not be deemed to have waived any provision of this Agreement until expressed in a signed writing.
  - b. *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

- c. *No Assignment.* This Agreement may not be assigned except by the advance, express written consent of all other Members.
- d. *Entire Agreement; Modification.* This Agreement shall constitute the entire agreement among the Members as to the subject matter and any understandings or representations of any kind preceding the execution of this Agreement shall not be binding upon the Members. This Agreement may not be amended or modified except by a written instrument executed by all Members.
- e. *Authority.* Each Member represents and warrants that it has the power and authority to enter into this Agreement. Each Member further represents and warrants that the person or persons executing this Agreement on its behalf have full and complete legal authority to do so, and thereby bind the Member and, to the extent permitted by this Agreement, its successors and assigns.
- f. *Notices.* Any notice or demand, which may or must be given or made by any Member under the terms of this Agreement or any statute or ordinance shall be in writing and be sent registered or certified mail to the other Members addressed as follows:

To: Maple Grove  
City Clerk  
City of Maple Grove  
12800 Arbor Lakes Parkway  
Maple Grove, MN 55369

To: Brooklyn Park  
Police Chief  
City of Brooklyn Park  
5400 85th Ave. N  
Brooklyn Park, MN 55443

To: Brooklyn Center  
Police Chief  
City of Brooklyn Center  
6645 Humboldt Ave  
Brooklyn Center, MN 55430

To: Champlin  
Police Chief  
City of Champlin  
11955 Champlin Drive  
Champlin, MN 55316

To: Crystal  
Police Chief  
City of Crystal  
4141 Douglas Drive N  
Crystal, MN 55427

To: New Hope  
Police Chief  
City of New Hope  
4401 Xylon Ave N  
New Hope, MN 55428

To: Plymouth  
City Clerk  
City of Plymouth  
3400 Plymouth Blvd.  
Plymouth, MN 55447-1448

To: Police Chief  
City of Robbinsdale  
4101 Hubbard Ave N  
Robbinsdale, MN 55442

Each Member may designate a different addressee or form of accepting notice at any time by giving written notice to the other Members as provided in this paragraph. Notice delivered by hand shall be deemed received upon delivery.

- g. *Acknowledgement.* Each of the Members affirms and acknowledges that it has fully read, appreciates, and understands the words, terms, conditions, and provisions of this Agreement and is fully satisfied with the same. Each Member affirms and acknowledges that it has been, or had the opportunity to be, represented by legal counsel of its choice.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below:

[Signature Pages to Follow]



**CITY OF MAPLE GROVE**

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By: Judy Hanson

Its: Acting Mayor

Dated: \_\_\_\_\_, 2023

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By: Heidi Nelson

Its: City Administrator

Dated: \_\_\_\_\_, 2023

**CITY OF BROOKLYN CENTER**

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By:

Its: Mayor

Dated: \_\_\_\_\_, 2023

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By:

Its: City Manager

Dated: \_\_\_\_\_, 2023

**CITY OF BROOKLYN PARK**

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By:

Its: Mayor

Dated: \_\_\_\_\_, 2023

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By:

Its: City Manager

Dated: \_\_\_\_\_, 2023

**CITY OF CHAMPLIN**

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By:

Its: Mayor

Dated: \_\_\_\_\_, 2023

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By:

Its: City Administrator

Dated: \_\_\_\_\_, 2023

**CITY OF CRYSTAL**

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By:

Its: Mayor

Dated: \_\_\_\_\_, 2023

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Its: City Manager

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**CITY OF NEW HOPE**

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Its: Mayor

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By:

Its: City Manager

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**CITY OF PLYMOUTH**

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Its: Mayor

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By:

Its: City Manager

Dated: \_\_\_\_\_, 2023

**CITY OF ROBBINSDALE**

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By:

Its: Mayor

Dated: \_\_\_\_\_, 2023

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By:

Its: City Manager

Dated: \_\_\_\_\_, 2023