

CITY OF ELK GROVE



Request for Proposals For Voter Education Outreach Services

**Office of the City Clerk
City of Elk Grove
8401 Laguna Palms Way, Elk Grove, CA 95758**

Proposals Due by 4:00 PM, July 16, 2010

Introduction:

The City of Elk Grove is accepting proposals from qualified consultants to provide Voter Education Outreach Services in accordance with the included specifications, terms, and conditions shown in this Request for Proposal (RFP). Prospective respondents are advised to read this information over carefully prior to submitting a proposal.

One signed original, four (4) hard copies, and one CD copy of the proposals shall be submitted to the Office of the City Clerk by 4:00 PM, July 16, 2010. Proposal shall be submitted in a sealed envelope clearly marked Voter Education Outreach and addressed to:

**OFFICE OF THE CITY CLERK
CITY OF ELK GROVE
8401 Laguna Palms Way
Elk Grove, CA 95758**

Questions regarding this RFP are to be directed by e-mail to: Christine Brainerd, Public Information Officer, at cbrainerd@elkgrovecity.org. Such contact shall be for clarification purposes only. The City must receive all questions no later than July 8, 2010. Material changes, if any, to the scope of services or proposal procedures will only be transmitted by written addendum and posted to the web site. Addendums and answers to submitted questions will be available via the City of Elk Grove Web site by clicking "View" under View Details/Documents for the Bid announcement.

Proposals will not be accepted by fax or electronically.

Late Proposals:

Proposals arriving after the specified date and time will not be considered, nor will late proposals be opened. Each consultant assumes responsibility for timely submission of its proposal.

Withdrawal or Modifications of Proposals:

Any proposal may be withdrawn or modified by a written request signed by the consultant and received by the City Clerk prior to the final time and date for the receipt of proposals. Once the deadline is past, consultants are obligated to fulfill the terms of their proposal.

Proposal Acceptance and Rejection:

The City of Elk Grove reserves the right to accept any proposal, to reject any and all proposals if said rejection is deemed in the best interest of the City, to call for new proposals, and to award the contract to other than the lowest proposal if deemed "proposal most advantageous to the City".

Proposal Evaluation and Award:

Evaluation will be made on the basis of the criteria noted in Attachment A, Evaluation and Selection Criteria. Award shall be made to the responsible consultant whose proposal is determined in writing to be the most advantageous to the City, taking into consideration adherence to the included specifications and price. The City will enter into a contract with the successful consultant for the specified products, services, and deliverables. All consultants that were not selected by the City shall be notified in writing. Nothing herein shall obligate the City to award a contract to any responding consultant.

Waiver of Irregularities:

The City retains the right, in its sole discretion, to waive any irregularities in proposals that do not comply with the strict requirements of this RFP, and the City reserves the right to award a contract to a consultant submitting any such non-compliant proposal, all in the City's sole discretion.

Validity of Pricing:

Consultants are required to provide a fee structure including, if applicable, the hourly rate of the principles to be assigned to the matter, and proposed cost and expense reimbursement levels. No cost increases

shall be passed onto the City after the proposal has been submitted. No attempt shall be made to tie any item or items contained in this RFP with any other business with the City.

Qualification/Inspection/Interviews:

Proposals shall only be considered from firms normally engaged in providing the types of products and services specified herein. The City reserves the right to inspect the Consultant's facilities, products, personnel, and organization at any time, or to take any other action necessary to determine Consultant's ability to perform. The City reserves the right to reject proposals where evidence or evaluation is determined to indicate inability to perform. The City reserves the right to interview any or all responding consultants and/or to award a contract without conducting interviews.

Acceptance and Conditions

The products and services supplied in response to the RFP award shall remain the property of the Consultant until a physical inspection is made and the products and services are accepted to the satisfaction of the City. The products and services shall comply fully with the terms of the RFP, be of the required quality and new unless specified by the City. Any substitutes of products or services not meeting specifications will be rejected, and returned if applicable, at the Consultant's expense. Payment will be made only after receipt and acceptance of products or services by the City.

Payment Terms:

Payment on non-disputed invoices will be paid net 45 from date of receipt of invoice. In submitting proposals under these specifications, Consultants should take into account all discounts, both trade and time, allowed in accordance with the above payment policy.

Performance:

Consultant shall give prompt and convenient shipment and service. Any contract will be non-exclusive, and the City reserves the right to seek products or services from other sources, in the City's sole discretion.

Term of Contract:

The term of the contract will be for a specific period of time, commencing upon contract execution. The contract may be extended by written mutual agreement of the two parties.

Change Orders:

If, in the course of performance of the Contract, Consultant or the City proposes changes to the products and or services specified herein, and informal consultation with the other party indicates that a change in the terms and conditions of the Contract may be warranted, Consultant or the City may request a change in the Contract. The parties to the Contract will meet to discuss and negotiate the required change order documents. Upon completion of those negotiations, the negotiated change order documents will be submitted to the City for approval. Upon approval by the City, an "Order to Proceed" with the approved changes will be submitted to Consultant. Any Amendment to this Contract will not render ineffective or invalidate any unaffected portions of this Contract.

(See next page for Guidelines for Proposal)

Guidelines for Proposal

The following guidelines are provided for standardizing the preparation and submission of proposals. The intent is to assist respondents in the preparation of their submissions and to assist the City by simplifying the review process providing standards for comparison of submissions.

Statements submitted in response to this RFP shall include a complete response to the requirements in this section in the order presented. Statements should be a straightforward delineation of the respondent's capability to satisfy the intent and requirements of this RFP, and should not contain redundancies and conflicting statements.

Proposals shall be printed double sided, submitted on 8-1/2" x 11" recycled paper, with easy to read font size and style. Pages shall be numbered, tabbed, and bound (spiral, comb or three ring binder). Tabbed dividers should separate and identify the response items described below.

One signed original, four (4) hard copies and one CD copy of the proposals shall be submitted to the Office of the City Clerk by 4:00 pm, July 16, 2010. Proposal shall be submitted in a sealed envelope clearly marked Voter Education Outreach Services and addressed to:

**OFFICE OF THE CITY CLERK
CITY OF ELK GROVE
8401 Laguna Palms Way
Elk Grove, CA 95758**

Proposals shall contain the following information in the order listed:

1. Introductory letter

The introductory letter should be addressed to:

Christine Brainerd, Public Information Officer
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

The letter should state the prime consultant and include the consultant's name submitting the proposal, their mailing address, and telephone number. The letter shall state the consultant's understanding of the project based on this RFP and any other information the consultant has gathered. The letter shall also include a statement discussing the consultant's interest and qualifications for this type of work. A principal of the firm authorized to legally bind the firm shall sign the letter.

2. Table of Contents

The consultant shall insert a comprehensive table of contents denoting sections three through seven of the proposal as indicated below.

