

DATE: October 23, 2007

TO: Mayor and City Council Members

FROM: Utilities Department

SUBJECT: **RESOLUTION NO. 8180 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SACRAMENTO COUNTY TO DIVERT & PROCESS THE CITY'S GREEN WASTE AND WOOD WASTE MATERIALS**

BACKGROUND/ISSUE

State Assembly Bill 939 requires all jurisdictions to divert at least 50% of their waste from landfills. Green waste and wood waste constitutes a major portion of the City's diversion from commercial and residential waste streams.

The Solid Waste Division of the Utilities Department has an Agreement for Residential Green Waste Tipping (Contract No. 70280) with the County of Sacramento which expires on December 31, 2007. Presently, the City of Folsom pays \$25.71 per ton for tipping and processing of green waste.

The Solid Waste Division would like to enter into a new agreement for the handling and processing of green waste and wood waste collected from the residential, commercial and industrial customers. Staff is requesting the City Manager to execute a new agreement with Sacramento County for the processing of the City's green waste and wood waste.

POLICY/RULE

Section 2.36.080, Award of Contracts of the Folsom Municipal Code, states in part that contracts for supplies, equipment, services and construction with an estimated value of \$41,750 or greater shall be awarded by City Council.

Chapter 5.04, Purchasing and Contracting, of the Folsom City Charter states in part, a provision for procurement and services and joint contracts with or through other government jurisdictions.

ANALYSIS

A new agreement with Sacramento County has been negotiated to process and provide recycling credits for the material generated from the City's residential curbside green waste program and the collection from commercial and industrial customers. The current agreement expires on December 31, 2007, and the tipping fee is \$25.71. This new Agreement will provide the following benefits:

- The negotiated tip fee is reduced from the previous Agreement from \$25.71 to \$23.00 per ton.
- The savings in the tip fee reduction will save the City approximately \$8,000 per year or \$20,000 for the term of the contract.
- The term of the Agreement is for two and one-half years (30 months) and both parties may mutually extend the term for two additional one-year periods.
- The option for Folsom to terminate the agreement within 30 days in the event future market conditions change.
- Future fee increases shall be held to a maximum annual Consumer Price Index (CPI) adjustment of 3% regardless of the actual increase in the CPI. 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 Tipping Fee Plus Percent Change	Prior Year Tipping Fee Plus 3 Percent	Use Lesser of Column E or F as Tipping Fee
Base Year (October 2002 for Example Only)	187.5	1.000	-0-	\$23.00	\$23.00	\$23.00
Current Year (April 2004 for Example Only)	194.4	1.0368	3.68%	\$23.84	\$23.69	\$23.69
Current Year (April 2005 for Example Only)	202.0	1.0773	7.73%	\$24.78	\$24.40	\$24.40
Current Year (April 2006 for Example Only)	204.5	1.0907	9.07%	\$25.08	\$25.13	\$25.08

FINANCIAL IMPACT

Funds have been budgeted in the FY 2007/08 budget in the amount of \$78,000 and will be expended from the Solid Waste Fund (Fund 540). This is an ongoing expenditure that is budgeted for each year; therefore, staff is requesting that an estimated \$175,000, approximately 7500 tons, be applied to this agreement over the two and one-half year (30 months) term. This will not increase the FY 2007/08 expenses and will be budgeted in the FY 2008/09 and FY 2009/10. This new agreement will result in a reduction in the price per ton of approximately \$20,000 for two and one-half years (30 months).

ENVIRONMENTAL REVIEW

This action is exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with Section 21080.

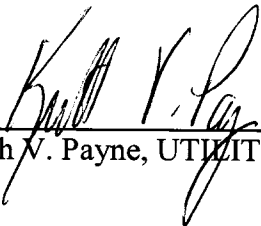
ATTACHMENT

1. Resolution No. 8180 – A Resolution Authorizing the City Manager to Execute an Agreement with Sacramento County to Divert and Process the City’s Green Waste and Wood Waste Materials
2. County of Sacramento Green Waste and Wood Waste Tipping at Kiefer Landfill Agreement

RECOMMENDATIONS / CITY COUNCIL ACTION

Staff recommends that the City Council pass and adopt Resolution No. 8180 - A Resolution Authorizing the City Manager to Execute an Agreement with Sacramento County to Divert and Process the City’s Green Waste and Wood Waste Materials.

