



CA. LIC. # 1043951

## HMH INC.

MAILING ADDRESS: P.O. BOX 371, BRAWLEY, CALIFORNIA 92227  
CORPORATE OFFICE: 245 NORTH 8<sup>th</sup> STREET, BRAWLEY, CA. 92227  
PHONE: 760-356-6200 FAX: 760-344-0371

### Daily Crusher Rental Proposal and Contract

Date of Proposal: July 8, 2022  
Proposal is valid for Thirty (30) Days from above.

**HMH INC.**, hereafter called "Contractor", and **CITY OF FULLERTON**, hereafter called the "Owner", agree as follows:

**1. DESCRIPTION OF WORK AND LOCATION:** Contractor agrees to provide the listed equipment, operated equipment and/or personnel at the daily rental rates indicated herein, hereafter called "Work", to perform the following: Process and Crush concrete and asphalt rubble, Located at: 3151 N. Euclid St, Fullerton, CA 92832.

**2. SCOPE OF WORK:** The above work shall be performed in accordance with the following: Scope of Work (see attached). Such Scope of Work is by this reference, incorporated herein, and made a part of this contract.

**3. PAYMENT:** Owner shall pay to Contractor, as full compensation for all the work hereunder, the following amount: **Ten Thousand One Hundred Eighty-Seven Dollars and no Cents (\$10,187.00) per Day.**

a. In accordance with the provisions of Paragraph III, of the attached General Conditions hereof, progress payments shall be 100% of the work performed and the sum of 2 % per month shall be added to any balance unpaid when due.

b. The above prices shall include all applicable Sales, Use, Franchise, Excise and other taxes which may now or hereafter be levied.

c. The above price is a unit price based on quantities, final payment shall be for actual days and/or fraction of a day, rounded to the nearest tenth of an hour, determined by the Superintendent, or other representative of Owner, and Contractor. This determination shall be memorialized, by said person's hands on Contractor's Daily Field Ticket, at the end of each and every work day or as soon as practical thereafter.

d. This Daily Crusher Rental Proposal and Contract shall be void if Owner is unable to demonstrate to the satisfaction of Contractor prior to commencement of work his ability to make payments for the work to be performed hereunder in the manner and at the times set forth herein.

**4. CONTRACT DOCUMENTS:** The contract documents shall consist of this Agreement, with attached General Conditions and Scope of Work.

**5. DAILY RENTAL:** Owner and Contractor hereby acknowledge that this contract is based on Eight (8) hour work Days, as set forth in Section 3 above, and that a day or part of a day is based on the following: That time, rounded to the nearest one-tenth of an hour, from the moment Contractor is prepared as scheduled or directed, by Owner, to commence work to the moment Contractor is scheduled or directed, by Owner, to cease work for the day. All work stoppages occurring within this period caused by, but not limited to, the following will be charged out at the same daily rate: material jams, wet materials, clay soils, oversize materials, steel and Owner supplied water or material shortages. All machine set up, take down, mandatory breaks and daily maintenance including but not limited to lubing, fueling, wear parts change out and filter maintenance will be performed during this time and charged out at the same daily rate. The only exceptions being for those days or parts of a day that Contractor's machinery is not operational due to mechanical failure and regularly scheduled meal times.

**6. BREAKAGE:** Owner agrees that the cost of any and all parts and labor required to affect repairs to any and all breakage and/or damage to the crusher or its accessories relating to the Contractor's feeding of Owner processed materials containing undetected non crushable steel such as, but not limited to, bolts, excavator teeth, pipe, plates, reinforcement bar (excluding up to 5/8" concrete encapsulated rebar) and ripper shanks will be solely borne by the Owner.

**7. DELIVERIES RELEASE:** In consideration of Contractor or his Agent unloading/loading materials and/or equipment to a place designated by Owner hereby releases and agrees to indemnify and hold harmless Contractor, its Agents, employees and drivers from all liability or claims for damage done by it, or them, to sidewalks, driveways, roadway property and all other real and personal property adjacent thereto, as a result of the movement of Contractor's vehicles, Agent vehicles, Agents or employees upon or about such property. This release is intended to, and does cover all movements of all vehicles of Contractor and/or its Agent, while being used in unloading/loading such materials and/or equipment at the location indicated above, from the time such vehicles leave the curb/property line to enter upon the property of the undersigned until they return to such curb/property line, regardless of the number and/or dates of such deliveries or movements.

**8. DOWN TIME:** Should any Contractor's equipment herein be unavailable to work, as scheduled by Owner, for any reason Contractor will advise Owner as soon as practical of such. Owner hereby acknowledges that Contractor will not be held liable for any charges (Back Charges) stemming from Owners inability to utilize any equipment, materials and/or labor related to this work.

