

RESOLUTION NO. 2007-274

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE A HOUSEHOLD HAZARDOUS
WASTE AGREEMENT BETWEEN THE COUNTY OF SACRAMENTO
AND THE CITY OF ELK GROVE**

WHEREAS, the County of Sacramento operates a permitted Permanent Household Hazardous Waste Collection Facility (PHHWCF) capable of providing access to 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

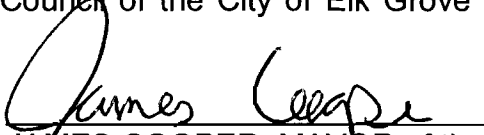
WHEREAS, the County of Sacramento and the City of Elk Grove have had a contractual agreement since July 26th, 2005, enabling the City of Elk Grove residents to utilize its household hazardous waste facility at 4450 Roseville Road, North Highlands; and

WHEREAS, the new contract between the County of Sacramento and the City of Elk Grove will continue to enable the City of Elk Grove residents to utilize the current household hazardous waste facility for all household hazardous waste, as well as the new household hazardous waste facility at the Kiefer Landfill for anti-freeze, batteries, oil and paint (ABOP).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove authorizes a five year and 5 month agreement with the County of Sacramento generally with the terms as identified in the attached agreement; and,

BE IT FURTHER RESOLVED that the City Manager or his/her designee is hereby authorized and empowered 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 hazardous waste for the residents of Elk Grove, in a form acceptable to the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 12th day of December, 2007.


JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:


SUSAN COCHRAN, CITY ATTORNEY

**COUNTY OF SACRAMENTO
MUNICIPAL SERVICES AGENCY**

**AGREEMENT FOR
HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM
BETWEEN THE COUNTY OF SACRAMENTO
AND THE CITY OF ELK GROVE**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2007, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and the CITY OF ELK GROVE, a municipal corporation, (hereinafter referred to as "CITY").

RECITALS

WHEREAS, COUNTY owns and operates a permitted permanent household hazardous waste collection facility pursuant to California Health and Safety Code Division 20, Chapter 6.5, §25218 and California Code of Regulations, Title 22, Division 4.5, Chapter 20, §66270.60(d)(6) (hereinafter referred to as "PHHWCF"), capable of providing convenient access to CITY residents, located at the COUNTY'S North Area Transfer Station, 4450 Roseville Road, North Highlands, California (hereinafter referred to as "NARS"); and

WHEREAS, COUNTY, prior to, or during the term of this agreement, will construct, own, and operate a permitted Antifreeze, Batteries, Oil, and Paint Collection Facility (hereinafter referred to as "ABOPF"), capable of providing convenient access to CITY residents, located at the COUNTY'S Kiefer Landfill, 12701 Kiefer Boulevard, Sloughhouse, California (hereinafter referred to as "Kiefer") pursuant to California Health and Safety Code Division 20, Chapter 6.5, §25218 and California Code of Regulations, Title 22, Division 4.5, Chapter 20, §66270.60(d)(6); and

WHEREAS, COUNTY and CITY desire to cooperate in using a regional PHHWCF and ABOPF and share certain costs in connection therewith; and

WHEREAS, CITY does not operate a PHHWCF or ABOPF for the proper disposal, recycling and exchange of household hazardous waste (hereinafter referred to as "HHW") and Antifreeze, Batteries, Oil, and Paint (hereinafter referred to as "ABOP" Materials); and

WHEREAS, COUNTY AND CITY desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CITY agree as follows:

1. **DEFINITIONS**

- A. "Conditionally Exempt Small Quantity Generator" (hereinafter referred to as "CESQ generator") means a business concern which meets the criteria specified in Section 261.5 of Title 40 of the Code of Federal Regulations.
- B. "Director" shall mean the Director of the Department of Waste Management and Recycling for COUNTY or his/her designee.
- C. "Hazardous Waste" means a waste, or combination of wastes, which because of its quantity, concentration, physical, chemical, or infectious characteristics may either: (1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (2) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed; or (3) exhibits one or more of the following characteristics: ignitable, corrosive, reactive, toxic, acutely hazardous, or infectious. (California Health and Safety Code, Division 20, Chapter 6.5 and California Code of Regulations, Title 22, Division 4.5, Chapter 11).
- D. "Household Hazardous Waste" (hereinafter referred to as "HHW") means any hazardous waste generated incidental to owning or maintaining a place of residence, but does not include any waste generated in the course of operating a business concern at a residence. (California Health and Safety Code Division 20, Chapter 6.5, §25218(1-e)).