Submitted,



Kenneth V. Payne, UTILITIES DIRECTOR

Attachment 1

RESOLUTION NO. 8180

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SACRAMENTO COUNTY TO DIVERT AND PROCESS THE CITY'S GREEN WASTE AND WOOD WASTE MATERIALS

WHEREAS, staff developed a need to select a Contractor to process the City's green waste and wood waste materials as defined within the City's Solid Waste Management Plan; and

WHEREAS, the City of Folsom seeks to establish solid waste programs to protect the community and environment; and

WHEREAS, sufficient funds are available in the Solid Waste Fund (Fund 540); and

WHEREAS, the provisions of Folsom Municipal Code, Section 2.36.080 and Chapter 5.04, Purchasing and Contracting, of the Folsom City Charter have been complied with:

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Folsom authorizes the City Manager to execute an agreement in a form acceptable to the City Attorney with Sacramento County to divert and process the City's green waste and wood waste materials.

PASSED AND ADOPTED on this 13th day of November 2007, by the following roll-call vote:

AYES: Council Member(s)

NOES: Council Member(s)

ABSENT: Council Member(s)

ABSTAIN: Council Member(s)

Andrew J. Morin, MAYOR

ATTEST:

Christa Schmidt, CITY CLERK

Attachment 2

**COUNTY OF SACRAMENTO
MUNICIPAL SERVICES AGENCY**

**AGREEMENT WITH CITY OF FOLSOM
FOR GREEN WASTE AND WOOD WASTE TIPPING AT KIEFER LANDFILL**

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 FOLSOM, a municipal corporation, hereinafter referred to as "CITY".

RECITALS

WHEREAS, CITY has need for tipping of green waste and wood waste to a facility for processing and recycling; and

WHEREAS, COUNTY maintains the facility at the Kiefer Landfill (Kiefer) where green waste and wood waste may be tipped and processed; and

WHEREAS, CITY desires to utilize COUNTY'S tipping facilities at Kiefer, and COUNTY desires to accept CITY'S green waste and wood waste for the compensation to be paid by CITY to COUNTY as established herein; and

WHEREAS, CITY and COUNTY 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, CITY and COUNTY agree as follows:

1. EFFECTIVE DATE, TERM, AND EXTENSION OF TERM

This Agreement shall be effective as of the date first written above and shall expire June 30, 2010. COUNTY'S Director of the Department of Waste Management and Recycling and CITY'S City Manager or his/her designee have authority to mutually extend the term for two additional one-year periods, provided that such extension is established in writing signed by both parties and the purpose is solely to continue the scope of services on the same terms and conditions and compensation rates established herein.

2. CONTRACT ADMINISTRATION

COUNTY'S Director the Department of Waste Management and Recycling shall administer this Agreement on behalf of COUNTY, and CITY'S Solid Waste Manager shall administer this Agreement on behalf of CITY.

3. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may, or is required to give to the other shall be in writing and shall be deemed to have been received three (3) days after being deposited in the United States mail, first class postage prepaid, and addressed as follows:

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

TO CITY
City of Folsom
50 Natoma Street
Folsom, CA 95630
Attn: Annette Borges,
Solid Waste Manager

Either party hereto shall have the right to serve any notice by personal delivery and to change the address at which it will receive such communications by giving fifteen (15) days advance notice to the other party.

4. GREEN-WASTE TIPPING SERVICES, CITY AND COUNTY RESPONSIBILITIES

- 4.1 Tipping Sites and Tonnage. Except as hereinafter provided, CITY shall deliver all green waste and wood waste, within the limits established herein, to the Kiefer Landfill at 12701 Kiefer Blvd, Sloughouse, CA.
- 4.2 Weighing of Deliveries. CITY green waste and wood waste delivery vehicles shall be weighed on COUNTY scales when arriving at Kiefer. COUNTY shall provide CITY drivers with written or verbal instructions regarding the operation of the scale system, and CITY shall insure that its drivers follow the same.
- 4.3 Delivery Vehicle Tare Weights and VINS. CITY green waste and wood waste delivery vehicle tare weights shall be determined at COUNTY scales, and COUNTY may periodically require CITY to recalculate the tare weight of its vehicles. For those vehicles which will provide green waste and wood waste deliveries to Kiefer, CITY shall provide vehicle tare weights and vehicle identification numbers to COUNTY for any existing vehicles used in conjunction with this agreement upon request of COUNTY, at least two weeks prior to the commencement of use of said vehicles; for additional vehicles brought into service during the term of this Agreement, CITY shall provide such weights and numbers to COUNTY at least two weeks prior to commencement of deliveries with those vehicles to Kiefer.
- 4.4 Contamination. A load of green waste and wood waste shall be considered as contaminated if it is determined that more than ten percent (10%) of the total load weight or volume consists of non-green waste and wood waste material (e.g., trash, metal, plastics, etc.). COUNTY shall have the right to determine, at its sole discretion, the quality of green waste and wood waste delivered by CITY. If COUNTY determines that CITY green waste and wood waste material is contaminated to such an extent that it cannot be recovered or reused, the green waste and wood waste will be disposed of as solid waste. COUNTY shall set aside such loads of contaminated CITY green waste and wood waste and notify CITY by phone; CITY shall have 24 hours to examine the green waste and wood waste and dispute COUNTY'S determination of contamination before COUNTY disposes of such load(s) as solid waste.

