

RESOLUTION NO. 2011-145

Adopted by the Sacramento City Council

March 15, 2011

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN CITY OF SACRAMENTO AND CITY OF ELK GROVE FOR HOUSEHOLD BATTERY DISPOSAL AT THE CITY'S PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY

BACKGROUND

- A. The City of Sacramento operates a regional Permanent Household Hazardous Waste Collection Facility that provides convenient drop off for the disposal, recycling and exchange of household hazardous waste (HHW) by City residents.
- B. Currently the City of Elk Grove does not operate such a facility and has an existing agreement with the City of Sacramento for use of the facility to dispose of household batteries (City Agreement No. 2008-0250). The agreement expires at the end of March 2011.
- C. A continuation of this practice will provide an economical and safe method for the disposal of household batteries, by Elk Grove residents and reduce the chance that these household batteries are disposed of illegally or improperly.
- D. The fees, expected to generate approximately \$3,000/year in revenue, paid by the City of Elk Grove will offset the operating costs incurred by the City of Sacramento for providing the use of the facility to the Elk Grove residents and have been included in the approved budget for FY2010/11.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1 The City Manager, or authorized designee, is hereby authorized to execute a Memorandum of Understanding with the City of Elk Grove to for disposal of household batteries at the City of Sacramento's Permanent Household Hazardous Waste Collection Facility (PHHWCF).

Section 2 Exhibit A is part of this Resolution.

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Exhibit A: Memorandum of Understanding

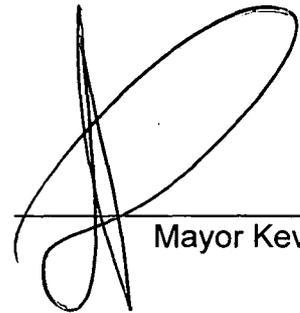
Adopted by the City of Sacramento City Council on March 15, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

**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

