

# MEMORANDUM

---

**To:** SFSWMA Joint Powers Board  
**From:** Randall Kippenbrock, P.E., Executive Director <sup>RLK</sup>  
**Date:** April 13, 2026  
**Subject:** Request for Approval of Amendment No. 1 to the Construction Agreement with Del Hur Industries of Port Angeles, WA, for the Basalt Rock Crushing and Sales Operation for the Caja del Rio Landfill to Include Compensation for Aggregate Materials for Landfill Applications (RFP No. '22/25/P)

## SUMMARY:

The Agency is requesting the Board approve Amendment No. 1 to the Construction Agreement with Del Hur Industries (Del Hur) of Port Angeles, WA.

The Amendment will provide construction services for basalt rock excavation, including blasting and rough subgrade preparation, for a future disposal area west of the West Phase disposal area. Del Hur will comply with Santa Fe County's minimum blasting permit requirements.

The Amendment will increase the royalty payments to the Agency from \$1.50 to \$1.70 per ton for the sale of aggregates at the Landfill, with \$0.95 per ton paid to the Bureau of Land Management (BLM).

The Amendment will also continue Del Hur's crushing and sales operations.

## BACKGROUND

On January 21, 2022, the Agency issued Request for Proposal (RFP) No. '22/25/P for the basalt rock crushing and sales operation at Caja del Rio Landfill.

On May 19, 2022, the Board approved the Construction Agreement with Del Hur Industries for a term of ten (10) years, ending May 19, 2032.

Per the Agreement, Del Hur agrees to perform in accordance with the Caja del Rio Crushing and Sales Plan and the Caja del Rio Landfill Noise Analysis Memorandum.

Del Hur agrees to pay the Agency for their reclaimed water usage, quarterly calibration of the scales, and maintenance and repairs to the outbound scale that can reasonably be attributed to its use.

Del Hur also agrees to sell the Agency aggregate materials at a discounted price for various landfill applications, such as cell liner construction, erosion control, and haul roads.

Del Hur will continue to conduct basalt rock crushing and sales operations within a work area of approximately 56 acres. The work area is west of the Landfill's active disposal area and includes stockpiles of previously quarried basalt rock and storage for various aggregate products.

The conceptual future disposal area provides approximately 10 million cubic yards of waste disposal capacity. The disposal area has an estimated capacity of 29 years, assuming 350,000 cubic yards of airspace are consumed annually. Additionally, approximately 3 million cubic yards of basalt will need to be blasted and excavated, assuming the top of the basalt rock lies 20 feet below the ground surface.

**ACTION REQUESTED:**

The Agency requests Board approval of Amendment No. 1 to the Construction Agreement with Del Hur.

Attachments:

- 1) Construction Agreement – Amendment No. 1
- 2) Construction Agreement with Del Hur Industries

M:\Memo\041326.3

**ATTACHMENT 1**

**Construction Agreement – Amendment No. 1**

**SANTA FE SOLID WASTE MANAGEMENT AGENCY  
AMENDMENT No. 1  
CONSTRUCTION AGREEMENT  
DEL HUR INDUSTRIES, INC.  
(Basalt Rock Crushing and Sales Operation - 2022)**

This AMENDMENT No. 1 (the “Amendment”) to the CONSTRUCTION AGREEMENT, dated May 19, 2022 (the “Agreement”), is made and entered into between the Santa Fe Solid Waste Management Agency (“Agency”) and Del Hur Industries, Inc. (“Contractor”). The Amendment shall be effective as of the date this Amendment is executed by the Agency.

**RECITALS**

Under the terms of the Agreement, Contractor has agreed to provide blasting, quarrying, excavation, rough subgrade preparation, crushing and sales of basalt rock from the Caja del Rio Landfill (RFP No. '22/25/P).

Pursuant to Article 24, Amendment of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Agency and Contractor agree as follows:

**1. SCOPE OF SERVICES**

Article 1, Scope of Services of the Agreement is hereby amended to incorporate the construction drawings for a future disposal area located west of the West Phase disposal area, as described in Exhibit B attached hereto, so that Article 1 reads in its entirety as follows:

A. Contractor shall perform the construction services in accordance with the terms of this Agreement, the terms set forth in Exhibit A, and the terms set forth in related Contract Documents, including the Caja del Rio Crushing and Sales Plan dated January 30, 2014; the Caja del Rio Landfill Noise Analysis Memorandum dated March 28, 2014; and Contractor’s Proposal for RFP No. '22/25/P, all of which are incorporated into this Agreement as if attached to this Agreement or repeated herein.

B. Contractor shall comply with the minimum blasting permit requirements set forth by Santa Fe County for a future disposal area west of the West Phase disposal area, attached hereto as Exhibit B.

C. Contractor shall also comply with all federal, state, and local law and regulations; obtain and comply with any permitting or licensing requirements, including, but not limited to, requirements imposed by environmental regulatory entities; and make substantial progress toward the removal of all designated material.

D. The construction services subject to this Agreement for crushing and sales are attached hereto as Exhibit A. Contractor shall crush, process, and remove all excavated basalt rock and other designated material located at the Caja del Rio Landfill. Contractor shall also crush and process basalt rock blasted and excavated for a future disposal area delineated in Exhibit B.

## **2. COMPENSATION**

Article 3, Compensation of the Agreement is hereby amended to update the BLM royalty fees in Paragraph A and in Exhibit A so that Paragraph A of Article 3 and Exhibit A are deleted entirely and replaced with the following:

A. Contractor shall pay to the Agency \$1.70 per ton for the removal of the basalt rock from the Caja del Rio Landfill (“Landfill”) sold as aggregates by Contractor across the truck scales located at the Landfill on a monthly basis until all aggregate is sold. All aggregate products not sold by Contractor upon the termination of this Agreement shall remain the property of the Agency. Contractor shall have the opportunity to purchase any such remaining materials at the market rate as determined by the Agency and shall, if an agreement to purchase is reached, be given a reasonable time, not to exceed six (6) months, to remove the materials from the premises.