3. Qualifications and Experience

Consultant's proposal shall include the following:

- Briefly introduce your firm and provide a summary of the administration, organization and staffing of your firm, including multiple offices, if applicable. Provide an organizational chart indicating the positions and names of the core management team that will undertake this engagement. If your proposal includes sub-consultants, provide a summary of the administration, organization and staffing of each sub-consultant firm.

Provide an organizational chart for each, indicating the positions and names of the core team that will be working with you on this project.

- Identify the lead person who will be the primary liaison with the City and each individual who will work with the City. Include resumes for each person to be assigned. Include any professional designations and affiliations, certifications and licenses, etc.; this also includes any sub-consultants you may use.
- Describe the experience of the firm in the last five (5) years in professional facilitation services, coordinating public meetings, community workshops and focus groups, public information services, and professional community event management services, of similar size and scope to this project (as further described below). List no more than ten (10) projects. For each project listed, include the clients current contact names and phone numbers associated with the project. References may be contacted as part of the selection process in order to evaluate work quality and performance.

4. Work Plan

The work plan should state the consultant's ability to meet each specification as outlined in this document. The work plan should specifically address the items of work as described in this RFP. The work plan should describe the various tasks and steps the consultant will undertake, estimation of the time needed to complete each task or step, and how these tasks and steps lead to specific deliverables. The plan should be simple, easy to read and follow, and address and satisfy the objectives and specifications as listed in the Scope of Work in this RFP.

5. Conflict of Interest Statement

State all activities or relationships of the firm that might create a conflict of interest for the firm or the City. If such activities or relationships exist, include a description of the facts, legal implications, and possible effects sufficient to permit the City to understand the conflict and, if appropriate and necessary, to grant any conflict waiver.

6. Supportive Information/References

This section may include graphs, charts, photos, resumes, references, etc., in support of the consultant's qualifications.

7. Fees

This section shall include the cost for requested products and services outlined in the Scope of Work. Interested firms shall clearly describe and outline fees for the services to be provided for each task of the project. Fees should be linked to the tasks of the work plan as provided in section 4, Work Plan. Include an hourly fee schedule for all principles involved. The total all-inclusive maximum price to be proposed is to contain all direct and indirect costs including all out-of-pocket expenses. The City will not be responsible for expenses incurred in preparing and submitting the proposal.

Proposed Fees should be a firm fixed fee based on the scope of work and services to be provided. The fee should be all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the City unless there is a change in the scope of work or additional work is authorized in writing by the City. Any additional work will be billed at an hourly rate based on the company's proposed fee schedule.

Upon completion of each task, the consultant will notify the City and request payment for the products and services delivered by submitting an invoice and a brief description of work performed during the billing period. Upon receipt of the invoice, the City will review in a timely manner the products and services noted, verify completion, and authorize payment. No cost increases shall be passed onto the City after the proposal has been submitted. No attempt shall be made to tie any item or items contained in this RFP with any other business with the City.

8. Professional Services Contract:

Attached to the RFP (Attachment B) is a copy of the City of Elk Grove's standard Professional Services Contract. Please review this document carefully and note in your proposal any exceptions or alterations to the contract. Alterations or changes to the contract that were not in the consultant's response will not be made after the selection of the consultant. This includes alterations, exceptions, or changes to the insurance and indemnity provisions. By requiring these requests up front, the City can compare all respondents on an equal basis.

(See next page for Scope of Work)

O'Dwyer's
www.odwyerpr.com

SCOPE OF WORK AND STANDARDS FOR SERVICES

Background:

For the General Municipal Election that will be held in the City of Elk Grove, California, on Tuesday, November 2, 2010, the following five (5) measures will be presented:

UTILITY USER TAX REDUCTION AND MODERNIZATION MEASURE Shall an ordinance* be adopted to reduce the existing Utility User Tax from 2.5% to 2.25%; modernize the current ordinance to treat taxpayers equally regardless of technology used for telecommunications and video services; to preserve funding for essential general municipal services, such as public safety?	YES
	NO
AND	
ELECTIVE OFFICE OF MAYOR Shall the electors elect a mayor and four city council members? A "Yes" vote means the citizens directly elect the mayor; a "No" vote continues the practice that the council chooses one of its members to preside as mayor on an annual basis.	YES
	NO
AND	
TWO YEAR TERM OF ELECTIVE OFFICE OF MAYOR Shall the term of office of mayor be two years ?	YES
	NO
AND	
FOUR YEAR TERM OF ELECTIVE OFFICE OF MAYOR Shall the term of office of mayor be four years ?	YES
	NO
AND	
ADVISORY VOTE ONLY INCREASE TO A SEVEN MEMBER LEGISLATIVE BODY Shall members of the legislative body of the City of Elk Grove be qualified by and elected from six (6) districts and the mayor be qualified and elected on a citywide basis by the voters of the entire city; a "Yes" vote increases the legislative body to seven (7) members; a "No" vote retains the current size of the legislative body at five (5) members.	YES
	NO

***NOTE:** The full text of the proposed Ordinance, presented as Exhibit A, is available for public examination in the Office of the City Clerk, 8401 Laguna Palms Way, 95758, Elk Grove, California, and online at: <http://www.elkgrovecity.org/city-clerk/election-information.asp>

Of these five measures, the three questions relating to the Elective Office of Mayor are related in purpose. Impartial analyses of the measures will be provided by the City Attorney by July 2, 2010. Arguments for and against the measures will also have been submitted by July 2, 2010. Rebuttals will have been submitted by July 16, 2010.

Below are the goals of outreach on the three categories of measures on the November 2, 2010 General Election. The goals will be achieved through: 1) increased voter awareness of the issues that are on the ballot, 2) increased voter knowledge through information campaigns and materials, and 3) increased voter participation by clarifying the voting process and meaning of positions on the issues to provide voters with a sense of what passage or failure of any given measure will result for the community.

The City Attorney impartial analyses, arguments submitted for and against, and rebuttals submitted for and against will provide positions and statements to be utilized in the outreach materials.

Utility User Tax (UUT) Measure

The UUT is the primary focus of outreach, and the outreach for the UUT measure itself will focus on the merits of passing the measure with an affirmative vote. The full text of the ordinance presented before the voters is attached as Exhibit A. The primary topics of discussion are: 1) reduction in percentage of tax across all utility categories, 2) modernization of legal language to protect City General Fund revenues from being frozen/lost due to legal challenge, and 3) equally applying the UUT regardless of technology used to include telecommunications and video services. The outreach would address the financial implications of the passage or failure of the UUT, both to the City and to individual households.

