



**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute the Amended and Restated Memorandum of Understanding and Cooperative Agreement between the City of Elk Grove and Visit Elk Grove

MEETING DATE: November 13, 2024

PREPARED BY: Sara Rodrigues, Economic Development Analyst II

DEPARTMENT HEAD: Darrell Doan, Economic Development Director

RECOMMENDED ACTION:

Staff recommends that the City Council adopt a resolution authorizing the City Manager to execute the Amended and Restated Memorandum of Understanding and Cooperative Agreement between the City of Elk Grove (City) and Visit Elk Grove.

BACKGROUND INFORMATION:

Under state law, California Streets and Highways Code Section 36600, et seq., cities can form a Business Improvement District to derive revenue to fund marketing and promotional activities related to tourism and visitation, also known as a Tourism Marketing District, or TMD.

A TMD is formed by a city at the request of lodging businesses within the district wherein the city charges an assessment on hotel room rental charges. The assessment is typically passed on to hotel guests and collected by the hotel at the time of sale. Assessments collected are remitted to the city on a quarterly basis. A city typically forms a non-profit organization, or Owners’ Association, to administer the funds within the district pursuant to a Management District Plan for the benefit of the lodging businesses.

On February 11, 2015, the City Council adopted Resolution No. 2015-027 establishing the Elk Grove Tourism Marketing District (EGTMD or “District”) for a term of five years and adopting a Management District Plan (MDP). The boundaries of the EGTMD include all areas within the City limits and a small

portion of unincorporated Sacramento County just outside the City limits. There are currently seven hotels within the District – six in the City and one in the County. The original term of the EGTMD was five years and the assessment rate was two percent of gross short-term (stays less than 30 days) room rental revenue for lodging businesses within the City, and one percent for lodging businesses within the District in the County.

At the time of formation, the City worked with the lodging businesses within the District to create a non-profit Owners' Association known as Visit Elk Grove (VEG). VEG operates under the brand name Explore Elk Grove. In 2015, the City contracted with VEG to administer the District pursuant to a Memorandum of Understanding and Cooperative Agreement between the parties.

On February 26, 2020, the City Council adopted Resolution No. 2020-040 renewing the District for a term of seven years, ending on March 31, 2027, and increasing the annual assessment rate to three percent within the City and maintaining it at one percent within the County.

On May 22, 2024, the City Council adopted Resolution No. 2024-081 modifying the EGTMD and the MDP by increasing the annual assessment rate to four percent within the City and two percent within the County, extending the EGTMD term to March 31, 2030, and modifying the Board of Directors to include representatives of non-hotel businesses with a vested interest in tourism. The EGTMD boundaries were also changed to reflect the recent annexation of Grant Line Business Park.

ANALYSIS/DISCUSSION:

The City and VEG wish at this time to enter into an Amended and Restated Memorandum of Understanding and Cooperative Agreement (the "Agreement") to reflect the modifications to the District and the MDP approved by Council in May 2024.

Key terms of the Agreement include the following:

- VEG will continue to provide Owners' Association services to the City and manage the District consistent with the MDP.
- Term: Unless earlier terminated or the District is disestablished, the Agreement will expire March 31, 2030, coterminous with the term of the District.

- Services Rendered: VEG will manage programs and conduct activities intended to increase hotel room night sales at all hotels paying the EGTMD assessment, consistent with the MDP.
- The Agreement replaces and supersedes all previous versions.

ALTERNATIVE ACTIONS:

The City Council could choose not to adopt the resolution, in which case the current agreement with VEG would remain in effect and expire March 31, 2027. Staff does not recommend this action for the reasons stated in this report.

FISCAL IMPACT:

Revenues for the operation of the EGTMD are derived from the four percent and two percent assessment surcharge paid by lodging businesses within the District. The revenues are collected by the City from the lodging businesses, remitted to VEG to administer the District, and the City retains a 1% administration fee.

ATTACHMENTS:

1. Resolution
2. Amended and Restated Memorandum of Understanding and Cooperative Agreement

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED AND
RESTATED MEMORANDUM OF UNDERSTANDING AND COOPERATIVE
AGREEMENT BETWEEN THE CITY OF ELK GROVE AND VISIT ELK GROVE**

WHEREAS, on February 11, 2015, by Resolution No. 2015-027, the City Council established the Elk Grove Tourism Marketing District (EGTMD) for a term of five years and, among other actions, adopted a Management District Plan (MDP) and set the original boundaries and assessment rates; and

WHEREAS, on February 26, 2020, by Resolution No. 2020-040, the City Council, among other actions, renewed the EGTMD for a term of seven years ending on March 31, 2027 and increased the assessment rates; and

WHEREAS, on May 22, 2024, by Resolution No. 2024-081, the City Council, among other actions, modified the EGTMD by extending the term to March 31, 2030, increasing the assessment rates, and modifying the original boundaries to include areas annexed by the City subsequent to establishment of the District; and

WHEREAS, Streets and Highways Code section 36651 authorizes the City to contract with an Owners' Association for provision of tourism marketing district services; and

WHEREAS, Visit Elk Grove (VEG) is the current Owners' Association that administers the EGTMD for the City pursuant to a Memorandum of Understanding and Cooperative Agreement between the parties; and

WHEREAS, the City and VEG wish to enter into an Amended and Restated Memorandum of Understanding and Cooperative Agreement to reflect the modifications to the EGTMD approved by the Council on May 22, 2024.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute the Amended and Restated Memorandum of Understanding and Cooperative Agreement, in substantially the form presented, between the City of Elk Grove and Visit Elk Grove for administration of the Elk Grove Tourism Marketing District.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 13th day of November 2024

BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

**AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING AND COOPERATIVE
AGREEMENT BETWEEN THE CITY OF ELK GROVE AND VISIT ELK GROVE**

This Amended and Restated Memorandum of Understanding and Cooperative Agreement ("Agreement") is entered into by and between the City of Elk Grove, a California municipal corporation ("City") and Visit Elk Grove, a California non-profit corporation ("VEG").

RECITALS

A. On February 26, 2020, the City adopted Resolution number 2020-040 renewing the Elk Grove Tourism Marketing District ("EGTMD") in accordance with the provisions of the Property and Business Improvement District Law of 1994, California Streets and Highways Code section 36600 et seq. ("1994 Law").

B. Streets and Highways Code section 36651 authorizes the City to contract with an Owners' Association for provision of EGTMD services.

C. On March 25, 2020, the City adopted Resolution number 2020-062 approving a Memorandum of Understanding and Cooperative Agreement between the City of Elk Grove and Visit Elk Grove dated March 30, 2020 (the "2020 Memorandum of Understanding and Cooperative Agreement").

D. On May 22, 2024, the City adopted Resolution number 2024-081, attached hereto as Attachment A, modifying the EGTMD in accordance with the 1994 Law, and approving a Management District Plan (the "Plan"), attached hereto as Attachment B.

E. The City desires, and VEG agrees, to amend and restate the 2020 Memorandum of Understanding and Cooperative Agreement pursuant to which VEG will continue to provide Owners' Association services to the City on the terms and conditions set forth in this Agreement, Resolution number 2024-081, and the Plan.

AGREEMENT

NOW, THEREFORE, in consideration of the provisions of this Agreement, the Parties agree as follows:

1. TERM

The term of this Agreement shall commence as of the date all Parties have executed this Agreement (the "Effective Date") and shall terminate on March 31, 2030, unless either: (1) the Agreement is earlier terminated as provided for herein; or (2) the EGTMD is disestablished prior to March 31, 2030, in which case this Agreement shall be deemed terminated as of the effective date of EGTMD disestablishment.

