

MEMORANDUM

To: SFSWMA Joint Powers Board
From: Randall Kippenbrock, P.E., Executive Director ^{RLK}
Date: May 15, 2026
Subject: Request for Approval of Amendment No. 1 to the Construction Agreement with DelHur 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 DelHur Industries (DelHur) 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 of the Caja del Rio Landfill. DelHur will comply with Santa Fe County's minimum blasting permit requirements.

The Amendment amends the royalty payments to the Agency for basalt aggregates produced and sold. DelHur will pay the Agency \$1.50 per ton for the sale of aggregates (basalt rock) produced in Cells 2B-6B of the Landfill. DelHur will pay the Agency \$0.95 per ton for the removal of basalt rock from the future disposal area west of the Landfill's West Phase disposal area. The Agency is responsible for royalty payments to the Bureau of Land Management (BLM), currently \$0.95 per ton.

The Amendment will also continue DelHur'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 DelHur Industries for a term of ten (10) years, ending May 19, 2032.

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

DelHur 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.

DelHur 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 DelHur.

Attachments:

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

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ATTACHMENT 1

Construction Agreement – Amendment No. 1

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
AMENDMENT No. 1
CONSTRUCTION AGREEMENT
DELHUR INDUSTRIES, INC.
(Crushing and Sales and Basalt Rock Blasting Operations - 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 DelHur 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 crushing and sales, and basalt rock blasting operations at 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 update the crushing and sales operations in Exhibit A, to incorporate the basalt rock blasting operations detailed in Exhibit B attached hereto, and to include the construction drawings for a future disposal area west of the West Phase disposal area, as described in Exhibit C 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 Exhibits A through C, 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 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, as described in Exhibit C, attached hereto.

C. Contractor shall also comply with all federal, state, and local laws and regulations; obtain and comply with any permitting or licensing requirements, including, but not limited to, those 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 set forth in Exhibit A attached hereto. Contractor shall crush, process, and remove all excavated basalt rock and other designated material 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 C.

E. The construction services subject to this Agreement for blasting operations are set forth in Exhibit B attached hereto.

2. COMPENSATION

Article 3, Compensation of the Agreement is hereby amended to update the royalty fees so that Article 3 reads in its entirety as follows:

A. Contractor shall pay the Agency \$1.50 per ton for the removal of basalt rock from Cells 2B-6B of the Caja del Rio Landfill ("Landfill") sold by Contractor as aggregates across the truck scales at the Landfill on a monthly basis until all aggregate is sold.

B. Contractor shall pay the Agency \$0.95 per ton for the removal of basalt rock from the future disposal area west of the Landfill's West Phase disposal area, as described in Exhibit C, for aggregates sold by Contractor across the truck scales at the Landfill on a monthly basis until all aggregate is sold.

C. 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.

D. Contractor shall pay the Agency for reclaimed water used by Contractor at the Landfill at fifty percent (50%) of the potable water rate 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.

E. 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.

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

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

3. NOTICES

Article 28, Notices of the Agreement is amended to change the notice information for Contractor, so that Article 28 reads in its entirety as follows:

A. Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by email, as provided below:

AGENCY: Mr. Randall Kippenbrock, P.E.
Executive Director
Santa Fe Solid Waste Management Agency
149 Wildlife Way
Santa Fe, NM 87506
Email: rkippenbrock@sfswma.org

CONTRACTOR: Mr. Rick Hurworth
President
DelHur Industries, Inc.
361 S. Camino Del Rio Ste. 130
Durango, CO 81303
Email: rhurworth@delhur.com

B. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day.

C. Notice sent by email shall be effective only upon actual receipt of the original by delivery service unless written confirmation is sent by the recipient of the email stating that the notice has been received, in which case the notice shall be deemed effective as of the date specified in the confirmation.

D. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not constitute delivery of notice hereunder.

4. 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
President
DelHur Industries, Inc.