- 4.5 Alternative Daily Cover. COUNTY may, in COUNTY'S discretion, use CITY'S green waste and wood waste loads as Alternative Daily Cover for the Kiefer Landfill. Alternative Daily Cover is an alternative to dirt cover and must meet the requirements of the California Integrated Waste Management Board as an allowed use.
- 4.6 Biomass Fuel. COUNTY may, in COUNTY'S discretion, use CITY'S green waste and wood waste loads as Biomass Fuel feedstock.
- 4.7 Diversions Credits.
 - A. COUNTY will notify CITY through quarterly diversion reports of the diversion credits due to CITY for recovered or reused green waste and wood waste material. Diversions credits shall be as defined by the California Integrated Waste Management Act of 1989, (Sections 40000 et seq of the California Public Resources Code, also known as Assembly Bill 939), as amended. In the event California laws are changed to limit Alternative Daily Cover or Biomass Fuel use or to require a higher or better use, CITY and COUNTY shall negotiate in good faith to establish revised operations that will comply with the new laws.
 - B. CITY shall receive no diversion credits for load(s) of contaminated green waste and wood waste as such contamination is determined hereinabove.

5. COMPENSATION

- 5.1 Scale Records. COUNTY will submit all billing for green waste and wood waste services based on COUNTY scale records of CITY deliveries less CITY vehicle tare weights.
- 5.2 Price per Ton. CITY shall pay COUNTY per ton of green waste and wood waste delivered to Kiefer based on the following rates:
 - A. Kiefer Landfill. \$23.00 per ton for processing, which shall be adjusted annually as provided hereinafter. It is understood during the term of this agreement, including extension periods defined herein, that the price at Kiefer Landfill will not exceed the current gate tipping fee for normal refuse (normal refuse tipping fee at the time of commencement of this agreement was \$26.00 per ton) regardless of Annual Rate Adjustments provided for below.
 - B. Contaminated Green Waste and Wood Waste. In the event delivery load(s) are determined to be contaminated as provided under Section 4.4 of this Agreement, CITY shall pay COUNTY the prevailing solid waste disposal fee and not receive any diversion credits for such load(s).
 - C. CPI Adjustment.
 - (1) 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.

- (2) Maximum Annual CPI Adjustment. The maximum annual CPI adjustment (increase or decrease) from the previous year's reduced tipping fee shall be three percent (3%).
- (3) First CPI Adjustment. Effective July 1, 2009, the reduced tipping 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.
- (4) Subsequent Annual CPI Adjustments. Effective July 1, 2010 and each July 1 thereafter, the previous year's reduced tipping fee shall be adjusted by an amount equal to the lesser of three percent (3%) of the previous year's reduced tipping 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.
- (5) Not to Exceed Gate Tipping Fee. If an annual CPI adjustment would result in exceeding the current gate tipping fee for normal refuse, adjustment shall be made to not exceed the current gate tipping fee for normal refuse.
- (6) Example of CPI Adjustments. The following table is provided for informational and example purposes only regarding the manner of computing CPI adjustments.

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5.3 Invoices and Payments.

- A. Monthly. COUNTY will invoice CITY each month for waste deliveries made by CITY to Kiefer.
- B. Payment. CITY shall pay COUNTY within thirty (30) days of the invoice date. Payment shall be made electronically via ACH transaction to the COUNTY OF SACRAMENTO'S bank account:

Beneficiary Bank: Wells Fargo Bank, N.A.
Bank Address: 550 California Street, 10th Floor
Bank Location: San Francisco, CA 94104
ABA Transit Routing Number: 121 000 248
Beneficiary Account Number: 4121-183966
Beneficiary Account Name: County of Sacramento – Main Account
Type of Account: Checking
Bank Representative Contact: Shelley Rintala (415) 396-8426

- C. Delinquent Disposal Account. CITY'S disposal account shall be delinquent if full payment of the invoice amount is not received by COUNTY within 30 days from the date of invoice, and said disposal account shall remain delinquent until full and current payment is received by COUNTY.
- D. Invoice Format and Content. COUNTY'S invoices shall follow the format and content of the COUNTY'S WasteWORKS scale software system or similar.