2. SERVICES RENDERED

VEG will provide marketing and promotional programs intended to increase hotel room night sales at all hotels paying the EGTM assessment. All programs shall be provided in accordance with the Plan.

3. PAYMENT/PASS-THROUGH OF ASSESSMENTS COLLECTED

A. Assessment Funds Defined. EGTM assessment funds are described in Resolution number 2024-081 as well as in the Plan. Both documents outline the rate and frequency of collection of assessments.

B. Pass-Through of EGTM Assessment Funds. The City shall make a pass-through payment to VEG of Ninety Nine Percent (99%) of EGTM assessment funds collected by the City, on or before the 15th day of each month following the reporting period in which the EGTM assessment funds were received by the City. The City shall retain the remaining One Percent (1%) of the EGTM assessment funds for collection and administration costs as detailed in the EGTM Plan. VEG agrees to reimburse the City the additional amounts necessary to cover the EGTM's pro rata share of costs for any collection action related to collection of EGTM assessment funds as detailed in the Plan.

4. AGREEMENTS

VEG hereby agrees to abide by all rules and regulations as established through this Agreement, Resolution 2024-081, and the Plan. Those rules and regulations include, but are not limited to, service plan budget, assessment rate, time and manner for collecting assessments, Brown Act and California Public Records Act Compliance, and an annual report.

5. INDEPENDENT CONTRACTOR

A. No relationship of employer and employee is created by this Agreement; it being understood and agreed that VEG is an Independent Contractor. VEG is not the agent or employee of the City in any capacity whatsoever, and City shall not be liable for any acts or omissions by VEG nor for any obligations or liabilities incurred by VEG.

B. VEG's assigned personnel shall not be entitled to any benefits payable to employees of City.

C. City is not required to make any deductions or withholdings from the compensation payable to VEG under the provisions of the Agreement and is not required to issue W-2 Forms for income and employment tax purposes for any of VEG's assigned personnel.

D. VEG, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished.

E. Any third-party person(s) employed by VEG shall be entirely and exclusively under the direction, supervision, and control of VEG.

F. VEG hereby agrees to indemnify, defend, and holds harmless the City, and any of its officers, agents and employees from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

G. Without limiting any other provision of this Agreement, in the event that VEG or any employee, agent, or subcontractor of VEG providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, VEG shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of VEG or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

H. In carrying out the work contemplated herein, VEG shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of City.

I. VEG agrees to perform its work and functions at all times in strict accordance with all applicable federal, state, county and city laws, resolutions, regulations, titles, departmental procedures and currently approved methods and practices in the field; and that the sole interest of City is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with standards required by the City.

6. INDEMNITY AND LITIGATION COSTS

To the fullest extent permitted by law, and without limiting any other provision of this Agreement, VEG shall indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this Agreement on the part of VEG, except such loss or damage which was caused by the sole negligence, or willful misconduct of the City. The provisions of this section shall survive termination or suspension of this Agreement.

In any contract that VEG enters into with any subcontractor in any capacity related to any and all duties under this Agreement, there must be an indemnification provision identical to the one provided in this Section applicable to the subcontractor requiring the subcontractor to assume the defense, indemnify and save harmless the City to the same extent as VEG. VEG's failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Agreement. In the event VEG fails to obtain such indemnity obligations from others as required herein, VEG agrees to be fully responsible and indemnify, and save harmless the City as prescribed under this Section.

7. COMPLIANCE WITH LAW

VEG shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Agreement.

8. INSURANCE REQUIREMENTS

VEG is responsible for maintaining its own insurance in accordance with the provisions outlined in Attachment C.

VEG or its insurance broker shall deliver the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage to City. City may designate an insurance certificate processor ("Processor") to accept and process VEG's proof of insurance. VEG shall deliver copies of the actual insurance policies, renewals, or replacements directly to City or Processor upon their request.

9. NOTICES

All notices, demands and other correspondence to the City shall be sent to the City as follows:

City of Elk Grove
Attn: Finance Department
With copy to: Office of Economic Development; City Attorney's Office
8401 Laguna Palms Way
Elk Grove, California 95758

All notices, demands and other correspondence to VEG shall be sent to VEG as follows:

Visit Elk Grove
Attn: Executive Director
9045 Elk Grove Blvd, Suite 102
Elk Grove, CA 95624

10. TAXES

Payment of all applicable federal, state and local taxes shall be VEG's sole responsibility.

11. OWNERSHIP OF DOCUMENTS

A. VEG is the owner of all documents and materials produced and created under this Agreement and in support of the EGTMD. VEG hereby agrees to provide to a private, not-for-profit, successor and if there is none, then assigns the City and its assignees all copyright and other use rights in any and all proposals, plans, specifications, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the City, VEG, VEG'S subcontractors or third parties at the request of VEG (collectively, "Documents and Materials"). This expressly includes electronic copies of all above stated documentation.

B. During the term of this Agreement and following termination and, or expiration of this Agreement, VEG shall be permitted to retain copies, including reproducible copies and computerized copies, of Documents and Materials. VEG agrees to take such further steps as may be reasonably requested by City to implement the aforesaid assignment. If for any reason said assignment is not effective, VEG hereby grants the City and any assignee of the City an express

royalty-free license to retain and use said Documents and Materials. The City's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials.

C. VEG shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by VEG, and shall defend, indemnify, and hold harmless the City from any claims for infringement of patent or copyright arising out of such selection.

12. USE OF CITY PROPERTY

VEG shall not use City property, including equipment, instruments and supplies, or personnel for any purpose other than in the performance of its obligations under this Agreement.

13. UNAUTHORIZED ALIENS

VEG hereby promises and agrees to comply with all of the provisions of the federal immigration and nationality act (8 U.S.C.A. § 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should VEG so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the federal government impose sanctions against the City for such use of unauthorized aliens, VEG hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. MISCELLANEOUS PROVISIONS

A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all litigation expenses, including, but not limited to expert's fees and disbursements.

B. Venue: This Agreement shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.

C. Enforceability: If any term or provision of this Agreement is found to be void, voidable, invalid, or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding.

D. Time: All times stated herein are of the essence.

E. Binding: This Agreement shall bind and inure to the heirs, devisees, assignees, and successors in interest of VEG and to the successors in interest of City in the same manner as if such parties had been expressly named herein.

F. Survivorship: Any responsibility of VEG for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.

G. Construction and Interpretation: VEG and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.

H. 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.

I. Severability: The invalidity, illegality, or unenforceability of any provision of this Agreement shall not render the other provisions invalid, illegal or unenforceable.

J. No Third-Party Beneficiary: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and VEG. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the City and VEG that any such person or entity, other than the City or VEG, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

K. Non-Discrimination/Non-Preferential Treatment Statement: In performing this Agreement, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

L. Authority to Execute: The person or persons executing this Agreement on behalf of VEG warrant and represent that they have the authority to execute this Agreement on behalf of their agency and further warrant and represent that they have the authority to bind VEG to the performance of its obligations hereunder.

M. Dispute Resolution: Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

N. Force Majeure: Neither party shall be in default by reason of any failure in the performance of this Agreement if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS

A. VEG certifies that it is in compliance with the Equal Employment Opportunity Requirement of Executive Order 11246, as amended by Executive Order 11375 and supplemented 145CFR, Part 60, Title VII of the Civil Rights Act and any other federal or state laws pertaining to equal

employment opportunity and that it shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin, ancestry, marital status, political affiliation or physical or mental condition, in matters pertaining to recruitment, hiring, training, upgrading, transfer, compensation or termination.

B. VEG shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

C. VEG shall, if requested to so do by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

D. If requested by the City, VEG shall provide the City with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

E. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

F. VEG shall include the provisions set forth in this Section in each of its subcontracts.

16. COMPLIANCE WITH LICENSING REQUIREMENTS

VEG shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, and file copies of same with the City.