2. **SCOPE OF SERVICES AND COMPENSATION**

- A. COUNTY shall provide services in the amount, type and manner, and for the compensation described in Exhibit A, "Scope of Services and Compensation" and Exhibit B, "Unit Pricing Table," which are attached hereto and incorporated herein.
- B. The Director of the Department of Waste Management and Recycling shall have the authority to make changes in the scope of services, and compensation therefor, within the general scope of this Agreement. All changes to this Agreement will be mutually agreed upon and signed by the Director for COUNTY and the authorized representative for CITY.

3. **TERM**

- A. This Agreement shall be in effect on February 1, 2008 and is estimated to end on June 30, 2013.
- B. The Director of the Department of Waste Management and Recycling shall have the authority to extend the term of this Agreement on a year-to-year basis with the mutual written consent of CITY.

4. **NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail.

TO COUNTY

County of Sacramento
Department of Waste Management
and Recycling
Attn: Paul Philleo, Acting Director
9850 Goethe Road
Sacramento, CA 95827-3561

TO CITY

City of Elk Grove
Attn: Cedar Kehoe
8401 Laguna Palms Way
Elk Grove, CA 95758

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

5. **COMPLIANCE WITH LAWS**

COUNTY and CITY shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

6. **GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

7. **STATUS OF PARTIES**

There is no agency relationship between the parties. Notwithstanding anything contained herein, the employees of each party will continue to be entirely and exclusively under the direction, supervision and control of the employing party.

8. **INDEMNIFICATION**

CITY shall defend, indemnify and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees, volunteers and subcontractors from and against all demands, claims, actions, liabilities, losses, damages, and costs, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of CITY'S officers, directors, agents, employees, volunteers, or subcontractors.

COUNTY shall defend, indemnify, and hold harmless CITY, its officers, directors, agents, employees, volunteers, and subcontractors of CITY from and against all demands, claims, actions, liabilities, losses, damages and costs, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of COUNTY'S Board of Supervisors, officers, directors, agents, employees, volunteers, or subcontractors.

It is the intention of COUNTY and CITY that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, COUNTY'S Board of Supervisors, COUNTY'S subcontractors, City Council, and CITY'S subcontractors. It is also the intention of COUNTY and CITY that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, COUNTY'S Board of Supervisors, COUNTY'S subcontractors, City Council, and CITY'S subcontractors.

9. **INSURANCE**

Each party, at its sole cost and expense, shall carry insurance-or self-insure-- its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

10. **ASSIGNMENT**

This Agreement is not assignable by CITY or COUNTY in whole or in part.

11. **AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon CITY or COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY and DIRECTOR and attorney for CITY.

12. **SUCCESSORS**

This Agreement shall bind the successors of COUNTY and CITY in the same way as if they were expressly named.

13. **TIME**

Time is of the essence of this Agreement.

14. **INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

15. **DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between them. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

16. **TERMINATION**

- A. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to CITY and it is later determined that CITY was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. CITY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by CITY to COUNTY and it is later determined that COUNTY was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (B).
- C. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CITY should CITY materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified.
- D. CITY may terminate this Agreement for cause immediately upon giving written notice to COUNTY should COUNTY materially fail to perform any

of the covenants contained in this Agreement in the time and/or manner specified.

- E. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CITY, 1) if advised that funds are not available from external sources for this Agreement or for any portion thereof; 2) if funds in COUNTY'S yearly proposed and final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 3) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by County as a result of mid-year budget reductions.
- F. CITY may terminate or amend this Agreement immediately upon giving written notice to COUNTY, 1) if advised that funds are not available from external sources for this Agreement or for any portion thereof; 2) if funds in CITY'S yearly proposed and final budget are not appropriated by CITY for this Agreement or any portion thereof; or 3) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by CITY as a result of mid-year budget reductions.
- G. If this Agreement is terminated under paragraph A, B, E or F above, COUNTY shall only be paid for any services completed and provided prior to notice of termination.

17. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COUNTY and CITY regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CITY regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

18. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

19. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

COUNTY OF SACRAMENTO, a political subdivision of the State of California

CITY OF ELK GROVE, a municipal corporation

By: _____
Paul Philleo, Acting Director
Department of Waste Management
and Recycling

By: _____

Title: _____

“COUNTY”

“CITY”

Date: _____

Date: _____

Agreement approved by the Board of Supervisors and signed by the Director under the authority delegated by Resolution No. 99-0327.

