



# CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

# R-10

333 West Ocean Boulevard 6<sup>th</sup> Floor • Long Beach, CA 90802 • (562) 570-5400 • Fax (562) 570-5414

July 19, 2016

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Adopt a Resolution authorizing the City Manager, or designee, to execute a Preparatory Agreement and an Administration Agreement, and any amendments thereto, with the California State Board of Equalization (BOE), to administer the collection of revenue from the Transactions and Use Tax adopted by the voters on June 7, 2016 as Measure A; and,

Adopt a Resolution authorizing the City Manager, or designee, and MuniServices, LLC, to examine records relating to the Transactions and Use Tax, collected by the BOE. (Citywide)

## DISCUSSION

With the adoption of Resolution 16-017 on February 23, 2016, the City placed a 1 percent Transactions and Use Tax measure (Measure A) and a Budget Stabilization (Rainy Day) Fund measure (Measure B) on the June 7, 2016 ballot. On March 1, 2016, the City Council adopted Ordinance 1516, adding Chapter 3.62 to the Long Beach Municipal Code, to impose a Transactions and Use Tax and establish a Budget Stabilization Fund subject to the outcome of the June 7, 2016 election.

Measure A, and the accompanying Measure B, were approved by a majority of City of Long Beach voters on June 7, 2016.

The California State Board of Equalization (BOE) administers and collects the Transactions and Use Taxes for all jurisdictions within the State. Accordingly, they will also be responsible for the administration and collection of Measure A. In order to allow the BOE to complete these tasks and complete appropriate preparations for collection of the new tax beginning January 1, 2017, the BOE requires adoption of the attached Resolution authorizing a City official to execute the following two agreements:

1. Agreement for Preparation to Administer and Operate City's Transactions and Use Tax Ordinance.

2. Agreement for State Administration of City's Transactions and Use Taxes.

Additionally, since 1983, the City has contracted for services of revenue recovery firms to provide sales and use tax auditing, projection and recovery services. The City has retained MuniServices, LLC (MuniServices), since 2007 to provide technical expertise to perform these services, which are not available within the City. These services include the examination of sales and use tax records to ensure that these taxes are properly attributed to the City and facilitating the process of correcting misallocations by the BOE so that revenue is remitted to the City.

State law requires that local jurisdictions adopt a Resolution authorizing consultants to review BOE records in order to perform revenue recovery services. Accordingly, in a separate action, staff is recommending that the City Council adopt the attached Resolution authorizing an agreement with MuniServices for the provision of these services for Measure A.

This matter was reviewed by Deputy City Attorney Amy R. Webber and by Assistant Finance Director Lea Eriksen on July 1, 2016.

TIMING CONSIDERATIONS

City Council action is requested on July 19, 2016, so that the BOE can promptly begin their preparation for Measure A's implementation.

FISCAL IMPACT

The passage of Measure A is projected to generate approximately \$48 million annually in additional transactions and use tax revenue for the City at the 1 percent level. Pursuant to Section 7272 of the State Revenue and Taxation Code, the City must reimburse the BOE for its preparatory and administration costs. The BOE charges approximately 0.53 percent of the revenue collected for transactions and use taxes, and an additional one-time setup fee of approximately \$150,000. These costs will be netted out of the revenue remitted to the City; as a result, no appropriation is needed.

MuniServices currently provides sales and use tax audit services to the City, and it is anticipated that additional revenue auditing services related to Measure A will commence in FY 17. The net cost of the additional scope of work cannot be determined until the tax has been fully implemented. There is no local job impact associated with this recommendation.

HONORABLE MAYOR AND CITY COUNCIL  
July 19, 2016  
Page 3

**SUGGESTED ACTION:**

Approve recommendation.

Respectfully submitted,



**JOHN GROSS  
DIRECTOR OF FINANCIAL MANAGEMENT**

JG:JJM  
K:\Exec\Council Letters 07-01-19 Agreements with SBOE for Measure A implementation.docx

**ATTACHMENTS**

**APPROVED:**

  
**PATRICK H. WEST  
CITY MANAGER**

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

1 RESOLUTION NO.

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 \_\_\_\_\_, 2016, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

# EXHIBIT “A”

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

3  
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”

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
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



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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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CHARLES PARKIN, City Attorney  
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1                   6. Any dispute as to the amount of costs incurred by Board in  
2 refunding taxes shall be referred to the State Director of Finance for resolution and the  
3 Director's decision shall be final.

4                   7. Costs incurred by Board in connection with such refunds shall  
5 be billed by Board on or before the 25th day of the second month following the month in  
6 which the judgment of a court of the State of California holding City's Ordinance invalid or  
7 void becomes final. Thereafter Board shall bill City on or before the 25th of each month  
8 for all costs incurred by Board for the preceding calendar month. City shall pay to Board  
9 the amount of such costs on or before the last day of the succeeding month and shall pay  
10 to Board the total amount of taxes, interest, and penalties refunded or paid to taxpayers,  
11 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

1 RESOLUTION NO.  
2

3 A RESOLUTION OF THE CITY COUNCIL OF THE  
4 CITY OF LONG BEACH DESIGNATING MUNISERVICES,  
5 LLC AS AN AUTHORIZED CITY CONSULTANT TO  
6 EXAMINE SALES AND USE TAX RECORDS OF THE CITY  
7 OF LONG BEACH  
8

9 WHEREAS, pursuant to California Revenue and Taxation Code Section  
10 7200 et seq., the City of Long Beach has adopted a sales and use tax ordinance which  
11 imposes a tax and provides that the State Board of Equalization can administer and  
12 collect such tax; and

13 WHEREAS, pursuant to California Revenue and Taxation Code Section  
14 7056, the City of Long Beach may designate any officer, employee or any other person to  
15 examine all of the sales and use tax records of the State Board of Equalization pertaining  
16 to sales and use taxes collected for the City; and

17 WHEREAS, the City of Long Beach has entered an agreement for tax audit  
18 and information services with MuniServices, LLC, and finds that it is desirable and  
19 necessary for MuniServices, LLC to examine such records maintained by the State Board  
20 of Equalization on behalf of the City of Long Beach;

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

23 Section 1. That MuniServices, LLC is hereby designated by the City of  
24 Long Beach as a representative of the City for purposes of examining sales and use tax  
25 records of the State Board of Equalization pertaining to sales and use taxes collected by  
26 said Board on behalf of the City of Long Beach.

27 Section 2. MuniServices, LLC meets all of the following conditions:

28 A. MuniServices, LLC has an existing agreement with the City to

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examine sales tax records;

B. MuniServices, LLC is required by the agreement to disclose information contained in, or derived from, those sales tax records only to an officer or employee of the City who is authorized to examine the information;

C. MuniServices, LLC is prohibited by the agreement from performing consulting services for a retailer during the term of the agreement; and

D. MuniServices, LLC is prohibited by the agreement from retaining the information contained in, or derived from, the sales tax records after the agreement has expired.

Section 3. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

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

Ayes: Councilmembers: \_\_\_\_\_

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Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

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\_\_\_\_\_  
City Clerk