17. AUDITS AND RECORDS ACCESS

A. VEG shall make available to the City, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursement of EGTMD assessment funds, and shall furnish to the City, within thirty (30) days after examination, its authorized agents, officers or employees such other evidence or information as the City may require with regard to any such expenditure or disbursement charged by VEG.

B. VEG shall maintain full and adequate records in accordance with City requirements to show the actual costs incurred by VEG in the performance of this Agreement. If such books and records are not kept and maintained by VEG within the City, VEG shall, upon request of the City, make such books and records available to the City for inspection at a location within the City or VEG shall pay to the City the reasonable and necessary costs incurred by the City in inspecting VEG's books and records, including, but not limited to, travel, lodging and subsistence costs. VEG shall provide such assistance as may be reasonably required in the course of such inspection. The City further reserves the right to examine and re-examine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the City, and VEG shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4)

years after the City makes the final or last payment or within four (4) years after any pending issues between the City and VEG with respect to this Agreement are closed, whichever is later.

18. DOCUMENTS AND MATERIALS

VEG shall maintain and make available to City for its inspection and use during the term of this Agreement all Documents and Materials, as defined in this Agreement. VEG's obligations shall continue for four (4) years following termination or expiration of this Agreement, and VEG shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the City's last payment to VEG under this Agreement.

19. TERMINATION/DISESTABLISHMENT

A. The City has and reserves the right to suspend, terminate, or abandon the execution of any work by VEG without cause at any time after the adoption of a resolution of intention to disestablish the EGTM D pursuant to the 1994 Law by City and upon providing VEG a copy of the adopted resolution of intention. In the event of disestablishment of the EGTM D, VEG shall be entitled to retain EGTM D revenues only for paying the VEG's current liabilities of the EGTM D. Pursuant to the 1994 Law, VEG shall refund to City any remaining EGTM D revenues or any revenues derived from the sale of assets acquired with EGTM D revenues to enable distribution of the revenues to the businesses who paid the assessment. VEG agrees that City has and reserves the right to deny the transfer of EGTM D revenues and/or suspend, terminate or abandon the execution of any work by the VEG in accordance with this agreement for misfeasance, nonfeasance, or gross malfeasance, or criminal conduct as determined by a court of competent jurisdiction. Any retention of EGTM D revenues by VEG shall comply with the 1994 Law.

B. This Agreement may be terminated by City without cause, provided that City gives VEG not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination of this Agreement, unless otherwise transferred pursuant to this Agreement, City shall be entitled to Documents and Materials.

C. City may temporarily suspend this Agreement, at no additional cost to City, provided that VEG is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, VEG shall immediately suspend its activities under this Agreement. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection B of this section.

20. ADVERTISING OR PUBLICITY

VEG shall not use, reproduce or copy the seal of the City and or any of its logos, marks, or taglines, and shall not represent the City in an official capacity as spokesperson or officer or agent or use the name City of Elk Grove, or the names of the City's officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of the City in each instance unless set forth in this Agreement. Nothing in this section prohibits VEG from using the name "Elk Grove Tourism Marketing District" or "City of Elk Grove" for regional identification for promotion and marketing of the EGTM D.

21. MODIFICATION OF AGREEMENT

This Agreement may be supplemented, amended or modified only by mutual written agreement of the parties; however, this Agreement shall be subject to any amendments to the EGTM D Plan

adopted by the City Council. No supplement, amendment or modification of this Agreement, except for a duly adopted amendment to the EGTMD Plan, shall be binding unless it is in writing and signed by authorized representatives of both parties.

22. SUBCONTRACTING/ASSIGNMENT

A. VEG shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the City's prior written approval.

B. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

C. Notwithstanding the foregoing, VEG may use subcontractors to provide services pursuant to the MDP without prior written consent of the City.

D. VEG shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between VEG and its subcontractors.

23. PATENT AND COPYRIGHT INDEMNITY

A. VEG represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("VEG Products") provided to City under this Agreement infringe any patent, copyright or other proprietary right. VEG shall defend, indemnify and hold harmless City of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any VEG Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party.

B. City will: (1) notify VEG promptly of such claim, suit or assertion; (2) permit VEG to defend the claim; and, (3) provide, on a reasonable basis, information to enable VEG to do so. VEG shall not agree without City's prior written consent, to any settlement, which would require City to pay money or perform some affirmative act in order to continue using the VEG Products.

C. If VEG is obligated to defend City pursuant to this Section and fails to do so after reasonable notice from City, City may defend itself and/or settle such proceeding, and VEG shall pay to City any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with City's defense and/or settlement of such proceeding.

D. In the case of any such claim of infringement, VEG shall either, at its option, (1) procure for City the right to continue using the VEG Products; or (2) replace or modify the VEG Products so that that they become non-infringing, but equivalent in functionality and performance.

E. Notwithstanding this Section, City retains the right and ability to defend itself, at its own expense, against any claims that VEG Products infringe any patent, copyright, or other intellectual property right.

24. CITY REVIEW OF CERTAIN MATTERS

VEG agrees to permit City review of the following matters prior to the VEG Board of Directors taking formal action on said matters:

A. Review and discuss changes to by-laws;

- B. Review and discuss appointment of non-lodging business board members;
- C. Review and discuss the annual budget; and
- D. Review and discuss hiring and contract extensions of CEO.

VEG shall not enter into any voluntary assessment agreement without the prior written approval of the City Manager, not to be unreasonably withheld. VEG shall not use EGTMD funds to conduct any marketing or promotional activities primarily intended to increase hotel room night sales at hotels outside the boundaries of the EGTMD (collectively, "Non-EGTMD Activities"). In no event shall any EGTMD funds be used to pay for Non-EGTMD Activities. In the event VEG enters into any voluntary assessment agreement or conducts any Non-EGTMD Activities, VEG shall ensure all Non-EGTMD Activities and any other activities undertaken pursuant to a voluntary assessment agreement are accounted for separately from any activities undertaken pursuant to this Agreement.

25. ENTIRE AGREEMENT

This instrument and any attachments hereto constitute the entire Agreement between City and VEG concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof. Specifically, and without limiting the scope of this Section 25, this Agreement amends and supersedes the 2020 Memorandum of Understanding and Cooperative Agreement between the Parties and, upon the Effective Date of this Agreement, the 2020 Memorandum of Understanding and Cooperative Agreement shall be of no further force or effect.

AGREED to this ⁶_____ day of ^{November}_____, 2024 by the Parties as follows:

Approved to as form:

Visit Elk Grove

By: _____

By: *James Lynton* _____

Attorney for Visit Elk Grove

James Lynton, Board Chair

Approved to as form:

CITY OF ELK GROVE

By: *Jonathan P. Hobbs* _____

By: _____

Jonathan P. Hobbs, City Attorney

Jason Behrmann, City Manager

Attest:

By: _____

Jason Lindgren, City Clerk

Attachment A
RESOLUTION NO. 2024-081

See Attached

RESOLUTION NO. 2024-081

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
DECLARING RESULTS OF MAJORITY PROTEST PROCEEDINGS AND
MODIFYING THE ELK GROVE TOURISM MARKETING DISTRICT**

WHEREAS, the Property and Business Improvement District Law of 1994 (Streets and Highways Code section 36600 et. seq.) authorizes the City to modify business improvement districts upon petition by a weighted majority of the business owners located within the boundaries of the Elk Grove Tourism Marketing District (EGTMD); and

WHEREAS, lodging business owners who will pay more than fifty percent (50%) of the proposed assessment, as weighted according to the amount of the assessment to be paid by the petitioner, within the boundaries of the EGTMD have petitioned the City Council to modify the EGTMD; and

