SUBJECT: IMPLEMENTATION ACTIONS FOR MEASURE H: MEASURE H SALES TAX ORDINANCE AND BOARD OF EQUALIZATION AGREEMENTS

SOURCE: Administration

COMMENT: During the 2004/2005 Budget year, the City Council began a review process to determine the best vehicle by which to designate a revenue stream to fund increased levels of public safety. After detailed analyses, surveys and input by community members, the Council conducted a public hearing and adopted a resolution which included a proposed Ordinance to be implemented by the People of the City of Porterville, with Program Guidelines and the Expenditure Plan as an attachment. The action of the Council authorized the submission of a proposition for a special sales tax increase to the City’s Transaction and Use Tax by a rate of 0.50% to the qualified voters of the City at the special election to be held on November 8, 2005. The special sales tax increase required a two-thirds (2/3), or sixty-six percent affirmative vote of the voting electors to pass. The election has now been held and the measure, known as Measure H, has been certified by the Tulare County Registrar of Voters Election Division Manager as receiving seventy point twenty-eight percent affirmative votes. With the Council’s approval of the Certification of Election Results, the Ordinance implementing Measure H shall go into effect in ten days, or December 16, 2005.

To enact the new legislation, an ordinance specifying the basis in law for the sales tax needs to be passed, allowing the State Board of Equalization (BOE) to then enter into an agreement with the City to administer the tax. The ordinance simply points to the sections of law authorizing the City to collect the tax and specifies April 1, 2006 as the effective date of the implementation. Two agreements from BOE are all that are required to begin the sales tax collection process. The implementation agreement allows BOE to act as the City’s agent taking the necessary steps to start the tax. The agreement also allows BOE to recover its costs in implementing the new tax. The administration agreement then becomes operative, specifying how the tax will be collected over time. Both agreements are standard agreements used by BOE throughout the State of California.

At this time, the City Council is faced with the welcome task of implementing the plan authorized by the voters. This item outlines the tasks that need to be accomplished in enacting the voters’ will. The proposed action list includes the following:

1. Certify the election results and enact the sales tax with the appropriate ordinance and other actions required by the State Board of Equalization, enabling the ½ cent sales tax.
2. Adjust the 2005/06 budget to implement the Measure H plan as outlined in the ballot measure for Fiscal Year 2005/06. This will require

4. Direct Finance to ensure that Measure H accountability elements are executed.

5. Direct staff to initiate the process of public notification in order to proceed toward the appointment of a Citizens Oversight Committee prior to May 1, 2006.

6. Direct Staff to prepare an informational mailer to be distributed via the utility bills explaining the first and second year implementation program

Recommendation: That the City Council approve the enactment of the Measure H Sales Tax Measure with the following action:

1. Accept the Tulare County Registrar of Voters Official Statement of Votes Cast and Certification of Results, and adopt the draft resolution accepting the Official Canvass;

2. Reaffirm the adoption of Ordinance 1684, An Ordinance Adding Article IIA to Chapter 22 of the Porterville Municipal Code to Provide for an Additional One-half of One Percent Transactions and Use Tax to Fund Public Safety, Police and Fire Protection Services and Related Capital Projects and to Be Administered by the State Board of Equalization, by the Declaration of the Vote;

3. Approve two proposed agreements on behalf of the City of Porterville with the State Board of Equalization by:
   a. Implementing an agreement which authorizes BOE to implement the tax and authorizes BOE to be reimbursed for costs associated with implementing the measure;
   b. Approving an ongoing administration agreement to administer and collect the sales tax; and,
   c. Adopting the draft resolution authorizing the City Manager to sign said agreements;

4. Adjust the 2005/06 budget to implement Measure H, including allowing for any payments to the State Board of Equalization;

5. Direct staff to bring back to Council a detailed plan by February 7, 2006, for the promotion and selection of a Citizens’ Oversight Committee, as stated in Ordinance 1684, to be accomplished by May 1, 2006.

