Meeting Date: 01 / 13 / 09

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). _____	■ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Martin R. Erickson MRE Agenda Item No. O-1

Reviewed By: City Manager City Attorney AH Finance JC Other *(Specify)*

DATE: January 7, 2009

TO: City Council

FROM: Edmund F. Sotelo, City Manager
City Manager's Office

SUBJECT: **Collection and Administration of the City's Local Option Sales Tax**

RECOMMENDATION

That City Council:

1. Adopt a resolution authorizing the Mayor to execute agreements with the State Board of Equalization ("Board") for collection of the one-half cent local option sales tax.

2. Adopt a resolution authorizing the City's sales tax advisor (Hinderliter deLlamas) to receive transaction data from the Board in providing the same revenue management services to the City for the local option sales tax as our "regular" sales tax revenues.

DISCUSSION

With voter approval of Measure O on November 4, 2008, the City is authorized to begin collecting a local one-half cent sales tax, which will become effective on April 1, 2009. The following actions are now required to implement this measure.

As set forth in the ordinance approved by City Council on July 1, 2008 (which took effect with the voters approval of Measure O), the Board will be responsible for collecting and administering the City's local sales tax. The Board requires that the City enter into two formal agreements with them for administration, collection and operation of the City's ordinance, and also for the City to authorize approval of the agreements by resolution. The resolution is provided in Attachment 1, with the two agreements referenced as Exhibit A (Preparatory Agreement) and Exhibit B (Administrative Agreement) of the resolution.

The City currently contracts with Hinderliter deLlamas (HdL) to provide sales tax reporting services. This includes ongoing reports that monitor our sales tax revenue by type and geographic area, as well as audit

services to ensure that we are correctly allocated our share of sales tax revenue by the Board. There will be no added costs for HdL for perform the same services for our local option share of the sales tax revenues. However, the Board requires that we adopt the resolution provided in attachment 2 in order for HdL to receive the required data from the Board for the local option portion, as they currently do for our "regular" sales tax revenue.

FINANCIAL IMPACT

Approval of the agreements with the Board is required in order for the City to receive Measure O revenues.

MRE:lal

Attachment #1 - Resolution authorizing implementation of use tax

Attachment #2 - Resolution authorizing examination of transactions and use tax records by Hinderliter deLlamas

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION FOR IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX

WHEREAS, on July 1, 2008, the City Council adopted Ordinance No. 2779, which was approved by the voters on November 4, 2008, amending the City Municipal Code and providing for a local transaction and use tax; and

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

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

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

WHEREAS, the Board requires that the City Council authorize the agreements.

NOW, THEREFORE, the City Council of the City of Oxnard resolves: that the "Preparatory Agreement" attached as Exhibit A and the "Administrative Agreement" attached as Exhibit B are hereby approved and the Mayor is hereby authorized to execute each agreement.

PASSED AND ADOPTED this ____ day of January, 2009 by the following vote:

AYES:

NOES:

ABSENT:

_____
Dr. Thomas E. Holden, Mayor

ATTEST:

_____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Alan Holmberg

_____
Alan Holmberg, City Attorney

ATTACHMENT 1
PAGE 1 OF 8

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

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

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

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

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

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

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

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

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

STATE BOARD OF EQUALIZATION
P. O. BOX 942879
SACRAMENTO, CALIFORNIA 94279-0073
ATTENTION: EXECUTIVE DIRECTOR

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

James Cameron, Chief Financial Officer
City of Oxnard
300 West Third Street
Oxnard, CA 93030

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.

CITY OF OXNARD

By _____
Dr. Thomas E. Holden, Mayor

STATE BOARD OF EQUALIZATION

By _____
(Executive Director)

ATTEST:

_____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

_____
Alan Holmberg, City Attorney

ATTACHMENT 1
EXHIBIT A
PAGE 3 OF 8

AGREEMENT FOR STATE ADMINISTRATION OF CITY TRANSACTIONS AND USE TAXES

The City Council of the City of Oxnard (hereafter called "City") has adopted, and the voters of the City have approved by the required majority vote, the City of Oxnard Measure O 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:

1. "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.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No. 2779, 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 inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Board pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

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

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

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

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

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Board shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

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

G. Records of the Board.

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

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

ARTICLE III
ALLOCATION OF TAX

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

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

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

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

ARTICLE IV
COMPENSATION

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

ARTICLE V
MISCELLANEOUS PROVISIONS

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

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

State Board of Equalization
P.O. Box 942879
Sacramento, California 94279-0073
Attention: Executive Director

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

James Cameron, Chief Financial Officer
City of Oxnard
300 West Third Street
Oxnard, CA 93030

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 April 1, 2009. 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 a final and non-appealable judgment that the tax is valid.

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

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

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

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

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

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

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

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.

CITY OF

By _____
Dr. Thomas E. Holden, Mayor

STATE BOARD OF EQUALIZATION

By _____
(Executive Director)

ATTEST:

_____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

_____
Alan Holmberg, City Attorney

Rev 1/05

ATTACHMENT 1
EXHIBIT B
PAGE 8 OF 8

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION FOR IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX

WHEREAS, pursuant to Ordinance No. 2779, the City of Oxnard will contract with the State Board of Equalization ("Board") to perform all functions incident to the administration and collection of local transactions and use taxes; and

WHEREAS, the City Council of the City of Oxnard deems it necessary for authorized representatives of the City to examine confidential transactions and use tax records of the Board pertaining to transactions and use taxes collected by the Board for the City pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from the transactions and use tax records of the Board; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code requires that any person designated by the City shall have an existing contract to examine the City's sales and use tax records.

NOW, THEREFORE, the City Council of the City of Oxnard resolves as follows:

Section 1. The Chief Financial Officer (CFO) of the City of Oxnard (City), and other officers or employees of the City designated in writing by CFO to the Board, is hereby appointed to represent the City with the authority to examine transactions and use tax records of the Board pertaining to transactions and use taxes collected for the City by the Board pursuant to the contract between the City and the Board. The information obtained by the examination of Board records shall be used only for purposes related to the collection of City transactions and use taxes by the Board pursuant to the contract.

Section 2. The City's existing contract with Hinderliter de Llamas and Associates is hereby amended to add thereto the examination of the transactions and use tax records of the City pertaining to transactions and use taxes collected for the City by the Board. The fee for transactions tax related audit and recovery work will be 25% of all new transactions tax or related use tax recovered for those specific quarters identified as being missing and/or deficient.

Section 3. Hinderliter de Llamas is hereby designated to examine the transactions and use tax records of the City pertaining to transactions and use taxes collected for the City by the Board. The entity designated by this section meets all of the following conditions:

a. Has an existing contract with the City to examine those transactions and use tax record.

b. Is required by that contract disclose information contained in, or derived from, those transactions and use tax records only to the officers or employees authorized under Section 1 of this resolution to examine the information.

c. Is prohibited by that contract from performing consulting services for a retailer during the term of that contract.

d. Is prohibited by that contract from retaining the information contained in, or derived from those transactions and use tax records, after that contract has expired.

Section 4. The information obtained by examination of Board records shall be used only for the purposes related to the collection of City transactions and use taxes by the Board pursuant to the contract between the City and the Board.

Section 5. The City Clerk of the City is hereby directed to certify adoption of this Resolution and to send a copy to:

State Board of Equalization
Local Revenue Allocation Section MIC:27
PO Box 942879
Sacramento, CA 94279-0027

PASSED AND ADOPTED this ____ day of January, 2009 by the following vote:

AYES:

NOES:

ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Alan Holmberg, City Attorney

ATTACHMENT 2
PAGE 2 OF 2