B. Contractor shall pay the Agency for reclaimed water used by Contractor at the Landfill at fifty percent (50%) of the rate for potable water as set forth in the City of Santa Fe Sanitary Sewer Rate, Fee and Penalty Schedule (Chapter XXV SFCC 1987) (as it may be amended), plus administrative costs and applicable state taxes.

C. Contractor acknowledges that its use of the outbound truck scales may cause damage to the scale in excess of the reasonable wear and tear associated with regular Agency operations. Accordingly, Contractor expressly agrees to pay the Agency: (1) fifty percent (50%) of the Agency's regular cost incurred for quarterly calibration of the scales and (2) the cost of maintenance and repairs for damage to the outbound truck scale reasonably attributable to Contractor's use of the scale.

D. Contractor shall be responsible for payment of gross receipts taxes due to the State of New Mexico on the sums payable under this Agreement.

E. Contractor shall not be compensated for any costs, expenses, or other items it incurs related to its performance under this Agreement.

### **3. AGREEMENT IN FULL FORCE**

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT No. 1 to the Construction Agreement as of the dates set forth below.

**SANTA FE SOLID WASTE MANAGEMENT AGENCY:**

\_\_\_\_\_  
Lisa Cacari Stone  
Chairperson, Joint Powers Board

\_\_\_\_\_  
Date:

**CONTRACTOR:**

\_\_\_\_\_  
Rick Hurworth  
Vice President  
Del Hur Industries, Inc.

\_\_\_\_\_  
Date:

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Nancy R. Long  
Agency Attorney

\_\_\_\_\_  
Date:

**EXHIBIT A**  
**Scope of Services**  
**for**  
**Crushing and Sales Operation**

## SCOPE OF SERVICES

The Contractor shall perform the Scope of Services required by the Agreement for the basalt rock crushing and sales operation at the Caja del Rio Landfill, as described in RFP No. '22/25/P and per the project approach provided to the Agency in the Contractor's proposal dated February 22, 2022. The Scope of Services also includes the requirements set forth in the Caja del Rio Crushing and Sales Plan and the Caja del Rio Landfill Noise Analysis Memorandum.

Contractor shall perform basalt rock crushing and sales operations within a work area of approximately 56 acres within the Landfill. The work area includes the stockpile of previously quarried basalt rock and storage for various aggregate products. The work area is west of the Landfill's active disposal area as defined in Exhibit B of this Agreement.

Contractor agrees that the Landfill is first and foremost an operating landfill and that any proposed basalt rock-related activities shall not take precedence over ongoing landfill operations. Furthermore, Contractor agrees that some existing infrastructure (e.g., roads, scales, utilities) may not be available for its use on a predictable basis.

Contractor agrees to produce a variety of NMDOT, FAA and local market aggregate materials, including, but not limited to, the following:

- Structural and pavement concrete aggregate, roller compacted concrete
- Hot mix asphaltic concrete, cold mix/cold laid asphaltic concrete, asphalt stabilized base
- Aggregate for surface treatments
- Flexible base course aggregate
- Railroad ballast
- Rip-rap and various erosion control aggregates;
- Driveway rock;
- Crusher fines; and
- Other products not specified above

Contractor agrees to use best efforts to sell 110,000 tons of aggregate materials annually.

Contractor also agrees to sell to the Agency aggregate materials for erosion control, haul roads, and similar uses at a discount from the Contractor's published list. The total discount shall

be \$2.95 per ton, which includes the payment under Paragraph A of Article 3 (\$1.70 per ton) and the quality control/marketing fee (\$0.25 per ton). For payment purposes, Contractor and the Agency shall agree on the density or conversion factor (i.e., tons to cubic yards) for each type of aggregate material.

Contractor agrees to use its best efforts to sell all the basalt rock by the termination date of this Agreement. Contractor shall pay the Agency \$1.70 per ton for aggregates produced and sold by the Contractor, across the truck scales at the Landfill, on a monthly basis until all aggregates have been sold. All excavated rock and produced aggregate that is not sold by the termination date of this Agreement shall remain the property of the Agency.

The Agency shall be responsible for royalty payments to the BLM.

Contractor warrants that it has the expertise and resources necessary to perform the work as detailed in the January 30, 2014, Caja del Rio Crushing and Sales Plan (Plan), approved by the BLM on April 14, 2014.

Contractor shall conduct crushing operations only Monday through Friday, from 7:00 a.m. to 5:30 p.m., when necessary. Contractor shall notify the Agency and obtain Agency approval before crushing may occur on weekends or at any time outside the specified hours.

Contractor shall use the existing heavy equipment, crushing plant, and infrastructure at the Landfill to minimize noise and emissions.

Contractor's crushing operations shall not exceed a 20-minute average noise level of 83 dBA as documented in CDM Smith's Caja del Rio Landfill Noise Analysis Memorandum, dated March 28, 2014.

Contractor shall comply with its NSR air quality permit for dust and emissions control by spraying or misting with water to reduce fugitive dust. There is no potable water at the Landfill.

The Agency receives treated effluent (reclaimed) wastewater from the City of Santa Fe Wastewater Plant via Marty Sanchez Golf Course. The Agency operates and monitors the use of Class 1B reclaimed wastewater under NMED Discharge permit number DP-1120. Contractor may use reclaimed wastewater for dust suppression at the crushing operation, watering haul roads, and rock washing. If reclaimed wastewater is not available on site, Contractor shall be responsible for transporting it to the crusher facility for dust control and rock washing.

Contractor shall pay for its use of reclaimed water at fifty percent (50%) of the rate for potable water as set forth in the City of Santa Fe Sanitary Sewer Rate, Fee and Penalty Schedule (Chapter XXV SFCC 1987), plus administrative costs and applicable state taxes.

