

RESOLUTION NO. 2004-43

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH
SACRAMENTO COUNTY ENVIRONMENTAL MANAGEMENT DEPARTMENT (EMD)
FOR MANDATED REGULATORY COMPLIANCE INSPECTIONS REQUIRED BY THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
STORMWATER PERMIT**

WHEREAS, the City of Elk Grove along with other co-permittee agencies has been issued a NPDES Stormwater Permit; and

WHEREAS, one of the new permit requirements is to track, inspect, and ensure compliance with stormwater ordinances at commercial and industrial facilities; and

WHEREAS, the Sacramento County Environmental Management Department (EMD), as both the State-designated Certified Unified Program Agency (CUPA) and the Environmental Health Agency for Sacramento County, is currently tracking and inspecting the majority of commercial and industrial facilities subject to NPDES permit provisions; and

WHEREAS, utilizing EMD to fulfill the commercial/industrial inspection program requirements will result in greater program efficiency, reduced program costs, reduced impacts to the regulated business community, and it is in the best interest of the City; and


WHEREAS, the cost of the program is proposed to be 100% funded through County implemented fees charged to the regulated businesses.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to enter into the agreement with EMD for fulfilling the NPDES permit inspection requirements.


PASSED AND ADOPTED by the City Council of the City of Elk Grove this 17th day of March 2004.


SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:


ANTHONY B. MANZANETTI,
CITY ATTORNEY

COUNTY OF SACRAMENTO AGREEMENT NO. # _____

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of ____, 2004, 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 charter municipal corporation of the State of California (hereinafter referred to as "CITY").

RECITALS

WHEREAS, in 1987 Congress amended Section 402 of the Federal Clean Water Act to require the United States Environmental Protection Agency ("EPA") to promulgate regulations for permits for stormwater discharges; and

WHEREAS, the regulations are designed to control pollutants associated with stormwater discharges through the use of the National Pollutant Discharge Elimination System ("NPDES") permit system which allows the lawful discharge of stormwater into the waters of the United States; and

WHEREAS, the EPA has delegated to the State of California the authority to issue NPDES permits; and

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") has been charged by the California State Water Resources Control Board with the responsibility to issue NPDES permits within the Central Valley Region; and

WHEREAS, on December 6, 2002, the Regional Board adopted a NPDES stormwater permit No. CAS0082597, Order No. R5-2002-0206, (hereinafter referred to as "Permit") for the County of Sacramento and the Cities of Citrus Heights, Elk Grove, Folsom, Galt, and Sacramento (PERMITTEES); and

WHEREAS, the PERMITTEES must comply with the Permit, its successor Permit, and other stormwater compliance documents subject to modification by the Regional Board; and

WHEREAS, the CITY is responsible for overseeing regulatory compliance with the Permit for areas within its jurisdiction; and

WHEREAS, the CITY has adopted a Stormwater Ordinance set forth at Chapter 15.10 of the Elk Grove City Code to prohibit the discharge of pollutants to the CITY's municipal stormwater conveyance system; and

WHEREAS, Provision C.9 of the Permit includes the requirement to track, inspect and ensure compliance with the Stormwater Ordinance at industrial and commercial facilities; and

WHEREAS, COUNTY Environmental Management Department, as both the State designated Certified Unified Program Agency (CUPA) and Environmental Health Agency for Sacramento County, is currently tracking, conducting inspections and otherwise regulating, pursuant to Chapter 6.11, Division 20 and Chapter 2, Part 7, Division 104 of the Health and Safety Code, the majority of the commercial and industrial facilities that are subject to compliance with the Stormwater Ordinance; and

WHEREAS, CITY has determined that the cost to track, inspect and ensure stormwater compliance at commercial and industrial facilities is such that it would be more economical, feasible, and of greater benefit to the regulated business community to utilize the services of COUNTY to fulfill the commercial/industrial stormwater program requirements of the Permit; and

WHEREAS, Article 11, Section 8 of the California Constitution provides that a county may agree with a city within its borders to performed specified municipal functions, if provided by their respective charters, and the City and County Charters allow the City Council and the Board of Supervisors, respectively, to enter into agreements for the performance of municipal functions by the County; and

WHEREAS, to the extent that amendments to the CITY's Stormwater Ordinance are needed to authorize COUNTY to administer and enforce the Stormwater Ordinance for such commercial and industrial facilities, CITY staff intends to develop and recommend such amendments to the City Council; 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, the parties hereto agree as follows:

I. SCOPE OF SERVICES

COUNTY shall provide services in the amount, type and manner described in Exhibit "A", which is attached hereto and incorporated herein.

