

**2023-2027 HOST FEE AGREEMENT
BETWEEN
DAKOTA COUNTY
AND
BFI WASTE SYSTEMS OF NORTH AMERICA, LLC
FOR PINE BEND SANITARY 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 BFI Waste Systems of North America, LLC ("BFI"), a Delaware corporation and successor corporation to Pine Bend Landfill, Inc., collectively referred to as the "Parties".

1.2 The Landfill. BFI is the owner and operator of the Pine Bend Sanitary Landfill ("the Landfill") which is located in the City of Inver Grove Heights, Dakota County, Minnesota, and which accepts solid waste for disposal.

1.3 Landfill Regulation. BFI operates the Landfill pursuant to a permit issued by the Minnesota Pollution Control Agency ("MPCA"), a license issued by the County, and a conditional use permit issued by the City of Inver Grove Heights.

1.4 Landfill Surcharge Fees. Pursuant to the authority granted under Minn. Stat. § 115A.919, the County previously imposed a landfill abatement fee from approximately 1985 through November 18, 1997, also known as a landfill surcharge fee, upon all non-exempt solid waste that is disposed in the sanitary landfills located in the County.

1.5 Prior Host Community Fee Agreements. BFI and the County have executed numerous Host Fee Agreements in lieu of the landfill surcharge fee in the previous 20 years, the most recent of which will expire on December 31, 2022.

1.6 Obligation to Pay Fees. Except as otherwise provided in this Agreement, as the owner and operator of the Landfill, BFI is solely responsible for the payment to the County of any landfill surcharge fees that are lawfully established and imposed by the Dakota County Board of Commissioners for solid waste disposed in the Landfill.

1.7 Need for Landfill Capacity. The Parties acknowledge that Dakota County is the only county in the Seven County Metropolitan Area that currently has permitted and operating sanitary landfills, that the amount of permitted sanitary landfill capacity in Dakota County is limited, and that there is an ongoing need for sanitary landfill capacity to dispose of solid waste processing residues and solid waste that cannot be processed.

1.8 Purpose. This Agreement is entered into for the purposes of: (1) establishing the terms of a Host Fee Agreement between the County as the host community to the Landfill and BFI as the owner and operator of the Landfill; (2) setting the amount of the host fees that BFI will pay to the County in lieu of the landfill surcharge fees that have been imposed by the County previously on sanitary landfills; and (3) encouraging BFI to maximize the permitted airspace within the Landfill and to utilize the land it owns for sanitary landfill capacity. This Agreement does not apply to a separate demolition landfill, or separate demolition waste disposal cell located within the Landfill, if one should be established by BFI in the future and approved by the County, Inver Grove Heights and the state.

**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 BFI Authority. BFI 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 TERM

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 7.3.

SECTION 4 LANDFILL CAPACITY

The MPCA has issued a permit for the design and operation of the Landfill that limits the total airspace that BFI may use for the disposal of solid waste in the Landfill. The MPCA also requires all sanitary landfills receiving mixed municipal solid waste for disposal in Minnesota to be constructed with a liner and leachate collection system. For the purposes of this Agreement, the property in Inver Grove Heights owned by BFI subject to the terms of this Agreement consists of that portion of the BFI property that (1) is currently permitted by the MPCA to receive solid waste for disposal, (2) currently has an approved liner and leachate collection system in place meeting the requirements for sanitary landfills, (3) is being filled with solid waste at this time, and (4) any additional capacity that may be permitted by the MPCA and licensed by the County during the term of this Agreement. The west 100 acres consisting of that portion of the BFI property that is west of the railroad tracks that bisect the BFI property is not permitted to receive solid waste for disposal and was a possible landfill expansion area under the Original Host Fee Agreement. The west 100 acres is currently approved for storage of clean soils pursuant to a conditional use permit issued by the City of Inver Grove Heights.