Contractor shall comply with its Stormwater Pollution Prevention Plan (SWPPP) and implement Best Management Practices (BMPs) to reduce pollutants in stormwater discharges from the site.

Contractor shall halt crushing or sales operations if any archaeological or cultural artifacts are discovered.

Contractor and its customers shall comply with all rules and regulations of the New Mexico Department of Motor Safety and the Federal Motor Carrier Safety Administration, including those related to covered loads to protect other vehicles and to maximum vehicle weights, as no loaded vehicles will be permitted to leave the Landfill in excess of these limits.

Contractor and its customers shall adhere to posted speed limits at all times, including the following: 45 mph on Caja del Rio Road; 35 mph on Wildlife Way before the first gate to the Landfill, 30 mph on Wildlife Way between the first and second gates to the Landfill, and 25 mph inside the second Landfill gate on the paved access road within the Landfill.

The Agency shall act as Scale Master for all loads of basalt rock removed from the Landfill. As such, the Agency retains the right to enforce the weight limits set forth in this Scope of Services. The Agency's scale facilities shall also serve as the scale of record for determining the weight of basalt rock removed from the Landfill and for calculating subsequent royalty payments due to the BLM and, potentially, the Agency.

Contractor shall acknowledge that its use of the outbound truck scales may cause damage to the scales beyond the reasonable wear and tear associated with regular Agency operations. Accordingly, Contractor expressly agrees to pay the Agency: (1) fifty percent (50%) of the Agency's regular cost for quarterly calibration of the scales and (2) the cost of maintenance and repairs for damage to the outbound truck scale reasonably attributable to Contractor's use of the scales.

Contractor shall be responsible for maintaining all necessary permits and licenses required to fulfill the scope of work under this Agreement. These permits and licenses shall be subject to inspection by the Agency. Contractor shall also notify the Agency of any noncompliance.

Contractor shall be responsible for maintaining proper standards for work, safety, and environmental protection. Contractor agrees to hold the Agency harmless from all fines imposed by federal, state, or local agencies. Contractor shall be responsible for paying all fines and judgments levied by these agencies arising from activities performed under this Agreement.

Contractor shall not subcontract any portion of the Scope of Services under this Agreement without the Agency's written approval.

Contractor shall not erect an asphalt or concrete batch plant at the Landfill.

**EXHIBIT B**

**Conceptual Design of Future Disposal Area  
for  
Blasting, Quarrying and Rough Subgrade Preparation**

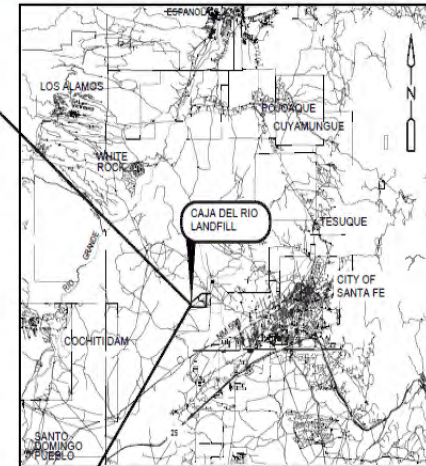
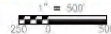
SANTA FE SOLID WASTE MANAGEMENT AGENCY  
**CAJA DEL RIO LANDFILL**

**CONCEPTUAL DESIGN OF  
 FUTURE DISPOSAL AREA**

JULY 2025



**SITE LOCATION MAP**



**VICINITY MAP**  
 NO SCALE

SHEET INDEX	
SHEET ID.	TITLE
-	COVER SHEET
G-1	CURRENT SITE DEVELOPMENT PLAN
G-2	PROPOSED SITE DEVELOPMENT PLAN
C-3	EXISTING CONDITIONS
C-1	GRADING PLAN
C-1A	DEL HUR GRADING PLAN
C-2	LEACHATE COLLECTION SYSTEM
C-3	CLOSURE PLAN
C-4	CROSS SECTIONS
CD-1	CIVIL DETAILS I
CD-2	CIVIL DETAILS II

