

### THIRD AMENDED AND RESTATED

#### JOINT POWERS AGREEMENT OF

#### THE MINNESOTA VALLEY TRANSIT AUTHORITY

THIS THIRD AMENDED AND RESTATED JOINT POWERS AGREEMENT ("Agreement") is by and among the Cities of Apple Valley, Burnsville, Eagan, Prior Lake, Rosemount, Savage, and Shakopee ("Cities") municipal corporations organized under the laws of the State of Minnesota, and Dakota County and Scott County ("Counties"), political subdivisions under the laws of the State of Minnesota. This Agreement amends, restates and replaces the Minnesota Valley Transit Authority ("MVTA") Second Amended and Restated Joint Powers Agreement adopted in October 2012. The Agreement is made pursuant to the authority conferred upon the Parties by Minnesota Statutes, Sections 473.384, 473.388, and 471.59 and related statutes.

WHEREAS, since 1990, the MVTA has operated as a legislatively-authorized "opt-out" provider of Metropolitan Transit Service in and for the areas of cities that have been members of the MVTA;

WHEREAS, the Cities of Prior Lake and Shakopee seek to add their public transit services to the MVTA by becoming members of the MVTA and continue the provision of high quality transit services to their customers through the MVTA;

WHEREAS, the MVTA, by and through its board and constituent members, seeks to add Prior Lake and Shakopee as new MVTA members and incorporate their public transit services and customer service areas into the MVTA while maintaining high quality services to those customers in Prior Lake and Shakopee as well as to those in the MVTA's service area existing prior to this merger of transit services; and

WHEREAS, the MVTA also seeks to amend the Agreement to simplify the process under this Agreement of future addition or subtraction of MVTA members.

NOW, THEREFORE, BE IT RESOLVED, in consideration of the mutual covenants contained herein, it is hereby agreed by and among the Cities and Counties:

1. **Name.** The name of this joint powers organization is the Minnesota Valley Transit Authority, also known as the MVTA.

2. **Purpose.** The purpose of this Agreement is to provide public transit service in and for persons within the Cities and within the Metropolitan Area pursuant to Minnesota Statutes, Sections 473.388, 473.384, 471.59 and related statutes.

3. **Definitions.**

(A) "MVTA" means the organization created by this Agreement.

(B) "BOARD" means the Board of Commissioners of the MVTA.

(C) “MVTA BOND BOARD” means the board established under Section 6 of this Agreement.

(D) “METROPOLITAN COUNCIL” means the Metropolitan Council as established by Minnesota Statutes, Section 473.123.

(E) “PARTY” or “PARTIES” means any one or more of the Cities or Counties that has entered into this Agreement, and cities or counties that may become Parties subsequent to the effective date of this Third Amended and Restated Agreement. Each Party to the Agreement is a member of the MVTA.

(F) “TECHNICAL WORK GROUP” is a committee consisting of one staff member of each City and County represented on the Board, which shall act as technical advisors to the Board.

4. **Party Addition or Withdrawal.** After the effective date of this Agreement, if new Parties join the MVTA or existing Parties withdraw and no other amendment is made to this Agreement at the time, the following process shall be used for such addition or withdrawal. New MVTA Parties shall be added to this Agreement upon the filing with the MVTA of a resolution duly adopted by the new Party or Parties agreeing to the terms of this Agreement, as it may be amended from time to time, and upon the filing of a resolution by each then existing MVTA Party, approving the addition of the new Party. All such resolutions shall be attached and become a part of this Agreement. Party withdrawal shall be effectuated in accordance with paragraph 11 of this Agreement. Upon the effective date of such withdrawal, the notice of withdrawal shall be attached to and become a part of this Agreement. No change in governmental boundaries, structure, organizational status or character shall affect the eligibility of any Party to a member of the MVTA so long as such Party continues to exist as a separate political subdivision.

