

RESOLUTION NO. 2011-37

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE A THREE-YEAR
AGREEMENT BETWEEN THE CITY OF ELK GROVE AND THE CITY OF
SACRAMENTO FOR THE CITY OF ELK GROVE'S DISPOSAL OF HOUSEHOLD
BATTERIES AT THE CITY OF SACRAMENTO'S PERMANENT HOUSEHOLD
HAZARDOUS WASTE COLLECTION FACILITY**

WHEREAS, the City of Sacramento operates a permitted Permanent Household Hazardous Waste Collection Facility (PHHWCF) capable of providing disposal of waste generated by Elk Grove residents; and

WHEREAS, the City of Elk Grove does not currently own a facility enabling Elk Grove residents to dispose of household hazardous waste; and

WHEREAS, the City of Sacramento and the City of Elk Grove have had a contractual agreement since March 2008, enabling the City of Elk Grove to dispose of batteries at the City of Sacramento's household hazardous waste facility located at 8491 Fruitridge Road; and

WHEREAS, the City of Elk Grove implemented a local battery collection program, which generates a large volume of household batteries that are collected on a weekly basis from the City's fourteen battery drop-off locations within the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby:

- 1) In accordance with Section 3.42.140 of the City's Municipal Code, finds that it is in the City's best interest to waive the competitive bidding process; and
- 2) Authorizes the City Manager, or her designee, to execute a three-year agreement with the City of Sacramento under the terms identified in the agreement attached hereto as Exhibit A; and
- 3) Authorizes and empowers the City Manager, or her designee, to negotiate terms and execute in the name of the City of Elk Grove an agreement and payments as requested and amendments hereto for the purposes of providing proper disposal of household batteries, in a form acceptable to the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 23rd day of February 2011.



STEVEN M. DETRICK, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


SUSAN COCHRAN, CITY ATTORNEY

AGREEMENT BETWEEN CITY OF SACRAMENTO AND CITY OF ELK GROVE FOR DISPOSAL OF HOUSEHOLD BATTERIES AT PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY

THIS AGREEMENT made and entered into the _____ day of _____, 2011 by and between the CITY OF SACRAMENTO, a municipal corporation, (hereinafter "City") and the CITY OF ELK GROVE, a municipal corporation, (hereinafter "Elk Grove").

WHEREAS,

1. The State of California has banned the disposal of household batteries in residential trash effective February 8, 2006.
2. Elk Grove has a number of drop-off locations where residents can dispose of their household batteries that are subsequently collected by Elk Grove.
3. Elk Grove does not operate a permanent household hazardous waste collection facility (hereinafter "PHHWC Facility").
4. City operates a PHHWC Facility and has an existing agreement with Elk Grove allowing Elk Grove residents access to the City PHHWC Facility.
5. Elk Grove desires to transport household batteries that are collected to the City PHHWC Facility, located at 8491 Fruitridge Road, Sacramento, California.

NOW THEREFORE, in consideration of the promises, terms, conditions and covenants contained herein, City and Elk Grove agree as follows:

1. **Term.** The term of this agreement is from the date this agreement is executed by all parties until June 30, 2014.
2. **Notice.** Any notice required under this Agreement shall be deemed to have been served when it is deposited in the United States Mail, postage prepaid, and addressed as follows:

To Elk Grove

Cedar Kehoe
Integrated Waste Manager
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

To City

William Skinner
Interim Integrated Waste General Manager
City of Sacramento
Solid Waste Services
2812 Meadowview Road
Sacramento CA 95832

3. **Use of City PHHWC Facility.** The following conditions apply to disposal of household batteries:

- a) "Household batteries" means and includes all batteries of sizes AAA, AA, C, D, button cell, 9 Volt, and all other batteries, both rechargeable and single use, with the exception of automotive batteries.
 - b) Elk Grove will transport the household batteries to the City PHHWC Facility, located at 8491 Fruitridge Road, Sacramento, California, during the operating days and hours determined by City.
 - c) Prior to transporting the batteries to the PHHWC Facility, Elk Grove shall separate all of the batteries by type and tape the ends of the following types of batteries:
 - 6 volt batteries
 - 9 volt batteries
 - Button/coin batteries
 - Lithium batteries
 - d) City will accept all household batteries with the exception of automotive batteries.
4. **City Services to be Provided.** City shall provide the following services:
- a) City shall provide adequate on-site personnel to safely accommodate accepting household batteries from Elk Grove.
 - b) City shall provide for the proper disposal, treatment, recycling, destruction and/or exchange of the household batteries in conformance with all applicable laws and regulations.
5. **Payment.** Elk Grove shall pay the City the following fees for disposal of household batteries:
- Alkaline batteries: \$0.80 per pound
Rechargeable batteries: \$0.10 per pound
(examples: Lithium, NiCad, NiMH, Sealed lead acid)
- City shall invoice Elk Grove on a quarterly basis. In no event shall compensation exceed \$30,000 per each year of this Agreement and \$90,000 for the full term of this Agreement without prior written consent of Elk Grove in the manner set forth in section 11 (Amendments). The invoice shall be due and payable within thirty (30) days of the date of invoice. On a quarterly basis, or less frequently as determined by City, the City may increase the fee if necessary to pay for an increase to the City's disposal costs. Any such fee increase shall take effect after the City provides a written notice to Elk Grove that describes the basis for such increase.
6. **Termination.** Either party may terminate this Agreement, for any reason, upon sixty (60) days advance written notice provided to the other party. The notice of termination shall be deemed served and effective on the date it is deposited in the United States mail, postage prepaid, and addressed to the respective parties indicated in Section 2.
7. **Indemnification and Liability.** Each party shall assume the responsibility and liability for the acts and omission of its own agents, officers, or employees in connection with the