Date:

APPROVED AS TO FORM:

Nancy R. Long
Agency Attorney

Date:

EXHIBIT A
Scope of Services
for
Crushing and Sales Operations

**SCOPE OF SERVICES
FOR
CRUSHING AND SALES OPERATIONS**

Contractor shall perform the Scope of Services required by the Agreement for the basalt rock crushing and sales operations at the Caja del Rio Landfill, as described in RFP No. '22/25/P and per the project approach provided to the Agency in 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 C 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 Contractor's published list. The total discount shall be \$2.75 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 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 potable water rate 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 Storm Water Pollution Prevention Plan (SWPPP) and implement Best Management Practices (BMPs) to reduce pollutants in storm water 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.

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

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
Scope of Services
for
Basalt Rock Blasting Operations

**SCOPE OF SERVICES
FOR
BASALT ROCK BLASTING OPERATIONS**

Contractor shall perform the Scope of Services required by the Agreement for the basalt rock blasting operations at the Caja del Rio Landfill, as described in RFP No. '22/25/P and per the project approach provided to the Agency in Contractor's proposal dated February 22, 2022.

Contractor shall perform basalt rock blasting operations within the approximately 56-acre Work Area of the Landfill as defined in Exhibit C of this Agreement.

The Contractor shall identify an area of approximately one acre per year within the 56-acre Work Area for the Agency to remove overburden. The objective is to expose the high points of the basalt and sufficient levels to reveal continuous, competent rock, without requiring the removal of every low pocket, particularly deep and narrow ones, to depths ranging from 1 to 3+ feet, thereby establishing a stable, continuous working surface for the Contractor to carry out blasting operations.

Alternatively, the Agency may engage the Contractor to remove the overburden and haul it to the designated landfill area. Such activity would require an amendment to the Agreement and prior notification.

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

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.

Contractor shall comply with its Storm Water Pollution Prevention Plan (SWPPP) and implement Best Management Practices (BMPs) to reduce pollutants in storm water discharges from the Work Area.

Contractor shall be responsible for maintaining all necessary permits and licenses required to fulfill the scope of services 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.

GENERAL REQUIREMENTS

Contractor shall furnish all labor, materials, equipment and incidentals required to blast, excavate, and remove basalt rock. Blasting operations shall include surveying, clearing, and grubbing within the Work Area.

General requirements for the blasting activities shall include the following:

1. Contractor shall comply with all applicable state and federal laws governing the use of explosives.
2. All blasting operations shall be conducted under the supervision of a licensed blaster. The licensed blaster shall be present during the detonation of the blast.
3. All blasting shall occur between sunrise and sunset.
4. Explosives may be used to clear blockages in crushing operations at any time, provided that the explosive charge does not exceed one pound and that Contractor complies with all other requirements as specified herein in this Exhibit.
5. Contractor shall provide vibration (seismic) monitoring services.
6. Contractor shall notify the Agency 48 hours prior to blasting. The Agency, in turn, will notify blast notification recipients, including, but not limited to, major haulers, public officials, and interested area residents of the exact time and day of blasting (Table 1). The following table identifies the entities that will be notified by the Agency. On the day of the blast, the Agency's primary coordinator will stop traffic 0.5 hours before the blast and hold traffic at the Scale House for 0.25 to 0.5 hours after the blast. The Agency's primary coordinator will confirm that all personnel, customers, and visitors have been evacuated beyond the Landfill scale house prior to

blasting and will remain so until the Agency’s primary coordinator has verified that it is safe to return to the Landfill.

Table 1. Blast Notification Recipients.

Santa Fe Airport Tower	City of Santa Fe - Environmental Services	New Mexico Department of Wildlife	Roadrunner Waste
Santa Fe County - Regional Emergency Communication Center	Santa Fe County - Solid Waste	Marty Sanchez Links De Santa Fe	MCT Waste
Del Hur Industries	North Central Solid Waste Authority	Agency Joint Powers Board	Universal Waste
Caja del Rio Landfill	San Miguel County	City of Santa Fe - Public Information Officer	Santa Fe Waste
Buckman Road Recycling and Transfer Station	Waste Management	Santa Fe County - Public Information Officer	Ibarra's Trash
New Mexico Environment Department - Resource Protection Compliance & Enforcement Bureau	Capital Scrap	Detecht, LLC (3 rd Party Seismic Monitoring Team)	Interested Area Residents

Contractor shall submit the proposed methods of excavation for the various portions of the work. Submittals shall be for information only.