SECTION 5 HOST FEE

5.1 Host Fee In General. 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, and in lieu of the statutory landfill surcharge fee previously received by the County for solid waste disposed at the Landfill, BFI shall pay the County a host fee for every ton of solid waste, or fraction thereof, that is disposed in the Landfill, regardless of the location of the generator of the solid waste. The amount of the host fee for each ton, or fraction thereof, disposed at the Landfill is dependent upon the type of waste. For the purposes of this Agreement, all wastes received at the Landfill are categorized as one of three types of waste:

- A. Type 1 Waste: consists of all waste that may be disposed in a sanitary landfill, excluding Type 2 waste or Type 3 under Sections 5.1(B) and (C) below, but including mixed loads of Type 1, 2 and 3 waste, or any combination of the preceding;
- B. Type 2 Waste: consists of the following wastes in loads that do not contain any Type 1 waste or Type 3 waste:
 - 1. Animal carcasses;
 - 2. Asbestos;
 - 3. Construction Debris;
 - 4. Demolition Waste;
 - 5. Street Sweepings;
 - 6. Processed Medical Waste; and
 - 7. Industrial Waste as defined in Dakota County Ordinance 110, including: empty containers as defined in Minn. R. 7045.0127; waste containing polychlorinated biphenyls at a concentration less than 50 ppm; spilled nonhazardous materials; rendering and slaughterhouse waste; foundry waste; ash from incinerators, resource recovery facilities, and power plants; paint residues, paint filters and paint dust; sludges, including ink sludges, lime sludge, wood sludge, and paper sludge; fiberglass, urethane, polyurethane and epoxy resin waste; spent activated carbon filters; grit and bar screenings from a wastewater treatment plant; baghouse dusts; disposable batteries; distillation bottoms; industrial equipment cleanings; metallic dust sweepings; and
- C. Type 3 Waste: consists of processing residues from processing, recycling or composting facilities that achieve at least an 85% reduction in the weight of the waste that is managed. This includes bulky items

delivered to the facility that are too large to process.

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The amount of the host fee for a ton of solid waste disposed at the Landfill is determined by reference to the fee schedules set forth in Section 5.2 below.

5.2 Host Fees. The host fee amounts for processible waste, non-processible waste, and processing residuals are as follows:

The host fee amounts for Type 1 waste, Type 2 waste, and Type 3 waste are as follows:

Waste Type	2023	2024	2025	2026	2027
Type 1 In-County	\$11.37	\$11.37	\$11.37	\$11.37	\$11.37
Type 1 Out-of-County	\$12.30	\$13.00	\$13.71	\$14.41	\$15.12
Type 2	\$7.27	\$7.49	\$7.71	\$7.95	\$8.18
Type 3 In-County	\$3.24	\$3.34	\$3.44	\$3.55	\$3.65
Type 3 Out-of-County	\$4.06	\$4.18	\$4.30	\$4.43	\$4.56

5.3 Exemptions from Host Fee. The following materials and solid wastes are exempted from the host fee:

- A. Sand, clay, and uncontaminated earthen material that are used for daily, intermediate, or final cover material or the construction of roads or berms within the Landfill.
- B. Solid wastes approved by the County pursuant to Dakota County Ordinance 110, Section 5.04 (as may be amended), that are used for daily, intermediate or final cover material within the Landfill (i.e., alternative daily cover). Any amounts of alternative daily cover that exceed the amounts approved by the County are subject to the host fee rates set forth in Section 5.2 above. For purposes of this section, one ton of solid waste is equivalent to 3.33 cubic yards of solid waste.
- C. Solid wastes approved by the County pursuant to Dakota County Ordinance 110, Section 5.04 (as may be amended), that are used for the construction of roads or berms within the Landfill.

