



**Metro**

Metropolitan Transportation Authority

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**16**

**FINANCE AND BUDGET COMMITTEE**

**January 15, 2009**

**SUBJECT: MEASURE R**

**ACTION: APPROVE A RESOLUTION AND AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION**

**RECOMMENDATION**

Approve the following documents necessary for the State Board of Equalization (SBOE) to administer, collect and remit Measure R proceeds to us:

- A. Resolution authorizing the Chief Executive Officer to execute the agreements below with the SBOE, Attachment A;
- B. Approve agreement for preparation to administer and operate Measure R, Attachment B; and,
- C. Approve agreement for the administration of Measure R.

The attachments are in substantially final form.

**RATIONALE**

On November 4, 2008, Los Angeles County voters approved Measure R, officially titled the Traffic Relief and Rail Expansion Ordinance. The SBOE requires the approval of a resolution and execution of certain agreements in order for them to set up their systems and collect the Measure R sales tax beginning on July 1, 2009.

The preparation agreement, Attachment B, requires that we reimburse SBOE up to \$175,000 for their costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for SBOE staff and for taxpayers and other appropriate and necessary preparatory costs to administer the ordinance.

**FINANCIAL IMPACT**

The FY09 budget includes \$11.4 million for costs associated with the Measure R election in cost centers #0511 and #7010 and project #100002. The costs of the preparation agreement, up to \$175,000, will be paid from savings from the information campaign that was terminated early. In accordance with Measure R and SBOE procedures, the SBOE's ongoing administration costs are deducted from the sales tax proceeds before they are remitted to us.

## ALTERNATIVES CONSIDERED

There are no alternatives to the recommended actions.

## ATTACHMENTS

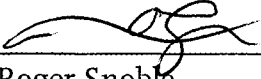
- A. Resolution authorizing the Chief Executive Officer to execute agreements with SBOE.
- B. Agreement for preparation to administer and operate Measure R.
- C. Agreement for the administration of Measure R.

Prepared by: Terry Matsumoto  
Chief Financial Services Officer and Treasurer



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Terry Matsumoto  
Chief Financial Services Officer and Treasurer



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Roger Snoble  
Chief Executive Officer

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE TRANSPORTATION AUTHORITY OF  
THE COUNTY OF \_\_\_\_\_**

**AUTHORIZING (Authority Official) TO EXECUTE  
AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION FOR  
IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX.**

WHEREAS, on (Date), the Transportation Authority of \_\_\_\_\_ approved Ordinance No. \_\_\_\_\_ providing for a local transactions 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 Authority; and

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

Whereas, the Board requires that the Transportation Authority of \_\_\_\_\_ authorize the agreements;

NOW, THEREFORE BE IT RESOLVED by the Transportation Authority of the County of \_\_\_\_\_ that the attached "Preparatory Agreement" and "Administrative Agreement" are hereby approved and the (Authority Official) is hereby authorized to execute each agreement.

\* \* \* \* \*

The foregoing resolution was introduced and adopted at a regular meeting of the Transportation Authority of the County of \_\_\_\_\_ held on (Date), by the following vote, to wit:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTEST: (s) \_\_\_\_\_  
Chair

(s) \_\_\_\_\_  
Executive Director

Attachment B

**AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE  
DISTRICT'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 \_\_\_\_\_, hereinafter called *District*, 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 District and whose ordinance has been adopted by the District.

2. District 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 District'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 District.

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. District 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 District 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 District shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 District's transactions and use tax ordinance has been completed and the Board has received all payments due from District under the terms of this agreement.

\_\_\_\_\_  
(District)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

STATE BOARD OF EQUALIZATION

By \_\_\_\_\_  
(Executive Director)

Attachment C

**AGREEMENT FOR STATE ADMINISTRATION  
OF DISTRICT TRANSACTIONS AND USE TAXES**

The Transportation Authority of the County of \_\_\_\_\_ has adopted, and the voters of the \_\_\_\_\_ (County Name) \_\_\_\_\_ (hereafter called "District") have approved by the required majority vote, the \_\_\_\_\_ (Legal Name of Tax) \_\_\_\_\_ 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 District 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 130350 of the California Public Utilities Code, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "District Ordinance" shall mean the District'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 DISTRICT TAXES**

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



**B. Other Applicable Laws.** District 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 District Ordinance. District agrees that money collected pursuant to the District 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 District the amount to which District 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 District Ordinance shall be transmitted to District 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 District's self-imposed limits or by final judgment of any court of the State of California holding that District's ordinance is invalid or void, all District taxes collected under the provisions of the District Ordinance shall be transmitted to District not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the District designated and authorized by District. 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 District 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 District 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 the District 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 District 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 District under section 7056 of the Revenue and Taxation Code, the Board agrees to permit authorized personnel of the District 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 District, pertaining to the ascertainment of transactions and use taxes collected for the District. Information obtained by the District from examination of the Board's records shall be used by the District only for purposes related to the collection of transactions and use taxes by the Board pursuant to this Agreement.

**H. Annexation.** District 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 District boundary. In the event the District 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 District showing the area annexed and the location address of the property nearest to the extended District 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 District agrees to pay to the Board as the Board's cost of administering the District Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Board for the District.

#### **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 District shall be addressed to:

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**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 July 1, 2009. This Agreement shall continue until December 31 next following the expiration date of the District Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the District Ordinance and has received and disbursed all payments due under that Ordinance.

**C. Notice of Repeal of Ordinance.** District shall give the Board written notice of the repeal of the District 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 District 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 District 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 District'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 District to Board to prepare to administer the District Ordinance.

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

3. District 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. District 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 District.

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 District's Ordinance invalid or void becomes final. Thereafter Board shall bill District on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. District 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.

\_\_\_\_\_  
(District)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

STATE BOARD OF EQUALIZATION

By \_\_\_\_\_  
Executive Director