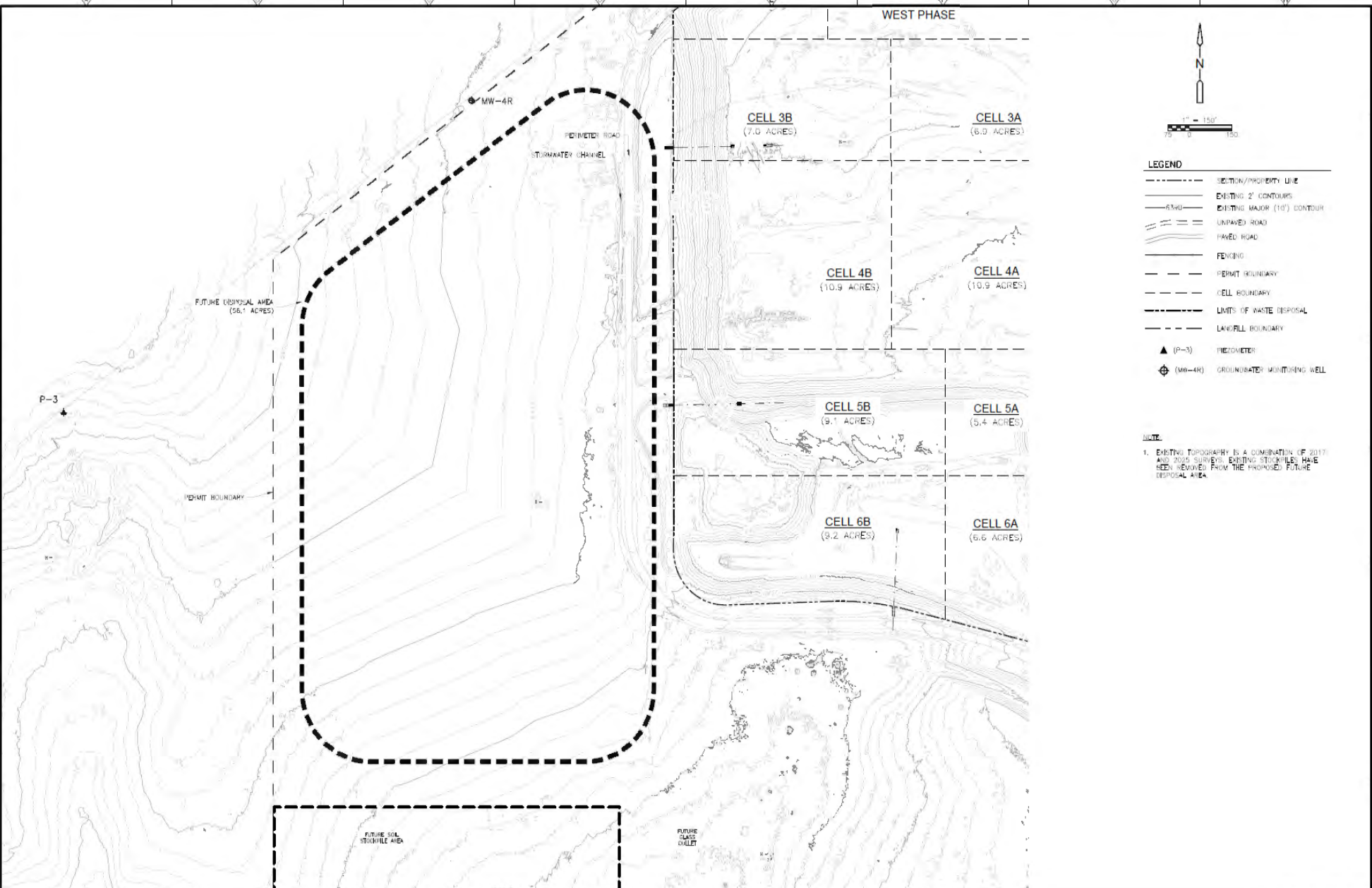
**CDM  
 Smith**  
 6001 INDIAN SCHOOL RD. NE, SUITE 310  
 ALBUQUERQUE, NM 87110  
 Tel. (505) 243-3200



PROJECT: SCSWMA SOLID WASTE MANAGEMENT PLAN, Figure 1, 20110907\_TML.dwg, 10/19/2014  
 PLOTTER: HP DesignJet 5000 Series Plotter  
 PLOT SCALE: 1:1  
 PLOT DATE: 10/19/2014 10:00:00 AM  
 PLOT BY: jsmith



4885-1 [CDWG\_2234\_05/2023] Issues: 0  
 Date saved by: JASON Date: 5/17/2023 2:44:05 PM  
 Location: \\007\3\2023\04\_Consult\_Schedule\_MW-4R.dwg User: JASON  
 05/17/2023 2:44:05 PM  
 I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF THE CONSULTANT AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE CONSULTANT.

