



MEETING DATE: June 26, 2024

FROM: Susan Scarlett and Tom Valentino

RE: Pledge of Revenue Agreement for Corrective Action of Portola Landfill
and Resolution NO. 2584 for Financial Assurance For Corrective Action
of Portola Landfill

BACKGROUND:

The regulations, enacted in 2012, require the City, through a third-party consulting firm, to determine the most-likely event that could affect Portola Landfill and estimate the cost to remediate damage from the event. Once the most-likely event and the remediation cost estimate is established (and approved by CalRecycle), the City is required to adopt a Pledge of Revenue financial mechanism (through resolution) and execute an agreement with CalRecycle committing to financial responsibility for a needed corrective action of the landfill.

In 2018, the City retained consulting firm Lawrence and Associates to conduct an analysis of events that could adversely affect Portola Landfill. The company determined that a fire at the landfill is the most likely catastrophic event and estimated the corrective action cost (i.e., the cost to return the landfill to its preexisting condition) as \$369,778. CalRecycle has approved the Lawrence report and corrective action cost estimate.

The state requires that each year the cost estimate is increased by an inflation value. The last inflation value provided by CalRecycle was for calendar year 2023. The current corrective action cost estimate, adjusted for the past five years of inflation, is \$449,277 (an increase of 21.5% from the 2018 cost).

EXECUTIVE SUMMARY:

Attached are Resolution No. 2584 and an agreement with the California Department of Resources, Recycling and Recovery (CalRecycle) establishing a Pledge of Revenue financial mechanism for potential corrective action of Portola Landfill. This resolution needs to be adopted to comply with state regulations regarding financial responsibility by the City of Portola for potential damage to Portola Landfill from a catastrophic event such as a fire, flood, or an earthquake.

Both Resolution No. 2584 and the financial assurance agreement has been reviewed and approved by CalRecycle legal staff and City Attorney Steve Gross.

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 2584 and authorize the Interim City Manager to execute the Pledge of Revenue Agreement for Corrective Action of Portola Landfill.

FISCAL IMPACT:

There are no impacts to the solid waste budget with enactment of Resolution No. 2584.

ATTACHMENTS:

- A. PORTOLA LF POR CORRECTIVE ACTION AGREEMENT
- B. PORTOLA LF POR CORRECTIVE ACTION RESOLUTION

PLEDGE OF REVENUE AGREEMENT FOR CORRECTIVE ACTION OF PORTOLA LANDFILL

This agreement establishes a Pledge of Revenue to assure that adequate funds are available to carry out corrective action of Portola Landfill.

This Agreement shall become effective immediately and is made and entered into by and between the City of Portola and the California Department of Resources, Recycling and Recovery (CalRecycle).

WHEREAS, Public Resources Code, sections 43500 through 43610.1 and Title 27, California Code of Regulations (Regulations), Division 2, Subdivision 1, Chapter 6, require operators of solid waste landfills to demonstrate the availability of financial resources to conduct closure, post-closure maintenance and corrective action activities; and

WHEREAS, sections 22228 and 22245 of the Regulations specify a Pledge of Revenue as an acceptable mechanism to demonstrate financial responsibility for post-closure maintenance and corrective action costs of a solid waste landfill; and

WHEREAS, the City of Portola operates Portola Landfill, a solid waste landfill, in conformance with the findings, conditions, prohibitions and requirements contained in Solid Waste Facilities Permit No. 32-AA-0007, issued by the Plumas County Environmental Health Department, serving as Local Enforcement Agency (LEA) for CalRecycle; and

WHEREAS, the City of Portola is pledging revenues from the Solid Waste Services portion of City Utility Bills, as established by resolution by the Portola City Council for city water, sewer and solid waste services and

WHEREAS, the City of Portola has determined that projected net revenues from the Solid Waste Services portion of City Utility Bills during corrective action period shall, during each year of this period, be greater than the yearly corrective action costs contained in the most recent Cost Estimate for the Portola Landfill, which has been submitted to CalRecycle in accordance with sections 22100 – 22103 of the Regulations.

NOW THEREFORE, the City of Portola and CalRecycle do agree as follows:

1. The City of Portola hereby establishes a pledge of revenue to demonstrate financial responsibility for corrective action costs of Portola Landfill in accordance with sections 22228 and 22245 of the Regulations.
2. The City of Portola agrees to pledge net revenues from the Solid Waste Services portion of City Utility Bills as described herein.
3. The amount of the pledged revenue shall be equal to \$449,277 for the estimated length of the corrective action period, representing the most recent corrective action cost estimate for Portola Landfill. It is agreed that the amount of this pledge may increase or decrease to match any adjustment to the identified cost estimate, which is mutually agreed to by the City of Portola and CalRecycle.

