



City Council Memorandum

To: Mayor Fasbender & City Council Members

From: John Caven, Assistant City Engineer

Date: January 26, 2022

Item: Approve Joint Powers Agreement between Dakota County and the City of Hastings for the Wetland Health Evaluation Program (WHEP)

Council Action Requested:

The council is requested to approve the Joint Powers Agreement between Dakota County and the City of Hastings for the Wetland Health Evaluation Program.

Background Information:

Hastings has partnered with Dakota County since 1999 to inspect four Hastings area ponds/wetlands to determine its overall wetland health. Dakota County trains volunteers to analyze a pond/wetland's health by studying the plant and insect life. Over time, trend lines are graphed to show how a pond/wetland is improving or declining to which provides the City valuable insight on how surrounding land management practices affect wetland health. A four year agreement is required from each of the nine participating Dakota County cities and runs through 2026. The City of Hastings agrees to help promote the program, identify the four ponds/wetlands to be inspected, and provide financial assistance to cover the inspection costs.

Financial Impact:

The financial assistance is paid from the "Expert and Consultant" fund in the amount of \$3,600.00.

Attachments:

Joint Powers Agreement between Dakota County and the City of Hastings for the Wetland Health Evaluation Program

**JOINT POWERS AGREEMENT
BETWEEN DAKOTA COUNTY AND THE CITY OF HASTINGS
FOR THE WETLAND HEALTH EVALUATION PROGRAM**

The parties to this Agreement are the County of Dakota, a political subdivision of the State of Minnesota (County) and the City of Hastings (City), a governmental and political subdivision of the State of Minnesota. This Agreement is made pursuant to the authority conferred upon the parties by Minn. Stat. § 471.59.

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

**SECTION 1
PURPOSE**

The purpose of this Agreement is to facilitate the analysis of wetlands located with the City through the Dakota County Wetland Health Evaluation Program (WHEP), which is coordinated and managed by the County, to obtain data and other information to assist both parties in performing their responsibilities under the Minnesota Wetland Conservation Act.

**SECTION 2
TERM**

Notwithstanding the date of the signatures of the parties, the term of this Agreement shall commence on January 1, 2022, and shall continue in full force and effect until December 31, 2026, unless earlier terminated by law or according to the provisions of this Agreement.

**SECTION 3
COOPERATION**

The parties 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 4
EXERCISE OF POWERS**

The parties to this Agreement agree that the County shall administer the funds collected hereunder and disburse these funds for expenses incurred by WHEP.

**SECTION 5
POWERS AND DUTIES OF THE COUNTY**

- 5.1 The County shall administer the WHEP funds on behalf of the City.
- 5.2 The County shall serve as fiscal agent for the funds collected hereunder. The County shall establish and maintain such funds and accounts as may be required by generally accepted accounting practices.
- 5.3 The County may apply for and accept gifts, grants, loans and money, other property or assistance from federal or state agencies, or any other person to carry out the WHEP in Dakota County.
- 5.4 The County may use funds to hire and retain a monitoring coordinator, a non-profit agency, consulting firms and such other personnel as may be needed to provide the services contemplated under this Agreement. Notwithstanding the foregoing, the parties agree that WHEP is a volunteer-based program and that data collection shall be performed solely by volunteers trained by the County. All volunteers participating in the WHEP shall be considered agents of the County and not agents of the City.

**SECTION 6
FUNDING**

On or before March 31 each year of the term of this Agreement, the County shall provide to the City a complete WHEP fee schedule for that calendar year, including an itemization of the fee for analyzing each wetland and the fee for performing a quality assurance recheck to enable the City to evaluate whether to participate in the WHEP for that year. If the City elects to participate in the WHEP for that year, the City shall notify the County and the County shall provide the services described herein. On or about July 1 of each year that the City elects to participate, the County shall submit an invoice to the City for the WHEP fees for that year and the City shall remit payment to the County within 30 days after receipt of such invoice.

**SECTION 7
WHEP TIMELINE**

The parties agree to the following timeline for each year of the term of this Agreement:

Spring	The County shall provide a WHEP fee schedule to the City and the City shall notify the County if the City elects to participate in the WHEP for that calendar year and identify the specific wetlands to be analyzed.
Late Spring and Summer	Trained volunteers shall collect data regarding the quantity and variety of plants and macroinvertebrates within each City designated wetland, making note of any invasive species sighted. A consultant hired by the County shall conduct a quality assurance recheck based on monitoring protocols.
Fall	The consultant hired by the County shall compile and analyze the data collected for all wetlands within the City under the WHEP and prepare a written report on the same.
Winter	The County shall deliver to the City the consultant’s written report and the data collected for all wetlands analyzed within the City.

**SECTION 8
INDEMNIFICATION**

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. The provisions of the Municipal Tort Claims Act, Minn. Stat. ch. 466 and other applicable laws govern liability of the County and the City. 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 Fischer or successor, Director Environmental Resources Department 14955 Galaxie Avenue Apple Valley, MN 55124
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TO THE CITY: Mary Fasbender or successor, Mayor
City of Hastings
101 4th Street East Third Street
Hastings, MN 55033

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

9.2 Liaisons. To assist the parties in the day-to-day performance of this Agreement and to ensure compliance and provide ongoing consultation, a liaison shall be designated by the County and the City. The parties 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
Paula Liepold, or successor
Telephone: (952) 891-7117
Email: paula.liepold@co.dakota.mn.us

City Liaison
John Caven, or successor
Telephone: 651-480-2369
Email: jcaven@hastingsmn.gov

**SECTION 10
TERMINATION**

Either party may terminate this Agreement at any time upon 90 days written notice to the other party.

**SECTION 11
GENERAL PROVISIONS**

11.1 Compliance with Laws/Standards. The City and the County 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 for any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be construed to be modification for the terms of this Agreement unless stated to be such in writing and signed by authorized representatives of the County and the City.

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 the City.
- 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. 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.
- 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.

APPROVED AS TO FORM:

DAKOTA COUNTY

/s/Helen R. Brosnahan 1/7/22
 Assistant County Attorney/Date
 KS-21-438-004
 County Board Res. No. 21-606

By _____
 Georg Fischer or successor, Director
 Environmental Resources Department
 Date of Signature: _____

CITY OF HASTINGS

By _____
 Mary Fasbender or successor, Mayor
 Date of Signature: _____

By _____
 Kelly Murtaugh or successor, City Clerk
 Date of Signature: _____