6. Direct Staff to prepare an informational mailer to be distributed via the utility bills thanking the citizens for their support and explaining the first and second year implementation of the program.
Attachments:  
1) Statement of Votes Cast and Certification of Results  
2) Resolution Accepting Official Canvas of Votes  
3) Ordinance No. 1684 Imposing a Transaction and Use Tax  
4) Resolution Authorizing City Manager to Execute State Board of Equalization (BOE) Agreements  
5) BOE Sales Tax Administration Agreement  
6) BOE Preparation Agreement
RESOLUTION NO. ___-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ACCEPTING THE OFFICIAL CANVASS OF THE NOVEMBER 8, 2005, SPECIAL CONSOLIDATED STATEWIDE ELECTION AS CONDUCTED REGARDING CITY OF PORTERVILLE SALES TAX MEASURE H

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Porterville that the City of Porterville does hereby accept the Official Canvass of Votes from the Special Consolidated Statewide Election of November 8, 2005, by the County Registrar of Voters, as follows:

CITY OF PORTERVILLE SALES TAX MEASURE H

“PORTERVILLE POLICE, FIRE AND EMERGENCY RESPONSE/9-1-1 SAFETY MEASURE. In order to increase the number of police and firefighters, expand neighborhood crime prevention efforts, improve 9-1-1 response time and communication, upgrade the 9-1-1 dispatch center, build a new fire station, and enhance and improve anti-gang, anti-drug and anti-bullying programs, shall the sales tax be increased by one-half cent with citizens oversight and independent annual performance and financial audits?”

Yes — 4362 - 70.28%
No — 1845 - 29.72%

Registered Voters - 13,369
Total voters voting - 6,310
Total Percentage voting - 45.7%

Adopted this 6th day of December, 2005.

____________________________________
Kelly West, Mayor

ATTEST:

_______________________________________
Georgia Hawley, Chief Deputy City Clerk
ORDINANCE NO. 1684

AN ORDINANCE ADDING ARTICLE IIA TO CHAPTER 22 OF THE PORTERVILLE MUNICIPAL CODE TO PROVIDE FOR AN ADDITIONAL ONE-HALF OF ONE PERCENT TRANSACTIONS AND USE TAX TO FUND PUBLIC SAFETY, POLICE AND FIRE PROTECTION SERVICES AND RELATED CAPITAL PROJECTS AND TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

THE PEOPLE OF THE CITY OF PORTERVILLE DO ORDAIN AS FOLLOWS:

SECTION I. AMENDMENT OF CODE.

Porterville Municipal Code Chapter 8 is hereby amended by the addition of a new Article to read as follows:

ARTICLE IIA. TRANSACTIONS AND USE TAX FOR PUBLIC SAFETY, POLICE AND FIRE PROTECTION

Sec. 22-8.1 Title/Purpose:

This ordinance shall be known as the Transactions and Use Tax for Public Safety, Police and Fire Protection. The City of Porterville hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City. This Ordinance of the Porterville Municipal Code has been adopted for the following (and other) purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

(a) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if at least two-thirds of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

(b) To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

(c) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practical to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Transactions and Use Taxes;

(d) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will, to the degree possible consistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the said Revenue and Taxation Code, minimize the cost of collecting
City transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions thereof.

(e) To provide a source of revenue to be used to provide additional public safety, police, fire protection services and undertake necessary capital projects to support those services, and to restore and maintain literacy programs and services. The revenue generated by the tax provided for herein shall be restricted to those uses. The tax is, therefore, a special tax.

**Sec. 22-8.2. Operative Date:**

“Operative date” means the first day of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance, the date of such adoption being set forth below.

**Sec. 22-8.3. Contract with State:**

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation hereof. If the City has not contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract. The Council may make any technical amendments to this ordinance required by the State Board of Equalization, except for any changes affecting the tax rate, its manner of collection, or the purpose for which the revenue from the tax may be used.

**Sec. 22-8.4. Imposition of Transactions Tax:**

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half of one percent (0.50%) of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City of Porterville on and after the operative date of this Ordinance. The City Council is authorized to establish a tax rate of one-half of one percent by resolution.