WHEREAS, the modified EGTMD includes lodging businesses in the City of Elk Grove and a portion of unincorporated Sacramento County; and

WHEREAS, consent to include lodging businesses in a portion of unincorporated Sacramento County has been received from Sacramento County; and

WHEREAS, included with the petitions was a Management District Plan (Plan) summary that describes the proposed assessment to be levied on lodging businesses within the EGTMD to pay for sales and marketing programs, and other improvements and activities set forth in the Plan; and

WHEREAS, the assessed lodging businesses within the EGTMD will receive a specific benefit from the activities and improvements set forth in the Plan; and

WHEREAS, on March 27, 2024 at 8400 Laguna Palms Way, Elk Grove, CA 95758 at 6:00 PM, the City Council adopted Resolution No. 2024-035, a Resolution of Intention to modify the EGTMD; and

WHEREAS, the public meeting and public hearing to consider the modification of the EGTMD have been properly noticed in accordance with Streets and Highways Code section 36623; and

WHEREAS, on April 24, 2024, at 6:00 PM at 8400 Laguna Palms Way, Elk Grove, CA 95758, the City Council held a public meeting regarding the modification of the EGTMD, and the City Council heard and received objections and protests, if any, to the modification of the EGTMD and the levy of the proposed assessment; and

WHEREAS, on May 22, 2024 at 6:00 PM at 8400 Laguna Palms Way, Elk Grove, CA 95758, the City Council held a public hearing regarding the modification of the EGTMD, and the City Council heard and received all objections and protests, if any, to the modification of the EGTMD and the levy of the proposed assessment; and

WHEREAS, the City Clerk has determined that there was no majority protest. A majority protest is defined as written protests received from owners of businesses that would pay fifty percent (50%) or more of the assessments proposed to be levied in the modified EGTMD. Protests are weighted based on the assessment proposed to be levied on each lodging business; and

WHEREAS, the City bears the burden of proving by a preponderance of the evidence that an assessment imposed for a specific benefit or specific government service is not a tax, that the amount is no more than necessary to cover the costs to the City in providing the specific benefit or specific government service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the specific benefits or specific government services received by the payor.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk Grove that:

- 1) The recitals set forth herein are adopted by the City Council as findings and they are true and correct.
- 2) The boundaries of the modified District are set forth in the attached Exhibit A, District Boundaries.
- 3) The EGTMD is hereby extended for a ten (10) year term, beginning April 1, 2020, through March 31, 2030.
- 4) The annual assessment rate of the modified EGTMD is four percent (4%) of gross short-term (stays less than thirty (30) days) room rental revenue for lodging businesses in the City of Elk Grove and two percent (2%) for lodging businesses in the portion of unincorporated Sacramento County.
- 5) The Plan dated March 5, 2024 is hereby adopted and approved.
- 6) The activities to be provided to benefit businesses in the EGTMD will be funded by the levy of the assessment. The revenue from the assessment levy shall not be used: to provide activities that directly benefit businesses outside the EGTMD; to provide activities or improvements outside the EGTMD; or for any purpose other than the purposes specified in this Resolution, the Resolution of Intention, and the Plan. Notwithstanding the foregoing, improvements and activities that must be provided outside the EGTMD boundaries to create a specific benefit to the assessed businesses may be provided, but shall be limited to marketing or signage pointing to the EGTMD.
- 7) The City Council finds as follows:
 - a) The activities funded by the assessment will provide a specific benefit to assessed businesses within the EGTMD that is not provided to those not paying the assessment.
 - b) The assessment is a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
 - c) The assessment is a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

- d) Assessments imposed pursuant to the EGTMD are levied solely upon the assessed business, and the business owner is solely responsible for payment of the assessment when due. If the owner chooses to collect any portion of the assessment from a transient, that portion shall be specifically called out and identified for the transient in any and all communications from the business owner as the “EGTMD Assessment” or “Tourism Assessment” as specified in the Plan.
- 8) The assessments levied for the EGTMD shall be applied towards sales and marketing programs to market Elk Grove lodging businesses as visitor, meeting, and event destinations, and other improvements and activities as set forth in the Plan.
 - 9) Assessments levied on lodging businesses pursuant to this resolution shall be levied on the basis of benefit. Because the services provided are intended to increase room rentals, an assessment based on room rentals is the best measure of benefit.
 - 10) The assessments for the entire EGTMD will total approximately \$1,026,000 in year one.
 - 11) Bonds shall not be issued to fund the EGTMD.
 - 12) The EGTMD shall include all lodging businesses located within the boundaries of the City of Elk Grove and a portion of unincorporated Sacramento County. A boundary map is attached hereto and incorporated herein by reference.
 - 13) The assessments shall be used for the purposes set forth above and any funds remaining at the end of any year may be used in subsequent years in which the EGTMD assessment is levied, as long as they are used consistent with the requirements set forth herein.
 - 14) The assessments to fund the activities and improvements for the EGTMD will be collected by the City on a monthly or quarterly basis, and in accordance with Streets and Highways Code section 36631.
 - 15) The City Council, through adoption of this Resolution and the Plan, has the right pursuant to Streets and Highways Code section 36651, to identify the body that shall implement the proposed program, which shall be the Owners’ Association of the EGTMD as defined in Streets and Highways Code section 36612. The City Council has determined that Visit Elk Grove shall be the EGTMD Owners’ Association.
 - 16) Visit Elk Grove, pursuant to Streets and Highways Code section 36650, shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvement and activities described in the report. The first report shall be due after the first year of operation of the EGTMD.

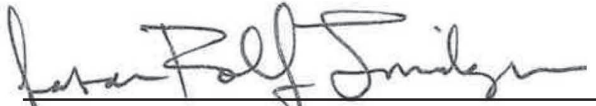
- 17) The EGTM as modified pursuant to this resolution will be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code section 36600 et. seq.).
- 18) The City Clerk, or designee, is directed to take all necessary actions to complete the modification of the EGTM and to levy the assessments.
- 19) This Resolution shall take effect immediately upon its adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 22nd day of May 2024



BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



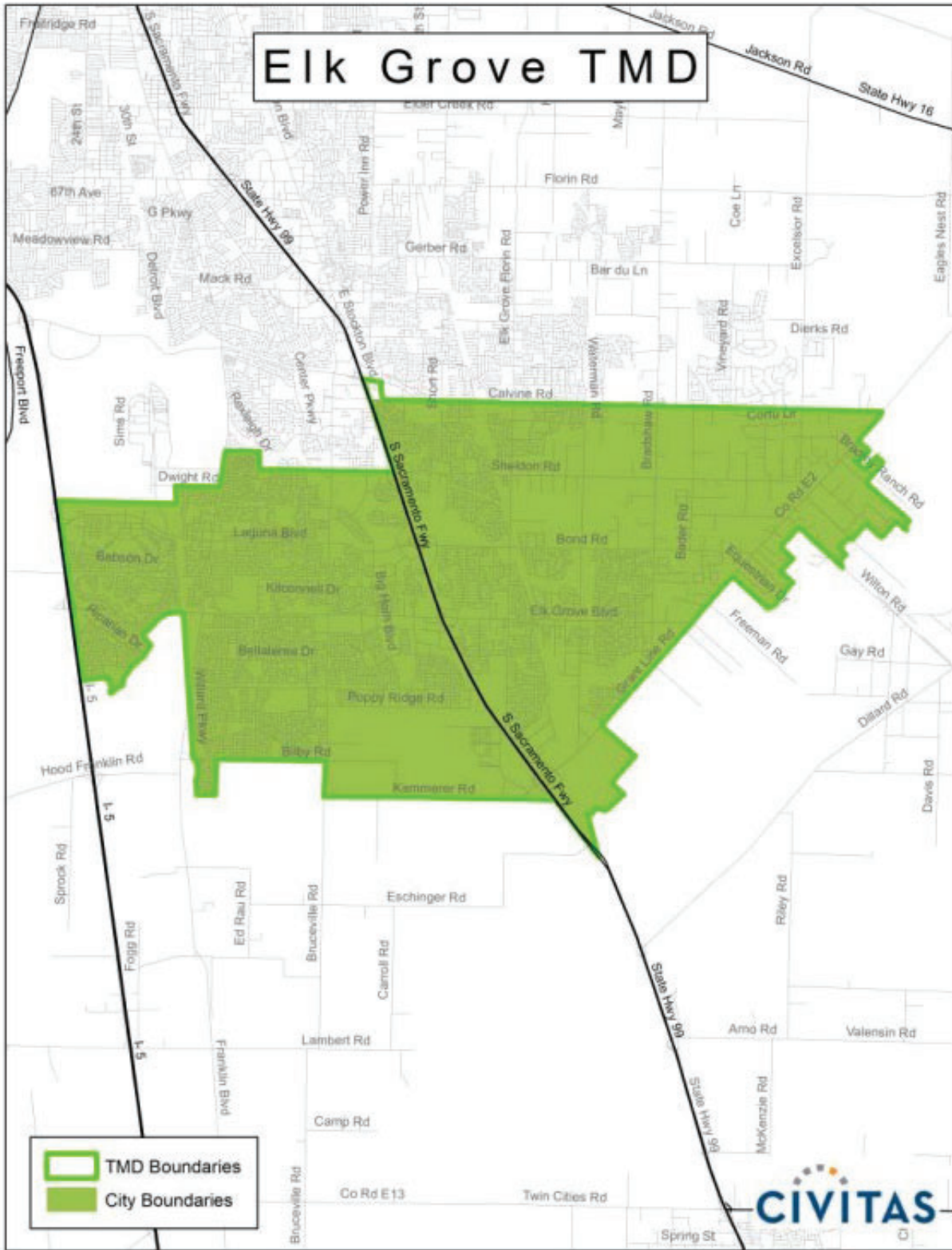
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

EXHIBIT A DISTRICT BOUNDARIES



CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2024-081

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 May 22, 2024 by the following vote:

AYES: COUNCILMEMBERS: Singh-Allen, Brewer, Robles, Spease, Suen

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None


Jason Lindgren, City Clerk
City of Elk Grove, California

Attachment B

PLAN

See Attached

2020-2030

**ELK GROVE TOURISM MARKETING DISTRICT
MANAGEMENT DISTRICT PLAN**

*Prepared pursuant to the Property and Business Improvement District Law of
1994, Streets and Highways Code section 36600 et seq.*

March 5, 2024
23

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Prepared by
Civitas and
Approved by the City of Elk Grove



I. OVERVIEW

The Elk Grove Tourism Marketing District (EGTMD) is an assessment district existing to provide specific benefits to assessed businesses within the District, or payors, by funding marketing and sales promotion efforts for assessed businesses. The EGTMD was created in 2015 with a five (5) year term and was renewed in 2020 for an additional seven (7) year term. In 2024, the EGTMD and this Management District Plan were modified to extend the renewed term to ten (10) years.

Location: The EGTMD includes all lodging businesses located within the boundaries of the City of Elk Grove (City) and a portion of unincorporated Sacramento County, as shown on the map in Section III.

Services: The EGTMD is designed to provide specific benefits directly to payors to increase room night sales. The services include marketing and sales promotions designed to increase overnight tourism through the attraction of meetings and events to the EGTMD, thereby increasing room night sales for payors.

Budget: The total EGTMD annual budget for the initial year of its ten seven (7) year renewal period was anticipated to be approximately \$675,000. Beginning June 1, 2024, or as soon as possible thereafter, due to an increased assessment rate, the total annual assessment budget for FY24/25 is anticipated to be approximately \$1,026,000.

Cost: The initial annual assessment rate of the renewed EGTMD was three percent (3%) of gross short-term (stays less than thirty (30) days) room rental revenue for lodging businesses in the City of Elk Grove and one percent (1%) for lodging businesses in the portion of the District within unincorporated Sacramento County. In 2024, the EGTMD and this Management District Plan were modified to increase the assessment rate to four percent (4%) of gross short-term (stays less than thirty (30) days) room rental revenue for lodging businesses in the City of Elk Grove and two percent (2%) for lodging businesses in the portion of the District within unincorporated Sacramento County. The modified assessment rate is effective beginning on June 1, 2024, or as soon as possible thereafter, and shall continue for the duration of the EGTMD’s term. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; and stays of persons in the performance of official duties as an employee of City, County, State and Federal government entities and foreign government diplomats if documentation of an exemption certificate is submitted and retained and payment is made directly to the hotel for rentals or by a government-sponsored corporate charge card.

Collection: The City will be responsible for collecting the assessment on a monthly or quarterly basis (including any delinquencies, penalties, and interest) from each lodging business located in the boundaries of the EGTMD. The City shall make all reasonable efforts to collect the assessments from each lodging business.

Duration: As a result of the 2024 modification, the EGTMD has a ten (10) year term, beginning April 1, 2020 through March 31, 2030, unless disestablished. The modified assessment rate is set to take effect June 1, 2024, or as soon as possible thereafter, and shall continue for the duration of the EGTMD’s term, unless further modified. Once per

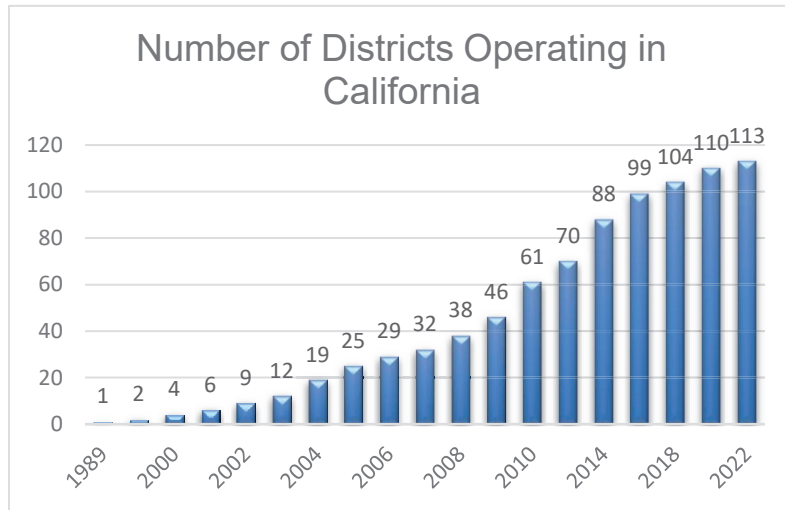
year, beginning on the anniversary date of the EGTMDD renewal, there is a thirty (30) day period in which owners or authorized representatives of businesses in the EGTMDD paying fifty percent (50%) or more of the assessment may request disestablishment of the EGTMDD and initiate a City Council hearing on EGTMDD termination.

Management: The Owners' Association with whom the City contracts is charged with managing funds and implementing programs in accordance with this Plan and must provide annual reports to the City Council. The City Council has determined that Visit Elk Grove (VEG) will continue to serve as the Owners' Association for the EGTMDD.

II. BACKGROUND

Tourism Marketing Districts (TMDs) are an evolution of the traditional Business Improvement District. The first TMD was formed in West Hollywood, California in 1989. Since then, over 100 California destinations have created TMDs. California’s TMDs collectively raise over \$300 million annually for local destination marketing.

In California, TMDs are formed pursuant to the Property and Business Improvement District Law of 1994 (“1994 Law”). This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area.