Elective Office of Mayor

The Elective Office of Mayor presents three (3) measure questions. The focus of outreach is to clearly present and identify what "Yes" and "No" votes equate to, and to coach potential voters on the need, and purpose, for the layout of the three related questions. The first measure asking voters if they want a mayor is the primary question, and outreach will differentiate what a "Yes" vote means: that if the measure passes then the citizens will directly elect their mayor, and what a "No" vote means: that the practice will be continued that the council chooses one of its members to preside as mayor on an annual basis. The second aspect of this outreach is to clarify that the two (2) questions related to the term of the office of mayor are inter-related, and that first the question of Elective Office of Mayor must pass, then it is decided by the Citizens whether the term of the Elective Office of Mayor is two or four years. If the Elective Office of Mayor measure passes, then the Term Measure that has the most affirmative votes wins.

Advisory Vote Considering an Increase to a Seven Member Legislative Body

The Advisory Question focus of outreach is to clearly present and identify what "Yes" and "No" votes equate to, to coach potential voters that it is an Advisory Question only with no controlling effect (i.e. the question only gauges voter opinion on the topic), and that the advisory measure will be used in the redistricting of legislative districts for the City for the next decade. A "Yes" vote supports expanding the Elk Grove City Council to seven members, a "No" vote maintains the current standard of having five members. The advisory question outreach will have an additional aspect to place the question in context both in not having the Elective Office of Mayor, and in having the Elective Office of Mayor (i.e. Five or Seven Council Members in 2012, or, with the Elective Office of Mayor measure successful, the question asks if citizens want a mayor and four council members, or a mayor and six council members in 2012. Outreach will also identify this is to gauge opinion only, it will not have a controlling effect on current districts, and expansion of districts could only happen by a future measure coming before the people in 2012. Lastly, outreach will identify that the purpose of this measure is to guide redistricting for the City that will be done in 2011, and will be the foundation for how many representative districts, based on the 2010 decennial census, voters will want to see for the City of Elk Grove for the next ten (10) years.

OBJECTIVES

The City of Elk Grove seeks a political consultant to develop and implement a voter education program that addresses the goals outlined in this RFP. As part of this program, the consultant shall provide strategic counsel and develop and implement a comprehensive plan. While a scope of work has not yet been identified, the consultant shall provide services that include, but are not limited, to the following activities and deliverables:

Task One: Project Set-Up and Coordination

- Initial introductory project kickoff meeting with City of Elk Grove staff to discuss the City's outreach needs, priorities and timelines
- Preparation of comprehensive strategic communications, public information, media relations, and community engagement plan designed to inform key stakeholders, the media and public at large about the voter education program. The action plan should utilize existing City of Elk Grove communication vehicles (listed below)
- Participate in project team meetings, as well as meetings with other City staff, elected officials and other stakeholders
- File all necessary documentation required by the California Fair Political Practices Commission for contributions and expenditures relating to the voter education program
-

Task Two: Message Development/Talking Points

- Provide message development strategies and recommendations based on the outreach goals identified in this RFP
- Develop talking points for the program's identified spokespersons that are uniquely tailored to meet the needs of the City of Elk Grove

Task Three: Information Collateral

- Develop informational fact sheet
- Develop web page for City of Elk Grove website and draft content
- Design and develop notices and advertisements for potential placement in local publications
- Secure placement of notices and advertisements in local publications
- Draft press release(s) and/or media kit

Task Four: Outreach activities

- Assist with public engagement strategies, plans, and techniques, that may include public workshops, Council meetings, and other stakeholder meetings
- Identify outreach opportunities, coordinate speaking arrangements and identify appropriate spokesperson(s)
- Develop necessary materials to ensure meetings or workshops are well-publicized among appropriate stakeholders, including the public

The City of Elk Grove utilizes the following communications channels to disseminate information to the public:

- Bimonthly City of Elk Grove newsletter that reaches all Elk Grove residents and businesses (52,000 copies)
- City Website
- Press releases
- Week at a Glance (weekly press release/tip sheet)
- City Manager General Administration Report
- Facebook and Twitter pages
- Live monthly webchats on Elk Grove Online

- Utility bill inserts

Requirements:

To be considered for a contract award, candidates must provide detailed information demonstrating the following minimum qualifications:

- A. Substantial, relevant professional experience in public outreach and public relations in local government.
- B. Substantial, relevant professional experience with similar clients and projects.
- C. Five (5) years experience in professional facilitation services, coordinating public meetings, community workshops and focus groups, public information services, and professional community event management services.

(See next page for Attachments)

ATTACHMENTS

Attachment A: Evaluation and Selection Criteria

Evaluation Criteria

Proposals will be evaluated using five (5) categories listed below. The evaluation criteria for the award of the contract will be weighted as follows. A score of one (1) through ten (10) will be assessed in each category, and then weighted according to the percentage assigned to each category. The following represent the principal selection criteria, which will be considered during the evaluation process:

Firms Qualifications, Experience, and References. (25%)

Experience in performing work of a closely similar nature and size; experience working with public agencies; experience and understanding of public outreach and public relations in local government; strength, stability, experience, and technical competence..

Personnel and Staffing. (25%)

Qualifications and experience of proposed personnel for requested services.

Work Plan. (30%)

Depth of consultant's understanding of City's requirements; overall quality and logic of work plan.

Rates and Fees. (15%)

Reasonableness and competitiveness of the rates and fees proposed; adequacy of data in support of figures quoted, basis on which rates and fees are quoted.

Quality and Responsiveness of the Proposal. (5%)

Completeness of response in accordance with the RFP instructions.

(Attachment A continued next page)

Attachment A (Cont'd) – Evaluation Criteria

CONSULTANT: _____

#	CRITERIA	RATING (1-10)	MULTIPLIER	SCORE
1.	Firms Qualifications, Experience, and References		25%	
2.	Personnel and Staffing		25%	
3.	Work Plan		30%	
4.	Rates and Fees		15%	
5.	Quality and Responsiveness of the Proposal		5%	
TOTAL WEIGHTED SCORE:				

Unweighted Scoring Range: Excellent = 10 Unsatisfactory = 0

Rating Performed By: _____

Print name

Signature

Date

Attachment B: Professional Service Contract

CITY OF ELK GROVE



CONSULTANT CONTRACT FOR
CONSULTANT'S NAME
Project

CONTRACT FOR SERVICES

THIS CONTRACT is made on _____, 20____, by and between the City of Elk Grove, a municipal corporation (the "City") _____ (the "Consultant"), collectively referred to as the "Parties."

WITNESSETH

WHEREAS, the Consultant has presented a proposal to provide _____ services, which services are identified in the Scope of Work attached hereto and incorporated herein as **Exhibit A**, and by reason of its qualifications, experience, and facilities, is duly authorized to perform the type of services contemplated herein; and,

WHEREAS, the City desires to hire a Consultant to perform the Scope of Work pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, City and Consultant agree to as follows:

1. SCOPE OF SERVICES

A. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in the Scope of Work. This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any exhibits shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control.

B. The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

2. TERM OF CONTRACT

A. This Contract shall be effective as of the date executed by the Parties and approved as to form by the City Attorney and shall continue until all services provided for in this Contract have been performed.