Contractor shall submit three copies of the pre-construction survey, including data in ASCH format with point numbers, northing and easting, elevations, and point descriptions.

Contractor shall submit three copies of the pre-blast investigation, including photographs and/or video recordings, as specified herein.

Contractor shall have the blasting plans prepared by a licensed blaster with at least 5 years of professional experience in blasting operations. Contractor shall submit an original and three copies of the licensed blaster's certification, stating that the licensed blaster prepared the blasting plans and will be responsible for their execution. The licensed blaster will remain responsible for the adequacy and safety of construction means, methods, and techniques. At a minimum, the blasting plan shall include:

1. A description of the blasting procedure.
2. Schedule of blasting.
3. Rock excavation and removal schedule.

4. A list of proposed equipment.
5. Quality control procedures.

The Agency shall obtain a Santa Fe County blasting permit. Contractor shall prominently display the blasting permit at the Work Area prior to the commencement of blasting operations.

Contractor shall submit three copies of blasting records as specified herein.

QUALITY CONTROL/ QUALITY ASSURANCE

Contractor must be qualified and/or certified to perform any aspect of the blasting operations that requires such qualifications, training, and/or certification. Basalt rock removal shall require previous experience (minimum 5 years) in rock removal and heavy/highway construction. Contractor shall provide references as defined herein.

Contractor shall comply with all applicable state and federal regulations regarding basalt rock blasting and removal

Prior to commencing blasting operations, a pre-construction meeting shall be held to discuss the Project, Project organization, responsibilities, work activities, construction quality assurance (CQA), and quality assurance procedures. During the pre-construction meeting, project personnel shall be identified by name and recorded in the project files.

Two duplicate project files shall be maintained onsite. The Agency shall maintain one project file, and the Contractor shall maintain the other. At the end of each workweek, the files shall be updated and checked to confirm that each file contains a copy of all pertinent project information.

DELIVERY, STORAGE AND HANDLING

The delivery, storage, and handling of explosives shall be performed only by qualified persons licensed in the state where the Work is located and in full conformance with all laws, regulations, ordinances, and practices. Extreme care shall be taken to avoid injury or damage to persons or property.

DEFINITIONS

Rock means any large mass of stone, bedrock, or ledge rock.

Boulder means rock fragments exceeding one cubic yard in volume.

Rock Excavation means the removal of solid rock or rock fragments greater than one cubic yard in volume that cannot be removed by conventional mechanical excavation equipment or that requires continuous, systematic drilling and blasting, chemical expanders, or other special procedures.

Boulder Excavation: The removal of boulders exceeding one cubic yard in volume, which can be excavated without resorting to blasting.

Airblast means airborne waves resulting from the detonation of explosives. Airblast may be caused by burden movement or by the release of expanding gas into the air. Airblast may or may not be audible.

Blast means the detonation of an explosive by a Contractor for basalt rock removal.

Licensed Blaster means the person authorized to oversee and approve blasting operations at a blasting site.

Blasting Zone means any area within the operation that is designated in writing by Contractor to the Agency as being within the area within which Work will be conducted.

Blasting Operations means the process of shot design, layout, drilling, loading, detonation, and recordkeeping.

Burden means the distance from an explosive charge to the nearest free or open face at the time of detonation of each hole.

Cube Root Scaled Distance means the distance in feet from the blast to a specific location, divided by the cube root of the maximum weight of explosives, in pounds, to be detonated in any 8-millisecond period.