**9. EQUIPMENT AND LABOR:** Owner will provide, and solely bore the cost of, all equipment and labor, other than Contractor supplied equipment and labor specifically referred to in the Scope of Work, should such be required.

**10. EQUIPMENT RELEASE:** In consideration of Contractor or his Agents and employees operating any Owner provided equipment, as directed by Owner or his Agents and employees, Owner hereby releases and agrees to indemnify and hold harmless Contractor, his Agents and employees from all liability or claims for damage done by it, or them, to said equipment arising from the normal use of same.

**11. FINISHED MATERIALS:** Owner acknowledges that Contractor makes no warranties either expressed or implied as to the quality or suitability of any crushed materials. Contractor shall endeavor to meet those specifications set forth by Owner but shall have no liability should any said materials fail to meet same.

**12. HAZARDOUS OR UNDESIRABLE MATTER:** By his/her hand below Owner hereby attest that, to the best of his/her knowledge, the materials to be processed or crushed, by Contractor, contain no matter deemed hazardous or undesirable by any Federal Government, State, County, Municipality or their Agencies of Government.

**13. JOB WATER:** Owner will supply construction water to within 25 feet away of crusher, or fill water buffalo daily. Furthermore, Owner will also supply water, with sufficient pressure and volume, to moisture condition materials to be crushed.

**14. MATERIALS TO BE PROCESSED AND OR CRUSHED:** Owner agrees that only those materials located on site will be crushed and or processed and no other materials will be delivered to the site as this may be a violation of Local Zoning Regulations. Furthermore Contractor will process and or crush only those materials that can safely be processed by Contractor's equipment. All materials exceeding the capabilities of Contractor's machinery will be set aside. The disposition of all said materials shall fall solely with Owner.

**15. MOBILIZATION:** A mobilization fee of **Ten Thousand Seven Hundred Forty-Five Dollars and no Cents (\$10,745.00)** is due and payable upon the execution of this contract. Owner understands that this fee is non-refundable regardless of time worked if any.

**16. OPERATED EQUIPMENT AND/OR PERSONNEL:** Owner and Contractor acknowledge that Contractor may or may not complete all work above as this contract is to provide operated equipment and/or personnel on a daily basis only. The Scope of Work above only describes, in detail, what task Contractor's operated equipment and/or personnel will be performing. Owner and Contractor further acknowledge that Contractor is working by the day and that either party may terminate said work at any time after a minimum of one (1) day(s) has been worked. Owner may elect to forego any or all minimum day(s) of actual work and pay Contractor for all those minimum day(s), shown above, at the agreed to rate, as set forth in Section 3 of same.

**17. OVERTIME:** Any such time worked, at the request of Owner, beyond eight (8) hours in any one day, forty (40) hours in any one week, as shift work, Saturdays, Sundays and legal holidays will incur overtime rates due to Contractor. This rate will be agreed to, in written form, by Owner and Contractor in advance of any such overtime work being performed. All said work will be noted on Contractor's Daily Field Ticket as set forth in Section 3(c) of same. At his discretion, with Owners consent, Contractor may elect to perform work during any said times without additional overtime charges to Owner.

**18. PER DIEM:** Owner agrees to pay, in addition to those charges laid forth in Section 3 of this Contract, **Zero Dollars and no Cents (\$0.00)** per day for each Contractor's employee utilized for said work.

**19. PREVAILING WAGE:** Owner has determined and expressed to Contractor that any work performed under this contract **is** subject to State or Federal prevailing wage statutes.

**20. SPECIAL PROVISIONS:** The total contract amount shall not exceed One Hundred Thirty-Two Thousand Six Hundred Fifty Dollars (\$132,650.00). Owner may elect to have finished product stockpiles surveyed for an EXTRA Two Thousand Six Hundred Dollars (\$2,600.00). Any such changes must be submitted to Contractor, by Owner, in written form. A fuel surcharge will be added for any increases in fuel cost, from the date above, using U.S. Energy Information Administration (EIA) data to calculate.

**21. TIME:** Contractor shall commence work hereunder as promptly as practicable after the receipt of written notice to proceed. A working day is defined as any day except Saturdays, Sundays, and legal holidays. At the option of Contractor, this agreement shall be void unless notice to proceed is received within Ten (10) working days following execution of this agreement by Owner.

**22. WORK STOPPAGES:** Any work stoppage, including unavoidable delays as set forth in the attached General Conditions, for which Contractor is prevented by conditions beyond his control or by inclement weather or conditions resulting therefrom, adverse to the current controlling operation or operations, from proceeding with at least 90% of the normal labor and equipment force required for such operation or operations, of Two (2) working day(s) or more will trigger the De-Mobilization of all equipment unless Owner and Contractor enter into a separate agreement for standby charges on all Contractor's equipment and personnel being utilized on said project.