TMDs utilize the efficiencies of the private sector in the promotion of tourism districts. TMDs allow lodging business owners to organize their efforts to increase room night sales.

At the request of lodging business owners in a specified geographic area, a city or county can establish a TMD. Lodging business owners within the TMD pay an assessment on room night revenues to receive services which provide a specific benefit to their business. The

assessment funds are collected from lodging business owners, and those funds are then remitted to an Owners’ Association. The Owners’ Association is typically a private non-profit corporation whose board is made up of representatives of the lodging businesses paying the assessment in the TMD. The Owners’ Association then spends the revenues on marketing programs and activities designed to specifically benefit hotel business through increased overnight visitors to those assessed lodging businesses within the district.

Under the 1994 Law, TMD funds may be used for services and improvements that provide a specific benefit to the payors within the district, and funds cannot be diverted to general government programs.

In February of 2015, the City Council approved the formation of the Elk Grove Tourism Marketing District to further the City Council’s visitation and hospitality goals. At that time, the City designated and contracted with Visit Elk Grove, a private non-profit corporation, to act as the Owners’ Association. To continue to ensure that tourism promotion funding is adequate to remain competitive with other popular destinations, in 2024 this Plan was modified to increase the assessment rate and to extend the term to ten (10) years. The modified assessment rate is effective beginning on June 1, 2024, or as soon as possible thereafter, and shall continue through the duration of the EGTMD’s term.

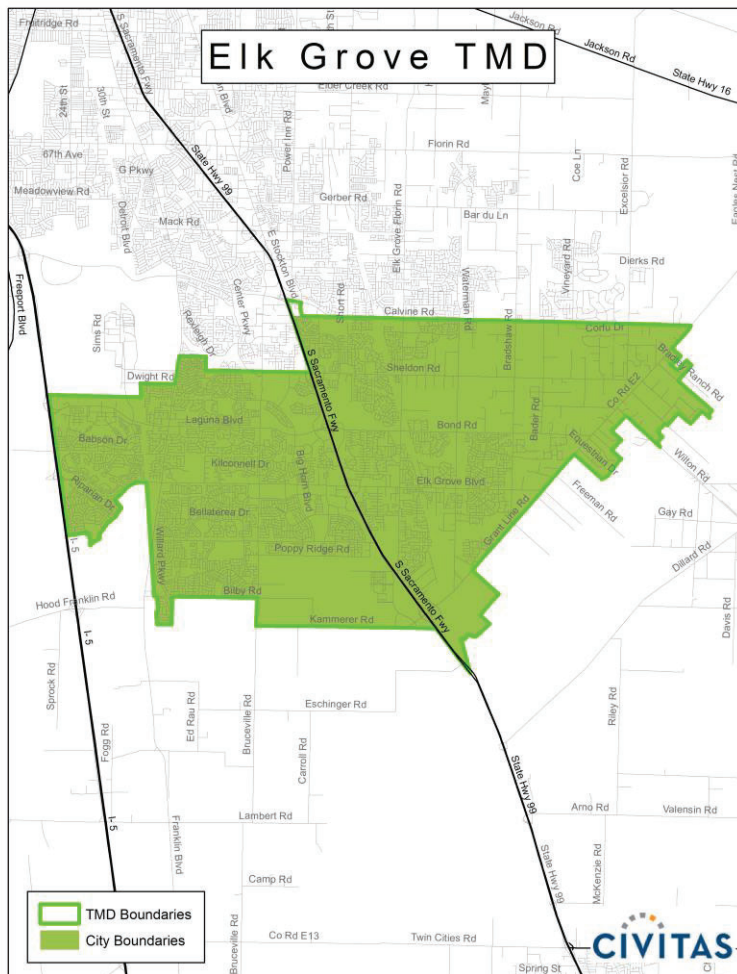
III. BOUNDARY

The EGTMD payors will include all lodging businesses, existing and in the future, available for public occupancy within the boundaries of the City of Elk Grove and a portion of unincorporated Sacramento County extending north between Power Inn Road and Highway 99 and ending on the southern side of Calvine Road.

Lodging business means: any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio, hotel, bachelor hotel, lodging house, rooming house, apartment house, bed and breakfast, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

Transient means: any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) days or less, counting portions of days as full days. Any such person so occupying space in a lodging business shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

The EGTMD boundary is shown in the map below. A listing of lodging businesses within the EGTMD at the time the 2024 Plan modification was approved can be found in Appendix 2.



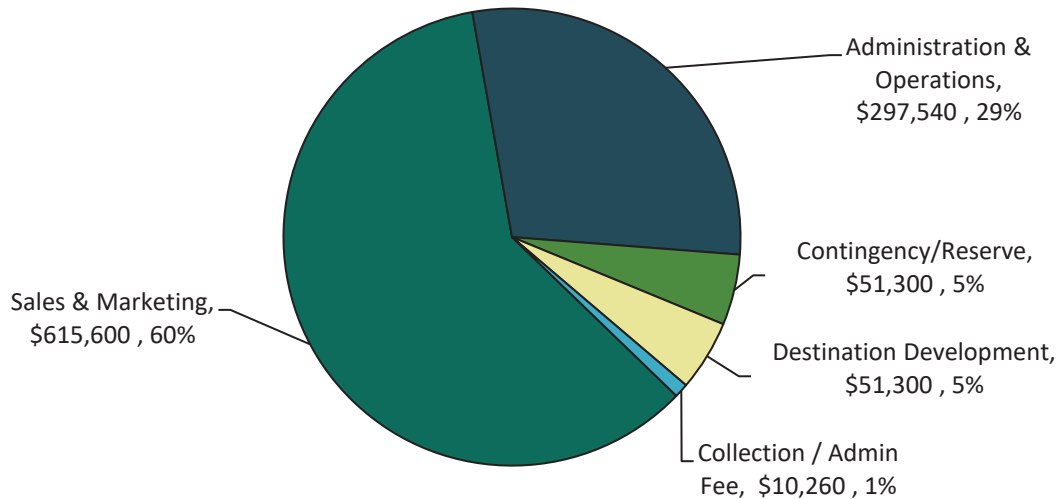
IV. BUDGET AND SERVICES

A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the EGTMD funds are sales and marketing programs available only to assessed businesses.

A budget has been developed to deliver services that benefit the assessed businesses. A detailed annual budget will be developed and approved by the Owners' Association. The total initial assessment budget for purposes of this Plan was anticipated to be \$675,000, although the actual budget amount was subject to variance. The chart below illustrates the initial FY24/25 annual budget allocations reflecting the modified assessment rate. Beginning June 1, 2024, or as soon as possible thereafter, due to the modified assessment rate, the total annual assessment budget is anticipated to be approximately \$1,026,000 but is subject to variance.

Annual Assessment Budget - \$1,026,000



Expenditures in each category will not exceed the percentages indicated for that year; however, the City and the Owners' Association shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) of the total budget per year. Any adjustment to the budget allocations authorized by the Association's Board shall be included in the Annual Report described in Section V(C) and approved by the Elk Grove City Council during the fiscal year annual report review. A description of the proposed improvements and activities for the initial year of operation is below. The same activities as directed by the Owners' Association, are proposed for subsequent years. In the event of a legal challenge against the EGTMD, any and all assessment funds may be used for the costs of defending the EGTMD.

Each budget category includes all costs related to providing that service. For example, the sales and marketing budget includes the cost of staff time dedicated to overseeing and implementing the sales and marketing program. Staff time dedicated purely to administrative tasks is allocated to the administrative portion of the budget. The costs of an individual staff member may be allocated to

multiple budget categories, as appropriate in accordance with GAAP. The staffing levels necessary to provide the services below will be determined by the Owners' Association on an as-needed basis.