Decibel means the unit of sound overpressure commonly used to measure airblast from the detonation of explosives. It is also a measure in pounds per square inch (psi) and is defined in terms of overpressure by the equation:

$$dB = 20 \log P/P[0]$$

where: dB = sound in decibels

P = measured

overpressure in psi $P[0] = 2.0 \times 10^9$ psi

Operations means the property limits of any non-coal mineral extraction.

Scaled Distance means the distance in feet from the blast to a specified location, divided by the square root of the maximum weight of explosives, in pounds, to be detonated in any 8-millisecond period.

Stemming means inert material placed above the explosive column or vertically between column decks of explosives in a blast hole.

Work means any blasting activities or operations.

SURVEY

The Agency has established benchmarks and primary control points outside the Work Area. Contractor shall employ a licensed Land Surveyor in the State of New Mexico to provide all lines and grades necessary to perform the Work, and all surveys required for quantity verification and data for project files.

Pre-Construction Survey

1. Prior to the initiation of the site work, Contractor shall verify the Agency-provided survey to confirm that site conditions are representative of the information contained in Exhibit C. Contractor shall submit a written report of any/all discrepancies to the Agency at least five days in advance of Work commencement. The report shall include a topographic map that clearly indicates the discrepancies.
2. Contractor shall generate an electronic pre-construction survey surface using the Agency-provided survey data. The surface shall be generated using the approved pre-construction aerial and ground survey data. All electronic surfaces shall be generated using raw survey data (i.e., mass points and break lines), provided by the Agency, and shall not rely on contours or digitization methods to generate surfaces, except with the consent of the Agency. Surfaces shall be comprised of a Triangulated Irregular Network (TIN), also being the basis for a Digital Terrain Model (DTM). All such surfaces shall be created commensurate with National Mapping Accuracy Standards equal to that matching the scale and contour interval of the contract drawings.

Survey Control Plan

1. Contractor shall submit a survey control plan identifying the proposed control points shown in the construction drawings in Exhibit C. The plan shall be submitted to the

Agency at least 10 days before beginning any blasting operations, and the Agency shall respond with comments or approval within five days of receipt. Primary control shall be based on and tied to at least three surveyor control stations (provided by the Agency, if applicable). The establishment of all future primary control points will be tied to the same control stations or to previously established primary control stations. No work shall commence until any discrepancies between the survey information in the construction documents and the field conditions at the start of the Work are resolved. Any changes to the survey control plan during the Project shall be submitted to the Agency for approval before implementation.

Survey Data Comparison

1. Contractor shall notify the Agency in writing at least two days before performing any survey work. The Agency will be available to compare the data with the construction drawings in Exhibit C and may advise Contractor of any discrepancies. Regardless, Contractor is ultimately responsible for ensuring the Work is completed to the lines and grades shown in the construction drawings in Exhibit C.

As-Built Survey Data

1. Contractor's survey data shall be collected throughout the blasting activities to show as-built conditions and to verify subgrade conditions.

PREPARATION FOR BLASTING

Clearing, grubbing, and stripping shall be performed by the Agency to clean the area prior to blasting. Existing plant life beyond the construction limits shall be protected. Vegetative material removed from the blasting area must be disposed of appropriately and/or as directed by the Agency.

Contractor shall perform a pre-blast investigation for alternate structures within the influence range of blasting operations, or within 200 ft of the blast area, whichever is greater. The pre-blast investigation shall consist of a close visual inspection of the area, fully supported by photographs or video recordings.

Contractor shall note any damage occurring after completion of blasting operations that cannot be determined from the pre-blast investigation to be a pre-existing condition, and such damage shall be presumed to have been caused by blasting operations. Such damage shall be repaired

promptly and completely to the Agency's satisfaction, restoring the property to its condition prior to blasting.

Contractor shall maintain pre-blast investigation records for a period of not less than 3 years following final completion and acceptance of the work.

