



City Council Memorandum

To: Mayor Fasbender & City Council Members
From: Paige Marschall Bigler, Recreation Programming Specialist (City Recycling Coordinator)
Date: March 16, 2020
Item: Joint Powers Agreement with Dakota County to Operate a Residential Organics Drop-Off Site

Council Action Requested: Approve Joint Powers Agreement with Dakota County to operate a residential organics drop-off site for the period of March 1, 2020 to December 31, 2026

Background Information: Metropolitan counties are responsible for waste management policy and programs (Minn. Stat. §115A.551). By Resolution No. 18-493 (September 18, 2018), the Dakota County Board of Commissioners adopted the 2018-2036 Solid Waste Master Plan (Master Plan). The Master Plan includes a strategy to expand residential organics recovery and a tactic to co-develop and help with residential organics drop-off sites with priority municipalities and partners until curbside organics collection is widely available. Staff from the City of Hastings has requested, in partnership with Dakota County, for a residential organics drop-off site to be located in the City of Hastings at the Dakota County Highway Shop, 900 County Road 47. Dakota County staff analyzed the proposed location and determined that approximately 1,466 households would utilize this site, diverting approximately 92 tons of organics annually from land disposal or incineration. The drop-off site location would be available to all County residents. Currently, the County either operates or partners on four (4) residential organics drop-off sites located in West St. Paul, Eagan, Lakeville and Rosemount (Empire Township). There are currently 4,242 registered households diverting approximately 200 tons of organics per year from area landfills.

Overview: It is recommended that the City of Hastings and Dakota County partner to construct and operate a residential organics recycling drop-off site. The drop-off site will be located at the Dakota County Highway Shop, 900 County Rd 47 (south and west of the existing fuel pumps). The Joint Powers Agreement establishes City and County project responsibilities and costs.

- City Responsibilities Include: Promotion and communications collaboration; compostable bag purchases; daily site monitoring and maintenance; and administration for invoicing and reimbursement.
- County Responsibilities Include: Drop-Off Site construction and infrastructure Installation; hauler service retention and management; maintaining a list of acceptable materials and guidelines; developing and providing promotion; communication and training; reimbursing the City of Hastings for recurring operational expenses; and administering participant recruitment, registration, and ongoing communication. *Please also see Section 5.1 of the attached JPA*

concerning the County's commitment to deferred maintenance such as fence replacement, concrete repair or replacement, and electrical components.

Timing: Upon approval from the City of Hastings, the following timeline is proposed:

- Execute JPA
- Distribute a Participant Recruitment Letter in late April (Dakota County)
- Provide online program registration and distribute Participant Welcome Kits (begin in a late April – ongoing throughout program) (Dakota County)
- Construct Drop-Off Site Enclosure in early May (Dakota County)
- Provide voluntary training sessions to interested residents at Pleasant Hill Library (currently scheduled for May 20, 26, & 28) (Dakota County; City Optional)
- Open site to public on June 1 (Day to Day Maintenance performed by City or its designee)

Financial Impact: Dakota County is responsible for monthly hauling costs, enclosure construction costs and deferred maintenance. Dakota County will reimburse the City of Hastings for reoccurring compostable bag purchases. The complete financial impact is illustrated in Exhibit 1 within the attached JPA.

Advisory Commission Discussion: N/A

Council Committee Discussion: N/A

Attachments:

- Joint Power Agreement to Operate a Residential Organics Drop-off Site
- Board of County Commissioners Resolution No. 20-091

**JOINT POWERS AGREEMENT
BETWEEN THE COUNTY OF DAKOTA AND
THE CITY OF HASTINGS
TO OPERATE A RESIDENTIAL ORGANICS DROP OFF SITE**

This Agreement is between the County of Dakota (County) and the City of Hastings (Municipality).