CITY shall provide services in the amount, type and manner described in Exhibit "B", which is attached hereto and incorporated herein.

II. COST SHARE

Each party shall be responsible for the costs of implementing their respective services as described in Exhibits "A" and "B".

III. TERM

This Agreement shall be effective and commence as of the date first written above and shall end on June 30, 2010, unless sooner terminated as provided herein.

IV. 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 certified mail-return receipt requested, addressed as follows:

TO COUNTY

DIRECTOR
Sacramento County Environmental
Management Department
8475 Jackson Road, Suite 230
Sacramento, CA 95826

TO CITY

Manager of Building and Engineering
Development Services
City of Elk Grove
8400 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. Notice shall be deemed effective on the date of receipt.

V. COMPLIANCE WITH LAWS

CITY and COUNTY and their respective officers and employees shall observe and comply with all applicable Federal, State, County and City laws, regulations and ordinances, including but not limited to laws, regulations and ordinances governing conflict of interest.

VI. EMPLOYMENT STATUS OF PERSONNEL

1. Any persons employed by COUNTY for the performance of services pursuant to this Agreement shall remain employees of COUNTY, shall at all times be under the direction and control of the COUNTY, and shall not be considered employees of the CITY. All persons employed by the COUNTY to perform services pursuant to this Agreement shall be entitled solely to the rights and privileges afforded to COUNTY

employees and shall not be entitled, as a result of providing services hereunder, to any additional rights or privileges that may be afforded to CITY employees.

2. For the purpose of performing the services provided for in this Agreement, and for the purpose of giving official status to the performance thereof where necessary, every COUNTY officer and employee engaged in the performance of any service hereunder shall be deemed to be an agent of the CITY while performing such services for CITY, provided that such services are within the scope of this Agreement, are purely municipal functions and are performed as authorized by the Elk Grove City Code. Notwithstanding the agency relationship established by this subsection, the CITY shall not be liable for any act or omission of any COUNTY officer or employee unless specifically provided elsewhere in this Agreement.
3. CITY shall not be liable for the payment of any salaries, wages, compensation or other benefits to any COUNTY employee performing services pursuant to this Agreement, or for compensation or indemnity to any COUNTY employee for injury or sickness arising out of his or her employment with the COUNTY and providing services pursuant to this Agreement.
4. COUNTY hereby indemnifies and holds CITY harmless from any and all claims that may be made against CITY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

VII. SHARE OF LIABILITIES

Notwithstanding any provision hereof to the contrary, if the Regional Board or other regulatory agency imposes penalties on the CITY, or any third party files a lawsuit against the CITY, based on any violation of the Permit by CITY, and such violation is related to any activities performed by either party under this Agreement, each party shall be equally responsible for the costs of such penalties or third party lawsuits to the extent that such penalties or lawsuits arise from activities performed or required to be performed by that party, its officers, directors, agents, employees, and volunteers, under this Agreement.

VIII. INDEMNIFICATION

CITY shall defend, indemnify and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including 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 officers, directors, agents, and employees (including its volunteers and students).

COUNTY shall defend, indemnify, and hold harmless CITY, its City Council, officers, directors, agents, employees, and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including 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, and employees (including its volunteers and students).

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 and students, COUNTY'S Board of Supervisors, and CITY'S City Council. 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 and students, COUNTY'S Board of Supervisors and CITY'S City Council.

IX. SUBCONTRACTS, ASSIGNMENT

1. Any subcontracting will be subject to all applicable provisions of this Agreement. Subcontracting services delivered under this Agreement shall not in any way relieve COUNTY of any duty or responsibility under this Agreement and COUNTY shall remain primarily obligated for the performance of all services.
2. This Agreement is not assignable by COUNTY in whole or in part, without the prior written consent of CITY.