BLASTING PLANS

Contractor shall, prior to initiating blasting operations, have a blasting plan prepared by a certified blaster. The plan shall include sketches showing blast locations; proximity to and methods for protecting existing structures and utilities; drill hole patterns, charge weights, firing sequence and times; calculations of ground velocities, energy ratio, acceleration and displacement; and any other pertinent information required. Field monitoring methods and techniques shall also be addressed.

If required by local or state regulations, blasting plans shall be reviewed by the appropriate agency or authority and revised as required to meet their approval.

SIGNAGE AND SITE CONTROL

Contractor shall provide, post, and maintain all signage and markers for all blasting activities. Signage and markers shall meet the following requirements:

1. Signs shall list the specified information in both English and Spanish.
2. Warning and all-clear signals of different character or pattern that are audible within the blast zone shall be given.

Blasting signs shall be conspicuously displayed at the following locations:

1. Along the edge of any blasting zone that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting zone.
2. At all entrances to the operation from public roads or highways, place conspicuous signs which indicate explosives are being used at the operation and which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use.

Access to the blasting zone shall be controlled to prevent unauthorized personnel from being present during blasting until an authorized representative of Contractor has reasonably determined that no unusual circumstances, such as undetonated charges, exist and that access to and travel in or through the area can be safely resumed.

GENERAL EARTHWORK

All earthwork shall conform to the following requirements, where applicable, unless otherwise noted herein:

1. Contractor shall be solely responsible for the satisfactory completion of all earthwork in accordance with the construction drawings in Exhibit C.
2. Equipment used in the excavation, transport, stockpiling, processing, placement, and compaction of all materials used in earthwork construction shall be standard-of-practice grading machinery of known specifications, suitable for performing the required work in a timely and efficient manner.

BASALT ROCK BLASTING AND REMOVAL

Contractor shall perform blasting operations under the direct supervision of a certified blaster and by qualified blasting technicians licensed in the state in which the work is being performed. Blasting operations shall be in full compliance with applicable state and local laws, regulations, ordinances and practices.

The existing topography shall be contoured to a minimum of 6 inches below the subgrade elevations shown on the construction drawings in Exhibit C.

Contractor shall provide construction staking required for the basalt rock removal operation and for verification that the removal has been completed to the specified limits.

Contractor, before blasting commences, shall adjust monitoring point heights in the area to be blasted in accordance with details shown on the construction drawings in Exhibit C, if applicable.

No basalt rock removal shall begin in a given area until the Agency has approved it.

If necessary to protect existing features identified in the pre-blast investigation, blast locations shall be heavily matted to contain flying debris.

Any new haul roads constructed and maintained by Contractor must meet the air quality standards listed in the Caja del Rio Landfill/Agency's air quality permit. The use of the existing paved road at the Landfill will be permitted, provided it does not interfere with landfill operations.

USE OF EXPLOSIVES

Blasting shall be conducted to prevent injury to persons and damage to public or private property.

Airblast Limits

1. Airblast shall be controlled so that it does not exceed the values specified below in the chart at any protected structure, unless such structure is owned by Contractor and has not been leased to any other person, or a waiver has been obtained.

Lower Frequency Limit of Measuring System, Hertz + 3 Decibels	Maximum Level in Decibels
0.1 Hz or lower - flat response	134 peak
2.0 Hz or lower - flat response	133 peak
6.0 Hz or lower- flat response	129 peak

2. The measuring systems used shall have a flat frequency response of at least 20 Hz at the upper end.
3. The person who conducts the blasting may satisfy the provisions of this paragraph by meeting any of the three specifications in the chart above.
4. To ensure compliance with the limits contained in this Section, the Agency will require an airblast measurement of any or all blasts, and may specify the location of such measurements.

Fly rock, including blaster material traveling in the air or along the ground, but excluding dust and detonation by-products, shall not be cast beyond the blast zone.