WHEREAS, Minn. Stat. § 471.59 authorizes local governmental units to jointly or cooperatively exercise any power common to the contracting parties; and

WHEREAS, the County and the Municipality are governmental units as that term is defined in Minn. Stat. § 471.59; and

WHEREAS, Metropolitan counties are responsible for waste management policy and programs (Minn. Stat. §115A.551); and

WHEREAS, by Resolution No.18-493 (September 18, 2018), the Dakota County Board of Commissioners adopted the 2018-2036 Solid Waste Master Plan (Master Plan); and

WHEREAS, the Master Plan includes a strategy to expand opportunities for residential organics recovery; and

WHEREAS, the Master Plan includes a tactic to co-develop and provide assistance for residential organics drop off sites with priority municipalities and/or partners until curbside organics collection is widely available; and

WHEREAS, the city of Hastings asked, in partnership with the County, for an organics drop-off site to be located at the Dakota County Highway Shop at 900 County Road 47 in Hastings; and

WHEREAS, the County receives Select Committee on Recycling and the Environment (SCORE) funds from the state to implement landfill abatement programs; and

WHEREAS, Minn. Stat. § 115A.557 requires the County to expend a portion of the state-allocated SCORE funds on organics programming; and

WHEREAS, allocated SCORE funds are used for residential organics drop sites at Thompson County Park, Lebanon Hills Regional Park, the Mulch Store, and the Lakeville Water Treatment Facility; and

WHEREAS, Municipality responsibilities include: promotion and communications collaboration; compostable bag purchases; daily site monitoring and maintenance; and administration for invoicing and reimbursement; and

WHEREAS, County responsibilities include: drop-off site construction and infrastructure installation; maintaining a list of acceptable organic materials and guidelines; developing and providing promotion, communications materials, and training; reimbursing the Municipality for recurring operational expenses; and administering participant recruitment, registration, and ongoing communication.

NOW, THEREFORE, in consideration of the mutual promises and benefits that the County and Municipality shall derive from this Agreement, the County and Municipality hereby enter into this Agreement for the purposes stated herein.

**SECTION 1
PURPOSE**

The purpose of this Agreement is to provide for cooperation and funding between the County and the Municipality for the operation of a residential organics drop off facility.

SECTION 2 PARTIES

The parties to this Agreement are the County and the Municipality.

SECTION 3 TERM

Notwithstanding the dates of the signatures of the parties, this Agreement shall be in effect March 1, 2020, and shall continue in effect until December 31, 2026, or until curbside organics collection is offered to residents in the Municipality whichever comes first, or until termination in accordance with the provisions herein. This Agreement may be amended in accordance with Section 11.

SECTION 4 COOPERATION

The County and the Municipality agree to cooperate and use their reasonable efforts to ensure prompt implementation of the various provisions of this Agreement and to, in good faith, undertake resolution of any dispute in an equitable and timely manner.

SECTION 5 RESPONSIBILITIES OF PARTIES

5.1 County Responsibilities. The County shall:

- A. Ensure any necessary residential drop off location approvals from the state, county, or municipality are fulfilled.
- B. Provide one drop-off site within the Municipality accessible from 5:00 a.m. – 10:00 p.m. daily for Dakota County residents to drop off acceptable organic materials.
- C. Maintain a list of acceptable organic materials, compostable bag specifications, and drop site guidelines on the County's website.
- D. Develop and supply outreach, education, and communications materials to the Municipality.
- E. Provide recurring drop-off site participation promotion.
- F. Retain and manage contractor to build enclosure and related infrastructure.
- G. Purchase and install access lock; signs, labels; bulletin board; and compostable bag storage case.
- H. Retain, manage, and pay for licensed waste hauling services including carts or dumpsters for organics collection from drop-off site to a licensed and/or permitted facility using adequate dumpster sizes and at a frequency necessary to support a clean and well-maintained site, and not less than one collection per week.
- I. Provide the waste hauling services pickup schedule to the Municipality.
- J. Reimburse drop-off site costs to the Municipality, including for: recurring costs for compostable bags; and other supplies and services with pre-approval from the County liaison.
- K. Recruit participants through direct mail to all households located in the Municipality.
- L. Assume cost of deferred maintenance such as fence replacement , concrete repair or replacement, and electrical components

- M. Administer participant recruitment, registration, training, and ongoing participant communication.
- N. Provide a dedicated organics email for direct contact to County drop-off site coordinator for residents and Municipality for daily communication.

