

**2023-2027 HOST FEE AGREEMENT
BETWEEN
DAKOTA COUNTY
AND
SKB ENVIRONMENTAL, INC.
FOR THE SKB (ROSEMOUNT) INDUSTRIAL WASTE LANDFILL
AND DEMOLITION LANDFILL
AND
THE SKB RICH VALLEY DEMOLITION WASTE MANAGEMENT FACILITY**

**SECTION 1
RECITALS**

- 1.1 Parties to Agreement.** This Host Fee Agreement ("Agreement") is made and entered into this ____ day of _____, 202_, by and between the County of Dakota ("the County"), a political subdivision of the State of Minnesota, and SKB Environmental, Inc. ("SKB"), a Minnesota corporation, collectively referred to as the "Parties".
- 1.2 The Landfills.** SKB is the owner and operator of the SKB Rosemount Landfill located at 13245 Courthouse Blvd, Rosemount, Dakota County, Minnesota, which accepts industrial waste (including municipal solid waste combustor ash), demolition waste, and construction debris for disposal or processing. SKB is the owner and operator of the SKB Rich Valley Demolition Waste Management Facility ("Rich Valley Landfill") located at 2490 117th Street, Inver Grove Heights, Dakota County, Minnesota which accepts industrial waste and demolition waste. The Rosemount and Rich Valley Landfills are referred to collectively as the "Landfills".
- 1.3 Landfill Regulation.** SKB is permitted by the Minnesota Pollution Control Agency ("MPCA") and licensed by the County to accept industrial waste, demolition waste, and construction debris for disposal or processing at the Rosemount Facility pursuant to the terms of the plans. SKB is permitted and licensed to accept industrial waste and demolition waste, as those terms are defined in Dakota County Ordinance 110, Section 2 at the Landfills.
- 1.4 County Fees.** SKB recognizes that pursuant to Minn. Stat. § 373.41 the County has authority to impose miscellaneous fees for services it provides. SKB recognizes the County has the authority under Minn. Stat. § 115A.919 to impose a surcharge for all non-exempt construction debris and demolition waste that is disposed at the Landfills
- 1.5 Prior Host Community Fee Agreements.** SKB and the County have executed numerous Host Fee Agreements in the previous 20 years, the most recent of which expires December 31, 2022.
- 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 Landfills, and SKB as the owner and operator of the Landfills.

**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 SKB Authority.** SKB 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 to it in 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. Construction debris only includes construction waste that SKB is licensed to accept at the Landfills subject to this Agreement.

- 3.2 Cubic Yard.** "Cubic yard" means a cubic yard of non-compacted waste. A cubic yard shall be assumed to weigh 1.3 tons.
- 3.3 Demolition Landfill.** "Demolition Landfill" means the Rich Valley Landfill and that section of the Rosemount Landfill as licensed by the Dakota County Board of Commissioners and includes any modifications as proposed by SKB and approved by the Dakota County Board of Commissioners. The Demolition Landfill is separate and distinct from the other operations at the Landfills.
- 3.4 Demolition Waste.** "Demolition waste" has the meaning given it by Dakota County Ordinance 110, subd. 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, construction waste means waste resulting from the demolition of man-made structures and other similar materials specifically approved by the department. Demolition waste excludes asbestos and other materials specifically prohibited by Ordinance 110. Demolition waste only includes demolition waste that SKB is licensed to accept at the Landfills subject to this Agreement.
- 3.5 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. Industrial solid waste does not include office materials, restaurant and food preparation waste, discarded machinery, demolition waste, municipal solid waste combustor ash, or household waste. Industrial waste only includes industrial waste that SKB is licensed to accept at the Landfills subject to this Agreement. Industrial Waste does not include Industrial Waste Soil for purposes of this Agreement.
- 3.6 Industrial Waste Landfill.** "Industrial Waste Landfill" means the Rich Valley Landfill and that part of the Rosemount Landfill as licensed by the Dakota County Board of Commissioners to accept industrial waste and includes any modifications as proposed by SKB and approved by the Dakota County Board of Commissioners. The Industrial Waste Landfill is separate and distinct from the other operations at the Landfills.
- 3.7 Industrial Waste Soil.** Industrial Waste Soils are defined as naturally occurring soils which contain no solid waste other than chemical contamination. The chemical contamination may only include chemicals up to concentrations approved for acceptance in SKB's MPCA permit and Dakota County license.
- 3.8 Municipal Solid Waste Combustor Ash.** "Municipal Solid Waste Combustor Ash" has the meaning given it by Minn. R. 7035.0300, subp. 67, as the same may be amended from time to time. As of the date of the signatures of the Parties to this Agreement, municipal solid waste combustor ash means ash from combustion of mixed municipal solid waste or refuse-derived fuel at a waste combustor. Municipal solid waste combustor ash does not include ash from waste combustors which accept hazardous waste except in household quantities as allowed by Minn. R. 7045.0120, item A. Municipal solid waste combustor ash which is managed according to Minn. R. parts 7035.2885 to 7035.2915 is a solid waste, and is not subject to regulation under Minn. R. ch. 7045. Ash from a facility that burns a mixture of mixed municipal solid waste or refuse-derived fuel and infectious waste or other nonhazardous wastes such that 20% or more of its heat input is from mixed municipal solid waste or refuse-derived fuel is considered municipal solid waste combustor ash. Ash from a facility that burns a mixture of mixed municipal solid waste or refuse-derived fuel with coal or other fuels is considered municipal solid waste combustor ash if the percentage of mixed municipal solid waste or refuse-derived fuel is such that the facility is considered a waste combustor under applicable state and federal rules and statutes.
- 3.9 Plans.** "Plans" mean the Industrial Waste Landfill Operations Plan, the Industrial Waste Landfill Waste Acceptance Plan, the Demolition Landfill Operations Plan and the Processing Facility Operations Plan submitted by SKB to the MPCA, the County, and the City of Rosemount, as may be amended from time to time.
- 3.9 Processing Facility.** "Processing Facility" means the SKB Rosemount Processing Facility as licensed by the Dakota County Board of Commissioners and includes any modifications as proposed by SKB and approved by the Dakota County Board of Commissioners. The Processing Facility is separate and distinct from the SKB Industrial Waste Landfill and the SKB Demolition Landfill that are also located on the property of the Rosemount Landfill.