Ground Vibration Monitoring

1. Contractor shall coordinate directly with Contractor's vibration monitoring team to confirm compliance with this Section.
2. Ground Vibration Limits: In all blasting operations, except as authorized in this Section, the maximum peak particle velocity shall not exceed one inch per second at the location of any protected structure, unless such structure is owned by Contractor and not leased to any other person, or a waiver has been obtained. In addition to the requirements of this Section, any blast within 500 feet of the Landfill's West Phase shall be conducted such that ground vibrations do not exceed 5 inches per second at the closest part of the Landfill's West Phase. Blast monitoring, as provided by the Contractor's vibration monitoring team, shall comply with this Section.
3. When the scaled distance is less than 65 at the nearest protected structure, a seismograph recording shall be made at or near the structure. To confirm compliance with the limits set in this Section, the Agency may require seismograph recordings of any or all blasts and may specify the locations where such recordings are made. Specific locations identified by the Agency prior to the Work include Landfill's West Phase, Landfill Administration Office, New Mexico Department of Wildlife, and a designated area near the closest neighborhood. Vibration monitoring, including seismograph recordings, will be provided by the Contractor's vibration monitoring team.
4. When any blast is within 500 feet of the Landfill West Phase, a seismographic recording at or near the closest part of the Landfill to the blast will be made.
5. In lieu of the ground vibration limit(s) identified above, Contractor may submit a written request to the Agency to use an alternative compliance method. Such a written request must be supported by sufficient technical information, which may include, but not be limited to, documented approval of such method by agencies in other states that regulate blasting operations at coal and/or non-coal mineral extraction operations. Upon Contractor's submission of a request to use an alternative compliance method, the Agency shall issue a written determination on whether the technical information

submitted provides sufficient justification for the alternative method to demonstrate compliance.

Waivers

1. A waiver of the airblast and ground vibration limits described in this Section may be obtained by Contractor in the following circumstances:
 - a. If the protected structure is owned by the Operator and leased to any other person.
 - b. If the protected structure is not owned by Contractor, but the Agency of the structure has a bona fide financial interest in, or commercial relationship with, the blasting operation. Contractor shall provide written documentation of any such interest or relationship to the Agency upon request.
2. The waiver shall be signed by the Agency of the structure unless Contractor is the Agency. If the structure is leased to any other person, the waiver must be signed by both the Agency and the lessee.
3. The waiver shall be in writing in a form approved by the Agency, and shall be submitted to the Agency before conducting blasting operations in accordance with the terms of the waiver.
4. Contractor is responsible for maintaining an up-to-date record of all executed waivers, including real estate and lease transactions that may affect the validity of the waivers. These records shall be made available for inspection by the Agency.
5. The waiver provided in this Section shall consist solely of a waiver of the airblast and ground vibration limits set forth herein and is not intended to exempt Contractor from civil liability.

MONITORING

When the cubed root scaled distance to the nearest protected structure has a value less than 350 and when the burden-to-hole depth ratio is greater than 1.0, or the top stemming height is less than 70 percent of the burden dimension, the airblast produced by the blast shall be measured at / or

near the closest protection structure. This shall apply to horizontal blast holes from the floor to the pit.

RECORDS

Contractor shall maintain blasting records as follows:

1. A record of each blast shall be made, retained by Contractor for at least three years and made available for inspection. The record is to be completed by the end of the workday following the day in which the blast occurred, including the seismograph meter reading and shall contain the following:
 - a. Name of licensed Contractor conducting the blast.
 - b. The location, date, and time of the blast.
 - c. Name, signature, and license number of the licensed blaster responsible for the blast.
 - d. Type of material blasted.
 - e. Number of holes, burden, and spacing,
 - f. Diameter and depth of holes.
 - g. Type of explosives per hole.
 - h. Maximum weights of explosives detonated within any 8-millisecond period.
 - i. Maximum number of holes or decks detonated within any 8-millisecond period.
 - j. Initiation system, including the number of circuits and the timer interval, if a sequential timer is used.
 - k. Type and length of stemming (deck and top).
 - l. Type of detonator and delay periods used, in milliseconds.
 - m. Sketch of delay pattern, including decking.
 - n. Distance and scaled distance to the closest protected structure, using the best available information.