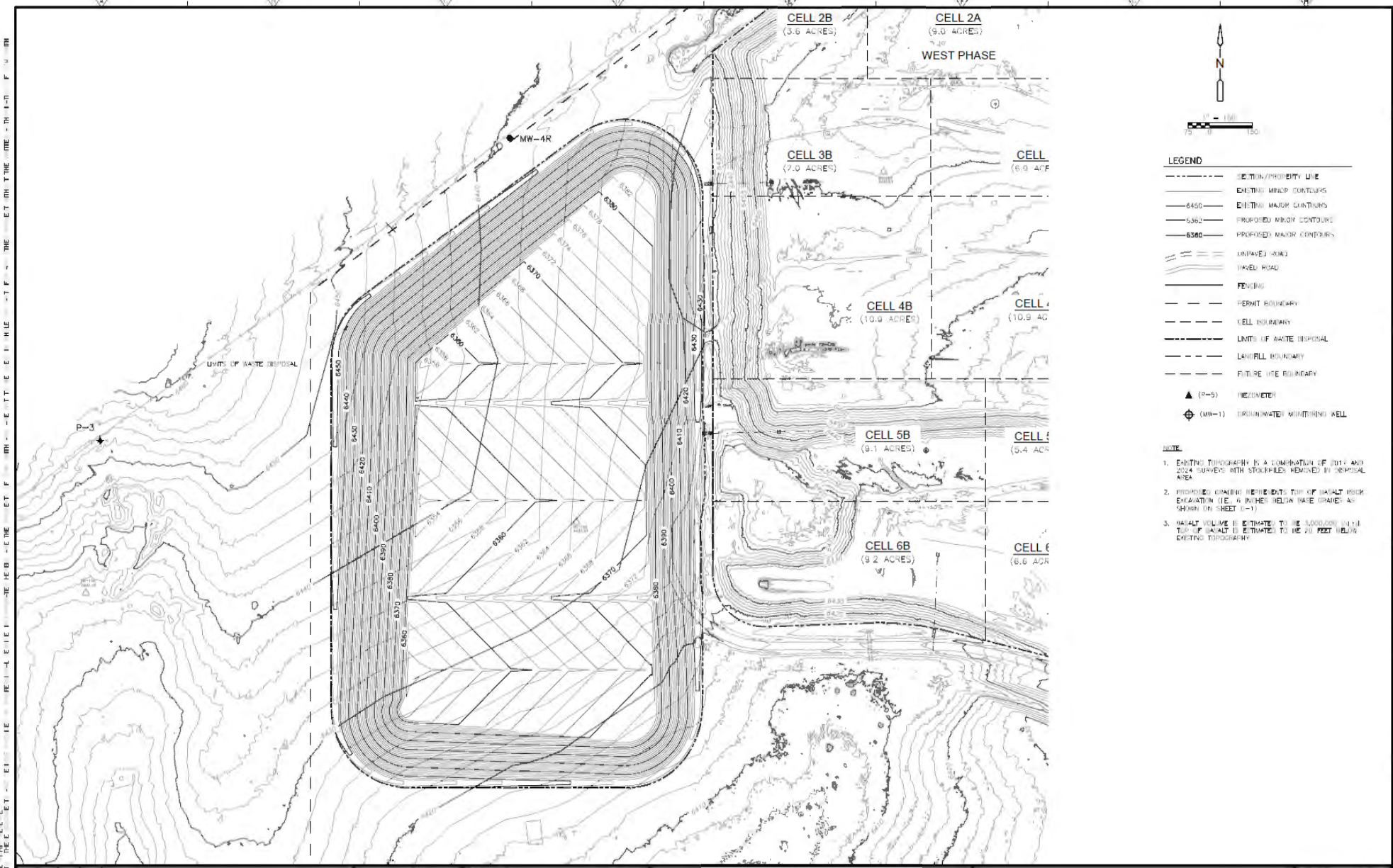


DATE: _____ DRAWN: _____ CHECKED: _____		REVISIONS: 1. DATE: _____ BY: _____ 2. DATE: _____ BY: _____ 3. DATE: _____ BY: _____ 4. DATE: _____ BY: _____	<b>CDM Smith</b> 6001 Indian School Rd. NE, Suite 310 Albuquerque, NM 87110 Tel: (505) 243-2000	SANTA FE SOLID WASTE MANAGEMENT AGENCY CAJA DEL RIO LANDFILL CONCEPTUAL DESIGN OF FUTURE DISPOSAL AREA	EXISTING CONDITIONS	PROJECT NO: 10979-302933 FILE NAME: 0304EX1L.DWG SHEET NO: <b>G-3</b>
---	--	--	--	---	---------------------	--

DRAFT DRAWINGS



085 [10/16/2014 10:45:00] Images I  
 Last saved by: vicki@cdmsmith.com  
 11/17/2014 10:45:00  
 0320



- LEGEND**
- BOUNDARY/PROPERTY LINE
  - EXISTING MINOR CONTOURS
  - EXISTING MAJOR CONTOURS
  - PROPOSED MINOR CONTOURS
  - PROPOSED MAJOR CONTOURS
  - UNPAVED ROAD
  - PAVED ROAD
  - FENCING
  - PERMIT BOUNDARY
  - CELL BOUNDARY
  - LIMITS OF WASTE DISPOSAL
  - LANDFILL BOUNDARY
  - FUTURE SITE BOUNDARY
  - ▲ (P-5) BENCHMARK
  - ⊕ (MW-1) DRINKING WATER MONITORING WELL

- NOTE**
1. EXISTING TOPOGRAPHY IS A COMBINATION OF 2014 AND 2014 SURVEYS WITH STICKPILES REMOVED IN BERMAL AREA
  2. PROVIDED DRAINING REQUIREMENTS TOP OF BAYALT WORK EXCAVATION (IE, 4 INCHER BELOW BASE DRAINS AS SHOWN ON SHEET C-1)
  3. BAYALT VOLUME IS ESTIMATED TO BE 3,000,000 CU YD. TOP OF BAYALT IS ESTIMATED TO BE 20 FEET BELOW EXISTING TOPOGRAPHY.

NO.	DATE	ISSUED BY	REVISION

DATE	BY	DESCRIPTION

**CDM Smith**  
 6001 Indian School RD, NE, Suite 310  
 Albuquerque, NM 87110  
 TEL: (505) 243-2500

SANTA FE SOLID WASTE MANAGEMENT AGENCY  
 CAJA DEL RIO LANDFILL  
 CONCEPTUAL DESIGN  
 OF FUTURE DISPOSAL AREA

DEL HUR GRADING PLAN  
 SHEET NO:  
**C-1A**

PROJECT NO: 10474-102833  
 FILE NAME: CDD14XFL1.DWG  
 SHEET NO:  
**C-1A**

DRAFT DRAWINGS

**ATTACHMENT 2**  
**Construction Agreement**  
**With**  
**Del Hur Industries**

**SANTA FE SOLID WASTE MANAGEMENT AGENCY  
CONSTRUCTION AGREEMENT WITH  
DELHUR INDUSTRIES, INC.  
(Basalt Rock Crushing and Sales Operation – 2022)**

This CONSTRUCTION AGREEMENT (“Agreement”) is made and entered into by and between the Santa Fe Solid Waste Management Agency (“Agency”) and DelHur Industries, Inc. (“Contractor”) for the crushing, sales and removal of excavated basalt rock from the Caja del Rio Landfill (RFP No. '22/25/P), as described in Exhibit A and below. The Agreement shall be effective as of the date this Agreement is executed by the Agency.

**1. SCOPE OF SERVICES**

A. The construction services subject to this Agreement are set forth in the Scope of Services attached hereto as Exhibit A. Contractor shall crush, process, prepare for removal, and remove all excavated basalt rock and other designated material located at the Caja del Rio Landfill. Contractor shall perform according to the terms of this Agreement, the terms established in Exhibit A, and the terms established in related Contract Documents, including the Caja del Rio Crushing and Sales Plan dated January 30, 2014, Caja del Rio Landfill Noise Analysis Memorandum dated March 28, 2014, and Contractor’s Proposal for RFP No. '22/25/P, all of which are incorporated in this Agreement as if attached to this Agreement or repeated herein. Contractor shall also comply with all federal, state, and local law and regulations; obtain and comply with any permitting or licensing requirements, including, but not limited to, requirements imposed by environmental regulatory entities; and make substantial progress toward the removal of all designated material.

B. Services for future rock excavation, including blasting, which may be authorized within the term of this Agreement shall require an Amendment to this Agreement to include a scope of work and the fees to be paid for such services.

**2. STANDARDS OF PERFORMANCE; LICENSES**

A. Contractor represents that it possesses the experience and knowledge necessary to perform the services described in this Agreement.