**Sec. 22-8.5. Presumption as to Place of Sales:**

For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the Board of Equalization.
Sec. 22-8.6. Imposition of Use Tax:

An excise tax is hereby imposed on the storage, use, or other consumption in the City of Porterville of tangible personal property purchased from any retailer on or after the operative date of this Ordinance for storage, use or other consumption in said territory, at the rate of one-half of one percent (0.50%) of the sales price of the property subject to the tax. The sales price shall include delivery charges when such charges are subject to State transactions or use tax regardless of the place to which delivery is made. The City Council is authorized to establish a tax rate of one-half of one percent by resolution.

Sec. 22-8.7. Adoption of Certain Sections of California Revenue & Taxation Code by Reference:

Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of said Code, as amended and in force and effect on the operative date of this Ordinance, applicable to use taxes are hereby adopted and made a part of this section as though fully set forth herein.

Sec. 22-8.8. Limitations on Adoption of State Law and Collection of Use Taxes:

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

(a) Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

(1) The word “State” is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

(2) The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

(3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

(A) Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
(B) Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

(4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

(b) The word “City” shall be substituted for the word “State” in the phrase “retailer engaged in business in this State” in Section 6203 and in the definition of that phrase in Section 6203.

**Sec. 22-8.9. Permit Not Required:**

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor’s permit shall not be required by this Ordinance.

**Sec. 22-8.10. Exemptions and Exclusions:**

(a) There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

(b) There are exempted from the computation of the amount of transactions tax the gross receipts from:

(1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

(2) Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

(A) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
(B) With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

(3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

(4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Ordinance.

(5) For the purposes of subsections (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(c) There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this City of tangible personal property:

(1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

(2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

(3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contact entered into prior to the operative date of this Ordinance.

(4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.

(5) For the purposes of subsections (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(6) Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal
property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

(7) “A retailer engaged in business in the City” shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

(d) Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Sec. 22-8.11. Amendments to Revenue and Tax Code:

All amendments subsequent to the effective date of this Ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

Sec. 22-8.12. Enjoining Collection Prohibited:

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the State or this City, or against any officer of the State or this City, to prevent or enjoin the collection hereunder, or Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION II: USE OF TAX PROCEEDS AND EXPENDITURE PLAN.

All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund or account designated for use for Public Safety Services only. The City hereby adopts the Program Guidelines and Public Safety Expenditure Plan for the administration and expenditure of the tax proceeds, attached to this Ordinance as Exhibit “A.” The Public Safety Expenditure Plan may be amended from time to time by a majority vote of the City Council, so long as the funds are utilized for public safety, police and fire protection services. For the purposes of this Ordinance, “Public Safety Services” means (a) obtaining, furnishing, operating, and/or maintaining police protection equipment or apparatus, paying the salaries and benefits of police protection personnel, and such other
police protection service expenses as are deemed necessary by the City Council for the benefit of the residents of the City; (b) obtaining, furnishing, operating, and/or maintaining fire protection equipment or apparatus, paying the salaries and benefits of fire protection personnel, and such other fire protection service expenses, including capital expenses, as are deemed necessary by the City Council for the benefit of the residents of the City; and (c) with the use of no more than 15% of the revenue generated from the special tax, restoration and maintenance of literacy programs due to the established connection between illiteracy and crime.

SECTION III: STATUTORY AUTHORITY FOR TAX; SEVERABILITY.

This ordinance is adopted pursuant to Revenue and Taxation Code Section 7285.91. In any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION IV: ELECTION REQUIRED.

This ordinance shall not become operative unless and until at least a two-thirds majority of the electors voting on this measure vote to approve the imposition of the tax at the election to be held on November 8, 2005.

SECTION V: EFFECTIVE DATE.

If this ordinance is approved by two-thirds of the voters voting on the issue at the November 8, 2005 election, pursuant to Elections Code Section 9217, the tax shall become effective ten (10) days after the Council certifies the results of the election.

APPROVED by the following vote of the People of the City of Porterville on November 8, 2005:

Yes — 4362 - 70.28%
No — 1845 - 29.72%

ADOPTED by Declaration of the vote by the City Council of the City of Porterville City on December 6, 2005.