STORAGE OF ROCK

Storage of blasted basalt rock shall be as determined by the Contractor and as needed to maximize the efficiency of its crushing operations. Storage of basalt rock shall not interfere with landfill operations.

Blasted basalt rock shall not exceed the maximum storage pile height of 50 feet.

DISPOSAL OF WASTE MATERIAL

Upon completion of the basalt rock subgrade development, Contractor shall dispose of all trash, waste material, and equipment used in connection with the performed Work and shall leave the premises in a neat and acceptable condition.

ACCEPTANCE

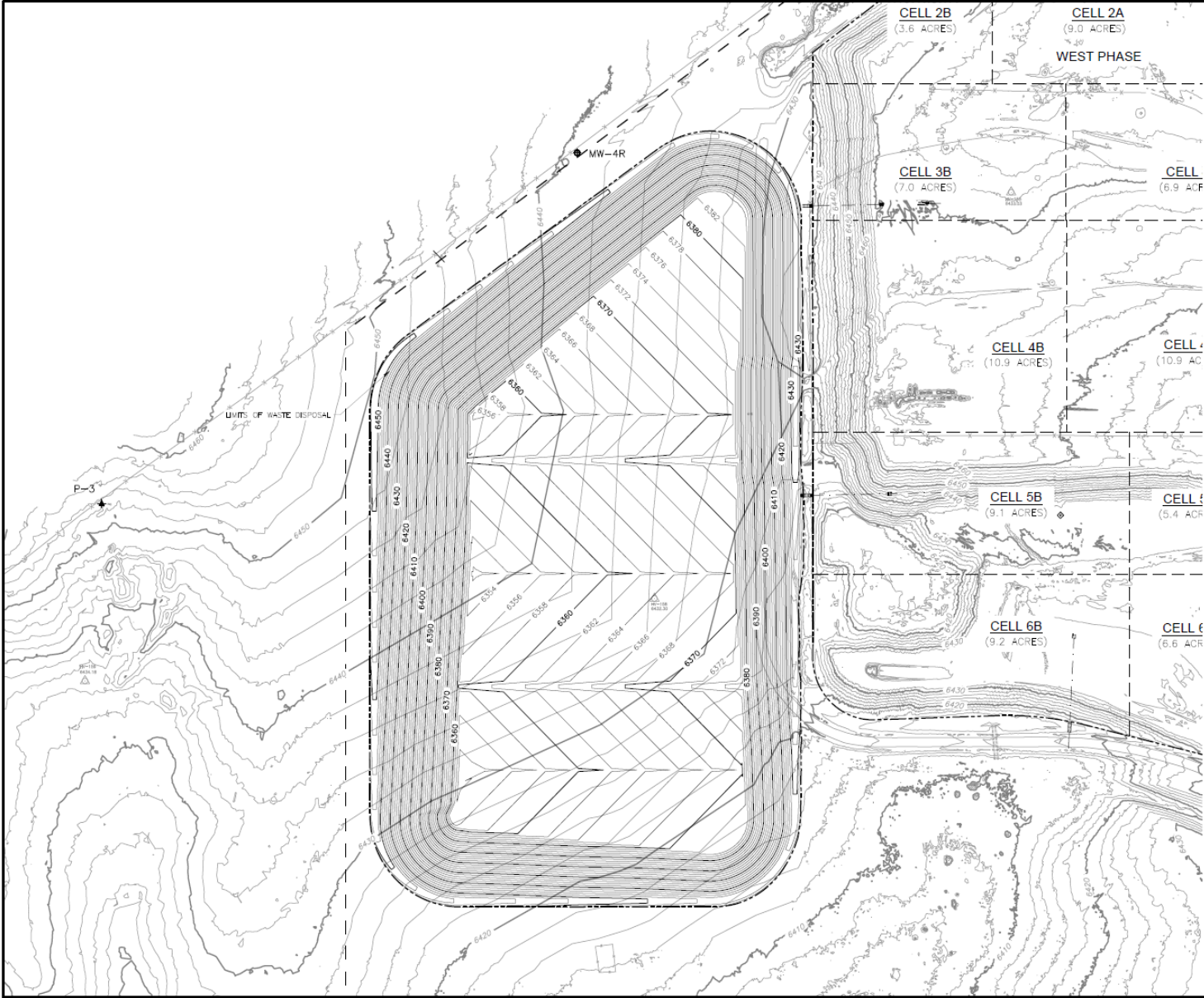
Contractor shall retain all ownership and responsibility for the basalt rock subgrade until acceptance by the Agency. The subgrade shall be accepted by the Agency when all of the following conditions are met:

