

## **RESOLUTION NO. 2010-278**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE APPROVING THE ISSUANCE AND SALE OF LEASE REVENUE BONDS BY THE ELK GROVE FINANCE AUTHORITY IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$12,700,000 TO FINANCE A CAPITAL FACILITY PROJECT, AND APPROVING RELATED DOCUMENTS AND OFFICIAL ACTIONS**

**WHEREAS**, the City of Elk Grove (the "City") is proceeding to construct a household hazardous waste collection facility and acquire land, furnishings and equipment related to such facility and incidental expenses related thereto (the "Project"), a capital project of benefit to the City; and

**WHEREAS**, in order to provide financing for a portion of the cost of the Project, the City has proposed to lease real property constituting its existing interest in property commonly known as 8380 and 8400 Laguna Palms Way and 8900 Elk Grove Boulevard (the "Leased Property") to the Elk Grove Finance Authority (the "Authority") under a Site Lease dated as of November 1, 2010, in consideration of the payment by the Authority of an initial rental payment (the "Site Lease Payment") which is sufficient to provide funds for such purposes; and

**WHEREAS**, in order to secure the payments of principal of and interest on the Bonds, the Authority proposes to lease the Leased Property back to the City under a Lease Agreement dated as of November 1, 2010 (the "Lease Agreement"), under which the City is obligated to pay semiannual lease payments as rental for the Leased Property; and

**WHEREAS**, the amounts required to finance a portion of the Project will be provided from the proceeds of Lease Revenue Bonds which the Authority proposes to issue and sell as its 2010 Lease Revenue Bonds (Capital Facility), in the principal amount of not to exceed \$12,700,000 (the "Bonds") under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law") secured by the lease payments; and

**WHEREAS**, Staff has determined, upon consultation with the City's financial advisor, that a competitive sale is not feasible given the fact that the Bond closing needs to occur by the end of the year to utilize the Recovery Zone 45% interest rebate program; and

**WHEREAS**, the City Council has duly held a public hearing regarding the Project in accordance with the requirements of Section 6586.5 of the Bond Law, the notice of which has been given in accordance with the requirements of said Section; and

**WHEREAS**, the City Council wishes at this time to approve all proceedings and documents to which it is a party relating to the issuance and sale of the Bonds and the financing of the Project.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Elk Grove as follows:

**Section 1. Approval of Bonds.** The City Council hereby approves the financing plan described in the recitals of this Resolution. To that end, the City Council hereby approves of the issuance of the Bonds by the Authority under the Bond Law, in the aggregate principal amount of not to exceed \$12,700,000, for the purpose of providing financing for a portion of the cost of the Project.

**Section 2. Approval of Related Financing Agreements.** The City Council hereby approves each of the following agreements required to implement the financing plan to be accomplished by the Bonds, in substantially the respective forms on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Manager, Assistant City Manager or the Finance Director (each, an "Authorized Officer"), and the execution thereof by an Authorized Officer shall be conclusive evidence of the approval of any such changes or additions.

- Site Lease between the City as lessor and the Authority as lessee, under which the City leases the *Leased Property* to the Authority in consideration of the payment of the Site Lease Payment which will be applied by the City to finance the Project.
- Lease Agreement between the Authority as lessor and the City as lessee, under which the Authority leases the *Leased Property* back to the City and the City agrees to pay semiannual lease payments which are sufficient to provide for payment of principal of and interest on the Bonds when due; and
- Bond Purchase Agreement among the Authority, the City and the Underwriter, under which the Underwriter agrees to purchase the Bonds from the; and
- Continuing Disclosure Agreement (attached as an appendix to the Preliminary Official Statement) executed by the City relating to the undertaking to make continuing disclosure filings with respect to the Bonds as required by Rule 15c2-12 of the Securities and Exchange Commission.

An Authorized Officer is hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest the final form of each of the foregoing agreements.

**Section 3. Sale of Bonds.** The City Council hereby approves the sale of the Bonds by the Authority by a competitive sale, the City shall advise the Authority of its desire that the sale shall occur pursuant to the terms of the Official Notice of Sale in substantially the form on file with the Clerk, together with such additions thereto or changes therein as are acceptable to an Authorized Officer. The City shall advise the

Authority of its desire that the sale shall occur pursuant to the terms and conditions of the Purchase Agreement in substantially the form on file with the Clerk, together with such additions thereto or changes therein. The Purchase Contract shall be executed in the name and on behalf of the City by an Authorized Officer, each of whom acting alone is hereby authorized and directed to execute and deliver said form of Purchase Agreement on behalf of the City.