5.4 Credit for Organics Processing Capacity. BFI may apply for a one-time \$3.00 per ton host fee credit for each ton of new organics processing capacity created in Dakota County by BFI. The credit can be applied to a maximum of 100,000 tons. Suitable processing includes: Composting, anaerobic digestion, and any other process approved by the County. Applicable capacity will be limited to source separated organic material only, any associated yard waste capacity will not be eligible for the credit. BFI may apply for the credit once the facility is open and accepting waste. Upon approval, the County will issue a credit statement that BFI may apply to the next payment.

5.5 Fee in Lieu of Landfill Surcharge Fees. The host fees paid by BFI shall be in lieu of the landfill surcharge fees that the County has the authority to impose pursuant to Minn. Stat. § 115A.919. During the term of this Agreement, the County agrees to accept the payment of host fees as compensation for the disposal of solid waste in the Landfill, and waives its right to impose landfill surcharge fees. If the County imposes or attempts to impose any landfill surcharge fee pursuant to Minn. Stat. § 115A.919, BFI, in addition to whatever other remedies it may have available at law or in equity, shall have the right to terminate this Agreement pursuant to Section 7.3 as if there had been an uncured default by the County pursuant to Section 7.2. This Agreement does not impair the right of the County to impose landfill surcharge fees pursuant to Minn. Stat. § 115A.919 after the term of this Agreement expires, or after this Agreement is terminated by either party under Section 7.3.

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

- A. BFI shall record the weight of all solid waste that is disposed at the Landfill consistent with the

requirements of Dakota County Ordinance 110 and the sanitary landfill license issued by the County. The amount of solid waste received by the Landfill shall be weighed and reported in tons rather than cubic yards. For purposes of this Agreement, one ton of solid waste is equivalent to 3.33 cubic yards of solid waste.

- B. BFI shall file a monthly return on a form prescribed by the County. The monthly return shall include: (1) the amount of solid waste accepted and disposed at the Landfill; (2) the host fee due; (3) the amount of solid waste received at the Landfill that is exempt from the host fee under Section 5.3(B) above; and (4) 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 BFI's full monthly host fee payment by the 20th of each month, BFI 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.

5.7 Failure of BFI to Perform. Unless cured under Section 7.2, the failure of BFI to file the information required by Section 5.6, and/or to pay the host fees in a timely manner and in the proper amount, shall constitute a default of this Agreement, and a violation of Dakota County Ordinance 110, Section 3.03 (Failure to Comply with License Conditions). BFI may cure any failure to comply with Section 5.6 pursuant to Section 7.2 of this Agreement. If BFI fails to cure the deficiencies in performance consistent with Section 7.2, the County may terminate this Agreement pursuant to Section 7.3 and take any other enforcement or legal action within the County's authority.

5.8 Annual Minimum Fee Payment.

During each calendar year beginning with 2023, BFI shall pay the County an annual minimum host fee ("Annual Minimum Fee"). The Parties agree the Annual Minimum Fee for the term of this agreement shall be \$1,200,000 minus any credit received under Section 5.4.

In January of 2024, and each January thereafter during the term of this Agreement, including January of 2028, BFI and the County shall calculate the total amount of the host fees that BFI paid to the County in the preceding calendar year. If the amount of the fees paid during the preceding calendar year is less than the Annual Minimum Fee for that given year, BFI shall pay the difference to the County on or before January 20th of that year. The Annual Minimum Fee payment is due regardless of the amount of solid waste received at the Landfill the preceding year, unless the Landfill was prevented from accepting solid waste during a period when the force majeure provisions of Section 7.1 apply. If force majeure conditions exist for thirty (30) consecutive days or less, there shall be no adjustment to the amount of the Annual Minimum Fee payment due under this Section. If force majeure conditions exist for more than thirty (30) consecutive days in a calendar year, the amount of the Annual Minimum Fee payment due under this Section shall be reduced by the percentage of the calendar year that the Landfill was prevented from receiving solid waste for disposal by the force majeure conditions. If regulatory or legislative action occurs or is finalized during the term of this agreement that BFI demonstrates to the satisfaction of the County (which shall not be unreasonably withheld) has caused a reduction in the amount of waste disposed of at the Landfill in a calendar year within the term of this Agreement, including action by the MPCA to enforce compliance with Minn. Stat. § 473.848 or related permit conditions, that results in host fees less than the annual minimum payment, the Annual Minimum Fee payment due under this Section shall be reduced in an amount equal to the amount of host fees that BFI demonstrates would have been paid had the reduction not occurred.