1. Development is completed.
2. Certification by survey that the basalt rock subgrade meets the tolerance stated herein.

The existing topography shall be contoured to a minimum of 6 inches below the subgrade elevations shown on the construction drawings in Exhibit C.

EXHIBIT C
Conceptual Design of Future Disposal Area

P:\Projects\2024\1079-302933\Drawings\DWG\DELHUR\DELHUR_CAD\DELHUR_CAD.dwg
 User: A.W.BENFELD
 Date: 7/2/2024 11:14:10 AM
 Plot Date: 7/2/2024 11:14:10 AM
 Plot Scale: 1" = 150'
 Plot Size: 24" x 36"
 Plot Orientation: Landscape
 Plot Color: Black
 Plot Lineweight: 0.25
 Plot Linetype: Solid
 Plot Font: Arial, 10
 Plot Title: DELHUR GRADING PLAN
 Plot Sheet: 1 of 1
 Plot Path: P:\Projects\2024\1079-302933\Drawings\DWG\DELHUR\DELHUR_CAD\DELHUR_CAD.dwg



N

1" = 150'

LEGEND

- SECTION/PROPERTY LINE
- EXISTING MINOR CONTOURS
- 6450 EXISTING MAJOR CONTOURS
- 6362 PROPOSED MINOR CONTOURS
- 6360 PROPOSED MAJOR CONTOURS
- UNPAVED ROAD
- PAVED ROAD
- FENCING
- PERMIT BOUNDARY
- CELL BOUNDARY
- LIMITS OF WASTE DISPOSAL
- LANDFILL BOUNDARY
- FUTURE USE BOUNDARY
- ▲ (P-5) PIEZOMETER
- ⊕ (MW-1) GROUNDWATER MONITORING WELL

- NOTE:**
- EXISTING TOPOGRAPHY IS A COMBINATION OF 2017 AND 2024 SURVEYS WITH STOCKPILES REMOVED IN DISPOSAL AREA.
 - PROPOSED GRADING REPRESENTS TOP OF BASALT ROCK EXCAVATION (I.E. 6 INCHES BELOW BASE GRADES AS SHOWN ON SHEET C-1).
 - BASALT VOLUME IS ESTIMATED TO BE 3,000,000 CU YD. TOP OF BASALT IS ESTIMATED TO BE 20 FEET BELOW EXISTING TOPOGRAPHY.

NO.	DATE	BY	CHKD	REMARKS

DRAWN BY: A. W. BENFELD
 CHECKED BY: M. HIGLEY
 DESIGNED BY: G. GABRIEL
 DATE: JULY 2024

CDM Smith
 2201 Indian School Road, 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

DEL HUR GRADING PLAN

PROJECT NO.: 10879-302933
 FILE NAME: C001AKFLDWG
 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.

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

SANTA FE SOLID WASTE MANAGEMENT AGENCY:

Anna Hansen

Anna Hansen
Chairperson

5/19/2022
Date:

ATTEST:

Katharine E. Clark

Katharine E. Clark
Santa Fe County Clerk



CONTRACTOR:

Rick Hurworth

Rick Hurworth
President
DelHur Industries, Inc.

5/20/2022
Date

APPROVED AS TO FORM:

Nancy R. Long

Nancy R. Long
Agency Attorney

5-20-2022
Date:

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.