3. SCHEDULE FOR PERFORMANCE

City and Consultant agree that time is of the essence and Consultant agrees that services shall be undertaken and completed in accordance with the schedule of performance (the "Schedule of Performance"), attached hereto and incorporated herein by reference as **Exhibit B**. Deviations from the time schedule stated in the Schedule of Performance may be made with the written approval of the City Manager, or his/her authorized representative. Consultant's failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 4.

4. COMPENSATION

A. The Consultant shall be paid monthly for the actual fees, costs and expenses for the time and materials required and expended, and approved by the City, but in no event shall total compensation exceed (\$00.00), without City's prior written approval.

B. Said amount shall be paid upon submittal of a monthly invoice showing completion of the tasks that month, including the services rendered, the costs incurred for materials, the person(s) rendering performed services, the amount of time spent by such person(s), and the applicable hourly rate.

C. If Consultant's performance is not in conformity with the Scope of Work or Schedule of Performance, payments may be delayed or denied, unless otherwise agreed to by the City in writing.

D. If the work is halted at the request of the City, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 11.

5. NOTICES

A. Consultant shall transmit invoices and any notices required by this Contract, to City as follows:

City of Elk Grove
Attn: Finance Department
8401 Laguna Palms Way
Elk Grove, California 95758

B. City shall transmit payments on invoiced amounts, and any notices required by this Contract to Consultant as follows:

() _____

6. PROFESSIONAL SERVICES

Consultant agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and its subcontractors or agents are engaged. Consultant shall not, either during or after the term of this Contract, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City or the operations or procedures of City without the prior written consent of City.

Consultant further agrees that it shall not, during the term of this Contract, take any action that would affect its impartiality or professionalism due to the City whether perceived or actual.

7. INDEPENDENT CONTRACTOR

A. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

B. Consultant'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 Consultant under the provisions of the Contract, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

D. Consultant, 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 Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

F. Consultant hereby indemnifies and holds City harmless 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 Contract.

8. AUTHORITY OF CONSULTANT

Consultant shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.

9. CONFLICT OF INTEREST

Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Contract. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Contract. Consultant further agrees to complete any statements of economic interest if required by either City ordinance or State law.

10. AMENDMENTS, CHANGES OR MODIFICATIONS

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the Parties hereto and shall be signed by the persons authorized to bind the Parties.

11. TERMINATION

A. This Contract may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of City.

B. The City may temporarily suspend this Contract, at no additional cost to City, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Contract.

C. Notwithstanding any provisions of this Contract, Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Contract by Consultant, and City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due City from Consultant is determined.

D. In the event of termination, Consultant shall be compensated as provided for in this Contract, except as provided in Section 11C. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of City.

12. FUNDING

Consultant agrees and understands that renewal of this Agreement in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII B of the California Constitution and that the City Council may determine not to fund this Agreement in subsequent years.

13. NOTICE TO PROCEED

Prior to commencing work under this Agreement, Consultant shall receive a written "Notice to Proceed" from City. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay Consultant for any services prior to issuance of the Notice to Proceed.

14. EXTENSIONS OF TIME

Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by City, in writing, and at City's sole discretion. Such extensions, if authorized, shall be incorporated in written amendments to this Contract or the attached Scope of Work in the manner provided in Section 10.

15. PROPERTY OF CITY

A. It is mutually agreed that all materials prepared by Consultant under this Contract shall become the property of City, and Consultant shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and Consultant shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Consultant in performing this Contract which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to City which is in Consultant's possession. Publication of the information derived from

work performed or data obtained in connection with services rendered under this Contract must be approved in writing by City.

B. Additionally, it is agreed that the Parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by the City.

C. Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.

16. COMPLIANCE WITH LAW

Consultant 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 Contract. As applicable, it shall be City's responsibility to obtain all rights-of-way and easements to enable Consultant to perform its services hereunder. Consultant shall assist City in providing the same.

17. REPRESENTATIONS

A. Consultant agrees and represents that it is qualified to properly provide the services set forth herein, in a manner which is consistent with the generally accepted standards of Consultant's profession.

B. Consultant agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law.

C. Consultant shall designate a project manager who at all times shall represent the Consultant before the City on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of City, is no longer employed by Consultant, or is replaced with the written approval of City, which approval shall not be unreasonably withheld.

D. Consultant shall provide corrective services without charge to City for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and Consultant shall be liable for any expenses thereby incurred.

18. APPROVAL OF STAFF MEMBERS

A. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this contract. Consultant shall notify City of any changes in Consultant's staff to be assigned to perform the services required under this

contract and shall obtain the approval of the city manager of a list of all proposed staff members who are to be assigned to perform services under this contract prior to any such performance.

19. ASSIGNMENT AND SUBCONTRACTING:

A. Except as expressly authorized herein, Consultant's obligations under this Contract are not assignable or transferable, and Consultant shall not subcontract any work, without the prior written approval of the City. However, claims for money due or which become due to Consultant from City under this Contract may be assigned to a financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to City.

B. Consultant shall be as fully responsible to City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by Consultant.

20. MATERIALS CONFIDENTIAL

All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of City, except by court order. If City or Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

21. LIABILITY OF CONSULTANT—NEGLIGENCE

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

22. INDEMNITY AND LITIGATION COSTS

To the fullest extent permitted by law, Consultant 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 Contract on the part of Consultant, 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 Contract.

In any contract that Consultant enters into with any subcontractor in any capacity related to any and all duties under this Contract, there must be an indemnification provision identical to the one provided in Section 22 applicable to the subcontractor requiring the subcontractor to assume the defense, indemnify and save harmless the City to the same extent as Consultant. Consultant's failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Contract. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, and save harmless the City as prescribed under this Section.

23. INSURANCE

Prior to commencement of any work under this Contract, Consultant shall provide and maintain in effect during the term of this Contract evidence of insurance coverage as set forth in Exhibit D, attached hereto and incorporated herein by reference.

24. EMPLOYMENT PRACTICES

Consultant, by execution of this Contract, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

25. UNAUTHORIZED ALIENS

Consultant 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 Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, and should the federal government impose sanctions against the City for such use of unauthorized aliens, Consultant 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.

26. LICENSES, PERMITS, AND OTHER APPROVALS

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature legally required for Consultant to practice its profession and perform the work described herein. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Contract any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

27. RECORDS AND INSPECTION

Consultant shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Contract in accordance with generally accepted accounting principles and practices. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

28. 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 Contract, 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 Contract shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Contract governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Contract 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 Contract 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 Contract shall remain binding.

D. Time: All times stated herein or in any other Contract Documents are of the essence.

E. Binding: This Contract shall bind and inure to the heirs, devisees, assignees and successors in interest of Consultant 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 Consultant for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Contract shall not be invalidated due to the expiration, termination or cancellation of this Contract.

G. Construction and Interpretation: Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract 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 Contract.

