

**2023-2027 HOST FEE AGREEMENT
BETWEEN
DAKOTA COUNTY
AND
BURNSVILLE SANITARY LANDFILL, INC.
FOR THE BURNSVILLE DEM/CON LANDFILL**

**SECTION 1
RECITALS**

1.1 Parties to Agreement. This Host Fee Agreement ("Agreement") is made and entered into this ____ day of _____, 2022, by and between the County of Dakota ("the County"), a political subdivision of the State of Minnesota, and Burnsville Sanitary Landfill, Inc. ("BSLI"), a Minnesota corporation and wholly owned subsidiary of Waste Management of Minnesota, Inc., collectively referred to as the "Parties".

1.2 The Landfill. BSLI is the owner and operator of the Burnsville Demolition Landfill ("the Landfill") which is located in the City of Burnsville, Dakota County, Minnesota, and which accepts demolition waste, construction debris, and industrial waste for disposal. For purposes of this Agreement, the Landfill does not include the Burnsville Sanitary Landfill that is also owned by BSLI.

1.3 Landfill Regulation. BSLI has obtained a permit from the Minnesota Pollution Control Agency and a license from the County to construct and operate the Landfill as a demolition waste disposal facility. BSLI is permitted and licensed under Minnesota law to accept demolition waste, construction debris, and industrial waste at the Landfill.

1.4 County Fees. BSLI recognizes that pursuant to Minn. Stat. § 373.41 the County has authority to impose miscellaneous fees for services it provides. BSLI recognizes that the County has the authority under Minn. Stat. § 115A.919 to impose a surcharge for all non-exempt waste that is disposed at the Landfill.

1.5 Prior Host Community Fee Agreements. BSLI and the County have executed a numerous Host Fee Agreements, in lieu of the landfill surcharge fee for demolition waste, construction debris, and industrial waste as those terms are defined in Dakota County Ordinance 110, section 2.30, 2.23, and 2.45 disposed at the Landfill, in the previous 20 years, the most recent of which expired on December 31, 2017.

1.6 Purpose. This Agreement is entered into for the purpose of establishing the terms of a Host Fee Agreement between the County, as the host community to the Landfill, and BSLI as the owner and operator of the Landfill.

**SECTION 2
AUTHORITY**

2.1 County Authority. The County enters into this Agreement pursuant to the powers granted to it by Minn. Stat. chs. 115A, 371, 375, and 473, and by authorization of the Dakota County Board of Commissioners.

2.2 BSLI Authority. BSLI enters into this Agreement pursuant to the powers granted to it by Minn. Stat. ch. 302A and by authorization of its Board of Directors.

**SECTION 3
DEFINITIONS**

The following terms, unless specifically defined elsewhere in this Agreement, shall have the following meanings:

3.1 Construction Debris. "Construction debris" has the meaning given it by Dakota County Ordinance 110, Section 2.23, as the same may be amended from time to time. As of the date of the signatures of the Parties to this Agreement, construction debris means waste building materials, packaging and rubble resulting from construction, remodeling and repair.

3.2 Demolition Waste. "Demolition waste" has the meaning given it by Dakota County Ordinance 110, Section 2.30, as the same may be amended from time to time. As of the date of the signatures of the Parties to this Agreement, demolition waste means waste resulting from the demolition of man-made structures, and other similar materials specifically approved by the Dakota County Environmental Resources Department ("Department") and excludes asbestos and other

materials specifically prohibited by Dakota County Ordinance 110 and the Department. Demolition waste only includes demolition waste that BSLI is licensed to accept at the Landfill subject to this agreement. .

3.3 Industrial Waste. "Industrial waste" has the meaning given it by Dakota County Ordinance 110, Section 2.45, as the same may be amended from time to time. As of the date of the signatures of the Parties to this Agreement, industrial waste means all solid waste generated from an industrial or manufacturing process, and solid waste generated from non-manufacturing activities such as service and commercial establishments and chemical and debris contaminated soil from spills; property clean up, and development activities. Industrial waste does not include office materials, restaurant and food preparation waste, discarded machinery, demolition waste, or household waste. Industrial waste only includes industrial waste that BSLI is licensed to accept at the Landfill subject to this Agreement.

