

AGREEMENT FOR ROADWAY MAINTENANCE OF BAILEY ROAD
BETWEEN HIGHWAY 4 INTERCHANGE AND WEST LELAND ROAD

This Agreement for Roadway Maintenance of Bailey Road between Highway 4 Interchange and West Leland Road, dated _____, 2013 (this "Agreement") is made by and between the City of Pittsburg, a municipal corporation (hereinafter referred to as "City") and the County of Contra Costa, a political subdivision of the State of California (herein referred to as "County").

RECITALS

A. County Land use permit 2020-89 authorizes the Keller Canyon Landfill Company to establish and operate a sanitary landfill adjacent to Bailey Road in the unincorporated area of Contra Costa County (the "Landfill")

B. County Condition of Approval number 29.7 of Land Use Permit 2020-89 requires the Landfill operator to impose a surcharge for the maintenance of Bailey Road between the Highway 4 interchange and the entrance to the Landfill ("Bailey Road").

C. A portion of Bailey Road is located in County's jurisdiction and a portion of Bailey Road is located in City's jurisdiction, as shown on the map attached hereto as Exhibit A, and incorporated herein by reference (the "Maintenance Area Map").

D. City and County have entered into the Bailey Road Maintenance Surcharge Disbursement Agreement, dated May 7, 2013, (the "Surcharge Disbursement Agreement"), between City and County, which provides that County and City will each receive a respective percentage of the Surcharge (as defined in the Surcharge Disbursement Agreement) for the purpose of maintaining the portions of Bailey Road within their respective jurisdictions.

E. City desires to maintain County's portion of Bailey Road from the Highway 4 interchange to West Leland Road (the "Maintenance Area") as shown on the Maintenance Area Map, and County desires to have City maintain the Maintenance Area, and each have agreed to enter into this Agreement providing therefor.

Now therefore, for good and valuable consideration, City and County mutually agree as follows.

AGREEMENT

1. Maintenance Work to be Performed. Notwithstanding that the Maintenance Area is located within County's jurisdiction, City shall maintain the Maintenance Area by providing routine maintenance work in the Maintenance Area, which may include maintenance of the pavement (pot hole repair), traffic stripings, signage, curb ramps, and drainage facilities as required to ensure satisfactory and safe condition of the Maintenance Area. Except for routine maintenance and temporary and emergency repair work, no modifications to the Maintenance Area shall be made by City without County's prior written approval. Temporary and emergency repair work to the Maintenance Area may be performed by City without prior written approval by County; however, when possible and as public safety permits, City shall inform County two (2) business days prior to any temporary or emergency repair work being performed.

2. Modification for Additional Facilities. Should either City or County determine that the Maintenance Area requires work beyond the scope of the maintenance or temporary emergency work set forth in Section 1 of this Agreement, the initiating party shall request in writing such modifications and, if agreed to by the parties, a separate agreement between the parties shall be documented prior to any construction of such work.
3. Payments. County will reimburse City one hundred percent (100%) for City's costs of performing maintenance and repairs in the Maintenance Area pursuant to this Agreement ("Costs"). Costs include labor costs and material costs from an accounting of actual charges for work in the Maintenance Area.
 - a. Billing. At the end of each calendar year City shall bill County one hundred percent (100%) for Costs incurred performing the maintenance work set forth in Section 1 of this Agreement; provided, however, if the amount of Costs exceeds Twenty Thousand Dollars (\$20,000) at any point during any calendar year, City will advise County, and any further maintenance work will require review by County and prior approval before being performed. City's billings shall list all road maintenance work performed and the costs therefor. County shall pay City within sixty (60) days after receipt of the billing from City.
 - b. Third Party Collections. Damages to the Maintenance Area roadway caused by vehicular damage or acts of God (flooding, lighting, storm damage, etc.), and necessitating repairs shall be accomplished by City, and County will reimburse City for all Costs incurred for such repairs. City shall notify County on the next workday following occurrences that necessitate repair and furnish estimated repair Costs. City will include the repair Costs with the annual invoice less any amount received from the party responsible for such damage, or the responsible party's insurance company. City is under no obligation to attempt to collect reimbursement from a third party responsible for damage in the Maintenance Area, or such third party's insurance carrier. City shall promptly (i) notify County of the identity of any third party potentially responsible for damages to the Maintenance Area roadway, and (ii) pay over to County any amounts it receives from a third party responsible for damages to the Maintenance Area roadway if City has already received payment from County for the repair of such damages. County is solely responsible for seeking compensation for damages to the Maintenance Area roadway by third parties.
4. Legal Relations and Responsibilities. Nothing in this Agreement is intended to create duties or obligations to or rights in third parties who are not parties to this Agreement or affect the legal liability of either party to this Agreement by imposing any standard of care respecting the maintenance of state highways different from the standard of care imposed by law.
5. Indemnity; Insurance.
 - a. City Indemnity. To the extent permitted by law, and pursuant to Government Code Section 895.4, City shall defend, with counsel acceptable to County, indemnify and save harmless the County and all County officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by City and its contractors

under or in connection with any work, authority or jurisdiction delegated to City under this Agreement; provided, however, that City is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of County, its officers or employees. This provision will survive the expiration or termination of this Agreement.

- b. County Indemnity. To the extent permitted by law, and pursuant to Government Code Section 895.4, County shall defend, with counsel acceptable to City, indemnify and save harmless the City and all City officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by County under or in connection with this Agreement; provided, however, that County is not required to indemnify City for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of City, its officers or employees. This provision will survive the expiration or termination of this Agreement.
- c. City Contractors' Insurance. City will require its contractors performing any work in the Maintenance Area to name County as an additional insured under the contract between City and the contractor.

- 6. Notices. All notices to be given under this Agreement will be in writing and sent by (a) first class mail, postage prepaid, in which case notice will be deemed delivered three (3) business days after deposit in the United States Mail; (b) a nationally recognized overnight courier, in which case notice will be deemed delivered one (1) business day after deposit with that courier, or (c) fax, in which case notice will be deemed delivered one (1) business day after the day it was transmitted, provided that a transmission report is generated reflecting the accurate transmission of the notice. Unless communicated in writing, the place for delivery of all notices given under this Agreement will be as follows

If to City:

Joe Sbranti, City Manager
City of Pittsburg
65 Civic Drive
Pittsburg, CA 94565
Fax: (925) 252-4930

If to County:

Julia Bueren, Public Works Director
Contra Costa County
255 Glacier Drive
Martinez, CA 94553
Fax: (925) 335-1098

- 7. Term. This Agreement may be terminated at any time for no or any reason by either party upon giving the other party sixty (60) days prior written notice.
- 8. Integration. This Agreement contains the entire agreement between parties and supersedes all prior understandings or agreements, oral or written, regarding the subject matter of this Agreement.
- 9. Modification. This Agreement shall be subject to modification or amendment only by the mutual, written agreement of both parties.

- 10. Accountability. City shall maintain and make available to County complete records of its receipts and disbursement under this Agreement
- 11. Effective Date. This Agreement is effective as of the date first set forth above.
- 12. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall lie in the County of Contra Costa.

The parties have executed this Agreement as of the date first set forth above.

CONTRA COSTA COUNTY

CITY OF PITTSBURG

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to form:

Sharon L. Anderson, County Counsel

Ruthann G. Ziegler, City Attorney

By: _____
Name: _____
Title: _____