B. Contractor agrees to obtain and maintain throughout the term of this Agreement all applicable professional and business licenses required by law for itself and its employees, agents, representatives and subcontractors.

**3. COMPENSATION**

A. Contractor shall pay to the Agency, \$1.50 per ton for the removal of the basalt rock from the Caja del Rio Landfill (“Landfill”) sold as aggregates by Contractor across the truck scales located at the Landfill on a monthly basis until all aggregate is sold. All aggregate products not sold by Contractor upon the termination of this Agreement shall remain the property of the Agency. Contractor shall have the opportunity to purchase any such remaining materials at the market rate as determined by the Agency and shall, if an agreement to purchase is reached, be given a reasonable time, not to exceed six months, to remove the materials from the premises.

B. Contractor shall pay the Agency for reclaimed water used by Contractor at the Landfill at fifty percent (50%) of the rate for potable water as set forth in the City of Santa Fe Sanitary Sewer Rate, Fee and Penalty Schedule (Chapter XXV SFCC 1987) (as it may be amended), plus administrative costs and applicable state taxes.

C. Contractor acknowledges that its use of the outbound truck scales may cause damage to the scale in excess of the reasonable wear and tear associated with regular Agency operations. Accordingly, Contractor expressly agrees to pay the Agency: (1) fifty percent (50%) of the Agency’s regular cost incurred for quarterly calibration of the scales and (2) the cost of

maintenance and repairs for damage to the outbound truck scale reasonably attributable to Contractor's use of the scale.

D. Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums payable under this Agreement.

E. Contractor shall not be compensated for any costs, expenses, or other items it incurs related to its performance under this Agreement.

**4. TERM AND EFFECTIVE DATE**

A. This Agreement shall be effective when signed by the Agency and shall be for a term of ten (10) years, terminating on May 19, 2032, unless it is terminated sooner pursuant to Article 6 below.

B. Pursuant to the limitations on construction contracts codified in NMSA 1978 §13-1-150, this Agreement may not exceed ten years, including all extensions and renewals.

**5. TERMINATION**

A. The Agency may terminate this Agreement at any time and for any reason by giving ninety (90) days written notice to Contractor. Reason for terminating the Agreement shall include, but not be limited to, Contractor's failure to make substantial progress towards the sale and removal of the basalt rock or Contractor's failure to sell the minimum quantities established in the Scope of Services. The Agency's determination that substantial progress is not being made shall be final and not subject to dispute or correction by Contractor. If the Agency terminates the Agreement:

- 1) Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the Agency original copies of all work product, research, or papers prepared for the services covered by this Agreement.

2) Full payment shall be made for all material transferred, for all reclaimed water used and for any other expenses due from Contractor before the date of termination, in accordance with Article 3 of this Agreement.

B. Contractor shall have the right to terminate this Agreement with or without cause, at any time with no less than one hundred twenty (120) days written notice to Agency.

**6. APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations to and authorization from the Joint Powers Board for the Agency for the performance of this Agreement. If sufficient appropriations are not made or authorization provided, this Agreement shall terminate upon written notice from the Agency to Contractor. Compensation shall be paid to the Agency for all activities performed up to the date of notification under this Article per Article 5 of this Agreement. The Agency's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

**7. DEFAULT**

The Agency reserves the right to cancel all or any part of this Agreement without cost to the Agency if Contractor defaults in the performance of this Agreement, and except as otherwise provided herein, to hold Contractor liable for any cost or damage incurred by the Agency due to Contractor's default.

**8. FORCE MAJEURE**

A. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation under this Agreement if the delay or failure to perform is as a result of force majeure. Event of force majeure means:

1) Acts of God or a public enemy;

- 2) Acts or omissions of any government entity;
- 3) Fire, flood or other casualty for which a party is not responsible;
- 4) Pandemic, epidemic or quarantine restriction;
- 5) Unanticipated work stoppage or freight embargo;
- 6) Strike, lockout, labor dispute, or civil disturbance; and
- 7) Unusually severe weather conditions.

**B.** Where there is an event of force majeure, the party prevented from or delayed in performing its obligations under this Agreement must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from or delaying that party in performing its obligations under this Agreement. The party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its performance of the Agreement and to fulfill its obligations under the Agreement.

#### **9. ASSIGNMENT; SUBCONTRACTING**

Contractor shall not assign or transfer any rights, privileges, obligations or other interests under this Agreement, including any claims for money due, without the Agency's prior written consent. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the Agency's prior written approval.

#### **10. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS**

**A.** Contractor, its agents, and its employees are independent contractors performing construction services for the Agency and are not employees of the Agency.

**B.** Contractor, its agents, and its employees shall not accrue leave, retirement, insurance, bonding, or any other benefits afforded to employees of the Agency and shall not be permitted to use Agency vehicles in the performance of this Agreement.

C. Contractor shall be solely responsible for payment of wages, salaries, and benefits to any and all employees or subcontractors Contractor retains to perform any of its obligations pursuant to this Agreement.

**11. CHANGE IN CONTRACTOR'S REPRESENTATIVE**

The Agency reserves the right to require a change in Contractor representative if the assigned representative fails to perform to the satisfaction of the Agency. Contractor will have fifteen (15) days from the Agency's written notice to remove and replace the representative with another representative acceptable to the Agency.

**12. RELEASE**

Contractor, upon making the final payment(s) due under this Agreement, releases the Agency, its officers, and its employees from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the Agency to any obligation not assumed herein by the Agency unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

**13. CONFIDENTIALITY**

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the Agency's prior written approval.

**14. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Contractor in the performance of this Agreement shall be and remain the property of the Agency without restriction or limitation upon its use or dissemination by Agency. Contractor may take and

retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Contractor.

**15. CONFLICT OF INTEREST**

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with its performance of its obligations pursuant to this Agreement. Contractor further agrees that it shall not employ or contract with anyone in the performance of this Agreement that has any such conflict of interest.