SECTION 4 TERM

Notwithstanding the date of signatures of the Parties, the term of this Agreement shall commence on January 1, 2023, and shall continue through December 31, 2027, or until the date the permitted capacity of the Landfill is filled, whichever occurs first, unless terminated earlier pursuant to Section 6.2.

SECTION 5 PAYMENT OF HOST FEE

5.1 Host Fee. In consideration for the County serving as a host community to the Landfill including all the costs, obligations and burdens the Landfill imposes on the County, BSLI shall pay to the County a host fee of \$0.50 per ton for every ton of demolition waste, construction debris, and industrial waste, or fraction thereof, accepted for disposal at the Landfill.

5.2 County Use of Host Fee. The County may use the host fees for any public purpose. The County is not restricted to those uses for surcharge fees enumerated in Minn. Stat. § 115A.919.

5.3 Other Fees. Nothing in this Agreement may be construed to limit the County's authority to impose solid waste facility fees, solid waste management service fees, and environmental or public health services fees.

5.4 Procedures for Fee Payment. The following procedures shall be utilized for the payment of host fees:

- A. BSLI shall record the weight of all demolition waste, construction debris, and industrial waste (collectively "waste") that is disposed at the Landfill consistent with the requirements of Dakota County Ordinance 110 and the license issued by the County. The amount of waste received shall be weighed and reported in tons, rather than cubic yards.
- B. BSLI shall file a monthly return on a form prescribed by the County. The monthly return shall include: (1) the amount of waste accepted and disposed at the Landfill; (2) the host fee due; and (3) such other information as may be required by the County to administer this Agreement.
- C. Both the monthly return and corresponding host fee payment shall be provided to the County on or before the 20th day of each month immediately following the month in which the waste was received at the Landfill. All host fee payments shall be made by electronic funds transfer.
- D. In the event the County does not receive BSLI's full monthly host fee payment by the 20th of each month, BSLI shall pay a late payment fee of 1% of the amount owed and, in addition, the amount owed shall accrue interest at the rate of 1% per month beginning on the 20th of the month following the month the payment was due, provided, however, that if the 20th of the month falls on a Saturday, Sunday, or bank holiday, the payment shall be due on the next bank business day following the Saturday, Sunday, or bank holiday.

5.5 Failure of BSLI to Perform. Unless cured under Section 6.1, the failure of BSLI to file the information required by Section 5.4, pay the host fees in a timely manner and in the proper amount, or both, shall constitute a default of this Agreement, and a violation of Dakota County Ordinance 110, Section 3.03 (Failure to Comply with License Conditions). BSLI may cure any failure to comply with Section 5.4 pursuant to Section 6.1 of this Agreement. If BSLI fails

to cure the deficiencies in performance consistent with Section 6.1, the County may terminate this Agreement pursuant to Section 6.2 and take any other enforcement or legal action within the County's authority.

SECTION 6 CURE AND TERMINATION

6.1 Cure.

- A. In General. Except as provided in Section 6.1(B), if BSLI or the County fail to comply with the requirements and obligations imposed by this Agreement, the defaulting party shall have thirty (30) calendar days to correct any deficiencies in its performance. The thirty (30) day cure period shall commence on the date that the defaulting party received written notice from the non-defaulting party of the failure to comply with the terms of this Agreement.
- B. Failure to Pay or Underpayment of Host Fees. In the event BSLI's monthly host fee payment is late or underpaid for any reason, BSLI shall have ten (10) working days to cure the late payment, underpayment, or both. The ten (10) day cure period shall commence on the date that BSLI receives written notice from the County of the late payment, underpayment, or both.

6.2 Termination. If a party has failed to comply with the requirements and obligations imposed by this Agreement, and that defaulting party has failed to cure the default in accordance with Section 6.1, the non-defaulting party may immediately terminate this Agreement by delivering or mailing notice of such termination to the defaulting party.