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 Contract 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 Contract 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 Consultant. 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 the Consultant that any such person or entity, other than the City or Consultant, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

K. Non-Discrimination/Non-Preferential Treatment Statement: In performing this Contract, 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 Contract on behalf of the Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.

M. Dispute Resolution: Prior to either party commencing any legal action under this Contract, 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 Contract 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.

29. ENTIRE AGREEMENT

This instrument and any attachments hereto constitute the entire Contract between City and Consultant concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.

AGREED to this _____ day of _____, 20____, by the Parties as follows:

Approved to as form:

CONSULTANT

By: _____
Attorney for Consultant

By: _____
Consultant, Title

Approved to as form:

CITY OF ELK GROVE

By: _____
Susan Burns Cochran, City Attorney

By: _____
Laura S. Gill, City Manager

Attest to:

Susan J. Blackston, City Clerk

City of Elk Grove
Consultant's Name
Re:



EXHIBIT A

Scope of Work

O'Dwyer's
www.odwyerpr.com

City of Elk Grove
Consultant's Name
Re:



EXHIBIT B

Schedule of Performance

O'Dwyer's
www.odwyerpr.com

EXHIBIT C
Compensation and Method of Payment

Under no circumstances will the aggregate amount paid under this Contract exceed the amount specified in Section 4A above and if the Contract is approved by the City Manager, all compensation paid to Consultant each year shall meet the cost limitation set forth in City of Elk Grove Municipal Code Chapter 3.42.

O'Dwyer's
www.odwyerpr.com

EXHIBIT D

Insurance Requirements

Prior to commencement of any work under this Contract, Consultant 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:

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product 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)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
- e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
- c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars
-----------------------	---------------------

(\$1,000,000)
- d. If General Liability coverage, as required above, is provided by the Commercial General Liability form, the Automobile Liability policy shall include an endorsement providing automobile contractual liability.

3. Worker's Compensation

- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and Employers Liability coverage. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.
- b. Employer's Liability Coverage shall not be less than the statutory requirements.
- c. If an injury occurs to any employee of the Consultant 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 the Consultant 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 the Consultant. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.

4. Errors and Omissions; Malpractice; Professional Liability. Errors and omissions, malpractice, or professional liability insurance with coverage of not less than \$1,000,000 per occurrence and two million dollars (\$2,000,000) aggregate.

5. Other Insurance Provisions: The General Liability and Automobile Liability, shall contain the following provisions and endorsements:

- a. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant on a separate endorsement acceptable to the City Attorney.
- b. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
- c. Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.
- d. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect

Consultant's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.

- e. The Consultant's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
 - f. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after **30 days prior written notice** by certified mail has been given to the City. Ten days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.
6. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
 7. 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.
 8. The Consultant 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 anytime at the written request of the City, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
 9. The City, 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.
 10. If the Consultant 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 the Consultant under the contract.
 11. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
 12. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or it's Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.

13. 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.
14. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

O'Dwyer's
www.odwyerpr.com

EXHIBIT E

Certificate of Compliance With Labor Code § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I have complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor Code §§1860, 1861.)

CONSULTANT

Consultant, Title

(See next page for Exhibit)

EXHIBIT A: UUT ORDINANCE

ORDINANCE NO. 14-2010

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 3.40 RELATING TO
UTILITY USER TAX**

WHEREAS, upon incorporation, the City of Elk Grove (City) adopted the County of Sacramento's utility user tax policy as part of the municipal code; and

WHEREAS, the City Council desires to protect the City's revenue sources by updating the utility user tax policy to better reflect technological advances; and

WHEREAS, a broader tax base allows for a reduced tax rate with no detrimental fiscal impact to the City; and

WHEREAS, citizens of Elk Grove will have opportunity to vote on the change in taxation proposed in the ordinance herein on November 2, 2010.

NOW, THEREFORE, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose. The purpose of this ordinance is to amend Elk Grove Municipal Code Chapter 3.40 relating to utility user tax.

Section 2: Amendment.
Chapter 3.40 is hereby amended in the Elk Grove Municipal Code to read in its entirety as follows:

**Chapter 3.40
UTILITY USER TAX**

Sections:

- 3.40.010 Short title.
- 3.40.020 Definitions.
- 3.40.030 Constitutional, statutory, and other exemptions.
- 3.40.040 Telecommunications users' tax.
- 3.40.050 Video users' tax.
- 3.40.060 Electricity users' tax.
- 3.40.070 Gas users' tax.
- 3.40.080 Collection of tax from service users receiving purchase of gas or electricity.
- 3.40.090 Sewer tax.
- 3.40.100 Bundling taxable items with non-taxable items.
- 3.40.110 Substantial nexus/minimum contacts
- 3.40.120 Duty to collect – Procedures.
- 3.40.130 Collection penalties – Service suppliers.
- 3.40.140 Actions to collect.
- 3.40.150 Deficiency determination and assessment – Tax application errors.
- 3.40.160 Administrative remedy – Non-paying service users.

- 3.40.170 Additional powers and duties of the tax administrator.
- 3.40.180 Records.
- 3.40.190 Refunds.
- 3.40.200 Appeals.
- 3.40.210 No injunction/writ of mandate.
- 3.40.220 Notice of changes to chapter.
- 3.40.230 Effect of state and federal reference/authorization.
- 3.40.240 Independent audit of tax collection, exemption, remittance, and expenditures.
- 3.40.250 Remedies cumulative.
- 3.40.260 Interaction with prior tax.

3.40.010. Short title.

This chapter shall be known as the "Utility Users' Tax Ordinance."

3.40.020. Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

A. "A" Definitions.

1. "Ancillary telecommunications services" means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services.

2. "Ancillary video services" means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, interactive services or other communications services that are associated with or incidental to the provision, use or enjoyment of video services, including any other service presently available or future service that enhances, supports, or extends the use or enjoyment, of video services or of any other ancillary video service.

B. "B" Definitions.

1. "Billing address" means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

C. "C" Definitions.

1. "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

D. "D" Definitions.

1. "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

2. "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

E. Reserved for future use.

F. Reserved for future use.

G. "G" Definitions.

1. "Gas" means natural or manufactured gas or any alternate fuel which may be substituted therefor currently or in the future.

H. Reserved for future use.

I. Reserved for future use.

J. Reserved for future use.

K. Reserved for future use.

L. Reserved for future use.

M. "M" Definitions.

1. "Mobile telecommunications service" has the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. §124) and the regulations thereunder, as may be amended from time to time.

2. "Month" means a calendar month (or portion thereof).

N. "N" Definitions.

1. "Non-utility service supplier" means:

a. A service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (15 U.S.C. §79z-5a), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

b. An electric service provider (ESP), electricity broker, marketer, aggregator, pool, operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; or

c. A gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

O. Reserved for future use.

P. "P" Definitions.

1. "Paging service" means a "telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers; whether such transmissions include messages and/or sounds.

2. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

3. "Post-paid telecommunications service" means the telecommunications service obtained by making a payment on a telecommunication-by-telecommunication basis whether through the use of a credit card or any other payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunications service.

4. "Prepaid telecommunications service" means the right to access telecommunications services, which must be paid for in advance and which enables the origination of telecommunications services and that is sold in predetermined units or dollars of which the number declines with use.

5. "Private telecommunications service" means a telecommunications service that entitles the customer the exclusive or priority use of a telecommunications channel or limited group of channels available only to a limited set of users between or among a limited set termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A telecommunications channel is a physical or virtual path of telecommunications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the telecommunications).

Q. Reserved for future use.

R. Reserved for future use.

S. "S" Definitions.

1. "Service address" means the residential street address or the business street address of the service user. For a telecommunications or video service user, "service address" means either:

a. The location of the service user's telecommunications or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid;

b. If the location in EGMC Section 3.40.020(S)(1)(a) of this definition is unknown or mobile (e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use; or

c. For prepaid telecommunications service, "service address" means the location associated with the service number.

2. "Service supplier" means any person and/or the City that provides any service subject to any tax hereunder, including, without limitation, telecommunications, video, electric, gas, water and/or sewer service to a user of such service within the City.

3. "Service user" means a person required to pay a tax imposed under the provisions of this chapter.

4. "Streamlined Sales and Use Tax Agreement" means the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, and as it is amended from time to time.

T. "T" Definitions.

1. "Tax administrator" means the Finance Director of the City or designee.

2. "Telecommunications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points whatever the technology used. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Telecommunications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with "telecommunications services." "Telecommunications services" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunications service; mobile telecommunications service; prepaid telecommunications service; post-paid telecommunications service; private telecommunications service; paging service; 800 service (or any other toll-free numbers designated by the Federal Telecommunications Commission); 900 service (or any other similar numbers designated by the Federal Telecommunications Commission for services whereby subscribers who call in to pre-recorded or live service).

U. Reserved for future use.

V. "V" Definitions.

1. "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

2. "Video programming" means those programming services commonly provided to subscribers by a "video service supplier," including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

3. "Video services" means "video programming" and any and all services related to the providing, recording, delivering, use or enjoyment of "video programming" (including origination programming and programming using internet protocol, e.g., IP-TV and IP-Video) using one or more channels by a "video service supplier," regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, "telecommunications services," or interactive

communication services that are functionally integrated with “video services.”

4. “Video service supplier” means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telecommunications. A “video service supplier” includes, but is not limited to, multichannel video programming distributors (as defined in 47 U.S.C.A. §522(13)); open video systems (OVS) suppliers; suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution, services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand); direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

5. “VoIP (voice over Internet protocol)” means the digital process of making and receiving real-time voice transmissions over any Internet protocol network.

6. “Voice mail service” means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

W. Reserved for future use.

X. Reserved for future use.

Y. Reserved for future use.

Z. Reserved for future use.

AA. “Number” Definitions.

1. “800 service” means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name; “800,” “855,” “866,” “877,” and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

2. “900 service” means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement of live service. “900 service” does not include the charge for collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service and any subsequent numbers designated by the Federal Communications Commission.

3.40.030. Constitutional, statutory, and other exemptions

A. Nothing in this chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in

violation of a federal or state statute, the Constitution of the United States or the Constitution of the state.

B. Any service user that is exempt from the tax imposed by this chapter pursuant to subsection A of this section shall file an application with the tax administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the tax administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the tax administrator, such service user shall give the tax administrator timely written notice of any change in utility service suppliers so that the tax administrator can properly notify the new utility service supplier of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of utility users' taxes collected and remitted to the tax administrator from such service user as a result of such noncompliance.

The decision of the tax administrator may be appealed pursuant to EGMC Section 3.40.200 of this chapter. Filing an application with the tax administrator and appeal to the City Manager pursuant to EGMC Section 3.40.200 of this chapter is a prerequisite to a suit thereon.

3.40.040. Telecommunications users' tax.

A. There is hereby imposed a tax upon every person in the City using telecommunications services. The tax imposed by this section shall be at the rate of two and 25/100^{ths} (2.25%) percent of the charges made for such services and shall be collected from the service user by the telecommunications services supplier or its billing agent. There is a rebuttable presumption that telecommunications services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunications services.

B. "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. §124). The tax administrator may issue and disseminate to telecommunications service suppliers, which are subject to the tax collection requirements of this chapter, sourcing rules for the taxation of other telecommunications services, including but not limited to post-paid telecommunications services, and prepaid telecommunications services, provided that, such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation (e.g., Streamline Sales and Use Tax Agreement).

C. The tax administrator may issue and disseminate to telecommunications service suppliers, which are subject to the tax collection requirements of this chapter, an administrative ruling, identifying those telecommunications services, or charges therefor, that are subject to or not subject to the tax of subsection A of this section.

D. As used in this section, the term “telecommunications services” includes, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunications services; late payment fees; detailed billing; central office and custom, calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; and local number portability charges. “Telecommunications services” shall not include digital downloads that are not “ancillary telecommunications services,” such as books, music, ringtones, games, and similar digital products.

E. To prevent actual multi-jurisdictional taxation of telecommunications services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another state or local jurisdiction on such telecommunications services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

F. The tax on telecommunications services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twentieth (20th) day of the following month.

3.40.050 Video users’ tax.

A. There is hereby imposed a tax upon every person in the City using video services. The tax imposed by this section shall be at the rate of two and 25/100^{ths} (2.25%) percent of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City’s boundaries, and such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

B. As used in this section, the term “charges” shall include, but is not limited to, charges for the following:

1. Regulatory fees and surcharges, franchise fees and access fees (Public Education and government [PEG] fees);
2. Initial installation of equipment necessary for provision and receipt of telecommunications services;
3. Late fees, collection fees, bad debt recoveries, and return check fees;
4. Activation fees, reactivation fees, and reconnection fees;
5. Video programming and video services;
6. Ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive,

services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);

7. Equipment leases (e.g., remote, recording and/or search devices; converters); and
8. Service calls, service protection plans, name changes, changes of services, and special services.

C. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.

D. The tax administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those video services or charges therefore, that are subject to or not subject to the tax of EGMC Section 3.40.050(A) of this section.

E. The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twentieth (20th) day of the following month.

3.40.060 Electricity users' tax

A. There is hereby imposed a tax, upon every person using electricity in the City. The tax imposed by this section shall be at the rate of two and 25/100^{ths} (2.25%) percent of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

B. As used in this section, the term “charges” shall apply to all services, components and items, that are: 1) necessary for or common to the receipt, use or enjoyment of electric service; or 2) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

1. Energy charges;
2. Distribution or transmission charges;
3. Metering charges;
4. Stand-by, reserves, firming, ramping, voltage, support, regulation, emergency, or other similar charges for supplemental services to self-generation

service users;

5. Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric, service; and

6. Charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.

D. The tax administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential, and commercial/industrial customers in the of the City, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The tax administrator thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components, and items which are: 1) necessary for or common to the receipt, use or enjoyment of electric service; or 2) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of EGMC Section 3.40.060(A) of this section.