5.2 Municipality Responsibilities. The Municipality shall:

- A. Provide training location and participate in up to three participant training sessions at no charge to the County.
- B. Collaborate for implementation and recurring promotion using County-supplied materials.
- C. Refer all participation inquiries to the County's designated email.
- D. Communicate to County's dedicated email any and all plans or unforeseen circumstances impacting participant use of the sites(s).
- E. Purchase and store a sufficient supply of BPI-certified compostable bags for use at the drop-off site at a size determined by the County for residential use.
- F. Provide daily monitoring (Monday-Friday) and necessary maintenance of drop-off area (Monday-Sunday) to ensure a clean, safe, and accessible drop off for residents, including: snow and ice removal; enclosure structure, door, lock, signage, labels, and compostable bag case cleanliness and operation; certified-compostable bag restocking; and dumpster capacity observations to ensure proper sizing and hauling frequency.
- G. Restock compostable bags at least once each day Monday – Friday.
- H. Observe dumpster capacity no later than 24 hours prior to scheduled collection service and report to the County's dedicated email at least weekly.
- I. Submit itemized invoices to the County in accordance with Section 6 for recurring organics drop site expenses, including: compostable bags; and other supplies and services with pre-approval from the County liaison.

**SECTION 6
FUNDING**

6.1 FUNDING AMOUNT. The allocated funding for the Municipality shall be in the total amount not to exceed \$25,396 as set forth in Exhibit 1.

6.2 FUNDING PAYMENT. The Municipality shall submit itemized invoices to the County covering annual drop-off site expenses by June 30 of each program year and February 1 following the program year. Costs not billed to the County by February 1 of a given calendar year may not be eligible for reimbursement. The invoices shall be paid within 35 days from the presentation of the claim.

6.3 ELIGIBLE EXPENSES. Municipality may use allocated funds only on eligible items as identified in Section 5 and includes recurring costs for compostable bags; and other supplies and services including necessary maintenance with pre-approval from the County liaison.

**SECTION 7
PROPERTY**

Upon termination of this Agreement, any necessary infrastructure purchased by the County and provided to the Municipality shall be the sole property of the County.

SECTION 8 INDEMNIFICATION

8.1 IN GENERAL. Each party to this Agreement shall be liable for the acts of its officers, employees or agents and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents.

8.2 LIMITATIONS. The provisions of Minn. Stat. § 471.59, the Municipal Tort Claims Act, Minn. Stat. ch. 466 and other applicable laws govern liability of the County and the Municipality. In the event of any claims or actions are filed against either Party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the Individual Parties.

8.3 SURVIVORSHIP. The provisions of this Section shall survive the expiration or termination of this Agreement.

SECTION 9 AUTHORIZED REPRESENTATIVES AND LIAISONS

9.1 AUTHORIZED REPRESENTATIVES: The following named persons are designated the Authorized Representatives of the parties for purposes of this Agreement. These persons have authority to bind the party they represent and to consent to modifications, except that the authorized representative shall have only the authority specifically or generally granted by their respective governing boards. Notice required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement.

TO THE COUNTY

Georg T. Fischer
Environmental Resources Director
Western Service Center
14955 Galaxie Avenue
Apple Valley, MN 55124

TO THE MUNICIPALITY

Mary Fasbender, Mayor
101 4th Street East
Hastings, MN 55033

In addition, notification to the County regarding termination under Section 10 of this Agreement by the other party shall be provided to the Office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, MN 55033.

9.2 LIAISONS. To assist the parties in the day-to-day performance of this Agreement, to ensure compliance, and provide ongoing consultation, a liaison shall be designated by the County and the Municipality. The County and the Municipality shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of execution of this Agreement, the following persons are the designated liaisons:

County Liaison: John Exner, or successor
Telephone: (952) 891-7112
Email: john.exner@co.dakota.mn.us

Municipality Liaison: Name: Paige Marschall Bigler
Telephone: (651) 480-6182
Email: pmarschall@hastingsmn.gov

SECTION 10 TERMINATION

10.1 IN GENERAL. Either party may terminate this Agreement for cause by giving seven days' written notice or without cause by giving thirty (30) days' written notice, of its intent to terminate, to the other party. Such notice to terminate for cause shall specify the circumstances warranting termination of the Agreement. Cause shall mean a material breach of this Agreement and any supplemental agreements or amendments thereto. Notice of Termination shall be made by certified mail or personal delivery to the authorized representative of the other party. Termination of this Agreement shall not discharge any liability, responsibility or right of any party, which arises from the performance of or failure to adequately perform the terms of this Agreement prior to the effective date of termination.