SECTION 7 GENERAL PROVISIONS

7.1 Consideration. BSLI acknowledges good and valuable consideration provided by the County for the making of this Agreement. In any action by the County to enforce the obligations of BSLI under this Agreement, or in any action by BSLI against the County to enforce the County's obligations under this Agreement, BSLI and the County hereby waive and agree not to assert any defense of lack of consideration.

7.2 Cooperation. The County and BSLI shall cooperate and use their reasonable efforts to ensure prompt implementation of the various provisions of this Agreement. The Parties agree to, in good faith, undertake resolution of any disputes in an equitable and timely manner.

7.3 Authorized Representatives/Notice. 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, except that, as to the County, the Authorized Representative shall have only the authority specifically or generally granted by the County Board. Written notice required to be provided pursuant to this Agreement shall be provided by certified mail to the following named persons and addresses. Such notice shall be effective as of the date of mailing.

If intended for the County:

Georg T. Fischer or successor, Director
Physical Development Division
Dakota County Western Service Center
14955 Galaxie Avenue
Apple Valley, MN 55124
Telephone: (952) 891-7007

If intended for BSLI

Frank Fello
President
Burnsville Sanitary Landfill, Inc.
2650 West Cliff Road
Burnsville, MN 55372
Telephone: (952) 656-5014

Or such other address as a party may notify the other party in accordance with this Section.

In addition, notification to the County regarding breach or termination shall be provided to the office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, Minnesota 55033.

In addition, notification to BSLI regarding breach or termination shall be sent to Micah Hamstra, Legal Counsel (mhamstra@wm.com), Waste Management, Inc., 720 E. Butterfield Road, 4th Floor, Lombard, Illinois 60148.

7.4 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 BSLI and the County. BSLI and the County 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:

BSLI Liaison:	Mike Miller, Sr. District Manager
Telephone:	(952) 656-5014
Email:	mmille20@wm.com

County Liaison:	Dave Magnuson
Phone Number:	(952) 891-7551
Email:	dave.magnuson@co.dakota.mn.us

7.5 Governing Law. 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 Minnesota.

7.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns.

7.7 BSLI's Responsibilities. This Agreement does not alter, amend or diminish BSLI's duties and legal responsibilities to comply with all local, county, state and federal laws, and all MPCA permit and County license conditions that apply to the Landfill. This Agreement does not restrict or in any way limit the County from bringing any enforcement or legal actions against BSLI for any other types of violation of Dakota County ordinances, state law, federal law, or conditions of the MPCA permit or County license issued for the Landfill.

7.8 Records. The County shall have full access to all records of BSLI relating to the performance of this Agreement. BSLI agrees to submit information in a form acceptable to Dakota County monthly that will justify the host fee payment submitted. BSLI agrees to maintain internal records relating to performance of this Agreement for six years following the termination of this Agreement but not longer than ten (10) years after creation of such documents. Such internal records shall be made available for audit or inspection at any time upon request of the County. The County agrees that all such BSLI internal records are confidential "trade secret information" as that term is used in Minn. Stat. § 13.37, Subd. 1(b).

7.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the payment of surcharge fees and host fees during the term of this Agreement, and supercedes all prior negotiations, understandings, agreements, or written proposals. This Agreement supercedes all former host fee agreements entered into between the Parties. There are no representations, warranties, or stipulations, either oral or written, not contained in this Agreement.

7.10 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 BSLI.

7.11 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.

7.12 Other Host Fee Agreements. During the term of this Agreement, if the County enters into host fee agreements with other demolition landfills, the County will use reasonable efforts to negotiate host fees that are no lower than the host fee in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

COUNTY OF DAKOTA

Approved as to form:

Assistant County Attorney/Date

County Board Res. No. ____ - _____

Georg T. Fischer
Director, Physical Development Division
Date of Signature _____

BURNSVILLE SANITARY LANDFILL, INC.
(Please have signature notarized.)

By _____
Signature
Frank Fello, President
Date of Signature _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2022, by Frank Fello, President, of Burnsville Sanitary Landfill, Inc. who being duly sworn, represents and warrants that he is authorized by law and all necessary board action to execute this contract on behalf of the corporation, intending this contract to be a legally binding obligation of the corporation.

Notary Public