Executed at Brawley, California, July 8, 2022.

If Acceptable Please Sign Original and Return to:

HMH INC.  
P.O. BOX 371  
BRAWLEY, CALIFORNIA 92227  
State of California Contractor's License No. 1043951

EXECUTED BY:

\_\_\_\_\_  
Alan D. Huber  
President  
CONTRACTOR

EXECUTED BY:

\_\_\_\_\_  
OWNER/OWNERS REPRESENTATIVE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Residence Address

\_\_\_\_\_  
Name of Construction Lender

\_\_\_\_\_  
Address

**Please initial each page of this Contract and Proposal**  
**This Contract is Subject to the Terms and Conditions appearing on the Attached General Conditions Hereof.**

## GENERAL CONDITIONS

I. **WORKMANSHIP AND MATERIALS:** Contractor acknowledges that it is familiar with the nature and location of the work. All work shall be performed by Contractor in a workmanlike manner, and Contractor shall use its best skill and judgment in the performance of all work under this contract.

II. **COMMENCEMENT AND PROGRESS:** Contractor shall commence the performance of this contract as soon as practicable following notification by Owner to do so, and shall continue diligently to complete such work in conformity with this agreement and in accordance with scope of work.

III. **PAYMENTS:** Contractor shall receive progress payments Monthly in the amount reflected on those daily field tickets signed by Owner or an authorized representative of same. Within ten (10) days after Owner receives a statement from Contractor setting forth the amount which Contractor's shows to have been earned during the period covered by such statement, Owner will pay to Contractor the percentage amount set forth under Section 3 (a) of the attached proposal and operated equipment rental contract. Any remaining amount due Contractor shall be paid to it within thirty-five (35) days after final completion of the work by Contractor. The work billed on Contractor's progress billings shall reflect those of the daily field tickets as signed by Owner or an authorized representative of same. As it would be extremely difficult to fix and ascertain the actual damages Contractor would sustain by non-payment of moneys due to Contractor under the terms of this agreement and at the times and in the manner specified herein, it is hereby agreed by the parties hereto that Owner shall pay to Contractor in addition to all sums due hereunder the sum of the percentage per month set forth under Section 3 (a) of the attached proposal and contract as a fixed amount of any balance unpaid when due under this agreement. Nothing herein shall be deemed a consent by Contractor extending the due date for payment under this agreement.

IV. **HAZARDOUS OR UNDESIRABLE MATTER:** Owner acknowledges that this contract excludes any work, including but not limited to, the identification, excavation, removal, remediation, transportation and disposal of any and all matter (e.g. materials, products, minerals, oils, fuels, soils, etc.) deemed hazardous or undesirable by any Federal Government, State, County, Municipality or their Agencies of Government. Owner shall pay for all work required relating to same, save and excepting such items thereof as shall be designated as the responsibility of Contractor in the scope of work or in special provisions.

V. **CHANGES IN WORK:** Owner may, from time to time, by instructions issued to Contractor, make changes in the scope of work, issue additional instructions, request additional work or direct the omission of work previously ordered, and the provisions of this contract shall apply to all such changes, modifications and additions with the same effect as if they were embodied in the original contract. The price or a formula for establishing the price for such work shall be set forth in a written change order either prior to the commencement of work or as soon as practical thereafter.

VI. **COST OF THE WORK:** Contractor shall pay for all equipment and/or personnel listed to perform the work outlined under this contract save and excepting such items thereof as shall be designated as the responsibility of Owner in the scope of work, or in special provisions.

VII. **INDEMNITY:** Contractor shall indemnify and hold Owner harmless against all claims, damage suits, actions, recoveries and judgments arising from or out of any negligence of Contractor, its agents, employees, or subcontractors, in performing the work under this contract.

VIII. **RESPONSIBILITY FOR EQUIPMENT:** Contractor shall be responsible for and shall bear any loss of damage to all Contractor's equipment unless such loss or damage results from the actions, fault or negligence, either active or passive, of Owner, his agents, employees, contractors or anyone acting on Owner's behalf. Owner shall be responsible for and shall bear any loss of damage to all Owner's equipment unless such loss or damage results from the actions, fault or negligence, either active or passive, of Contractor, his agents, employees, contractors or anyone acting on Contractor's behalf.

IX. **INSURANCE:** Contractor shall maintain such insurance as will protect it from claims under workman's compensation acts and from claims for damages because of bodily injury, including death, or injury to property which may arise from and during the operation of this contract. A certificate of such insurance shall be filed with Owner if he/she so requests.

