

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 RESOLUTION NO. RES-16-0061

2
3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH AUTHORIZING THE CITY
5 MANAGER TO EXECUTE AGREEMENTS WITH THE
6 STATE BOARD OF EQUALIZATION FOR
7 IMPLEMENTATION OF A LOCAL TRANSACTION AND USE
8 TAX

9
10 WHEREAS, on June 7, 2016, the City Council approved amending the
11 Long Beach Municipal Code and providing for a local transactions and use tax; and

12 WHEREAS, the State Board of Equalization ("Board") administers and collects
13 the transactions and use taxes for all applicable jurisdictions within the state; and

14 WHEREAS, the Board will be responsible to administer and collect the
15 transactions and use tax for the City; and

16 WHEREAS, the Board requires that the City enter into a Preparatory
17 Agreement and an Administration Agreement prior to implementation of said taxes; and

18 WHEREAS, the Board requires that the City Council authorize the
19 agreements;

20 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
21 follows:

22 Section 1. That the City Manager is authorized to execute the
23 Preparatory Agreement attached hereto as Exhibit "A" and the Administrative Agreement
24 attached hereto as Exhibit "B".

25 Section 2. This resolution shall take effect immediately upon its adoption
26 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

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I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of JULY 19th , 2016, by the following vote:

Ayes: Councilmembers: Gonzalez, Pearce, Price, Supernaw
Mungo, Andrews, Uranga, Richardson

Noes: Councilmembers: None.

Absent: Councilmembers: Austin.

Maria delia L. Gamin
City Clerk

EXHIBIT "A"

1 AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE CITY'S
2 TRANSACTIONS AND USE TAX ORDINANCE

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4 In order to prepare to administer a transactions and use tax ordinance
5 adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of
6 Division 2 of the Revenue and Taxation Code, the CITY OF LONG BEACH, hereinafter
7 called City, and the STATE BOARD OF EQUALIZATION, hereinafter called Board, do
8 agree as follows:

9 1. The Board agrees to enter into work to prepare to administer and
10 operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue
11 and Taxation Code which has been approved by a majority of the electors of the City and
12 whose ordinance has been adopted by the City.

13 2. City agrees to pay to the Board at the times and in the amounts
14 hereinafter specified all of the Board's costs for preparatory work necessary to administer
15 the City's transactions and use tax ordinance. The Board's costs for preparatory work
16 include costs of developing procedures, programming for data processing, developing and
17 adopting appropriate regulations, designing and printing forms, developing instructions for
18 the Board's staff and for taxpayers, and other appropriate and necessary preparatory costs
19 to administer a transactions and use tax ordinance. These costs shall include both direct
20 and indirect costs as specified in Section 11256 of the Government Code.

21 3. Preparatory costs may be accounted for in a manner which conforms
22 to the internal accounting and personnel records currently maintained by the Board. The
23 billings for costs may be presented in summary form. Detailed records of preparatory costs
24 will be retained for audit and verification by the City.

25 4. Any dispute as to the amount of preparatory costs incurred by the
26 Board shall be referred to the State Director of Finance for resolution, and the Director's
27 decision shall be final.

28 5. Preparatory costs incurred by the Board shall be billed by the Board

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1 periodically, with the final billing within a reasonable time after the operative date of the
2 ordinance. City shall pay to the Board the amount of such costs on or before the last day
3 of the next succeeding month following the month when the billing is received.

4 6. The amount to be paid by City for the Board's preparatory costs shall
5 not exceed one hundred seventy-five thousand dollars (\$175,000) (Revenue and Taxation
6 Code Section 7272.)

7 7. Communications and notices may be sent by first class United States
8 mail. Communications and notices to be sent to the Board shall be addressed to:

9 State Board of Equalization
10 P.O. Box 942879 MIC: 27
11 Sacramento, California 94279-0027
12 Attention: Supervisor,
13 Local Revenue Allocation Unit

14 Communications and notices to be sent to City shall be addressed to:

15 City of Long Beach
16 333 West Ocean Boulevard, Long Beach, California 90802
17 Attn: City Manager

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8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Board has received all payments due from City under the terms of this agreement.