3.10 Processing Residuals. “Processing Residuals” means processing residues from processing or recycling that is conducted on demolition waste or construction debris at the Processing Facility and achieves at least a 50% reduction in the weight of the demolition waste or construction debris that is managed.

3.11 Process Residuals from a Recycling Facility. “Process Residuals from a Recycling Facility means” industrial waste resulting from the operations at a facility where the primary purpose is to process recyclables for market or produce a product from recyclable materials. Examples include residual from a materials recovery facility, sludge from a paper recycling facility, or other similar facility with approval from the County. Prior to accepting a waste stream under this section, SKB will need prior written approval from the County.

SECTION 4 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 Landfills are filled, whichever occurs first, unless terminated earlier pursuant to section 6.3.

SECTION 5 PAYMENT OF HOST FEE

5.1 Amount of Fees. SKB shall pay host fees based on the following:

Waste Type	2023	2024	2025	2026	2027
Industrial Waste non-Soil (per ton)	\$5.50	\$5.50	\$5.50	\$5.50	\$5.50
Industrial Waste Soil (per ton)	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50
MSW Combustor Ash (per ton)	\$3.85	\$3.85	\$3.85	\$5.50	\$5.67
Construction Debris and Demolition Waste	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50
Processing Residuals (per ton)	\$0.19	\$0.20	\$0.20	\$0.21	\$0.21
Process Residuals from a Recycling Facility	3.24	3.34	3.44	3.55	3.65

Loads consisting of mixed solid waste types received at the Landfills shall pay prorated host fees based on the waste ratios of the load.

5.2 Exemptions from Host Fees. The following materials and solid wastes are exempted from the host fees set forth in section 5.1:

- A. Sand, clay, and uncontaminated earthen material that are used for cover material or the construction of roads or berms within the Industrial Waste Landfill or Demolition 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 cover material within the Industrial Waste Landfill or Demolition Landfill (i.e., alternative cover). Any amounts of alternative cover that exceed the amounts approved by the County are subject to the applicable host fee rates set forth in section 5.1.
- 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 Industrial Waste Landfill or Demolition Landfill.

5.3 Credit for Organics Processing Capacity. SKB 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 SKB. 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. SKB may apply for the credit once the facility is open and accepting waste. Upon approval, the County will issue a credit statement that SKB may apply to the next payment.

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

- A. SKB shall record the amount of all demolition debris, construction debris, industrial solid waste, and municipal solid waste combustor ash (collectively "waste") that is disposed at the Landfills according to the permits and licenses obtained by SKB consistent with the requirements of Dakota County Ordinance 110. The amount of waste received at each of the respective Landfills shall be weighed and reported in tons rather than cubic yards. In addition, SKB shall record the amount of waste processed or recycled at the Processing Facility located at the Rosemount Landfill and be able to demonstrate which waste qualifies as processing residuals. The amount of waste processed or recycled at the Processing Facility shall be reported in tons rather than cubic yards.
- B. SKB 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 Landfills; (2) the host fees 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 Landfills. All host fee payments shall be made by electronic funds transfer.
- D. In the event the County does not receive SKB's full monthly host fee payment by the 20th of each month, SKB 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 SKB to Perform. Unless cured under section 6.2, the failure of SKB 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). SKB may cure any failure to comply with section 5.4 pursuant to section 6.2 of this Agreement. If SKB fails to cure the deficiencies in performance consistent with section 6.2, the County may terminate this Agreement pursuant to section 6.3 and take any other enforcement or legal action within the County's authority.