The true interest cost (calculated net of the federal subsidy described in Section 5) on the Bonds shall not exceed 5%. Additionally, if the Bonds are sold pursuant to a negotiated sale, the underwriter's discount or fee (excluding original issue discount, if any) for the Bonds shall not exceed 4.5% of the principal amount of the Bonds.

**Section 4. Termination of Existing Lease on 8380 and 8400 Laguna Palms Way.** In order to finance the acquisition, construction, furnishing and equipping of the city hall located generally at 8400 Laguna Palms Way and the office building used by the Elk Grove Police Department located generally at 8380 Laguna Palms Way, the City entered into two leases, as described in the Termination Agreements on file with the Clerk. The City's lease payment obligations under the leases were prepaid by the City on June 20, 2007 from the proceeds of \$18,585,000 principal amount of Elk Grove Finance Authority Lease Revenue Bonds (2007 Capital Projects), however the leases inadvertently were never terminated at the time of prepayment. The lessors under the leases and their assignees are no longer in business and cannot be found. This Council hereby finds that the City no longer has any obligations under the leases and desires that evidence of the City's satisfaction of its obligations be established through the execution of the Termination Agreements and recordation thereof in the Official Records of Sacramento County. In connection therewith, an Authorized Officer is hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest the final form of each of the Termination Agreements and to cause the same to be so recorded.

**Section 5. Findings and Determinations.** In accordance with Sections 6586 and 8686.5 of the Bond Law, the City Council hereby finds and determines that there will be "significant public benefits" to the citizens of the City by financing a portion of the costs of the Project through the issuance of the Bonds. Such benefits include the following: (a) demonstrable savings in effective interest rates, bond preparation, bond underwriting or bond issuance costs, (b) significant reductions in effective user charges levied by the City, and (c) employment benefits from undertaking the Project in a timely fashion. The City hereby directs an Authorized Officer to determine, based on advice from the City's financial advisor, whether it is feasible and in the best interests of the Authority to issue the Bonds in the form of "Recovery Zone Economic Development Bonds" under and within the meaning of the provisions of Section 1400U-2 of the Tax Code and to treat the Bonds as "Qualified Bonds" within the meaning of Section 54AA(g)(2) and Section 6431 of the Tax Code such that the Bonds will be eligible for a direct payment subsidy by the federal government equal to forty-five percent (45%) of interest payable on the Bonds. If an Authorized Officer determines that it is in the best interests of the City and the Authority to issue the Bonds in such form, an Authorized Officer is authorized to make the necessary election in the name and on behalf of the

City as required by the Tax Code, and to approve such amendments to the documents approved under this Resolution as may be required to effectuate such issuance.

**Section 6. Official Statement.** The Council hereby approves and deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the Preliminary Official Statement describing the Bonds in the form on file with the Clerk, together with such modifications thereof as may be approved by an Authorized Officer. An Authorized Officer is hereby authorized and directed to (a) execute and deliver to the purchaser of the Bonds a certificate deeming the Preliminary Official Statement to be nearly final as of its date within the meaning of such Rule, (b) approve any changes in or additions to cause the Official Statement to be put in final form, and (c) execute the Final Official Statement for and in the name and on behalf of the City. The Council hereby authorizes the distribution of the Preliminary Official Statement and the Final Official Statement by the Underwriter.

**Section 7. Official Actions.** The Mayor, the City Manager, the Assistant City Manager, the Finance Director, the City Clerk and any and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions as described herein. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

**Section 8. Effective Date.** This Resolution shall take effect immediately upon its passage and adoption.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 8<sup>th</sup> day of December 2010.

  
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SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

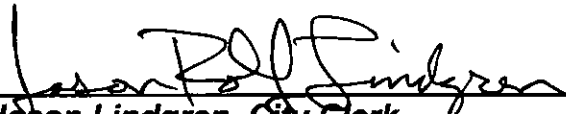
  
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SUSAN COCHRAN, CITY ATTORNEY

**CERTIFICATION  
ELK GROVE CITY COUNCIL RESOLUTION NO. 2010-278**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )        ss  
CITY OF ELK GROVE         )

***I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 8, 2010 by the following vote:***

**AYES :**        **COUNCILMEMBERS:**        **Scherman, Detrick, Cooper, Davis, Hume**  
**NOES:**       **COUNCILMEMBERS:**        **None**  
**ABSTAIN :**   **COUNCILMEMBERS:**        **None**  
**ABSENT:**    **COUNCILMEMBERS:**        **None**

  
**Jason Lindgren, City Clerk  
City of Elk Grove, California**