5. **Board of Commissioners.**

(A) Except as otherwise provided under Section 6 hereof, the governing body of the MVTA shall be its Board which will consist of a representative of each MVTA Party as provided in this Agreement. Each Party shall appoint one commissioner, one alternate commissioner, and a staff member who shall serve on the Technical Work Group. The alternate commissioner and the Technical Work Group member may be the same person. The commissioner appointed by each Party shall be a member of that Party’s governing body; the alternate commissioner need not be a member of the Party’s governing body. Each Party has one vote. If a Party’s commissioner is not present at a meeting of the Board of Commissioners, the alternate may vote. Metropolitan Council members who represent the Cities of the MVTA may serve as non-voting ex officio members of the Board. The terms of office of each commissioner and alternate commissioner shall be determined by the Party making the appointment. In January of each year, or as soon thereafter as the Party representatives to the Board are appointed, the Party shall provide to the MVTA in writing the name(s) of the appointed representative(s).

(B) A commissioner or alternate may be removed by the Party appointing the commissioner with or without cause.

(C) Commissioners and alternates shall serve without compensation from the MVTA.

(D) A majority of the MVTA commissioners (including alternates, in the absence of commissioners) shall constitute a quorum of the Board. Attendance by a quorum of the Board shall be necessary for conducting a meeting of the Board. The Board may take action at a meeting upon the affirmative vote of a majority of the commissioners present at a meeting,

(E) The Board may adopt Bylaws to govern its meetings.

(F) As the first order of business at the January meeting of each year, the Board shall elect a chair, a vice chair, a secretary-treasurer, and such other officers as it deems necessary to conduct its business and affairs. The current chair shall facilitate these elections. In the event that the current chair is no longer his/her Party's representative to the MVTA, the vice chair shall facilitate the election process. In the event that both the vice chair and chair are no longer its Party's representative to the MVTA, the Board shall decide on another Board member to preside over the elections. The newly-elected chair shall then preside over the remainder of the meeting, and all meetings henceforth until a new chair is elected. In no event may an alternate commissioner act as an officer of the Board in the absence of the commissioner who holds that office.

#### **6. MVTA Bond Board.**

(A) There is hereby established the board designated as the "MVTA Bond Board." The MVTA Bond Board shall consist of a representative of each MVTA Party, each of whom is a member of the respective Parties' governing body, and is each Party's appointed commissioner on the Board. If both the Board commissioner and the Board alternate appointed by a Party are members of that Party's governing body, only the designated commissioner shall represent that Party on the MVTA Bond Board. In no event shall any alternate commissioner on the Board serve in any capacity on the MVTA Bond Board. The terms of office of each member of the MVTA Bond Board shall be the same as their terms on the Board, determined by each Party as described in Section 5(A).

(B) The MVTA Bond Board may issue bonds or obligations on behalf of the Parties, under any law by which any Party may independently issue bonds or obligations, and may use the proceeds of the bonds or obligations to carry out the purposes of the law under which the bonds or obligations are issued; provided that such bonds or obligations shall be issued only to carry out the powers and duties of MVTA described in Section 7 hereof.

(C) The MVTA Bond Board may issue bonds and obligations only in accordance with express authority granted by the action of the governing bodies of each Party, which bodies must each approve the Bond Board decision to issue bonds and obligations. The MVTA may not pledge the full faith and credit or taxing power of any Party to any bonds or obligations issued by the MVTA Bond Board. The bonds or obligations must be issued in the same manner and subject to the same conditions and limitations that would apply if the bonds or obligations were incurred by one of the Parties, provided that any reference to a governmental unit in the statute, law, or charter provision authorizing issuance of the bonds or obligations is considered a reference to the MVTA Bond Board.

(D) A member of the MVTA Bond Board may be removed by the Party appointing that member with or without cause; provided that if a member is removed from the MVTA Bond Board, that person shall also be deemed removed from the Board; and if a member is removed from the Board, that person shall be deemed removed from the MVTA Bond Board.

(E) The rules for compensation under section 5(C) and for a quorum under section 5(D) also apply to the MVTA Board.

(F) Bylaws adopted by the Board under Section 5(E) also apply to the MTVA Board.

(G) The officers of the MVTA Bond Board shall be the same as the officers of the Board described in Section 5(F).