**16. INSURANCE**

A. Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement commercial general liability insurance of \$2,000,000 for each occurrence and \$4,000,000 in general aggregate coverage for bodily injury and property damage liability, in a form and with an insurance company acceptable to the Agency. The required limits may be provided by a combination of general liability insurance and commercial umbrella liability insurance. The Agency shall be named as an additional insured under the insurance policy, and the policy shall provide that the Agency will be notified no less than 30 days before the policy is canceled for any reason. Contractor has furnished the Agency with a copy of a Certificate of Insurance or other evidence of Contractor's compliance with the provisions of this Article as a condition of entering into this Agreement.

B. Contractor shall carry and maintain sufficient automobile liability insurance throughout the term of this Agreement to cover no less than \$2,000,000 combined single limit for each accident for bodily injury and property damage. The required limits may be provided by a combination of automotive liability insurance and commercial umbrella liability insurance.

C. Contractor shall carry and maintain Contractors pollution liability insurance and/or errors and omissions applicable to the services performed throughout the term of this Agreement to cover no less than \$2,000,000 for each claim and \$4,000,000 aggregate per policy period of one year. The required limits may be provided by a combination of pollution liability insurance and commercial umbrella liability insurance.

D. Contractor shall carry and maintain Workers' Compensation insurance in accordance with New Mexico law to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the Agency with evidence demonstrating that appropriate Workers' Compensation insurance has been obtained.

E. The Contractor may obtain additional insurance not required by this Agreement.

**17. INDEMNIFICATION**

Contractor shall indemnify, hold harmless and defend the Agency from all losses, damages, claims or judgments, including payment of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action, or demand whatsoever to the extent arising from the negligent acts, errors, or omissions, or willful or reckless disregard of obligations under this Agreement, in the performance of any services covered by this Agreement, whether occurring on Agency managed or owned property or otherwise, by Contractor or its employees, agents, representatives, or subcontractors, excepting only such liability that arises out of the Agency's sole negligence.

**18. RECORDS AND AUDIT**

Contractor shall maintain throughout the term of this Agreement and for a period of three years thereafter detailed records that indicate the date, time, and nature of services rendered. These records shall be subject to inspection by the Agency, City of Santa Fe Finance Department, and the State Auditor. The Agency shall have the right to audit the billing both before and after payment.

Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

**19. THIRD PARTY BENEFICIARIES**

By entering into this Agreement, the parties do not intend to create any right, title, or interest in, or for the benefit of, any person other than the Agency and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary.

**20. APPLICABLE LAW; CHOICE OF LAW; VENUE**

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the Agency. In any action, suit, or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

**21. NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the Agency in connection with this Agreement is subject to the immunities and limitations set forth in the New Mexico Tort Claims Act, NMSA 1978 §§ 41-4-1 to 41-4-27. The Agency and its employees do not waive sovereign immunity, any available defense, or any limitation of liability recognized by law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**22. NON-DISCRIMINATION**

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the services Contractor

undertakes pursuant to this Agreement on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

**23. COMPLIANCE WITH LAWS AND REGULATIONS; PROHIBITION OF BRIBES, GRATUITIES, AND KICKBACKS**

Contractor shall comply with all applicable federal, state, and local laws and regulations throughout the term of this Agreement. Contractor expressly acknowledges that the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation, and New Mexico criminal statutes impose penalties for bribes, gratuities, and kickbacks.

**24. AMENDMENT**

This Agreement shall not be altered, changed, or modified except by an amendment in writing executed by the parties.

**25. SCOPE OF AGREEMENT**

This Agreement expresses the entire agreement and understanding between the parties with respect to the services set forth in the Scope of Services attached hereto as Exhibit A. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**26. SEVERABILITY**

If one or more of the provisions of this Agreement or any application thereof is found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of the Agreement and any other application thereof shall not in any way be affected or impaired.

27. **NOTICES**

A. Any notice required to be given under this Agreement shall be in writing and served to the parties at the following addresses:

**AGENCY:** Executive Director  
Santa Fe Solid Waste Management Agency  
149 Wildlife Way  
Santa Fe, NM 87506

**CONTRACTOR:** President  
DelHur Industries, Inc.  
4333 Tumwater Access Road  
P.O. Box 1116  
Port Angeles, WA 98362

B. Such notices may be delivered by:

- 1) personal delivery;
- 2) certified U.S. mail, returned receipt requested; or
- 3) recognized overnight delivery service.

C. Any such notice shall be effective upon actual receipt by the party entitled thereto.

D. Any party may change its address for purposes of this Article by giving notice to the other party as herein provided.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

**SANTA FE SOLID WASTE MANAGEMENT AGENCY:**

Anna Hansen      5/19/2022  
Anna Hanson      Date:  
Chairperson

**ATTEST:**

Katharine E. Clark  
Katharine E. Clark  
Santa Fe County Clerk



**CONTRACTOR:**

Rick Hurworth      5/20/2022  
Rick Hurworth      Date  
President  
DelHur Industries, Inc.

**APPROVED AS TO FORM:**

Nancy R. Long      5-20-2022  
Nancy R. Long      Date  
Agency Attorney

**EXHIBIT A**  
**Scope of Services**

## SCOPE OF SERVICES

The Contractor shall perform the following Scope of Services required by the Agreement for the basalt rock crushing and sales operation for the Caja del Rio Landfill as described in RFP No. '22/25/P and per the project approach provided to the Agency in the Contractor's proposal dated February 22, 2022. The Scope of Services also includes the requirements set forth in the Caja del Rio Crushing and Sales Plan and the Caja del Rio Landfill Noise Analysis Memorandum.

Contractor shall perform the basalt rock crushing and sales operation on a work area approximately 35 acres within the Landfill. The work area includes the stockpile of previously quarried basalt rock (237,000 tons) and storage for various aggregate products. The work area is west of the active disposal area of the Landfill. Any expansion of the existing work area must be approved by the Agency.