X. 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.

XI. 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.

XII. TERMINATION

Either party may terminate this Agreement upon one hundred and eighty (180) days written notice to the other party. Notice shall be deemed served on the date of mailing.

XIV. 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.

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

By:



Director
Environmental Management Department

Date: 2/26/04

Reviewed and approved by County Counsel:



Deputy County Counsel

Date: 2-18-04

CITY OF ELK GROVE, a municipal corporation of the State of California

By:

City Manager

Date: _____

Attest:

City Clerk

Date: _____

Approved as to form:



City Attorney

Date: 2-25-2004



**EXHIBIT A to Agreement
between the COUNTY OF SACRAMENTO,
hereafter referred to as "COUNTY," and
and the CITY OF ELK GROVE, hereafter referred to as "CITY"**

SCOPE OF SERVICES

COUNTY DESCRIPTION OF SERVICES

COUNTY will work within a cooperative relationship with CITY and provide the following services:

1. Administer and enforce CITY's Stormwater Ordinance with respect to commercial and industrial facilities within the CITY.

COUNTY will administer and enforce CITY's Stormwater Ordinance with respect to commercial and industrial facilities within the incorporated CITY area, to the extent that COUNTY administration and enforcement is authorized by the Stormwater Ordinance or any amendments thereto adopted by the Elk Grove City Council.

2. Provide inspections at commercial and industrial facilities within the incorporated CITY area as required by California Regional Water Quality Control Board Order # R5-2002-0206 (Permit) consistent with applicable provisions of the Stormwater Ordinance.

- A. COUNTY will complete a stormwater compliance inspection at each eligible commercial and industrial facility at least once every three years.
- B. COUNTY will, in coordination with CITY, develop inspection form(s) to be used by COUNTY personnel.
- C. COUNTY will develop protocols to complete required area survey activities to ensure that new facilities are incorporated into the stormwater inspection and enforcement program and will provide, at a minimum, annual updates of database.
- D. COUNTY will distribute at the time of inspection any educational materials provided by CITY for such distribution.

3. Provide follow-up inspection and progressive enforcement protocols, including a written enforcement policy, consistent with the requirements of the Permit and applicable provisions of the Stormwater Ordinance.

- A. In coordination with CITY, COUNTY will develop and, as needed, modify those protocols, to ensure compliance with the Permit
- B. COUNTY will provide enforcement assistance, as requested, by the Regional Board.

4. Provide a funding mechanism for commercial and industrial facility stormwater compliance inspection program.

- A. COUNTY will quantify necessary COUNTY resources required to achieve compliance with the Permit as it applies to inspection, enforcement, and other related activities for commercial and industrial facilities.
- B. COUNTY will develop and present to the Sacramento County Board of Supervisors a proposed resolution and/or ordinance that authorizes COUNTY to recover program costs resulting from the expenditure of resources required for program implementation. Such a resolution and/or ordinance will include a fee schedule detailing annual fees for all facilities included in the commercial and industrial stormwater compliance program.

5. Provide support for presentations before the Elk Grove City Council and other groups or individuals.

If requested, COUNTY will assist in the presentation of stormwater related issues before the City Council and any other groups or individuals.

6. Provide Adequate Industry Notification

COUNTY, along with CITY, will conduct workshops and other outreach efforts to inform the regulated community of pending fee and significant compliance issues.

7. Provide for additional staff and training

- A. COUNTY will develop a work plan documenting additional staff required for the commercial and industrial stormwater compliance program implementation.
- B. COUNTY will arrange for and secure needed staff training.

8. Develop adequate record-keeping and notification system.

A. COUNTY will review record keeping and notification requirements required by the Permit and incorporate these requirements into its existing record keeping and outside agency reporting protocols.

B. COUNTY will make the necessary additions and/or adjustments to its existing database to comply with data management requirements contained in the Permit.

9. Appointment of a Senior Level Manager as liaison to CITY for coordination with the commercial and industrial stormwater compliance program.

COUNTY will designate a senior level position to oversee all stormwater program activities and act as the primary liaison with CITY.

10. Provide for complaint response

A. COUNTY will develop a methodology that outlines how complaints should be categorized and the appropriate level of response that is required in response to complaints for those industries within COUNTY's inspection jurisdiction.