10.2 TERMINATION BY COUNTY FOR LACK OF FUNDING. Notwithstanding any provision of this Agreement to the contrary, the County may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies, or other funding source, or if its funding cannot be continued at a level sufficient to allow payment of the amounts due under this Agreement. Written notice of termination sent by the County to the Municipality by email or facsimile is sufficient notice under this section. The County is not obligated to pay for any services that are provided after written notice of termination for lack of funding. The County will not be assessed any penalty or damages if the Agreement is terminated due to lack of funding.

SECTION 11 GENERAL PROVISIONS

11.1 COMPLIANCE WITH LAWS/STANDARDS. The County and Municipality agree to abide by all federal, state or local laws, statutes, ordinances, rules and regulations now in effect or hereafter adopted pertaining to this Agreement or to the facilities, programs and staff for which either party is responsible.

11.2 EXCUSED DEFAULT – FORCE MAJEURE. Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

11.3 CONTRACT RIGHTS CUMULATIVE NOT EXCLUSIVE

- A. All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. The rights and remedies provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- B. Waiver. Any waiver is only valid when reduced to writing, specifically identified as a waiver, and signed by the waiving party's Authorized Representative. A waiver is not an amendment to the Contract. The County's failure to enforce any provision of this Contract does not waive the provision or the County's right to enforce it.

11.4 RECORDS RETENTION AND AUDITS. Each party's bonds, records, documents, papers, accounting procedures and practices, and other records relevant to this Agreement are subject to the examination, duplication, transcription and audit by the other party, the Legislative Auditor or State Auditor under Minn. Stat. § 16C.05, subd. 5. If any funds provided under this Agreement use federal funds these records are also subject to review by the Comptroller General of the United States and his or her approved representative. Following termination of this Agreement, the parties must keep these records for at least six years or longer if any audit-in-progress needs a longer retention time.

11.5 MODIFICATIONS. Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the authorized representatives of the County and Municipality.

11.6 ASSIGNMENT. Neither party may assign any of its rights under this Agreement without the prior written consent of the other party. Said consent may be subject to conditions.

11.7 GOVERNMENT DATA PRACTICES. For purposes of this Agreement, all data on individuals collected, created, received, maintained or disseminated shall be administered consistent with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13.

11.8 MINNESOTA LAW TO GOVERN. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in Dakota County, Minnesota or U.S. District Court, District of Minnesota. The provisions of this section shall survive the expiration or termination of this Agreement.

11.9 MERGER. This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings, or agreements. There are no representations, warranties, or provisions, either oral or written, not contained herein.

11.10 SEVERABILITY. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

DAKOTA COUNTY

Georg T. Fischer, Director, Environmental
Resources Department
Date of Signature: _____

CITY OF HASTINGS

Mary Fasbender, Mayor
Date of Signature: _____

APPROVED AS TO FORM:

/s/ Helen R. Brosnahan 3/9/20
Assistant County Attorney/Date

KS-20-126

County Board Res. No. 20-091

Attest _____

(title)
Date of Signature: _____

| Exhibit 1 | | | |
|--|--------------------------|-------------------------|-------------------|
| Joint Powers Agreement for Organics Drop-Off Site | | | |
| County of Dakota and City of Hastings | | | |
| Item | Annual Cost | Term (Years) | Total Cost |
| Certified Compostable Bags | \$ 4,232.70 | 6 | \$ 25,396 |
| Six-Year Cost (Reimbursable to City of Hastings) | | | \$ 25,396 |
| Item | Construction Cost | Term | Total Cost |
| Fence Quote | \$ 9,105 | 1 | \$ 9,105 |
| Concrete Quote | \$ 5,324 | 1 | \$ 5,324 |
| Lighting (Pole and Electrical Work) | \$ 12,000 | 1 | \$ 12,000 |
| Metal Signs | \$ 200 | 1 | \$ 200 |
| Pelican Bag Case/Bag Dispenser | \$ 277 | 1 | \$ 277 |
| Door Lock | \$ 529 | 1 | \$ 529 |
| Bulletin Board | \$ 384 | 1 | \$ 384 |
| Collection & Disposal Cost | | 6 | \$ 10,902 |
| Six-Year Cost (Non-Reimbursable) | | | \$ 38,721 |
| Total Project Cost - Six-Year Term | | | \$ 64,117 |