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

SECTION 6 UTILIZING LANDFILL CAPACITY/PENALTY

As part of the consideration for this Agreement, BFI agrees that the Landfill will remain open during normal business hours and without interruption, except as provided in Section 7.1 until the permitted capacity, including any additional capacity that may be permitted during the term of this Agreement, is filled with solid waste. If BFI fails to fill the permitted capacity of the Landfill with solid waste, BFI will pay the County a penalty that is measured by the following formula:

$$\text{Penalty} = A(B*50\%)$$

Where:

- A= Total remaining permitted capacity as determined by a registered Surveyor;
- B=Waste Type 1 Rate for the year of closure.

For the purposes of this calculation, one ton of solid waste disposed in the Landfill is equivalent to 3.33 cubic yards of solid waste.

Except as provided in this section, and as provided in Section 7.3 upon termination by BFI and failure to cure by the County, if the permitted capacity of the Landfill is not filled with solid waste before the termination or expiration of the term of this Agreement, BFI's obligation to pay this penalty shall survive such termination or expiration.

If the Landfill is actively being filled with solid waste at the time the term of this Agreement expires, and if, during negotiations between the parties to extend this Agreement, the County demands an increase in the unit rates of the host fees that are greater than the increase in the rolling Consumer Price Index – Urban for Minneapolis/St. Paul as measured from January 1, 2023, to the date the term expires, and if the County's demands for an increase in fees in excess of the rolling average is the cause for the parties being unable to reach an acceptable extension of the term of a host fee agreement, then BFI is not obligated to pay the penalty under this Section for failing to fill the remaining permitted capacity of the Landfill with solid waste.

If BFI demonstrates to the satisfaction of the County (which shall not be unreasonably withheld) that it is prevented from filling the permitted capacity of the Landfill with solid waste due to a force majeure or regulatory or legislative action occurring or finalized after the execution of this Agreement, including action by the MPCA to enforce compliance with Minn. Stat. § 473.848 or related permit conditions, BFI is not obligated to pay the penalty under this Section. For purposes of this section, "prevented" includes, but is not limited to, conditions which make further operation of the Landfill economically impractical. Economically impractical shall include, but is not limited to, situations where continued daily operation of the Landfill would result in ongoing financial losses for BFI, but shall not include losses due to temporary conditions lasting less than 30 days.

If the County assesses the penalty under this Section, or if BFI's obligation to pay the penalty is eliminated due to a force majeure or regulatory or legislative action as provided herein, the County is no longer eligible to receive any Annual Minimum Fee payments under Section 5.7.

The obligations of this Section supersede and replace any similar, surviving obligations under previous agreements.

SECTION 7 FORCE MAJEURE, CURE, AND TERMINATION

7.1 Force Majeure. Subject to the provisions of the Annual Minimum Fee payment due under Section 5.7, no party shall be held responsible or subject to damages for delay or failure to perform when such delay or failure is due to uncontrollable circumstances that prevent BFI from receiving any solid waste for disposal for more than a two consecutive week period, including any of the following: fire, flood, epidemic, strikes, wars, acts of terrorism, acts of God, unusually severe weather, change in law, acts of public authorities, or delays or defaults caused by public carriers; unless the act or occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure and provided the defaulting party gives notice as soon as possible to the other party of the inability to perform. However, unless the uncontrollable circumstance prevents BFI from disposing solid waste in the Landfill at all times in the future, an uncontrollable circumstance shall not relieve BFI from the penalty assessed under Section 6 for failing to fill the permitted capacity of the Landfill with solid waste.