Contractor agrees the Landfill is first and foremost an operating landfill and that any proposed basalt rock related activities shall not have precedence over on-going landfill operations. Furthermore, Contractor agrees that some existing infrastructure (i.e., roads, scales, utilities etc.) may not be available for their use on a predictable basis.

Contractor agrees to produce a variety of NMDOT, FAA and local market aggregate materials including, but not limited to, the following:

- Structural and pavement concrete aggregate, roller compacted concrete
- Hot mix asphaltic concrete, cold mix/cold laid asphaltic concrete, asphalt stabilized base
- Aggregate for surface treatments
- Flexible base course aggregate
- Railroad ballast
- Rip-rap and various erosion control aggregate;
- Driveway rock;
- Crusher fines; and
- Other products not specified above

Contractor agrees to use best effort to sell 110,000 tons of aggregate materials annually.

Contractor also agrees to sell to the Agency aggregate materials for erosion controls, haul roads, etc. at a discount price to the Contractor's published list. The total discount shall be \$2.75 per ton, which includes the payment under Paragraph A of Article 3 (\$1.50 per ton) and quality control/marketing fee (\$0.25 per ton). For payment purposes, Contractor and the Agency shall agree on the density or conversion factor (i.e., tons to cubic yard) for each type of aggregate material.

Contractor agrees to use best efforts to sell all the basalt rock by the termination date of this Agreement. The Contractor shall pay the Agency \$1.50 per ton for aggregates produced and sold by the Contractor across the truck scales located at the Landfill on a monthly basis until all of the aggregates have been sold. All excavated rock and produced aggregate that is not sold by the termination date of this Agreement shall remain the property of the Agency.

The Agency shall be responsible for royalty payment to the BLM.

Contractor warrants that it possesses the expertise and the appropriate resources to perform the work as detailed in the January 30, 2014 Caja del Rio Crushing and Sales Plan (Plan) approved by the BLM on April 14, 2014.

Contractor shall engage in crushing operations only on Monday through Friday from 7:00 a.m. to 5:30 p.m., when crushing is necessary. Contractor shall notify the Agency and receive Agency approval before crushing may take place on weekends or at a time other than during the specified times.

Contractor shall utilize the existing heavy equipment, crushing plant, and infrastructure at the Landfill to keep to keep noise and emissions to a minimum.

Contractor's crushing operations shall not exceed a 20-minute average noise level of 83 dBA as documented in the CDM Smith's Caja del Rio Landfill Noise Analysis Memorandum, dated March 28, 2014.

Contractor shall comply with its NSR air quality permit for dust and emissions control by spraying/misting with water to reduce fugitive dust. There is no potable water at the Landfill. The Agency receives treated effluent wastewater (reclaimed wastewater) from the City of Santa Fe Wastewater Plant via Marty Sanchez Golf Course. The Agency operates and monitors the use of Class 1B reclaimed wastewater under NMED Discharge permit number DP-1120. Contractor may use reclaimed wastewater for dust suppression for the crushing operation, watering of haul roads, and rock washing. If reclaimed wastewater is not available on site for Contractor, then Contractor shall be responsible for transporting reclaimed wastewater to the crusher facility for dust control and rock washing.

Contractor shall pay for its use of reclaimed water at fifty percent (50%) of the rate for potable water as set forth in the City of Santa Fe Sanitary Sewer Rate, Fee and Penalty Schedule (Chapter XXV SFCC 1987), plus administrative costs and applicable state taxes.

Contractor shall comply with its Stormwater Pollution Prevention Plan (SWPPP) and employ Best Management Practices (BMPs) to reduce pollutants in stormwater discharges from the site.

Contractor shall halt crushing or sales operation if any archaeological or cultural artifacts are discovered.

Contractor and its customers shall comply with all rules and regulations governed by the New Mexico Department of Motor Safety and the Federal Motor Carrier Safety Administration including the rules and regulations related to covered loads to protect other vehicles and maximum

vehicle weights as no loaded vehicles will be permitted to leave the Landfill in excess of these limits.

Contractor and its customers shall adhere to the posted speed limits at all times including the following: 45 miles per hour (mph) on Caja del Rio Road, 35 mph on Wildlife Way before the first gate to the Landfill, 30 mph on Wildlife Way between the first and second gates to the Landfill, and 25 mph inside the second gate on the paved access road inside the Landfill.

The Agency shall act as Scale Master for all loads of basalt rock removed from the Landfill. As such, the Agency retains the right to enforce weight limits as described in this Scope of Services. The Agency scale facilities shall also serve as the scale of record to determine the weight of basalt rock removed from the Landfill and subsequent royalty payments due to the BLM and potentially the Agency.

Contractor shall acknowledge that its use of the outbound truck scales may cause damage to the scale in excess of the reasonable wear and tear associated with regular Agency operations. Accordingly, Contractor expressly agrees to pay the Agency: (1) fifty percent (50%) of the Agency's regular cost incurred for quarterly calibration of the scales and (2) the cost of maintenance and repairs for damage to the outbound truck scale reasonably attributable to Contractor's use of the scale.

Contractor shall be responsible for maintaining all necessary permits and licenses to fulfill the scope of work in this Agreement. These permits and licenses shall be subject to inspection by the Agency. Contractor shall also notify the Agency of any non-compliance.

Contractor shall be responsible for maintaining proper work, safety, and environmental protection standards. Contractor agrees to hold the Agency harmless for all fines from federal,

state, or local agencies. Contractor shall be responsible for paying all fines and judgments levied by these agencies resulting from activities performed under this Agreement.

Contractor shall not subcontract any portion of the scope of work to be performed under this Agreement without written approval of the Agency.

Contractor shall not erect an asphalt batch plant or a concrete batch plant at the Landfill.