## **7. Powers and Duties of the MVTA.**

(A) General. The MVTA has the powers and duties to establish a program pursuant to Minnesota Statutes, Sections 473.384 and 473.388 to provide public transit service for persons within the Parties and on such routes within the Metropolitan Area that the MVTA may operate to provide such service pursuant to the authority granted the MVTA under Minnesota Statutes, Sections 473.384, 473.388, 16A.88, and other applicable statutes, if any. The MVTA shall have all powers necessary to discharge its duties.

(B) The MVTA may acquire, own, hold, use, improve, operate, maintain, lease, exchange, transfer, sell, or otherwise dispose of equipment, property, or property rights as deemed necessary to carry out the purposes of the MVTA.

(C) The MVTA may enter into such contracts to carry out the purposes of the MVTA.

(D) The MVTA may establish bank accounts as the Board shall from time to time determine.

(E) The MVTA may employ an executive director whose duties shall be to administer policies as established by the MVTA. The executive director shall be an employee of the MVTA. The MVTA shall hire and terminate personnel and provide for compensation, insurance, and other terms and conditions that it deems necessary.

(F) The MVTA may enter into a contract for management services.

(G) The MVTA may sue or be sued.

(H) The MVTA shall cause to be made an annual audit of the books and accounts of the MVTA and shall make and file the report to its Parties at least once each year.

(I) The MVTA shall maintain books, reports, and records of its business and

affairs which shall be available for and open to inspection by the Parties at all reasonable times.

(J) The MVTA may contract to purchase services from any one of the Parties.

(K) The MVTA may finance the acquisition of any real or personal property under a lease-purchase agreement pursuant to Minnesota Statutes, Section 465.71, including without limitation through issuance of certificates of participation in such lease (together, a "Financing Lease"); and each Party hereby expressly approves and authorizes any Financing Lease entered into by the MVTA on behalf of the Parties.

8. **Operating and Capital Costs, Budgets, and Financial Liability.** The MVTA shall have a fiscal year beginning January 1 and ending December 31. The executive director shall prepare an estimated budget for the next fiscal year including an estimate of expenditures, operating costs, capital costs and revenues and submit it to the Board for preliminary approval. The executive director shall also submit the preliminary budget to the Parties for comment within thirty (30) days of the date of submittal. The budget shall be deemed approved by a Party unless the Party objects to the preliminary budget within said thirty (30) days. The Board shall approve, or approve as modified, a final budget and submit the final budget by December 15 to the Metropolitan Council for approval. The Board may adjust the budget from time to time on the basis of actual costs incurred or changes in estimated revenue or expenditures. In the event of an adjustment of the budget, the Board shall furnish to each Party a computation of the adjustment.

9. **Indemnification.** Except as may be otherwise provided in this Agreement, the Parties transfer to the MVTA all responsibility and control for actions taken pursuant to this Agreement. The MVTA shall defend and indemnify the Parties, and their officers, elected officials, employees, and volunteers, from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of the acts or omissions of the Joint Powers Board or the Bond Board in carrying out the terms of this Agreement or acts or omissions otherwise occurring in the course of carrying out MVTA operations. This Agreement does not constitute a waiver of the limitations of liability set forth in Minnesota Statutes, Section 466.04. Nothing herein shall be construed to provide insurance coverage or indemnification to an officer, employee, or volunteer of any Party for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith. To the fullest extent permitted by law, actions by the Parties to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Parties that they shall be deemed a "single governmental unit" for the purposes of liability, as set forth in Minnesota Statutes, Section 471.59, subd. 1a (a), provided further that for purposes of that statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of another party. The parties to this Agreement are not liable for the acts or omissions of another Party to this Agreement except to the extent they have agreed in writing to be responsible for such acts or omissions of the other Parties.

10. **Insurance.** The MVTA shall purchase liability insurance coverage to cover the activities of the MVTA. The MVTA shall provide all Parties with copies of the liability insurance coverage documents. The liability insurance coverage shall provide all Parties with sixty (60) days notice of cancellation, material change or termination of coverage. In the event the liability

insurance coverage is cancelled, or otherwise becomes unavailable, the MVTA shall procure similar liability insurance coverage from another entity. The MVTA shall purchase insurance in addition to liability insurance in such amounts and on such terms as the MVTA shall determine.