4. The City Manager is directed to produce an Annual Certification Report (form CalRecycle 114) as required by Section 22233(b)(4)(B) of the Regulations to demonstrate that the pledged revenue continues to be available when needed and will cover the cost estimates identified in the updated Annual Inflation Report required by Section 22236 of the Regulations. It is understood that copies of the Resolution and Pledge of Revenue Agreement are not required annually, unless amended.

5. If the City of Portola ceases at any time to retain control of its ability to allocate the pledged revenue as identified herein to pay corrective action costs, the City of Portola shall notify CalRecycle and the local enforcement agency and shall obtain alternate coverage within sixty (60) days after the control of funds lapses, pursuant to section 22245 of the Regulations.

6. In the event that CalRecycle, RWQCB or LEA staff determines that the City of Portola has failed, or is failing, to perform corrective actions as required by law, CalRecycle, RWQCB and/or LEA staff shall confer with the City of Portola and attempt to resolve the alleged violation. If no agreement is reached, the matter shall be presented to CalRecycle which shall give reasonable notice, hold a public hearing, and consider the testimony and documentation submitted by CalRecycle and/or LEA staff, the City of Portola, and any interested parties, prior to making a determination in the matter. In the event CalRecycle then determines that the City of Portola has failed, or is failing, to perform corrective action as required by law, CalRecycle may direct the Treasurer to pay the City Manager from the pledged revenues sufficient funds to ensure corrective action, who then shall be obligated to use such funds for corrective action in accordance with the directives of CalRecycle and RWQCB.

IN WITNESS HEREOF, the parties have executed this agreement on the date as set forth below.

By City this _____ day of _____, 2024

By CalRecycle this _____ day of _____, 2024

STATE OF CALIFORNIA
CalRecycle

CITY OF PORTOLA

By: _____
Authorized Officer of CalRecycle

By: _____
Susan Scarlett
Interim City Manager

APPROVED AS TO FORM
AND PROCEDURE:

ATTEST:

By: _____
Authorized Counsel of CalRecycle

By: _____
Jason Shaw
Deputy City Clerk

APPROVED AS TO FORM

AND PROCEDURE:

By: _____
Steven Gross
City Attorney

RESOLUTION NO. 2584

FINANCIAL ASSURANCE FOR CORRECTIVE ACTION OF PORTOLA LANDFILL

WHEREAS, Public Resources Code sections 43500 through 43610.1 and Title 27, California Code of Regulations (Regulations), Division 2, Subdivision 1, Chapter 6, require operators of solid waste landfills to demonstrate the availability of financial resources to conduct closure, post-closure maintenance, and corrective action activities; and

WHEREAS, sections 22228 and 22245 of the Regulations specify a Pledge of Revenue as an acceptable mechanism to demonstrate financial responsibility for financing post-closure maintenance and/or corrective action costs of a solid waste landfill.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Portola that:

1. The City of Portola operates Portola Landfill, a solid waste landfill, in conformance with the findings, conditions, prohibitions and requirements contained in Solid Waste Facility Permit No. 32-AA-0007, issued by the Plumas County Environmental Health Department, serving as Local Enforcement Agency (LEA) for the California Department of Resources, Recycling and Recovery (CalRecycle); and
2. The City of Portola shall establish a Pledge of Revenue to demonstrate financial responsibility for corrective action of Portola Landfill in accordance with sections 22228 and 22245 of the Regulations.
3. Disbursement of funds for corrective action shall be in accordance with the final corrective action plan, as approved by CalRecycle.
4. In the event the CalRecycle determines that the City of Portola has failed, or is failing, to perform corrective action, as required by law, CalRecycle may direct the Treasurer to pay to the City Manager from the pledged revenues sufficient funds to ensure corrective action, who then shall be obligated to use such funds for corrective action in accordance with the directives of CalRecycle.
5. The City Manager is directed to produce an Annual Certification Report (form CalRecycle 114) as required by Section 22233(b)(4)(B) of the Regulations to demonstrate that the pledged revenue continues to be available when needed and will cover the cost estimates identified in the updated Annual Inflation Report required by Section 22236 of the Regulations. It is understood that copies of the Resolution and Pledge of Revenue Agreement are not required annually, unless amended.

6. The number of current members of the City Council of the City of Portola who voted affirmatively when this resolution was adopted:

Ayes:

Noes:

Absent:

Not Voting:

Pat Morton
Mayor
City of Portola, State of California

ATTEST:

I, Jason Shaw, Deputy Clerk of the City Council of the City of Portola, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the City Council at a regular meeting held on June 26, 2024, and duly entered in the minutes of said City.

Jason Shaw
Deputy Clerk of the City Council

S E A L