5.6 Annual Minimum Fee Payment.

- A. During each calendar year beginning with 2018, SKB shall pay the County an annual minimum host fee ("the Annual Minimum Fee"). The parties agree the Annual Minimum Fee for the term of this Agreement shall be as \$1,700,000 minus any credit received under Section 5.3.

In January of 2024, and each January thereafter during the term of this Agreement, including January of 2028, SKB and the County shall calculate the total amount of the host fees that SKB 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, SKB 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 waste received at the Landfills the preceding year, unless the Landfills were prevented from accepting waste during a period when the force majeure provisions of Section 6.1 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 Landfills were prevented from receiving solid waste for disposal by the force majeure conditions.

- B. Option to Renegotiate.

If during any year of the Term of this Agreement, the Annual Minimum Payment in section 5.5A is triggered, at the request of SKB, the Parties shall in good faith engage in renegotiation of the terms of this Agreement to maximize waste received at the Landfills which will result in fees greater than the annual minimum payment required under this Agreement, or any amendment thereto.

- 5.7 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.

SECTION 6 FORCE MAJEURE, CURE AND TERMINATION

- 6.1 Force Majeure.** Subject to the provisions of the Annual Minimum Fee payment due under Section 5.5, 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 SKB from receiving any waste for disposal for more than a two consecutive week period, including any of the following: fire, flood, epidemic, strikes, wars, acts of terrorism, 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.

6.2 Cure.

- A. In General. Except as provided in section 6.2(B) below, if SKB 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 receives 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 SKB's monthly host fee payment is late or underpaid for any reason, SKB 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 SKB receives written notice from the County of the late payment, underpayment, or both.

6.3 Termination.

- A. 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 6.2, the non-defaulting party may immediately terminate this Agreement by delivering or mailing notice of such termination to the defaulting party.
- B. If Section 5.5A of this Agreement is triggered and the Parties are unable to reach an agreement under section 5.5B, either party has the right to terminate this Agreement upon 60 days written notice to the other party.

SECTION 7 GENERAL PROVISIONS

- 7.1 Consideration.** SKB 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 SKB under this Agreement, or in any action by SKB against the County to enforce the County's obligations under this Agreement, SKB and the County hereby waive and agree not to assert any defense of lack of consideration.
- 7.2 Cooperation.** The County and SKB 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

If intended for SKB
Matt O'Connell
Division Vice President

Dakota County Western Service Center
14955 Galaxie Avenue
Apple Valley, MN 55124
(952) 891-7007
Georg.Fischer@co.dakota.mn.us

SKB Environmental, Inc.
251 Starkey Street
St. Paul, MN 55107
(651) 224-6329
johndo@wcnx.org

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.

- 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 SKB and the County. SKB 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:

County Liaison
Dave Magnuson
Waste Regulation Unit Supervisor
14955 Galaxie Avenue
Apple Valley, MN 55124
952-891-7551
Email: dave.magnuson@co.dakota.mn.us

SKB Liaison
Ryan O’Gara, or
Government Affairs Manager
251 Starkey Street
St. Paul, MN
651-224-6329
Email: ryano@wcnx.org

- 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 SKB’s Responsibilities.** This Agreement does not alter, amend or diminish SKB’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 Landfills and all activities occurring at the Landfills. This Agreement does not restrict or in any way limit the County from bringing any enforcement or legal actions against SKB for any other types of violation of Dakota County ordinances, state law, federal law, or conditions of the MPCA permit or County licenses issued for the Landfills.
- 7.8 Records.** The County shall have full access to all records of SKB relating to the performance of this Agreement. SKB agrees to submit information in a form acceptable to Dakota County monthly that will justify the host fee payment submitted. SKB 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 SKB 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 supersedes all prior negotiations, understandings, agreements, or written proposals. This Agreement supersedes 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 SKB.
- 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 similar landfills, the County will use reasonable efforts to negotiate host fees that are no lower than the host fees 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

Georg T. Fischer
Director, Physical Development Division
Date of Signature_____

SKB ENVIRONMENTAL, INC.
(Please have signature notarized.)

By_____
Matt O'Connell, Division Vice President
Date of Signature_____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, by Matt O'Connell, Division Vice President of SKB Environmental, 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

County Board Res. No. ____-____
KS-17-363