11. **Duration of Agreement.** This Agreement shall continue in force from the effective date of this Agreement from year to year, subject to termination by all Parties. Withdrawal by any Party or Parties shall not affect the duration of this Agreement unless and until all Parties duly terminate this Agreement and dissolve the MVTA. Party withdrawal shall be initiated by serving written notice upon the MVTA no later than February 15<sup>th</sup> of the year at the end of which such Party withdrawal is to be effective. Withdrawal from the Agreement by any Party at the end of the calendar year shall not affect the obligation of that Party to perform the Agreement during the period it remains a Party to the Agreement. Withdrawal of any Party or termination of the Agreement by all Parties shall not terminate or limit any liability, contingent, asserted or unasserted, of any Party arising out of that Party's participation in the Agreement. In the event a Party withdrawal or other change renders one or more provisions of this Agreement inapplicable, those inapplicable provisions shall be severed from the Agreement and the balance of the Agreement shall remain in full force and effect.

12. **Distribution of Assets.**

(A) In the event of the withdrawal of any Party from this Agreement and subject to the return of assets set forth in subparagraph 10.1 of that certain Agreement to Consolidate Public Transit Services dated September 9, 2014, attached as Exhibit A, the withdrawing Party shall not be reimbursed for or be entitled to the return of any costs incurred for, or contributions of property made to, the MVTA. The MVTA and the withdrawing Party shall do all things necessary to effectuate promptly the reimbursement or other form of property transfer agreed upon. The withdrawing Party shall be responsible for all reasonable costs incurred by the MVTA in effectuating the reimbursement or property transfer.

(B) In the event of termination of this Agreement by all Parties, all of the assets that remain, if any, after payment of debts and obligations that are not required by terms of state statutes, federal statutes, or contracts with the Metropolitan Council or federal agencies to be available for regional use for transit purposes or to be transferred to the Metropolitan Council or federal agencies, shall be distributed among the Parties to this Agreement immediately prior to its termination in accordance with the following formula: Each Party shall receive that percentage of remaining assets determined by dividing the total then current asset value the receiving Party contributed to the MVTA by the total remaining asset value contributed by all the Parties that are Parties to this Agreement immediately prior to its termination.

(C) The amount of the distribution to any Party pursuant to this Agreement, including upon withdrawal, shall be reduced by any amounts owed by the Party to the MVTA.

13. **Effective Date.** This Agreement shall be in full force and effect when all Parties sign this Agreement as amended and restated herein. This Agreement may be signed in counterpart. The signed Agreement shall be filed with the executive director, who shall notify all

Parties at the earliest Board meeting of its effective date.

IN WITNESS WHEREOF, the undersigned government units, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minnesota Statutes, Section 471.59.

Adopted this 14th day of August, 2014.

CITY OF APPLE VALLEY

By: \_\_\_\_\_

Its: Mayor

ATTEST:

By: \_\_\_\_\_

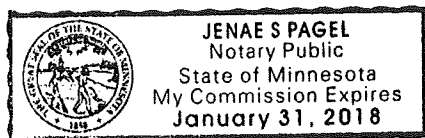
Its: Deputy City Clerk

STATE OF MINNESOTA )

) ss.

COUNTY OF DAKOTA )

On this 14<sup>th</sup> day of August, 2014, before me a Notary Public within and for Dakota County, Minnesota, personally appeared the Mayor and Deputy Clerk of the City of Apple Valley, Dakota County, Minnesota, known to be the persons described in and who executed the foregoing instrument and acknowledged that said instrument was signed and sealed as their free act and deed with the authorization and under the direction of the City Council of the City of Apple Valley, Dakota County, Minnesota.



Jenae Pagel  
Notary Public



Adopted this 2<sup>nd</sup> day of September, 2014

CITY OF BURNSVILLE

By: 

Its: Elizabeth B. Kautz, Mayor

By: 

Its: Heather A. Johnston, City Manager


STATE OF MINNESOTA

SS.