E. As used in this section, the term "using electricity" shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

F. The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in EGMC Section 3.40.080. All, other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the tax administrator and must be received by the tax administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user which must be received by the tax administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent remittance that becomes due.

3.40.070 Gas users' tax.

A. There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this section shall be at the rate of two and 25/100^{ths} (2.25%) percent of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product.

B. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: 1) necessary for or common to the receipt, use or enjoyment of gas service; or 2) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

2. Gas transportation charges (including interstate charges to the extent not included in commodity charges);

3. Storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

4. Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and

5. Charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

D. The tax administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal

regulatory agencies as a condition of providing such gas service. The tax administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: 1) necessary for or common to the receipt, use or enjoyment of gas service; or 2) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of EGMC Section 3.40.070(A) of this section.

E. There shall be excluded from the calculation of the tax imposed in this section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

F. The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in EGMC Section 3.40.080. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the tax administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent remittance that becomes due.

3.40.080 Collection of tax from service users receiving purchase of gas or electricity.

A. Any service user subject to the tax imposed by EGMC Section 3.40.060 or by EGMC Section 3.40.070, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier; or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the tax administrator and shall remit the tax due directly to the tax administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in EGMC Sections 3.40.060(B) and 3.40.070(B). In lieu of paying said actual tax, the service user may, at its option, remit to the tax administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator in writing, may be applied against any subsequent tax bill that becomes due.

B. The tax administrator may require said service user to identify its non-utility service supplier, and otherwise provide, subject to audit: invoices; books of account; or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or if the administrative cost of calculating

the tax in the opinion of the tax administrator is excessive, the tax administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

3.40.090 Sewer tax.

A. There is hereby imposed a tax upon every person in the City using sewer services within the City. The tax imposed by this section shall be at the rate of two and 25/100^{ths} (2.25%) percent of the charges made for such sewer service. The tax shall be paid by the person using such sewer service.

B. As used in this section, the term "charges" shall apply to all services, components and items that are: 1) necessary for or common to the receipt, use or enjoyment of sewer service; or 2) currently are or historically have been included in a single or bundled rate for sewer service to retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. Customer charges, late charges, service establishment or reestablishment charges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of sewer service; and

2. Charges, fees, or surcharges for sewer services or programs, which are mandated by the City, a state, or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. The tax on sewer service imposed by this section shall be collected from the service user by the sewer service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twentieth (20th) day of the following month.

3.40.100 Bundling taxable items with non-taxable items.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are non-taxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation of the taxable and non-taxable services.

3.40.110 Substantial nexus / minimum contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under

this chapter, “substantial nexus” and “minimum contacts” shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunications service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that “substantial nexus/ minimum contacts” exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent, affiliate, or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of services that are subject to a tax under this chapter.

3.40.120 Duty to collect – Procedures.

A. Collection by Service Suppliers. The duty of service suppliers to collect and remit the taxes imposed by the provisions of this chapter shall be performed as follows:

1. The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, EGMC Section 3.40.160 shall apply.

2. The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service, where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a service user receives more than one (1) billing, one (1) or more being for different periods than another, the duty to collect shall arise, separately for each billing period.

B. Filing Return and Payment. Each person required by this chapter to remit a tax shall file a return to the tax administrator, on forms approved by the tax administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the tax administrator. The tax administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Section 7284.6 of the Revenue and Tax Code, the tax administrator and his or her agents shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

3.40.130 Collection penalties – Service Suppliers.

A. Taxes collected by service supplier from a service user are delinquent if not received by the tax administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the tax administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

B. If the person required to collect and/or remit the utility users' tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the tax administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen (15%) percent of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of zero and 75/100^{ths} (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. The tax administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of fifteen (15%) percent of the amount of the tax collected and/or required to be remitted, or as recomputed by the tax administrator.

D. For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

E. Notwithstanding the foregoing, the tax administrator may, in his or her discretion, modify the due dates of this chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users' tax, or otherwise legally established, to create a central payment location or mechanism.

3.40.140 Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the tax administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. §507(a)(8)(C).

3.40.150 Deficiency determination and assessment – Tax application errors.

A. The tax administrator shall make a deficiency determination if he or she determines that any service supplier or service user required to pay, collect, and/or

remit taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly applying or failing to apply the tax to one (1) or more taxable services or charges. Nothing herein shall require that the tax administrator institute proceedings under EGMC Section 3.40.150 if, in the opinion of the tax administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. The tax administrator shall mail a notice of such deficiency determination to the person or entity allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of zero and $75/100^{\text{ths}}$ (0.75%) percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) days after the date of service of such notice, the person or entity allegedly owing the tax may request in writing to the tax administrator for a hearing on the matter.

C. If the person or entity allegedly owing the tax fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment and shall immediately be due and owing to the City. If the person requests a hearing, the tax administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the tax administrator to such person or entity at least ten (10) days prior to the hearing, and, if the tax administrator desires said person or entity to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. At the time fixed for the hearing, the tax administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the tax administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the tax administrator shall issue a final assessment, (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to the person or entity owing the tax. The decision of the tax administrator may be appealed pursuant to EGMC Section 3.40.200. Filing an application with the tax administrator and appeal to the City Manager pursuant to EGMC Section 3.40.200 is a prerequisite to a suit thereon.

E. Payment of the final assessment shall become delinquent if not received by the tax administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen (15%) percent on the total amount of the assessment, along with interest at the rate of zero and $75/100^{\text{ths}}$ (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this EGMC Section 3.40.150(E).

F. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.40.160 Administrative remedy – Non-paying service users.

A. Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the tax administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this chapter from certain, named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this chapter. Nothing herein shall require that the tax administrator institute proceedings under this section if, in the opinion of the tax administrator, the cost of collection or enforcement likely outweighs the tax benefit.

B. In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen (15%) percent of the total tax that is owed, and shall pay interest at the rate of zero and 75/100^{ths} (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. The tax administrator shall notify the non-paying service user that the tax administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

D. If the service user fails to remit the tax to the tax administrator within thirty (30) days from the date of the service of the notice upon him or her, the tax administrator may impose an additional penalty of fifteen (15%) percent of the amount of the total tax that is owed.