B. COUNTY, along with CITY, will work directly with the Regional Board to develop and modify this proposed methodology, as needed, to ensure Permit compliance.

11. Provide for reporting and documentation

Not later than August 1st of each year, COUNTY will provide CITY any inspection/enforcement/complaint data or documentation needed by CITY to achieve compliance with reporting requirements contained in the Permit. This will include at a minimum:

- Number of businesses/facilities inspected.
- Number of enforcement actions taken, including the amount of fines or monies assessed and collected.
- Number of complaints referred to COUNTY by the Regional Board.
- Total number of complaint responses by COUNTY.
- Enforcement assistance provided to the Regional Board.
- Inspection or complaint response records for specific facilities requested by CITY on an as needed basis.

12. Provide for progress evaluation

- A. COUNTY and CITY shall meet on a quarterly basis for program updates and coordination purposes. COUNTY and CITY will meet semi-annually to evaluate program effectiveness.
- B. As with its other regulatory programs, COUNTY will prepare required records or documentation relating to the storm water program for the purpose of a financial review or analysis by the City of Elk Grove and County Auditor(s).

**EXHIBIT B to Agreement
between the COUNTY OF SACRAMENTO,
hereafter referred to as "COUNTY,"
and the CITY OF ELK GROVE, hereafter referred to as "CITY"**

CITY DESCRIPTION OF SERVICES

Consistent with applicable provisions of the Elk Grove City Charter and City Code, CITY will work within a cooperative relationship with COUNTY and provide the following services:

1. Assist in the specification of the commercial and industrial facilities to be inspected, as defined by California Regional Water Quality Control Board Order # R5-2002-0206 (Permit)

CITY will work with COUNTY to develop an inclusive inventory of commercial and industrial facilities that are subject to inspections, enforcement, and other associated activities, as defined by the Permit.

2. Provide support for presentations before the Sacramento County Board of Supervisors and other groups or individuals

If requested by COUNTY, CITY will assist in the presentation of stormwater related issues before the Board of Supervisors and any other groups or individuals.

3. Modification of Local Storm Water Ordinance

If necessary, CITY staff will develop and present to the City Council proposed amendments to CITY's existing Stormwater Ordinance to include authorization for COUNTY to implement the stormwater compliance program for commercial and industrial facilities. If approved by the City Council, such amendments shall to the extent necessary authorize COUNTY to:

- Conduct all necessary inspections or re-inspections of regulated facilities within the incorporated CITY area.
- Take any necessary enforcement actions as authorized by the City Code and consistent with a CITY approved enforcement plan.
- Investigate and follow-up referred complaints at eligible facilities.
- Establish and collect fees necessary to recover program implementation costs.

4. Provide Adequate Industry Notification

CITY will develop initial industry notification and educational materials and, when requested by the COUNTY, will participate with County in workshops and other outreach efforts to inform the regulated community of pending fee and significant compliance issues.

5. Assist in staff training

If requested by COUNTY, CITY will provide assistance in developing staff training modules and materials. CITY will also assist, if requested, in the development of a work plan documenting additional staff required for the implementation of the commercial and industrial stormwater compliance program.

6. Appointment of a Senior Level Manager, or a Senior Level Manager's designated representative, as liaison to COUNTY for coordination with the commercial and industrial stormwater compliance program.

CITY will appoint a senior level manager or identify a senior level manager designee to oversee the commercial and industrial facility stormwater program activities and act as the primary liaison with COUNTY.

7. Provide for complaint response

CITY will be responsible for complaint response for those industries in the CITY that are not specified by the Permit or the Regional Board to be included in the commercial and industrial inspection program.

8. Reporting and documentation requirements.

CITY will work with COUNTY to develop specific report format(s) including necessary data elements needed to comply with reporting requirements contained in the Permit.

9. Other Additional Services

CITY shall develop and provide to COUNTY, educational outreach materials to be distributed during commercial and industrial inspections.

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-43

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 the 17th day of March 2004 by the following vote:

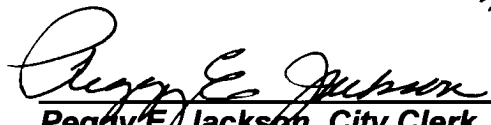
AYES 5: COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 0: COUNCILMEMBERS:





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