**BOARD OF COUNTY COMMISSIONERS
DAKOTA COUNTY, MINNESOTA**

February 25, 2020
Motion by Commissioner Egan

Resolution No. 20-091
Second by Commissioner Gaylord

Authorization To Execute Joint Powers Agreement With City Of Hastings To Operate Residential Organics Drop-Off Site

WHEREAS, Minn. Stat. § 471.59 authorizes local governmental units to jointly or cooperatively exercise any power common to the contracting parties; and

WHEREAS, Dakota County and the Municipality are governmental units as that term is defined in Minn. Stat. § 471.59; and

WHEREAS, Metropolitan counties are responsible for waste management policy and programs (Minn. Stat. §115A.551); and

WHEREAS, by Resolution No.18-493 (September 18, 2018), the Dakota County Board of Commissioners adopted the 2018–2036 Solid Waste Master Plan (Master Plan); and

WHEREAS, the Master Plan includes a strategy to expand opportunities for residential organics recovery; and

WHEREAS, the Master Plan includes a tactic to co-develop and provide assistance for residential organics drop-off sites with priority municipalities and/or partners until curbside organics collection is widely available; and

WHEREAS, the City of Hastings (City) has requested to provide a residential organics drop-off site in collaboration with the County; and

WHEREAS, Dakota County receives Select Committee on Recycling and the Environment (SCORE) funds from the state to implement landfill abatement programs; and

WHEREAS, Minn. Stat. § 115A.557 requires Dakota County to expend a portion of the state-allocated SCORE funds on organics programming; and

WHEREAS, allocated SCORE funds were used for residential organics drop-off sites at Thompson County Park (2016), Holland Lake (2017), Lakeville Water Treatment Facility (2019), and The Mulch Store (2019); and

WHEREAS, the City responsibilities include promotion and communications collaboration, compostable bag purchases, daily site monitoring and maintenance, and administration for invoicing and reimbursement; and

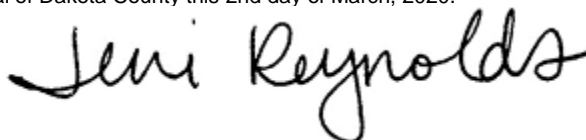
WHEREAS, County responsibilities include drop-off site construction and infrastructure installation; hauler service retention and management; maintaining a list of acceptable organic materials and guidelines; developing and

**STATE OF MINNESOTA
County of Dakota**

| | VOTE |
|----------------|-------------|
| Slavik | Yes |
| Gaylord | Yes |
| Egan | Yes |
| Atkins | Yes |
| Workman | Yes |
| Holberg | Yes |
| Gerlach | Yes |

I, Jennifer Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 25th day of February, 2020, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 2nd day of March, 2020.



Clerk to the Board

providing promotion, communications materials, and training; reimbursing the City for recurring operational expenses; and administering participant recruitment, registration, and ongoing communication; and

WHEREAS, staff recommends executing a joint powers agreement with the City to operate a residential organics drop-off site for Dakota County residents for the period of March 1, 2020, to December 31, 2026, or until curbside collection of residential organics is widely available.

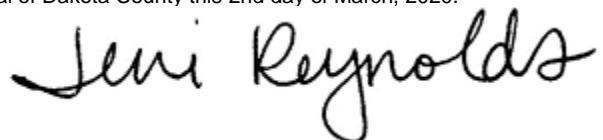
NOW, THEREFORE, BE IT RESOLVED, That the Dakota County Board of Commissioners hereby authorizes the County Manager, or designee, to execute a joint powers agreement with the City of Hastings to operate a residential organics drop-off site located at the Dakota County Highway Shop, 900 Highway 47 in the City of Hastings for the period of March 1, 2020, to December 31, 2025, or until curbside residential organics collection is offered in the City of Hastings and not to exceed \$25,396 for the six-year term as substantially presented on February 11, 2020, to the Physical Development Committee of the Whole, subject to approval by the County Attorney's Office as to form.

STATE OF MINNESOTA
County of Dakota

| | VOTE |
|---------|------|
| Slavik | Yes |
| Gaylord | Yes |
| Egan | Yes |
| Atkins | Yes |
| Workman | Yes |
| Holberg | Yes |
| Gerlach | Yes |

I, Jennifer Reynolds, Clerk to the Board of the County of Dakota, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Dakota County, Minnesota, at their session held on the 25th day of February, 2020, now on file in the County Administration Department, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal of Dakota County this 2nd day of March, 2020.



Clerk to the Board