ATTEST:

Agenda Date: _____

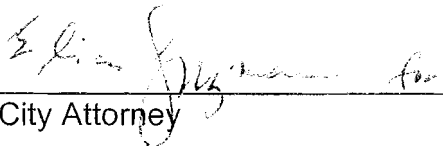
City Clerk

Item Number: _____

Contract and Consultant Tax Status Reviewed and Approved by County Counsel

APPROVED AS TO FORM:

By: _____
Diane E. McElhern
Deputy County Counsel



City Attorney

Prepared by:

Terrie Squaglia
Administrative Services Officer 2
Contract Services Section
Accounting & Fiscal Services
Municipal Services Agency
Phone: (916) 876-6287

**EXHIBIT A to Agreement
Between the COUNTY OF SACRAMENTO and the
CITY OF ELK GROVE**

SCOPE OF SERVICES AND COMPENSATION

1. CITY RESPONSIBILITIES

- A. CITY may direct residential and CESQ generators in the CITY to self-haul HHW to COUNTY'S PHHWCF, located at COUNTY'S NARS facility (4450 Roseville Road, North Highlands, CA 95660). CITY may also direct residential generators in the CITY to self-haul ABOP materials to COUNTY'S ABOPF, located at COUNTY'S Kiefer facility (12701 Kiefer Boulevard, Sloughhouse, CA 95742). Any public education or promotional efforts developed by CITY shall indicate the specific days and hours of operation of the PHHWCF and ABOPF.

- B. CITY acknowledges that the NARS PHHWCF does not accept all types and quantities of HHW from residential and CESQ generators. Prohibited materials include, but are not limited to: radioactive materials, railroad ties or treated wood, explosives (flares are acceptable), and medical waste (home generated needles or syringes are acceptable). Ammunition will only be accepted on a case-by-case basis with prior notification. Quantity limits (actual liquid amount) per trip are currently as follows but are subject to change at the will of COUNTY: 10 gallons for latex paint, 20 gallons for used oil, 5 gallons or 50 pounds for all other materials. No containers larger than 5 gallons are accepted.

- C. In the event COUNTY constructs, owns, and operates a PHHWCF at Kiefer during the term of this agreement, then all acceptable materials and limits thereto as reflected in Paragraph 1 (B) above for the NARS PHHWCF shall apply to that Kiefer PHHWCF. Further, CITY acknowledges that COUNTY will only accept antifreeze, auto and household batteries, motor and cooking oil, motor oil filters, and latex or enamel paint at the Kiefer ABOPF. Quantity limits as described above for these certain materials applies to those materials acceptable at the ABOPF.

2. COUNTY RESPONSIBILITIES

COUNTY shall accept self-hauled HHW from residential (at no charge to the resident) and CESQ generators from the CITY at COUNTY'S NARS PHHWCF, and shall accept self-hauled HHW and ABOP materials, as applicable pursuant to Section 1.C above, from residential (also at no charge to resident) and CESQ generators from the CITY at COUNTY'S Kiefer ABOPF, during the hours of operation of the NARS PHHWCF and Kiefer ABOPF. The initial days and hours

of operation of the NARS PHHWCF and Kiefer ABOPF are as follows (hours subject to change at the will of COUNTY with written notice to City):

- A. Residential Customers: HHW will be accepted from residential generators at the NARS PHHWCF on Tuesday, Thursday, Friday, and Saturday, from 8:30 AM to 4:00 PM (no appointment necessary).

ABOP materials will be accepted from residential generators at the Kiefer ABOPF: Tuesday, Thursday, Friday, and Saturday, from 8:30 AM to 4:00 PM (no appointment necessary).

- B. CESQ Generators: CESQ Hazardous waste will be accepted on the last Friday of each month from 8:30 a.m. to 12:30 p.m. CESQ generators must call (916) 481-4316 to receive an appointment to self-haul material at the PHHWCF. No material will be accepted from a CESQ generator who does not have an appointment.

COUNTY shall charge any CESQ generator from the CITY who self-hauls hazardous wastes to the NARS or Kiefer PHHWCF, by appointment, the same amount for the same materials and quantities as COUNTY charges their CESQ generators. CITY CESQ generators shall pay COUNTY prior to gaining access to any COUNTY PHHWCF.

3. COMPENSATION

- A. Residential Generators: CITY shall compensate COUNTY for the participation of residential generators of HHW and ABOP materials from CITY at COUNTY'S NARS PHHWCF or Kiefer ABOPF.

- 1. Address Verification: The COUNTY shall maintain a record of the zip code and address of each HHW or ABOP load relative to the jurisdiction of waste origin. The County shall verify all addresses through GIS applications to determine whether a certain address for a load is physically located within CITY before assessing the appropriate HHW Admin Fee and per item fees for each material type in that load.

- 2. HHW Admin Fee: The initial administrative fee shall be \$25.00 per HHW or ABOP load (hereinafter referred to as "HHW Admin Fee") The HHW Admin Fee will be subject to a 3% maximum annual CPI adjustment which will be calculated in July of each year. COUNTY shall notify CITY in writing of any change in fees and provide City with a revised Exhibit B.

CPI Adjustment.