X. **UNAVOIDABLE DELAYS – EXTENSIONS OF TIME:** In the event Contractor shall be delayed in the performance of the work under this contract by causes beyond the control of Contractor and without the fault or negligence of Contractor, including, but not limited to, Change Orders, Acts of God, or of the public enemy, acts of any governmental agency, in either its sovereign or contractual capacity, fire, flood, epidemics, strikes, freight embargoes, inclement weather, over optimum moisture content of ground or base course, unsuitable ground conditions or delays caused by Vendors or other Contractors, Contractor shall have such period of time to complete the performance of this contract as shall be necessary as a result of any such causes.

XI. **CHANGED CONDITIONS:** In the event sub-surface or latent physical conditions differ materially from those indicated in this contract, or in the event there exist unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered in work of the character provided for in this contract, Contractor shall advise Owner of the existence of such conditions and the parties shall equitably adjust the work needed and the contract price to provide for any increase resulting from such condition.

XII. **LAWS AND REGULATIONS:** Contractor shall at all times comply with all applicable laws, ordinances, statutes, rules and regulations of the Federal Government, State, County, Municipalities or their Agencies of Government and particularly those regulations relating to hours and working conditions.

XIII. **OWNER DEFINED:** Owner represents he is Owner in fee simple of the real property upon which the construction improvement is to be made. For the purpose of administration, wherever in this contract the word "Owner" is used it shall include the Architect, Contractor (Prime or Sub), Supervising Engineer and any other duly authorized representative of Owner.

XIV. **ACCEPTANCE:** Any work once memorialized on Contractor's daily field ticket(s), by Owner or other authorized representative, Owner accepts all said work and the results thereof.

XV. **PERMITS:** Owner will obtain and solely bore the cost of any and all permits, inspection fees, soils test, engineering, staking, fees for utility connections, or other such similar items required for the performance of work hereunder.

XVI. **LIENS AND CLAIMS:** Contractor shall promptly pay valid claims of all persons, firms or corporations performing labor or furnishing equipment, materials and other items used in, upon or for the work done hereunder. Owner warrants that Contractor's right to mechanic's lien has not been and will not be waived by Owner or anyone else without specific approval of Contractor.

XVII. **FAILURE TO MAKE PAYMENTS:** In the event Owner shall fail to make payment at the times and in the amounts provided for in this agreement, Contractor shall have the right to stop work. In such event all amounts due Contractor, including retention, shall immediately become payable and Contractor shall have the right to recover all damages sustained by Contractor as a result of such breach of contract by Owner.

XVIII. **TERMINATION BY OWNER:** In the event Contractor shall fail to perform any provision of this agreement, and such failure should continue for thirty (30) days after receipt of written notice from Owner, then Owner may terminate this contract.

XIX. **COSTS AND ATTORNEYS' FEES:** Should either party bring suit in court to enforce or interpret any of the terms hereof, or for a breach thereof, and/or to foreclose any mechanic's lien attributable to the work done hereunder, the prevailing party shall be entitled to costs and actual attorneys' fees, which may be set by the Court in the same action or in a separate action brought for the purpose, in addition to any other relief to which he may be entitled.

XX. **NOTICES:** Any notice required or permitted hereunder may be served personally on the Superintendent of Construction, or on the duly authorized representative of Owner at the jobsite, or may be served by certified mail directed to the address of the party shown on the face of this contract.

XXI. **ASSIGNMENT:** This agreement shall be binding upon and inure to the heirs, successors and assigns of the parties hereto.

XXII. **COUNTERPARTS:** This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

XXIII. **WAIVER OF RIGHTS:** Failure to enforce any rights hereunder shall not waive any rights in respect of other or future occurrences.

XXIV. **JURISDICTION:** It is understood and agreed that each and every provision of this contract, including any alleged breach thereof, shall be interpreted in accordance with the laws of the State of California and this contract shall be deemed to have been made and entered into at Brawley, California.

California Law requires the following statement to be included in a written contract when Contractor performs work as a prime contractor within the State of California to which the written contract applies: **"Contractors are required by law to be licensed and regulated by the Contractors State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is:**

**Contractors State License Board  
P.O. Box 26000  
Sacramento, CA 95826**

## SCOPE OF WORK

1. Mobilize equipment below.
2. Provide one (1) operated and maintained twenty (20) ton class excavator equipped with hydraulic breaker to process Owner supplied rubble.
3. Provide one (1) operated and maintained twenty (20) ton class excavator to feed crusher.
4. Provide one (1) operated and maintained RM100GO! crusher set up in a closed loop configuration, to crush Owner supplier rubble to one-inch (1") minus material.
5. Provide one (1) maintained track stacker to stack crusher material onsite.
6. Demobilize equipment above.