

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

This Agreement is between the County of Dakota (County) and the City of Apple Valley (City).

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

WHEREAS, the County and the City 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 aid with residential organics drop-off sites with cities, until curbside organics collection is widely available; and

WHEREAS, the City is willing to provide for an organics drop-off site to be located at its Central Maintenance Facility; 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 facilities throughout the County; and

WHEREAS, City responsibilities include: providing one drop-off location to collect organics from Dakota County residents; retaining a licensed hauler; collaborating with the County on promotion and communications; purchasing and storing compostable bags; monitoring daily and maintaining the site; and administering invoice and reimbursement submittals; and

WHEREAS, County responsibilities include: maintaining a list of acceptable organic materials and guidelines; developing and providing promotion; communications materials, and training; reimbursing the City for infrastructure installation; 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 City shall derive from this Agreement, the County and City 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 City for the operation of a residential organics drop-off site.

**SECTION 2
PARTIES**

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

**SECTION 3
TERM**

Subject to termination pursuant to Section 10, this Agreement shall be in effect [INSERT CONSTRUCTION START DATE], and shall continue in effect until December 31, 2028, or until curbside organics collection is offered to residents in the City whichever comes first.

**SECTION 4
COOPERATION**

The County and the City 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 are fulfilled.
- B. Maintain and widely distribute to County residents a list of acceptable organic materials, compostable bag specifications, and drop-off site guidelines.
- C. Develop and supply outreach, education, and communications materials to County residents.
- D. Provide recurring drop-off site participation promotion.

- E. Reimburse the City's costs of installing bag distribution boxes, signage, and labels; acquiring compostable bags; organics hauling and disposal service fees; maintenance of the drop-off site, including any contamination or other identified charge or expense incurred by the City in the removal of non-organic material or resulting from the deposit of non-organic material; preparation and distribution of promotional material; and the acquisition and use of other supplies and services with pre-approval from the County liaison. Reimbursement shall be made within 35 days of the receipt of an invoice from the City.
- F. Recruit initial participants through direct mail to households located in the City.
- G. Administer participant recruitment, registration, training, and ongoing communication to residents of the City.
- H. Provide a dedicated organics email for direct contact to County Liaison for residents and City for regular communication.
- I. Provide appropriate drop-off site signage and labels to the City.

5.2 CITY RESPONSIBILITIES. The City shall:

- A. Provide at least one convenient and safe drop-off site, which is accessible from 5:00 am – 10:00 pm daily for Dakota County residents to drop off acceptable organics.
- B. Notify County liaison if any local approvals or notifications are required.
- C. Retain, manage, and pay for licensed waste hauler services including container(s) for organics collection and delivery of collected organics from drop-off site to a permitted and licensed commercial compost facility using adequate container size and at a frequency necessary for a clean, well-maintained site, and at a frequency not less than one collection per week.
- D. Provide the waste hauling pickup schedule to the County.
- E. Obtain County approval prior to changes to hauling frequency if less than once per week.
- F. Install bag distribution box, program signage, and labels.
- G. Collaborate for implementation and recurring promotion using County-supplied materials.
- H. Refer all participation inquiries to the County's Liaison.
- I. Communicate to County's dedicated email all plans or unforeseen circumstances impacting participant use of the site (e.g., nearby construction, site maintenance).

- J. 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.
- K. Provide daily monitoring (Monday-Friday) and necessary maintenance of drop-off area (Monday-Sunday) to ensure a clean, safe, and accessible drop-off site for residents including snow and ice removal; certified-compostable bag restocking; and container capacity observations to ensure proper sizing and hauling frequency.
- L. Restock compostable bags at least once each day Monday – Friday, or as needed to ensure a continuous supply of compostable bags is available for participants.
- M. Observe container capacity no later than 24 hours prior to scheduled collection service and report to the County’s dedicated email at least monthly the used capacity of the container.
- N. Submit itemized invoices to the County in accordance with Section 6.2 for organics drop-off site expenses, including: infrastructure installation; compostable bags; organics hauling and disposal service fees; and other supplies and services with pre-approval from the County Liaison.

**SECTION 6
FUNDING**

6.1 FUNDING AMOUNT. The allocated funding for the City shall be in the total amount not to exceed \$[INSERT CALCULATED SIX-YEAR COST] as set forth in Exhibit 1.

6.2 FUNDING PAYMENT. The City 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 request reimbursement of allocated funds only for eligible items as identified in Section 5 and includes recurring costs for compostable bags; organics hauling and disposal service fees; 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 to install the site (e.g., enclosure, signs, bag distribution boxes) purchased by the County and provided to the City shall be the sole property of the City.

**SECTION 8
LIABILITY**

8.1 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 City. 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 DISPOSAL. The County shall defend, indemnify, and hold the City harmless from all claims, demands, penalties, fines, remedial actions, and liability due to the County or its agents conduct or legal obligations under this contract made or imposed against the City in connection with the disposal of materials (organics and non-organics) deposited at the City drop-off site.

8.4 INDEMNITY. Except as to the obligation set forth in 8.3, each party shall defend, indemnify, and hold the other party against one party, following an independent determination that such liability or imposition was due to the failure by the other to perform its obligations under this agreement.

8.5 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 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 COUNTY:
Nikki Stewart, Director
Environmental Resources Department
14955 Galaxie Avenue
Apple Valley, MN 55124

TO CITY:
Pamela J. Gackstetter, or successor
Apple Valley Municipal Center
7100 147th Street
Apple Valley, MN 55124

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 City. The County and the City 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

CITY LIAISON:

Matt Saam, or successor

Telephone: (952) 953-2412

Email: Matt.saam@applevalleymn.gov

**SECTION 10
TERMINATION**

10.1 IN GENERAL. Either party may terminate this Agreement by giving thirty (30) days' written notice of its intent to terminate, to the other party. 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 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 City 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 City 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 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 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 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

Approved as to form:

Assistant County Attorney/Date
KS-22-31

County Board Res. No. _____

Nikki Stewart, Director
Environmental Resources Department

Date of Signature: _____

CITY OF APPLE VALLEY

Clint Hooppaw, Mayor, or successor
Date of Signature: _____

Pamela J. Gackstetter, Clerk, or successor
Date of Signature: _____