The parties agree to promptly attempt resolution of all matters related to uncontrollable circumstances.

7.2 Cure.

- A. In General. Except as provided in Section 7.2(B) below, if BFI or the County fails 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 BFI's monthly host fee payment is late or underpaid for any reason, BFI shall have ten (10) working days to cure the late payment and/or underpayment. The ten (10) day cure period shall commence on the date that BFI receives written notice from the County of the late payment and/or underpayment.

7.3 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 7.2, the non-defaulting party may immediately terminate this Agreement by delivering or mailing notice of such termination to the defaulting party.

SECTION 8 OBLIGATION TO REVIEW AGREEMENT TERMS

8.1 If during any year of the Term of this Agreement, BFI is required to pay the Annual Minimum Fee in Section 5.7 as a result of insufficient intake of waste at the Landfill, at the request of BFI, the Parties shall in good faith engage in discussions to determine whether any terms of this Agreement need modification.

8.2 If during any year of the Term of this Agreement, a new solid waste facility, not owned or controlled, in whole or in part, by BFI Waste Systems of North America LLC or any of its affiliated companies, opens within the seven county metropolitan solid waste management system, with a capacity of 500 tons or more per day, at the request of BFI, the Parties shall in good faith discuss the impact of any such new facility to determine whether any terms of this Agreement need modification.

SECTION 9 GENERAL PROVISIONS

9.1 Cooperation. The County and BFI 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.

9.2 Authorized Representatives/Notice. The following named persons are designated the Authorized Representatives of the parties for the 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
Georg.Fischer@co.dakota.mn.us
Phone: 952-891-7007

If intended for BFI:

Kevin Bremer, or successor
Area President
BFI Waste Systems of North America, LLC
2495 E. 117th Street
Inver Grove Heights, MN 55077

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.

9.3 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 BFI. The County and BFI shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of the execution of this Agreement, the following persons are the designated liaisons:

County:
Dave Magnuson
Waste Regulation Unit Supervisor
Telephone: (952) 891-7551
Email: dave.magnuson@co.dakota.mn.us

BFI:

Telephone: _____
Email: _____

9.4 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.

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

9.6 BFI's Responsibilities. With the exception of the obligation to pay landfill surcharge fees to the County pursuant to Minn. Stat. § 115A.919, this Agreement does not alter, amend or diminish BFI'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 BFI for any other types of violations of Dakota County ordinances, state law, federal law, or conditions of the MPCA permit or County license issued for the Landfill.

9.7 Records. The County shall have full access to all records of BFI relating to the performance of this Agreement. BFI agrees to submit information in a form acceptable to Dakota County monthly that will justify the host fee payment submitted. BFI 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 BFI internal records are confidential "trade secret information" as that term is used in Minn. Stat. § 13.37, Subd. 1(b).

9.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to the payment of landfill 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.

9.9 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 BFI.

9.10 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.

9.11 Other Host Fee Agreements. During the term of this Agreement, if the County enters into host fee agreements with other municipal solid waste landfills, the County will use reasonable efforts to negotiate host fees and an Annual Minimum Fee that are no lower than the host fees and Annual Minimum Fee in this Agreement. If the County executes host fee agreements with other municipal solid waste landfills and one or more of those other agreements have lower host fees and/or have a lower Annual Minimum Fee, the County shall immediately notify BFI and the amount of the host fees and/or Annual Minimum Fee under the terms of this Agreement shall be reduced to be the same as such lower

host fees and/or Annual Minimum Fee.

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

Approved as to form:

COUNTY OF DAKOTA

Assistant County Attorney/Date

County Board Res. No. _____

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

BFI WASTE SYSTEMS OF NORTH AMERICA, LLC
(Please have signature notarized.)

By _____
Kevin Bremer
Area President
Date of Signature _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2022, by Kevin Bremer, Area President, of BFI Waste Systems of North America, LLC, 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