Sales and Marketing

A sales and marketing program will promote assessed businesses as visitor, meeting, and event destinations. The sales and marketing program will have a central theme of promoting Elk Grove as a desirable place for overnight visits. The program will have the goal of increasing overnight visitation and room night sales at assessed businesses, and may include, but is not limited to, the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence to drive overnight visitation and room sales to assessed businesses;
- Print ads in magazines and newspapers targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Television ads targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Radio ads targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Attendance at trade shows to promote assessed businesses;
- Sales blitzes for assessed businesses;
- Familiarization tours of assessed businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed businesses;
- Attendance at professional industry conferences and affiliation events to promote assessed businesses;
- Lead generation activities designed to attract visitors and group events to assessed businesses;
- Lodging business Director of Sales and General Manager meetings to plan and to coordinate visitation promotion efforts for assessed businesses;
- Capital improvements related to sales and marketing of assessed businesses, which may include sports facilities and conference and meeting facilities;
- A transportation service that facilitates group transportation between assessed businesses and local events, transportation hubs, and attractions designed to attract group stays at assessed businesses;
- Comprehensive and integrated signage and billboards to improve wayfinding;
- Education of hospitality staff on service and safety (related to alcohol and food) designed to create a visitor experience that will bring repeat visits to assessed businesses; and
- Education of lodging business management and the Owners' Association on marketing strategies best suited to meet assessed business's needs.

Destination Development

Destination development will be targeted at potential visitors to drive overnight visitation and room night sales to assessed businesses, and may include the following activities:

- Sports Facility/Complex feasibility study;
- Comprehensive and integrated wayfinding signage; and
- Placemaking, enhancing the appeal and experience of our destination attracting tourists and encouraging them to explore, stay longer and return.

Administration and Operations

The administration and operations portion of the budget shall be utilized for administrative staffing costs, office costs, advocacy, and other general administrative costs such as insurance, legal, and accounting fees.

City Administration Fee

The City of Elk Grove shall be paid a fee equal to one percent (1%) of the amount of assessment collected to cover its costs of collection and administration.

Contingency/Reserve

A prudent portion of the budget, not exceeding five percent (5%) will be allocated to a contingency fund to account for lower than anticipated collections. If there are contingency funds collected and, near the expiration of the district, business owners wish to renew the district, the contingency funds may be used for renewal costs.

B. Annual Budget

The initial seven (7) year improvement and service plan budget was projected at approximately \$675,000 annually, or \$4,725,000 through 2027. The term has been modified to ten (10) years, through March 31, 2030. Beginning on June 1, 2024, or as soon as possible thereafter, due to the modified assessment rate, the total EGTMD assessment budget for each subsequent full year of operation is projected to be approximately \$1,026,000, or approximately \$8,856,000 cumulatively through 2030. This amount may fluctuate as sales and revenues increase or decrease at assessed businesses.

C. California Constitutional Compliance

The EGTMD assessment is not a property-based assessment subject to the requirements of Proposition 218. Courts have found Proposition 218 limited the term ‘assessments’ to levies on real property.¹ Rather, the EGTMD assessment is a business-based assessment, and is subject to Proposition 26. Pursuant to Proposition 26 all levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the EGTMD, a “specific benefit” and a “specific government service.” Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

1. Specific Benefit

Proposition 26 requires that assessment funds be expended on, “a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.”² The services in this Plan are designed to provide targeted benefits directly to assessed businesses, and are intended only to provide benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific businesses within the EGTMD. The activities described in this Plan are specifically targeted to increase room night sales for assessed lodging businesses within the boundaries of the EGTMD, and are narrowly tailored. EGTMD funds will be used exclusively to provide the specific benefit of increased room night sales directly to the assessees. Assessment funds shall not be used to feature non-assessed lodging businesses in EGTMD programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses.

¹ *Jarvis v. the City of San Diego* 72 Cal App. 4th 230

² Cal. Const. art XIII C § 1(e)(1)

The assessment imposed by this EGTMD is for a specific benefit conferred directly to the payors that is not provided to those not charged. The specific benefit conferred directly to the payors is an increase in room night sales. The specific benefit of an increase in room night sales for assessed lodging businesses will be provided only to lodging businesses paying the district assessment, with marketing and sales programs promoting lodging businesses paying the EGTMD assessment. The marketing and sales programs will be designed to increase room night sales at each assessed lodging business. Because they are necessary to provide the marketing and sales programs that specifically benefit the assessed lodging businesses, the administration and contingency services also provide the specific benefit of increased room night sales to the assessed lodging businesses.

Although the EGTMD, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, “A specific benefit is not excluded from classification as a ‘specific benefit’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor.”³

2. Specific Government Service

The assessment may also be utilized to provide, “a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”⁴ The legislature has recognized that marketing and promotions services like those to be provided by the EGTMD are government services within the meaning of Proposition 26⁵. Further, the legislature has determined that “a specific government service is not excluded from classification as a ‘specific government service’ merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor.”⁶

3. Reasonable Cost

EGTMD services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by the Owners’ Association, and reports submitted on an annual basis to the City. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from EGTMD-funded activities, be featured in advertising campaigns, and benefit from other EGTMD-funded services. Non-assessed lodging businesses will not directly receive these, nor any other, EGTMD-funded services and benefits.

The EGTMD-funded programs are all targeted directly at and feature only assessed businesses. It is, however, possible that there will be a spill-over benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room nights, that portion of the promotion or program generating those room nights shall be paid with non-EGTMD funds. EGTMD funds shall only be spent to benefit the assessed businesses and shall not be spent on that portion of any program which directly generates incidental room nights for non-assessed businesses.

³ Government Code § 53758(a)

⁴ Cal. Const. art XIII C § 1(e)(2)

⁵ Government Code § 53758(b)

⁶ Government Code § 53758(b)

D. Assessment

The initial annual assessment rate was three percent (3%) of gross short term (stays less than thirty (30) days) room rental revenue for lodging businesses in the City of Elk Grove and one percent (1%) for lodging businesses in the portion of unincorporated Sacramento County within the District. This Plan has been modified to increase the assessment rate to four percent (4%) of gross short-term (stays less than thirty (30) days) room rental revenue for lodging businesses in the City of Elk Grove and two percent (2%) for lodging businesses in the portion of unincorporated Sacramento County within the District. The modified assessment rate is effective beginning on June 1, 2024, or as soon as possible thereafter, and shall continue for the duration of the EGTMD’s term. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; and stays of persons in the performance of official duties as an employee of City, County, State and Federal government entities and foreign government diplomats if documentation of an exemption certificate is submitted and retained and payment is made directly to the hotel for rentals or by a government-sponsored corporate charge card.

The term “gross room rental revenue” as used herein means: the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever. For assessment purposes only, gross room rental revenue shall not include any federal, state or local taxes collected from transients, including but not limited to transient occupancy taxes. Gross room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The assessment is levied upon and a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. If the EGTMD assessment is identified separately it shall be disclosed as the “EGTMD Assessment.” As an alternative, the disclosure may include the amount of the EGTMD assessment and the amount of the assessment imposed pursuant to the California Tourism Marketing Act, Government Code §13995 et seq. and shall be disclosed as the “Tourism Assessment.” The assessment is imposed solely upon, and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for any purpose, including calculation of transient occupancy taxes.

Bonds shall not be issued.

E. Penalties and Interest

The EGTMD shall reimburse the City of Elk Grove for any costs associated with collecting unpaid assessments. If sums in excess of the delinquent EGTMD assessment are sought to be recovered in the same collection action by the City, the EGTMD shall bear its pro rata share of such collection costs. Assessed businesses which are delinquent in paying the assessment shall be responsible for paying:

1. *Original Delinquency*
Any lodging business which fails to remit any assessment imposed within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of assessment.
2. *Continued Delinquency*

Any lodging business which fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first (1st) became delinquent shall pay a second (2nd) delinquency penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment and the ten percent (10%) penalty first imposed.

