

Attachment: Dawnway Demolition Landfill Agreement

**2023-2027 HOST FEE AGREEMENT
BETWEEN
DAKOTA COUNTY
AND
FRATTALONE'S DAWNWAY, LLLP
FOR THE DAWNWAY DEMOLITION 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 Frattalone's Dawnway, LLLP ("Frattalone"), a Minnesota limited partnership, collectively referred to as the "Parties".
- 1.2 The Landfill.** Frattalone is the owner and operator of the Dawnway Demolition Landfill ("the Landfill") which is located in the Cities of South St. Paul and Inver Grove Heights, Dakota County, Minnesota, and which accepts demolition waste for disposal.
- 1.3 Landfill Regulation.** Frattalone 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. Frattalone is permitted and licensed to accept demolition waste at the Landfill.
- 1.4 County Fees.** Frattalone recognizes that pursuant to Minn. Stat. § 373.41 the County has authority to impose miscellaneous fees for services it provides. Frattalone recognizes the County has the authority under Minn. Stat. § 115A.919 to impose a surcharge for all non-exempt demolition waste that is disposed at the Landfill.
- 1.5 Prior Host Fee Agreements.** By agreement of the Parties, a host fee was established for the time period of January 1, 2018, through December 31, 2022, for demolition waste, as that term is defined in Dakota County Ordinance 110, Section 2.30 disposed of at the Landfill.
- 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 Frattalone, 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 Frattalone Authority.** Frattalone enters into this Agreement pursuant to the powers granted to it by Minn. Stat. ch. 321 and by authorization of its partners.

**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 5.2.

**SECTION 4
PAYMENT OF HOST FEE**

- 4.1 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, Frattalone shall pay to the County a host fee of \$0.125 per cubic yard for every cubic yard of demolition waste, or fraction thereof, that is accepted at the gate for disposal at the Landfill during each year of this Agreement. In the event that Frattalone changes its practice and weighs the demolition waste, Frattalone shall pay to the County a host fee of \$0.50 per ton for every ton of demolition

waste, or fraction thereof that is accepted at the gate for disposal at the Landfill during each year of this Agreement. For purposes of this Agreement, "demolition waste" has the meaning given it by Dakota County Ordinance 110, Section 2.30.

4.2 Exemptions from Host Fee. The following are exempted from the host fee in section 4.1 above:

- Material that is recycled and is not disposed of at the Landfill.

4.3 Fee in Lieu of Landfill Surcharge Fees. The host fees paid by the Landfill shall be in lieu of any other landfill surcharge fees that the County has the authority to impose. During the term of this Agreement, the County agrees to accept the payment of host fees as compensation for the disposal of demolition waste in the Landfill, and waives its right to impose any other landfill surcharge fees.

4.4 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.

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

- A. Frattalone shall record the number of cubic yards of all demolition waste ("waste") that is disposed at the Landfill consistent with the requirements of Dakota County Ordinance 110 and the license issued by the County. If Frattalone changes its practice and weighs the waste, then Frattalone shall report the amount of waste received in tons rather than in cubic yards.
- B. Frattalone shall file a quarterly return on a form prescribed by the County. The quarterly 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 quarterly return and corresponding host fee payment shall be provided to the County on or before the 20th day of each month immediately following the quarter in which the waste was received at the Landfill (e.g., First quarter report and payment are due by April 20th). All host fee payments shall be made by electronic funds transfer.
- D. In the event the County does not receive Frattalone's full quarterly host fee payment by the 20th of the month following the end of the applicable quarter, Frattalone 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.

4.6 Failure of Frattalone to Perform. Unless cured under section 5.1, the failure of Frattalone to file the information required by section 4.5, pay the host fees, or both, 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). Frattalone may cure any failure to comply with section 4.5 pursuant to section 5.1 of this Agreement. If Frattalone fails to cure the deficiencies in performance consistent with section 5.1, the County may terminate this Agreement pursuant to section 5.2 and take any other enforcement or legal action within the County's authority.

SECTION 5 CURE AND TERMINATION

5.1 Cure

- A. In General. Except as provided in section 5.1(B) below, if Frattalone 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 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 Frattalone's monthly host fee payment is late or underpaid for any reason, Frattalone 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 Frattalone receives written notice from the County of the late payment, underpayment, or both.

5.2 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 5.1, the non-defaulting party may immediately terminate this Agreement by delivering or mailing notice of such termination to the defaulting party.

SECTION 6 GENERAL PROVISIONS

6.1 Consideration. Frattalone 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 Frattalone under this Agreement, or in any action by Frattalone against the County to enforce the County's obligations under this Agreement, Frattalone and the County hereby waive and agree not to assert any defense of lack of consideration.

6.2 Cooperation. The County and Frattalone 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.

6.3 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
(952) 891-7007

If intended for Frattalone:

Nicholas D. Frattalone
Limited Partner
Frattalone's Dawnway, LLLP
3205 Spruce Street
St. Paul, MN 55117
(651) 765-1138

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.

6.4 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 Frattalone and the County. Frattalone 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:

Frattalone Liaison:	Nicholas D. Frattalone
Phone Number:	(651) 765-1138
Email:	nickf@frattaloneco.com

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

6.5 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 Dakota County, Minnesota.

- 6.6 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns.
- 6.7 Frattalone's Responsibilities.** This Agreement does not alter, amend or diminish Frattalone's duties and legal responsibilities to comply with all local, county, state and federal laws, rules, regulations, 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 Frattalone for any other types of violation of Dakota County ordinances, state law, federal law, rules, regulations, or conditions of the MPCA permit or County license issued for the Landfill.
- 6.8 Records.** The County shall have full access to all records of Frattalone relating to the performance of this Agreement. Frattalone agrees to submit information in a form acceptable to Dakota County quarterly that will justify the host fee payment submitted. Frattalone 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 Frattalone internal records are confidential "trade secret information" as that term is used in Minn. Stat. § 13.37, subd. 1(b).
- 6.9 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties as to the payment of host fees during the term of this Agreement and supersedes all prior negotiations, understandings, agreements, or written proposals. There are no representations, warranties, or stipulations, either oral or written, not contained in this Agreement.
- 6.10 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 Frattalone.
- 6.11 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.
- 6.12 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. 22-_____

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

FRATTALONE'S DAWNWAY, LLLP
(Please have signature notarized.)

By_____
Nicholas D. Frattalone
Date of Signature_____

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

This instrument was acknowledged before me on _____, 2022, by Nicholas D. Frattalone, Limited Partner, of Frattalone's Dawnway, LLLP, who being duly sworn, represents and warrants that he is authorized by law and all necessary partnership action to execute this contract on behalf of Frattalone's Dawnway, LLLP, intending this contract to be a legally binding obligation of Frattalone's Dawnway, LLLP.

Notary Public