performance of their obligations under this Agreement. For all purposes, including without limitation, tort liability, neither party shall be considered the agent of the other party. Each party shall be liable, if at all, only for the torts of its own officers, agents, or employees that occur within the scope of their official duties.

City shall assume the responsibility and liability for and City shall indemnify, defend, and hold harmless Elk Grove, its agents, officers, and employees from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses, and disbursements (including legal fees and expenses) for any kind and nature whatsoever imposed in, asserted against, incurred or suffered by Elk Grove or its agents, officers, or employees by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property caused by or in any way relating to or arising out of any negligent act or action, or any neglect, omission or failure to act when under a duty to act on the part of City, or any of its agents, officers, or employees in its or their performance of this Agreement.

Elk Grove shall assume the responsibility and liability for and Elk Grove shall indemnify, defend, and hold harmless City, its agents, officers, and employees from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses, and disbursements (including legal fees and expenses) for any kind and nature whatsoever imposed in, asserted against, incurred or suffered by City or its agents, officers, or employees by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property caused by or in any way relating to or arising out of any negligent act or action, or any neglect, omission or failure to act when under a duty to act on the part of Elk Grove, or any of its agents, officers, or employees in its or their performance of this Agreement.

Owners, operators and/or occupants of vehicles that deliver household batteries to the City PHHWC Facility SHALL NOT under any circumstances be construed to be agents, officers or employees of City for purposes of this Agreement.

The provisions contained herein include any violation of applicable law, ordinance, regulation or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal act or action of any party or any of its agents, officers, or employees in its or their performance hereunder.

It is the intent of the parties hereto that, where negligence is determined to have been contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any obligations, losses, damages, expenses and liability costs, including attorney's fees, attributable to that party's negligence or fault.

8. **Mutual Waiver of Subrogation.** The parties agree that *in the event of a loss due to a claim arising out of any negligence, omission, or failure to act when under a duty by any of their agents, officers, or employees, against their respective workers' compensation, general liability, and /or auto liability insurance policies, each party shall look solely to its own insurance recovery.*
9. **Health, Safety and Environmental Regulation Compliance.** The parties shall comply with all applicable Federal, State and Local laws, ordinances, rules and regulations pertaining to health and safety protection of their respective employees, including

requirements applicable to an Injury and Illness Protection Plan and a program to communicate any significant hazards of work to be performance under this Agreement. The parties agree to comply with all applicable hazardous waste and environmental laws, ordinances, rules and regulations, enacted or promulgated by any public or governmental authority or agency having jurisdiction.

10. **Assignment of Agreement.** The parties to this Agreement may not assign the privileges or obligations of this Agreement.
11. **Amendments.** Modifications or amendments to this Agreement shall be in writing and executed by both parties.
12. **Waiver.** The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.
13. **Severability.** The invalidity, illegality or unenforceability of any provisions of this Agreement shall not render the other provisions unenforceable, invalid or illegal.
14. **Entire Agreement.** This instrument constitutes the entire Agreement between the Parties concerning the subject matter hereof.
15. **Dispute Resolution.** With respect to any breach or dispute arising under this Agreement, the Parties shall meet and attempt, in good faith and in using their best and reasonable efforts, to resolve the same prior to the commencement of litigation.
16. **Authority.** The signers of this Agreement have the authority to execute this Agreement as the representatives of their respective Parties, and to bind said Parties to the terms hereof.

IN WITNESS HEREOF, the Parties have caused this Agreement to be duly executed as of the day and year written above.

CITY OF ELK GROVE
A Municipal Corporation

CITY OF SACRAMENTO
A Municipal Corporation

Laura S. Gill, City Manager Date

Marty Hanneman, Director of Utilities Date
For: Gus Vina, Interim City Manager

Approved as to Form:

Approved as to Form:

Susan Burns Cochran, City Attorney Date

Sr. Deputy City Attorney Date

Attest:

Attest:

Jason Lindgren, City Clerk Date

Shirley Concolino, City Clerk Date

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2011-37**

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

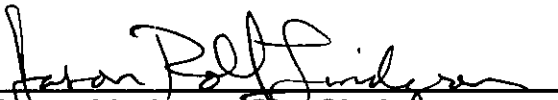
I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 23, 2011 by the following vote:

AYES : **COUNCILMEMBERS:** *Detrick, Cooper, Davis, Hume, Scherman*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN : **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*



Jason Lindgren, City Clerk
City of Elk Grove, California