3. *Fraud*

If the City determines that the nonpayment of any remittance due is due to fraud or misrepresentation, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated in subsections 1 and 2 of this section.

4. *Interest*

In addition to the penalties imposed, any lodging business which fails to remit any assessment imposed shall pay interest at the rate of one-half of one percent (0.5%) per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

5. *Penalties Merged with Assessment*

Every penalty imposed and such interest as accrues under the provisions of this section shall become part of the assessment herein required to be paid.

F. Time and Manner for Collecting Assessments

The EGTMD assessment will be implemented beginning April 1, 2020 and will continue for ten (10) years through March 31, 2030. The City will be responsible for collecting the assessment on a monthly or quarterly basis (including any delinquencies, penalties and interest) from each lodging business. The City shall take all reasonable efforts to collect the assessments from each lodging business. The City shall forward the assessments collected to the Owners' Association.

V. GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the EGTMD, which shall be the Owners' Association of the EGTMD as defined in Streets and Highways Code §36612. The City Council has determined that Visit Elk Grove (VEG) will be the Owners' Association of the EGTMD pursuant to a Memorandum of Understanding and Cooperative Agreement between the City of Elk Grove and Visit Elk Grove dated March 30, 2020, as such agreement may be updated from time to time. This modified Management District Plan shall replace the original Management District Plan contained in the March 30, 2020 Agreement. A majority of directors of VEG shall be representatives of lodging businesses who pay the EGTMD assessment. The Board shall also include one (1) representative from the City of Elk Grove and may include businesses within the community that have a vested interest in tourism.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Owners's Association board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

C. Annual Report

Owners' Association shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district;
- The improvements and activities to be provided for that fiscal year;
- An estimate of the cost of providing the improvements and the activities for that fiscal year;
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year;
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year; and
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

APPENDIX 1 – LAW

*** THIS DOCUMENT IS CURRENT THROUGH THE 2023 SUPPLEMENT ***
(ALL 2022 LEGISLATION)

STREETS AND HIGHWAYS CODE DIVISION 18. PARKING PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

- (a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
- (b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.
- (c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.
- (d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.
- (e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:
 - (1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.
 - (2) Job creation.
 - (3) Business attraction.
 - (4) Business retention.
 - (5) Economic growth.
 - (6) New investments.
- (f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.
- (g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.
- (h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.
 - (1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.
 - (2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the

incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. “Activities”

“Activities” means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. “Assessment”

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. “Business”

“Business” means all types of businesses and includes financial institutions and professions.

36608. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. “Clerk”

“Clerk” means the clerk of the legislative body.

36609.5. “General benefit”

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

36610. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

36611. “Management district plan”; “Plan”

“Management district plan” or “plan” means a proposal as defined in Section 36622.

36612. “Owners’ association”

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), for all records relating to activities of the district.

36614. “Property”

“Property” means real property situated within a district.

36614.5. “Property and business improvement district”; “District”

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

36614.6. “Property-based assessment”

“Property-based assessment” means any assessment made pursuant to this part upon real property.

36614.7. “Property-based district”

“Property-based district” means any district in which a city levies a property-based assessment.

36615. “Property owner”; “Business owner”; “Owner”

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. “Special benefit”

(a) “Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

(b) “Special benefit” also includes, for purposes of a property-based district, a particular and distinct benefit provided directly to each assessed parcel within the district. Merely because parcels throughout an assessment district share the same special benefits does not make the benefits general.

36616. “Tenant”

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3. Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

- (a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.
- (b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:
- (1) A map showing the boundaries of the district.
 - (2) Information specifying where the complete management district plan can be obtained.
 - (3) Information specifying that the complete management district plan shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:
- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
 - (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

- (a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.
- (b) The name of the proposed district.
- (c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.
- (d) The improvements, maintenance, and activities proposed for each year of operation of the district and the estimated cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities and a

statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against their property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k)

(1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(3) In a property-based district, properties throughout the district may share the same special benefits. In a district with boundaries that define which parcels are to receive improvements, maintenance, or activities over and above those services provided by the city, the improvements, maintenance, or activities themselves may constitute a special benefit. The city may impose assessments that are less than the proportional special benefit conferred, but shall not impose assessments that exceed the reasonable costs of the proportional special benefit conferred. Because one or more parcels pay less than the special benefit conferred does not necessarily mean that other parcels are assessed more than the reasonable cost of their special benefit.

(l) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(m) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the

public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.
- (2) The number, date of adoption, and title of the resolution of intention.
- (3) The time and place where the public hearing was held concerning the establishment of the district.
- (4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.
- (5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.
- (6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3. Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in an action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36625. An appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

CHAPTER 3.5. Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements, maintenance, and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

- (a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.
- (b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.
- (c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

- (a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:
 - (1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.
 - (2) During the operation of the district, there shall be a 30-day period each year in which assesseses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
- (b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

- (a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.
- (b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – CURRENT ASSESSED BUSINESSES*

HOTEL NAME	ADDRESS
Holiday Inn Express & Suites	9175 W. Stockton Boulevard, Elk Grove, CA 95758
Hilton Garden Inn	9241 Laguna Springs Drive, Elk Grove, CA 95758
Hampton Inn and Suites	2305 Longport Court, Elk Grove, CA 95758
Holiday Inn Express	2460 Maritime Drive, Elk Grove, CA 95758
Extended Stay America	2201 Longport Court, Elk Grove, CA 95758
Fairfield Inn & Suites	8058 Orchard Loop Lane, Sacramento, CA 95624
TownePlace Suites by Marriott	9320 East Stockton Boulevard, Elk Grove, CA 95624

**Additional lodging businesses that meet the requirements for inclusion in the EGTMD will be assessed as they become operational*

Attachment C

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Contract, VEG shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein. VEG shall comply with all reporting and other provisions of the policies of insurance as set forth herein including, but not limited to, timely reporting of claims and suits. Further, should VEG maintain any programs of self-insurance, VEG shall comply with the applicable fulfillment of any self-insured retentions.

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury, property damage, and products and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:

Each occurrence:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
Aggregate:	One Million Dollars (\$1,000,000)
- e. The City, its officials, employees, agents and authorized volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of VEG, products and completed operations of VEG, premises owned, occupied, or used by VEG, or automobiles leased, hired, or borrowed by VEG on a separate endorsement acceptable to the City.
- f. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and authorized volunteers for losses arising from work performed by VEG.
- g. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents, or authorized volunteers.
- h. Provision or endorsement stating that for any claims related to this contract, VEG's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents, and authorized volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officials, employees, agents, or authorized volunteers shall be in excess of VEG's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

2. Worker's Compensation:

- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless VEG is a qualified self-insurer with the State of California or is not required by California law to carry workers' compensation coverage), and

Employers Liability coverage. VEG shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.

- b. Employer's Liability Coverage minimum limits shall be no less than \$1,000,000.
 - c. If an injury occurs to any employee of VEG for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due VEG under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to VEG.
 - d. The City, its officials, employees, agents and authorized volunteers shall be covered and specifically named as additional insured.
3. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
 4. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
 5. VEG shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At the written request of the City, VEG agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
 6. The City, due to unforeseen risk or exhaustion, failure, or dilution of VEG's insurance coverage, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
 7. VEG shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
 8. If VEG fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due VEG under the contract.
 9. Failure of the City to obtain such insurance shall in no way relieve VEG from any of its responsibilities under the contract.

10. The making of progress payments to VEG shall not be construed as relieving VEG or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
11. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
12. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by VEG are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by VEG under the Contract.