STATE BOARD OF EQUALIZATION

_____, 2016 By _____
Administrator
Local Revenue Allocation Unit

"Board"

CITY OF LONG BEACH, a municipal corporation

_____, 2016 By _____
City Manager

"City"

This Agreement is approved as to form on _____, 2016.

CHARLES PARKIN, City Attorney

By _____
Deputy

EXHIBIT “B”

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Long Beach, CA 90802-4664

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AGREEMENT FOR STATE ADMINISTRATION
OF CITY'S TRANSACTIONS AND USE TAXES

The City Council of the CITY OF LONG BEACH has adopted, and the voters of the CITY OF LONG BEACH (hereafter called "City" or "District") have approved by the required majority vote, the CITY OF LONG BEACH Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the STATE BOARD OF EQUALIZATION, (hereinafter called the "Board") and the City do agree as follows:

ARTICLE I
DEFINITIONS

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

A. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

B. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No. _____, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

ARTICLE II
ADMINISTRATION AND COLLECTION OF CITY TAXES

A. Administration. The Board and City agree that the Board shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law which are not

1 inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be
2 applicable to the administration and operation of the City Ordinance. City agrees that
3 money collected pursuant to the City Ordinance may be deposited into the State Treasury
4 to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any
5 authorized purpose, including making refunds, compensating and reimbursing the Board
6 pursuant to Article IV of this Agreement, and transmitting to City the amount to which City
7 is entitled.

8 C. Transmittal of money.

9 1. For the period during which the tax is in effect, and except as
10 otherwise provided herein, all district taxes collected under the provisions of the City
11 Ordinance shall be transmitted to City periodically as promptly as feasible, but not less
12 often than twice in each calendar quarter.

13 2. For periods subsequent to the expiration date of the tax
14 whether by City's self-imposed limits or by final judgment of any court of the State of
15 California holding that City's ordinance is invalid or void, all district taxes collected under
16 the provisions of the City Ordinance shall be transmitted to City not less than once in each
17 calendar quarter.

18 3. Transmittals may be made by mail or electronic funds transfer
19 to an account of the City designated and authorized by the City. A statement shall be
20 furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this
21 Agreement.

22 D. Rules. The Board shall prescribe and adopt such rules and
23 regulations as in its judgment are necessary or desirable for the administration and
24 operation of the City Ordinance and the distribution of the district taxes collected
25 thereunder.

26 E. Preference. Unless the payor instructs otherwise, and except as
27 otherwise provided in this Agreement, the Board shall give no preference in applying
28 money received for state sales and use taxes, state-administered local sales and use

1 taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys
2 collected to the satisfaction of the claims of the State, cities, counties, cities and counties,
3 redevelopment agencies, other districts, and City as their interests appear.

4 F. Security. The Board agrees that any security which it hereafter
5 requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon
6 such terms that it also will be available for the payment of the claims of City for district taxes
7 owing to it as its interest appears. The Board shall not be required to change the terms of
8 any security now held by it, and City shall not participate in any security now held by the
9 Board.

10 G. Records of the Board. When requested by resolution of the legislative
11 body of the City under section 7056 of the Revenue and Taxation Code, the Board agrees
12 to permit authorized personnel of the City to examine the records of the Board, including
13 the name, address, and account number of each seller holding a seller's permit with a
14 registered business location in the City, pertaining to the ascertainment of transactions and
15 use taxes collected for the City. Information obtained by the City from examination of the
16 Board's records shall be used by the City only for purposes related to the collection of
17 transactions and use taxes by the Board pursuant to this Agreement.

18 H. Annexation. City agrees that the Board shall not be required to give
19 effect to an annexation, for the purpose of collecting, allocating, and distributing District
20 transactions and use taxes, earlier than the first day of the calendar quarter which
21 commences not less than two months after notice to the Board. The notice shall include
22 the name of the county or counties annexed to the extended City boundary. In the event
23 the City shall annex an area, the boundaries of which are not coterminous with a county or
24 counties, the notice shall include a description of the area annexed and two maps of the
25 City showing the area annexed and the location address of the property nearest to the
26 extended City boundary on each side of every street or road crossing the boundary.