COUNTY OF DAKOTA

On this 12<sup>th</sup> day of September, 2014, before me a Notary Public within and for said County personally appeared Elizabeth B. Kautz and Heather A. Johnston, to be personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Manager of the CITY OF BURNSVILLE, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council, and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.

(SEAL)

  
NOTARY PUBLIC



Adopted this 19 day of August, 2014

CITY OF EAGAN

By: Mike Magline

Its: Mayor

ATTEST:

By: Christina M. Sejin

Its: Clerk

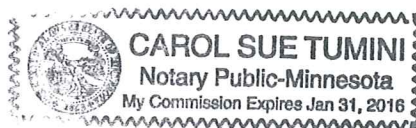
STATE OF MINNESOTA

ss.

COUNTY OF DAKOTA

On this 19 day of August, 20 14, before me a Notary Public within and for said County personally appeared Mike Magline + Christina M. Sejin, to be personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Clerk of the CITY OF EAGAN, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council, and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.

Carol Tumini  
Notary Public



Adopted this 11<sup>th</sup> day of August, 2014

CITY OF PRIOR LAKE

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_

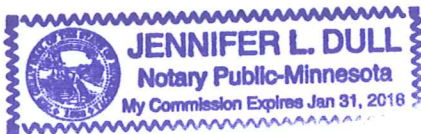
Its: \_\_\_\_\_

STATE OF MINNESOTA

SS.

COUNTY OF SCOTT

On this 11<sup>th</sup> day of August, 2014, before me a Notary Public within and for said County personally appeared fit and \_\_\_\_\_, to be personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Clerk of the CITY OF PRIOR LAKE, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council, and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.



A handwritten signature in blue ink, appearing to read "Jennifer L. Dull", written over the notary seal.

Adopted this 2<sup>nd</sup> day of September, 2014

CITY OF ROSEMOUNT

By: William H. Rueter

Its: Mayor

ATTEST:

By: Chris Fisher

Its: city clerk

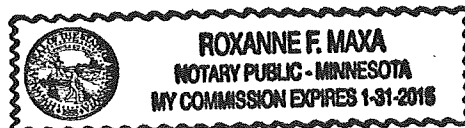
STATE OF MINNESOTA

ss.

COUNTY OF DAKOTA

On this 4<sup>th</sup> day of Sept 2014, before me a Notary Public within and for said County personally appeared fit and \_\_\_\_\_, to be personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Clerk of the CITY OF ROSEMOUNT, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council, and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.

Roxanne F. Maxa



Adopted this 18<sup>th</sup> day of Aug, 2014

CITY OF SAVAGE

By: Janet Williams Janet Williams

Its: Mayor

ATTEST:

By: Barry A. Stock

Its: City Administrator

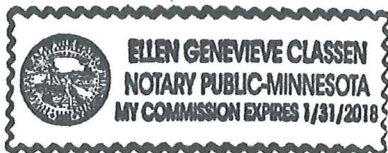
STATE OF MINNESOTA

ss.

COUNTY OF SCOTT


On this 18<sup>th</sup> day of Aug, 2014, before me a Notary Public within and for said County personally appeared fit and \_\_\_\_\_, to be personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Clerk of the CITY OF SAVAGE, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed in behalf of said municipality by authority of its City Council, and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.

Ellen Classen



DAKOTA COUNTY

RECOMMENDED FOR APPROVAL:

By: 

Its: Physical Development Director / Date

COUNTY BOARD RESOLUTION:

No: 14-412 Date: 8-26-14


C 002 40 96-1

APPROVED AS TO FORM:

By: Karen Schaffer 9/2/14

Its: Assistant County Attorney / Date

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By: 

Its: Chair, Board of Commissioners

Date: 9/8/14

ATTEST



Its: Clerk to the Board

Date: 9/9/14

SCOTT COUNTY

RECOMMENDED FOR APPROVAL:

By: [Signature]  
Its: County Board Chair

APPROVED AS TO FORM:

By: [Signature]  
Its: County Administrator

COUNTY BOARD RESOLUTION:

No: 2014-156 Date: 9-9-14

By: [Signature]  
Assistant County Attorney  
Date: 10/3/14