3.40.170 Additional powers and duties of the tax administrator.

A. The tax administrator shall have the power and duty to enforce each and all of the provisions of this chapter.

B. The tax administrator may adopt administrative rules and regulations consistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the tax administrator's office. To the extent that the tax administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the tax administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Section 53750 of the Government Code or otherwise. The tax administrator is not authorized to amend the City's methodology for purposes of Section 53750 of the Government Code, and the City does not waive or abrogate its ability to impose the utility users' tax in full as a result of promulgating administrative rulings or entering into agreements.

C. Upon a proper showing of good cause, the tax administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby: 1) conform to the billing procedures of a

particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or 2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the tax administrator's office, and are voidable by the tax administrator or the City at any time.

D. The tax administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The tax administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the tax administrator. Upon completion of the audit, the tax administrator may make a deficiency determination pursuant to EGMC Section 3.40.150 of this chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the tax administrator. If said person is unable or unwilling to provide sufficient records to enable the tax administrator to verify compliance with this chapter, the tax administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable, presumption of correctness.

E. Upon receipt of a written request of a taxpayer, and for good cause, the tax administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of zero and 75/100^{ths} (0.75%) percent per month, prorated for any portion thereof.

F. The tax administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this chapter.

G. Notwithstanding any provision in this chapter to the contrary, the tax administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the tax administrator shall take into consideration industry practice or other precedence.

3.40.180 Records.

A. It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this chapter to keep and preserve for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and remittance to the tax administrator, which records the tax administrator shall have the right to inspect at a reasonable time.

B. The City, through the City Council, may issue an administrative subpoena to compel a person to deliver to the tax administrator, copies of all records deemed necessary by the tax administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the tax administrator on or before the due date provided in the administrative subpoena, such

person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

C. The tax administrator is authorized to execute a nondisclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to Sections 7284.6 and 7284.7 of the California Revenue and Tax Code.

D. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: 1) provide to the tax administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and 2) upon request of the tax administrator, deliver, or effect the delivery of any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the tax administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.

E. If any person subject to recordkeeping under this section unreasonably denies the tax administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the tax administrator may impose a penalty of Five Hundred and no/100^{ths} (\$500.00) Dollars on such person for each day following: 1) the initial date that the person refuses to provide such access; or 2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.

3.40.190 Refunds.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter from a service user or service supplier, it may be refunded as provided in this section:

A. The tax administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter from a service user or service supplier, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the tax administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this subsection.

B. The tax administrator, where the claim is less than the settlement authority established in or in accordance with any applicable section of the Code, or the City Council where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the tax administrator/City Council fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the tax administrator/City Council on the forty-fifth (45th) day. The tax administrator shall

give notice of the action in a form which substantially complies with that set forth in Section 913 of the Government Code.

C. The filing of a written claim pursuant to Section 935 of the Government Code is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of Sections 945.6 and 946 of the Government Code.

D. Notwithstanding the notice provisions of EGMC Section 3.40.190(A) of this section, the tax administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this chapter, to claim credit for such overpayment against the amount of tax which is due the City upon subsequent monthly return(s) to the tax administrator, provided that: 1) such credit is claimed in a return dated no later than one (1) year from the date of overpayment or erroneous collection of said tax; 2) the tax administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and 3) in the case of an overpayment by a service user to the service supplier that has been remitted to the City, the tax administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

E. Notwithstanding EGMC Sections 3.40.190(A) through (D), a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a deficiency determination or assessment by the tax administrator in connection with an audit instituted by the tax administrator pursuant to EGMC Section 3.40.170(D). A service supplier shall not be entitled to said credit unless it first clearly establishes, to the satisfaction of the tax administrator, the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one (1) year written claim requirement of this section.

3.40.200 Appeals.

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to EGMC Section 3.40.190), deficiency determination, assessment, or administrative ruling of the tax administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to EGMC Section 3.40.190 of this chapter), deficiency determination, assessment, or administrative ruling of the tax administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. (See Section 935(b) of the Government Code.) Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to EGMC Section 3.40.190 of this chapter), deficiency determination, assessment, or administrative ruling, of the tax administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the tax administrator which aggrieved the service user or service supplier.

C. The matter shall be scheduled for hearing before an independent hearing officer

selected by the City Manager, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials; at least five (5) days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing the appealing party, the tax administrator, and any other interested person, may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

D. Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Section 1094.6 of the Code of Civil Procedure.

E. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third (3rd) day following the date of mailing, as established by a proof of mailing.

3.40.210 No injunction/writ of mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected and/or remitted.

3.40.220 Notice of changes to chapter.

If a tax under this chapter is added, repealed, increased, reduced, or the tax base is changed, the tax administrator shall follow the notice requirements of Section 799 of the California Public Utilities Code.

3.40.230 Effect of state and federal reference/authorization

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would, result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

3.40.240 Independent audit of tax collection, exemption, remittance, and expenditures.

The City shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

3.40.250 Remedies cumulative

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Section 12650 of the Government Code, et seq.) and the California Unfair Practices Act (Section 17070 of Business and Professions Code, et seq.), are cumulative. The use of one (1) or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.40.260 Interaction with prior tax.

A. Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this amended chapter as soon as feasible after the effective date of the ordinance codified in this chapter, but in no event later than permitted by Section 799 of the California Public Utilities Code.

B. Satisfaction of Tax Obligation by Service Users. Prior to March 1, 2011, any person who pays the tax levied pursuant to this chapter, as it existed prior to its amendment as provided herein, with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to this chapter as amended herein, with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a single utility charge during the transition period from the prior Utility Users' Tax ordinance to the amended Utility Users' Tax ordinance (which transition period ends March 1, 2011) and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.

C. In the event that a final court order should determine that the election enacting this chapter (as amended herein) is invalid for whatever reason, or that any tax imposed under this chapter (as amended herein) is invalid in whole or in part, then the taxes imposed under this chapter, as it existed prior to its amendment as provided herein, shall automatically continue to apply with respect to any service for which the tax levied pursuant to this chapter has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by this chapter is not valid. However, in the event of an invalidation, any tax, (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this chapter (as amended herein) shall be deemed to satisfy the tax imposed under this chapter, as it existed prior to its amendment as provided herein, on that service, so long as the tax is paid with respect to a service provided no later than six (6) months subsequent to the date on which the final court order is published.

Section 3: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 5: Savings Clause.

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 6: Amendments.

This ordinance may be amended from time to time by the City Council, provided the amendments are of an administrative nature only and do not affect the methodology or amount of the tax established by this ordinance.

Section 7: Majority Approval; Effective Date.

This ordinance shall be effective only if approved by a majority of voters voting on this ordinance and shall go into effect ten (10) days after the vote is declared by the City Council.

ORDINANCE: 14-2010
INTRODUCED: May 26, 2010
ADOPTED:
EFFECTIVE:

SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, INTERIM CITY CLERK

SUSAN COCHRAN, CITY ATTORNEY

Date signed: _____

O'Dwyer's
www.odwyerpr.com