

## AGREEMENT FOR ROADWAY SURFACE TREATMENT OF LAS LOMAS WAY

This Agreement for Roadway Surface Treatment of Las Lomas Way, dated \_\_\_\_\_, 2022 (this “Agreement”) is made by and between the City of Walnut Creek, 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. Portions of Las Lomas Way are located in County’s jurisdiction and in City’s jurisdiction, as shown on the map attached hereto as Exhibit A and incorporated herein by reference (the “Treatment Area Map”).
- B. City is applying a surface treatment to the portion of Las Lomas Way in its jurisdiction. This work is tentatively scheduled for Summer 2023.
- C. County desires that City, at the same time as the surface treatment work in Recital B is performed, apply a surface treatment on County’s portion of Las Lomas Way as shown on the Treatment Area Map (the “Treatment Area”), and County desires to pay City therefor.
- D. City desires to apply a surface treatment on the Treatment Area, and City and County 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. Surface Treatment Work to be Performed. Notwithstanding that the Treatment Area is located within County’s jurisdiction, City shall apply a chip seal, slurry seal, microsurface seal, or other surface treatment in the Treatment Area, which is, in City’s sole discretion, appropriate to prolong the life and improve the pavement condition of the Treatment Area (the “Surface Treatment”). Except for application of a Surface Treatment, City shall not make any modifications to the Treatment Area without County’s prior written approval. After City’s application of a Surface Treatment, County shall continue to maintain the Treatment Area by providing routine maintenance work, which may include but not limited to, maintenance of the pavement (pothole repair), traffic stripings, signage, and drainage facilities as required to ensure satisfactory and safe condition of the Treatment Area.
2. Modification for Additional Work. Should either City or County determine that the Treatment Area requires work beyond the scope of the Surface Treatment 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. a. County will reimburse City one hundred percent (100%) of City’s costs of performing the Surface Treatment work in the Treatment Area pursuant to this Agreement, which include labor costs, material costs and equipment costs from an accounting of actual

charges for work in the Treatment Area ("Costs"), provided that County will not reimburse City for Costs in excess of \$100,000.00.

- b. Billing. At the completion of the Surface Treatment, City shall bill County one hundred percent (100%) for Costs incurred performing the Surface Treatment work set forth in Section 1 of this Agreement; provided that County will not reimburse City for Costs in excess of \$100,000.00. City's billings shall list all road surface treatment work performed and the costs therefor. County shall pay City within sixty (60) days after receipt of the billing from City.
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 and its contractors under or in connection with any work, authority or jurisdiction delegated to County under 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 Treatment 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:

Heather Ballenger, Public Works Director  
City of Walnut Creek  
1666 N. Main Street  
Walnut Creek, CA 94596

If to County:

Brian M. Balbas, Public Works Director  
Contra Costa County  
255 Glacier Drive  
Martinez, CA 94553  
Fax: (925) 313-2333

- 7. Effective Date; Termination. This Agreement is effective as of the date first set forth above. 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, provided that County will pay City for all Costs incurred in performing the Surface Treatment work through the date of termination.
- 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 may only be modified or amended 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. 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 WALNUT CREEK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

Mary Ann McNett Mason, County Counsel

XXX, City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_