- (a) CPI; Base Year CPI. When used herein, "CPI" shall be 100% of the "Northern California All Urban Consumers" Consumer Price Index – All Urban Consumers, San

Francisco – Oakland – San Jose, CA, All items (1982-84=100). "Base Year" shall refer to (CPI) value for April 2007.

- (b) Maximum Annual CPI Adjustment. The maximum annual CPI adjustment (increase or decrease) from the previous year's HHW Admin Fee shall be three percent (3%).
- (c) First CPI Adjustment. Effective July 1, 2008, the HHW Admin Fee shall be adjusted by an amount equal to the lesser of three percent (3%) or 100% of the increase (or decrease if applicable) in the CPI value from the Base Year to April 2008.
- (d) Subsequent Annual CPI Adjustments. Effective July 1, 2009 and each July 1 thereafter, the previous year's HHW Admin Fee shall be adjusted by an amount equal to the lesser of three percent (3%) of the previous year's HHW Admin Fee or 100% of the increase (or decrease if applicable) in the CPI value from the Base Year to April of the current year period.
- (e) Example of CPI Adjustments. The following table is provided for informational and example purposes only regarding the manner of computing CPI adjustments.

Example of CPI Adjustments						
A	B	C	D	E	F	G
	CPI Value	Current Year CPI Value Divided by Base Year CPI Value	Percent Change	Base Year HHW Fee Plus Percent Change	Prior Year HHW Fee Plus 3 Percent	Use Lesser of Column E or F as HHW Admin Fee
Base Year (October 2002 for Example Only)	187.5	1.000	-0-	\$25.00	\$25.00	\$25.00
Current Year (April 2004 for Example Only)	194.4	1.0368	3.68%	\$25.92	\$25.75	\$25.75
Current Year (April 2005 for Example Only)	202.0	1.0773	7.73%	\$26.93	\$26.52	\$26.52
Current Year (April 2006 for Example Only)	204.5	1.0907	9.07%	\$27.27	\$27.31	\$27.27

- 3. Per Item Fees: The per item fees shown in Exhibit B are subject to change pursuant to changes in actual costs to County due to changes in regulations, permit requirements, or direct costs from County contractors. COUNTY shall notify CITY in writing no less than thirty (30) days in advance of any change in fees and provide CITY with a revised Exhibit B.

4. Invoicing and Payment: COUNTY shall submit invoice to CITY no later than the fifteenth (15th) day of the month following the monthly invoice period, and CITY shall pay COUNTY within thirty (30) days after receipt of invoice.

5. Modification of Compensation Terms: The Director of the Department of Waste Management and Recycling and the authorized representative from CITY shall have the authority to modify the terms of compensation in the Agreement on behalf of COUNTY'S Board of Supervisors and CITY'S Council.

**EXHIBIT B to Agreement
between the COUNTY OF SACRAMENTO and the
CITY OF ELK GROVE**

Unit Pricing Table

Description	Unit Price	Description	Unit Price
Motor Oil (gal)	\$0.00/gal	Acids (gal)	\$7.00/gal
Antifreeze (gal)	\$0.55/gal	Aerosols (ea)	\$0.75/ea
Latex Paint (gal)	\$2.75/gal	Flammable Liquids (pourable) (gal)	\$2.75/gal
Flammable Paint (Enamel) (gal)	\$2.75/gal	Flammable Liquids (non- pourable) (lb)	\$1.00/lb
Auto Batteries (ea)	\$0.00/ea	Flammable Solids (lb)	\$1.50/lb
Household Batteries (lb)	\$0.25/lb	Oxidizers (lb)	\$1.25/lb
Compact Fluorescents & U- Tubes (ea)	\$1.00/ea	Oxidizers (gal)	\$10.00/gal
4' Fluorescent Tubes (ea)	\$0.60/ea	Caustics (lb)	\$1.00/lb
Mercury (lb)	\$2.25/lb	Caustics (gal)	\$7.00/gal
Poison-Liquids (gal)	\$10.00/gal	Non-RCRA Waste-Liquids (gal)	\$2.75/gal
Poison-Solids (lb)	\$1.25/lb	Non-RCRA Waste-Solids (lb)	\$1.00/lb
Unknown (ea)	\$7.50/ea		

Note: Pricing shown above subject to change based on actual costs incurred by County. Any pricing changes will be provided to CITY in writing at least 30 days prior to becoming effective.

Note: Current HHW Admin Fee \$25.00 as of February 1, 2008
(Adjusted annually pursuant to CPI provisions of agreement)

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2007-274**

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


I, Peggy E. Jackson, 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 12, 2007 by the following vote:

AYES : COUNCILMEMBERS: Cooper, Leary, Scherman, Hume, Davis

NOES: COUNCILMEMBERS: None

ABSTAIN : COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



**Peggy E. Jackson, City Clerk
City of Elk Grove, California**