27 ARTICLE III

28 ALLOCATION OF TAXES

1 A. Allocation. In the administration of the Board's contracts with all
 2 districts that impose transactions and use taxes imposed under ordinances, which comply
 3 with Part 1.6 of Division 2 of the Revenue and Taxation Code:

4 1. Any payment not identified as being in payment of liability owing
 5 to a designated district or districts may be apportioned among the districts as their interest
 6 appear, or, in the discretion of the Board, to all districts with which the Board has contracted
 7 using ratios reflected by the distribution of district taxes collected from all taxpayers.

8 2. All district taxes collected as a result of determinations or
 9 billings made by the Board, and all amounts refunded or credited may be distributed or
 10 charged to the respective districts in the same ratio as the taxpayer's self-declared district
 11 taxes for the period for which the determination, billing, refund or credit applies.

12 B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax
 13 with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing
 14 on the application for registration or on the certificate of ownership may be used by the
 15 Board in determining the place of use.

16 ARTICLE IV
 17 COMPENSATION

18 The City agrees to pay to the Board as the Board's cost of administering the
 19 City Ordinance such amount as is provided for by law. Such amounts shall be deducted
 20 from the taxes collected by the Board for the City.

21
 22 ARTICLE V
 23 MISCELLANEOUS PROVISIONS

24 A. Communications. Communications and notices may be sent by first
 25 class United States mail to the addresses listed below, or to such other addresses as the
 26 parties may from time to time designate. A notification is complete when deposited in the
 27 mail.

28 Communications and notices to be sent to the Board shall be addressed to:

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State Board of Equalization
P.O. Box 942879
Sacramento, California 94279-0027
Attention: Supervisor,
Local Revenue Allocation Unit

Communications and notices to be sent to the City shall be addressed to:
The City of Long Beach
333 West Ocean Boulevard, Long Beach, California 90802
Attn: City Manager

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on October 1, 2016 . This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Board written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

ARTICLE VI

ADMINISTRATION OF TAXES IF THE
ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders

1 a final and non-appealable judgment that the tax is valid.

2 2. If the tax is determined to be unconstitutional or otherwise
3 invalid, the City shall transmit to the Board the moneys retained in escrow, including any
4 accumulated interest, within ten days of the judgment of the trial court in the litigation
5 awarding costs and fees becoming final and non-appealable.

6 B Costs of administration. Should a final judgment be entered in any
7 court of the State of California, holding that City's Ordinance is invalid or void, and requiring
8 a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement,
9 the parties mutually agree that:

10 1. Board may retain all payments made by City to Board to
11 prepare to administer the City Ordinance.

12 2. City will pay to Board and allow Board to retain Board's cost of
13 administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

14 3. City will pay to Board or to the State of California the amount of
15 any taxes plus interest and penalties, if any, that Board or the State of California may be
16 required to rebate or refund to taxpayers.

17 4. City will pay to Board its costs for rebating or refunding such
18 taxes, interest, or penalties. Board's costs shall include its additional cost for developing
19 procedures for processing the rebates or refunds, its costs of actually making these
20 refunds, designing and printing forms, and developing instructions for Board's staff for use
21 in making these rebates or refunds and any other costs incurred by Board which are
22 reasonably appropriate or necessary to make those rebates or refunds. These costs shall
23 include Board's direct and indirect costs as specified by Section 11256 of the Government
24 Code.

25 5. Costs may be accounted for in a manner, which conforms to
26 the internal accounting, and personnel records currently maintained by the Board. The
27 billings for such costs may be presented in summary form. Detailed records will be retained
28 for audit and verification by City.

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6. Any dispute as to the amount of costs incurred by Board in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Board in connection with such refunds shall be billed by Board on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Board shall bill City on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. City shall pay to Board the amount of such costs on or before the last day of the succeeding month and shall pay to Board the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Board costs incurred in making those refunds.

STATE BOARD OF EQUALIZATION

_____, 2016

By _____
Administrator
Local Revenue Allocation Unit

"Board"

CITY OF LONG BEACH, a municipal corporation

_____, 2016

By _____
City Manager

"City"

This Agreement is approved as to form on _____, 2016.

CHARLES PARKIN, City Attorney

By _____
Deputy