6. INDEMNIFICATION

- 6.1 City. 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'S officers, directors, agents, employees, or subcontractors.
- 6.2 County. COUNTY shall defend, indemnify, and hold harmless CITY, its officers, directors, agents, employees, and subcontractors 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, employees, or volunteers.
- 6.3 Intention. It is the intention of CITY and COUNTY 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, and CITY'S subcontractors. It is also the intention of CITY and COUNTY 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 and CITY'S subcontractors.

7. **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.

8. **STATUS OF COUNTY—Independent Contractor**

At all times during the term of this Agreement, COUNTY and its officers and agents shall be independent contractors and shall not be employees of the CITY. CITY shall have the right to control COUNTY only insofar as the results of COUNTY'S services rendered pursuant to this Agreement; CITY shall not have the right to control the means by which COUNTY accomplished services rendered pursuant to this Agreement. Notwithstanding any other CITY, state, or federal policy, rule, regulation, law or ordinance to the contrary, COUNTY and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contributions and/or employee contributions for PERS benefits.

9. **LEGAL REQUIREMENTS**

9.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

9.2 **Venue.** In the event either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Sacramento or in the United States District Court for the Eastern District of California.

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

9.4 **Licenses and Permits.** COUNTY represents and warrants to CITY that COUNTY and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature legally required to practice their respective professions. COUNTY represents and warrants to CITY that COUNTY and its employees, agents, and any subcontractors shall, at their sole costs and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

9.5 **Nondiscrimination and Equal Opportunity.** COUNTY shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or

mental handicap or disability, medial condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by COUNTY under this Agreement. COUNTY shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of COUNTY thereby. COUNTY shall include the provisions of this subsection in any subcontract approved by the Contract Administrator or this Agreement.

- 9.6 Severability. The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal, provided that such invalidity does not materially affect the respective rights and obligations of the parties.
- 9.7 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between CITY and COUNTY shall survive the termination of this Agreement.
- 9.8 No Implied Waiver of Breach. 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.
- 9.9 Construction and Interpretation. It is agreed and acknowledged by the parties hereto that the provisions of this Agreement have been arrived at through negotiation and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing and interpreting this Agreement.
- 9.10 Integration/Entire Agreement. This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties hereto concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.
- 9.11 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 themselves. 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.

10. MODIFICATION AND TERMINATION.

- 10.1 Assignment and Subcontracting. Neither party hereto shall assign, subcontract, or transfer any interest in this Agreement or any duty hereunder without the prior written consent of the other party, and no assignment shall be of any force or effect whatsoever unless and until the other party furnishes such written consent.
- 10.2 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto subject to the restrictions of Assignment and Subcontracting, above.
- 10.3 Amendments. 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.
- 10.4 Termination. Either party may terminate this Agreement for any reason and without cause during the term hereof by providing 30 days prior written notice of such termination to the other party.

11. AUDIT AND RETENTION OF RECORDS

CITY and COUNTY records under this Agreement shall be made available for inspection and audit by the other party upon reasonable notice. Pursuant to Government Code Section 8546.7, CITY and COUNTY records shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment by CITY to COUNTY pursuant to this Agreement. CITY and COUNTY shall retain all records relating to the performance of this Agreement for this three (3) year period, except that records pertaining to any audit then in progress, or any claims or litigation, shall be retained beyond such three (3) year period.

12. COUNTERPARTS

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

(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 FOLSOM, a municipal corporation

By: _____ Date _____
Paul Philleo, Acting Director
Department of Waste Management
and Recycling
Municipal Services Agency

By _____ Date _____
Kerry Miller,
City Manager

Signed by the Director under the authority delegated by Resolution No. 99-0327.

Approved as to Content

Agreement approved by the Board of Supervisors:

_____ Date _____
Kenneth V. Payne
Director of Utilities

Agenda Date _____ Item No _____

Approved as to Form

Reviewed and Approved by County Counsel

By _____ Date _____
Diane McElhern
Deputy County Counsel

_____ Date _____
Bruce C. Cline
City Attorney

Prepared by

Attest

_____ Date _____
Terrie Squaglia
Contract Services Section
Accounting & Fiscal Services Division
Municipal Services Agency
916-876-6287

_____ Date _____
Christa Schmidt
City Clerk

Funding Available

_____ Date _____
Gene Albaugh,
Interim Finance Director