

RESOLUTION NO. 2011-36

**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 USE OF THE CITY OF
SACRAMENTO'S PERMANENT HOUSEHOLD HAZARDOUS WASTE
COLLECTION FACILITY FOR HOUSEHOLD HAZARDOUS WASTE DISPOSAL**

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

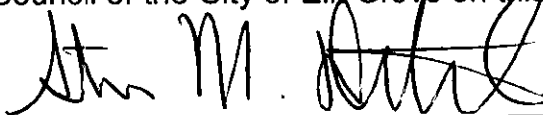
WHEREAS, the City of Elk Grove does not currently own a facility enabling Elk Grove residents to dispose of household hazardous waste; and

WHEREAS, the City of Sacramento and the City of Elk Grove have had a contractual agreement since July 2002, enabling City of Elk Grove residents to utilize the City of Sacramento's household hazardous waste facility located at 8491 Fruitridge Road.

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 Elk Grove 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 hazardous waste, 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 ELK GROVE AND
CITY OF SACRAMENTO FOR PARTICIPATION AT
PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY**

THIS AGREEMENT made and entered into on the ____ of ____, 2011, by and between the **CITY OF ELK GROVE**, a municipal corporation, (hereinafter "EG") and the **CITY OF SACRAMENTO**, a municipal corporation, (hereinafter "CITY").

WITNESSETH

WHEREAS, CITY and EG desire to cooperate in using a facility for the disposal of household hazardous waste (HHW) during the term of this Agreement, and share certain costs in connection therewith; and,

WHEREAS, EG does not operate a permanent household hazardous waste collection facility that provides maximum convenience to its residents for the proper disposal, recycling and exchange of household hazardous waste; and,

WHEREAS, the CITY operates a permanent household hazardous waste collection facility capable of providing convenient access to EG residents; and,

WHEREAS, it is more cost effective for EG to pay its share of costs incurred at the CITY's facility in contrast to developing its own permanent facility.

NOW, THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, CITY and EG hereby agree as follows:

1. **TERM:** The term of this agreement shall commence on July 1, 2011 and terminate on June 30, 2014.
2. **NOTICE:** Notice shall be deemed to have been served when it is deposited in the United States Mail, postage prepaid, and addressed as follows:

TO EG

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. **EG USE OF CITY FACILITY:** The following conditions apply to use of the CITY facility by residents of EG:

a) "Household hazardous waste" means any waste generated in the household, regardless of quantity or concentration, that exhibits any of the characteristics or criteria of hazardous waste as set forth in Chapter 6.5, Article, Section 25117 of the State of California Health and Safety Code. Materials that **will** be accepted from EG residents include:

Acids	Household cleansers	Used oil filters
Aerosol cans	Paint thinners	Used Motor Oil (max. 15 gallons)
Automotive batteries	Paint (max. 10 gallons)	Antifreeze (max. 10 gallons)
Brake fluid	Poisons	Household Batteries
Flammables	Pool Chemicals	Fluorescent Lamps and Tubes
Gasoline	Solvents	Sharps
Herbicides and Pesticides	Transmission Fluids	Wood Preservatives

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The following materials **will not** be accepted for collection:

Asbestos	Medical waste	Compressed gas cylinders
Explosives	PCP's	Contractor or Commercially
Infectious waste	Radioactive waste	Generated Waste

- b) CITY facility operators shall have the discretion to place further limits on residents attempting to drop off excessive quantities of household hazardous waste. CITY facility operators shall also have the discretion to accept quantities of household hazardous waste in excess of the specified limitations above in consideration of health and public safety.
 - c) The collection site will be the City of Sacramento Permanent Household Hazardous Waste Collection Facility located at 8491 Fruitridge Road, Sacramento, California 95826.
 - d) Use of the CITY facility shall be limited to the operating days and hours determined by the CITY, and shall be subject to all rules and regulations established by the CITY.
4. **CITY SERVICES TO BE PROVIDED:** The CITY shall provide the following services to EG:
- a) The CITY shall provide adequate on-site personnel to safely accommodate accepting household hazardous waste from EG residents.
 - b) The CITY shall provide for the proper disposal, treatment, recycling, destruction and/or exchange of materials in conformance with all applicable laws and regulations.
 - c) The CITY shall provide EG with templates of brochures or other promotional materials for EG's use for public counters and special events publicizing the facility.
 - d) The CITY shall provide EG with a copy of its Form 303 to document the aggregate quantity of material accepted at the facility.

5. **COST SHARING PROCEDURE:** EG shall reimburse the CITY in conformance with the following procedure:
- a) The CITY shall maintain a record of the physical address and zip code of each car relative to the jurisdiction of waste origin. EG zip codes are defined as follows:

95624 95757 95758 95759

- b) EG shall pay the CITY a per vehicle fee for all vehicles originating from the jurisdictional boundaries of EG and delivering waste at the facility. Fees are as follows:

Cost per Car	Estimated Weight/Quantity
\$70	<125 lbs. or 15 gallons
Best estimate of actual cost for disposal and labor	
	>125 lbs. or 15 gallons

Note: Disposal costs are understood to be the costs of drums, transportation and facility disposal based upon the method of disposal (landfill, incineration, etc.)

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- c) Additional fees for highly reactive or atypical waste shall be assessed to EG based on direct costs related to disposal and labor. Examples are as follows:

Oxidizers	Dangerous when Wet Materials
Organic Peroxides	Inhalation Hazard Materials (Poisonous inhalation hazards)
Mercury	Highly Reactive Flammable solids (e.g., red phosphorous)
Sodium Metal	Other materials deemed an immediate threat or hazard

- d) The CITY agrees to meet and confer with the EG representative upon request to clarify charges related to additional fees.
- e) The CITY shall invoice EG on a quarterly basis. The invoice is due and payable within 30 days.
- f) The quarterly invoice will include a list of zip codes, names and addresses from EG residents that have used the facility in order to verify the jurisdiction of origin of waste.
- g) In no event shall EG pay more than **\$100,000** to CITY for the services contemplated under this agreement annually (based on each fiscal year in which this agreement is in effect) and \$300,000 for the full term of this Agreement without the prior written consent of Elk Grove as set forth in section 11 (Amendments). If invoices exceed the cap set by this provision in any fiscal year, either party at their sole option may cancel this agreement or the parties may agree to renegotiate the cost sharing provisions under this section.
6. **TERMINATION OF AGREEMENT:** 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 for all purposes on the date it is deposited in the United States mail, postage prepaid and addressed to the respective parties at the address indicated in Section 2.

7. **INDEMNIFICATION AND LIABILITY:** Each party shall assume the responsibility and liability for the acts and omissions 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 EG, 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) of any kind and nature whatsoever imposed in, asserted against, incurred or suffered by EG 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.

EG shall assume the responsibility and liability for and EG 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) of 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,

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omission or failure to act when under a duty to act on the part of EG, or any of its agents, officers, or employees in its or their performance 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.

EG residents who are owners, operators and/or occupants of vehicles that deliver HHW to the CITY facility shall not under any circumstances be construed to be agents, officers or employees of CITY or EG for purposes of this Agreement.

8. **MUTUAL WAIVER OF SUBROGATION:** The parties agree that in the event of 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 for 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 performed 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. CITY shall obtain all necessary permits or licenses required for the operation of its facilities necessary to provide the services contemplated under this agreement.

10. **ASSIGNMENT OF AGREEMENT:** The parties to this Agreement may not assign the privileges or obligations of this Agreement.

11. **AMENDMENTS:** Modifications or amendments affecting the work hereunder 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 provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

14. **ENTIRE AGREEMENT:** This instrument constitutes the entire Agreement between the EG and CITY 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.

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16. **APPROVAL OF GOVERNING BODIES:** This Agreement shall not be effective for any purposes until approved by each party's governing body.
17. **WARRANTY OF CONTRACTING AUTHORITY:** The signers of this Agreement have the capacity and are authorized to execute this Agreement as the representatives of their respective Parties, and to bind said Parties to the terms hereof.

IN WITNESS WHEREOF, the parties hereto 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

By: _____
Laura S. Gill, City Manager

By: _____
Gus Vina, Interim City Manager

Approved as to form:

Approved as to form:

Susan Burns Cochran, City Attorney

Sr. Deputy City Attorney

ATTEST:

ATTEST:

By: _____
Jason Lindgren, City Clerk

By: _____
Shirley Concolino, City Clerk

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2011-36**

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**