__________________________________
Kelly West, Mayor

ATTEST

________________________________
John Longley, City Clerk
Porterville Police, Fire, and Emergency Response 9-1-1 Measure
Program Guidelines and Expenditure Plan

This measure will provide a secure, local revenue stream to the City of Porterville that will be used entirely to provide additional public safety police and fire personnel and services to protect our community. Porterville residents deserve to know how the funds will be spent. Detailed spending plans have been developed so voters can have a clear understanding of how the monies will be spent if the ½ cent sales tax is approved. Program guidelines have also been established to govern how the money can be spent, to specify the accounting, audit and oversight guidelines that will be implemented to make certain that the funds are spent according to the voter’s direction, and to ensure the public is well-informed of the progress and process.

Fiscal Accountability Protections

An Independent Auditor will annually review and audit expenditures of funds specifically derived from the Public Safety Measure, to ensure compliance with the expenditure plans and with prudent, established accounting regulations and practices.

The City will establish an Independent Citizen’s Oversight Committee to annually review revenues and expenditures, providing a second independent verification that all expenditures are being made as promised to Porterville residents. The findings of both the Independent Citizens Oversight Committee and the Independent Auditor will be reviewed by the City Council and made available to the public.

Each May or June, as the City’s budget is adopted following public hearings, the City Manager will re-certify the plan to the City Council, stating what monies have been received, what monies have been spent and what monies are available. The financial consequences of these changes will be reflected in the re-certified plan.

Dedicated Accounting Structure

The Expenditure Plan specifies that all revenues from the Measure are to be utilized for the sole purpose of improving our community’s public safety, with the revenue to be directed to the police and fire departments respectively, and with a small portion (not more than 15%) dedicated to the restoration and maintenance of literacy programs due to the established connection between illiteracy and crime. The funding proportions have been mutually agreed upon by the Police Chief and Fire Chief.

The City will establish separate funds into which these specific monies shall be deposited. These accounts shall be separate for police and fire and shall be the source of their respective expenditures as established in the approved expenditure plans. Any balances in these funds, positive or negative, shall earn or pay interest accordingly.

Based on public safety needs, the City Council may determine to advance funds from the City’s General Fund into the individual Public Safety Sales Tax Fund in order to most effectively accomplish the objectives of the program.
**Priorities if additional revenues are available**

In the event that the contingency/reserve fund is fully funded and all annual planned expenditures have been implemented, the use of the additional unanticipated sales tax revenues will be used first to accelerate the implementation of the plan and then to provide additional public safety facilities, personnel, and new equipment based on specific needs of the community.

**Review and Modification of Expenditure Plan**

The proposed Expenditure Plan may be amended from time to time by a majority vote of the City Council.
NOVEMBER 2005 BALLOT MEASURE EXPENDITURE PLAN

Proposed Expenditure Plan for the City of Porterville Public Safety Sales Tax Measure Based on ½ Cent Sales Tax availability

The City Council has evaluated Porterville’s safety needs with input from the public in developing the attached Public Safety Expenditure Plan, which shall be amended from time to time, at the projected/estimated costs shown:

Fiscal Year 2005-06 Sales Tax Revenue available (partial year) $600,000
Additional Supplemental Resources (General Fund) $50,903
Total Resources Available $650,903

Increase Police Sworn by 5 positions to the base and outfit (partial year) $412,803
Increase Fire Sworn by 7 positions to the base and outfit (partial year) $148,100
Restore Literacy Programs/hours (partial year) $90,000
Total 2005-06 Fiscal Year Expenditures $650,903

Fiscal Year 2006-07 Additional Sales Tax Revenues (First full F/Y) $1,792,000
Increase Police Sworn by 1 additional position to the base $85,000
Maintain and Expand Patrol Operations $405,000
Maintain and Expand Gang Suppression and Narcotics Operations $215,000
Maintain 7 additional Sworn Fire personnel $521,156
Purchase additional Fire Rescue Apparatus $140,000
Purchase Rescue Equipment for new Fire Apparatus $25,000
Purchase Personal Safety Equipment for additional Fire Fighters $14,000
Maintain Literacy Program/hours $180,000
Expand Homework Assistance and Creative Expression Program $80,000
Establish Capital Reserve Fund for New Fire Station $126,844
Total 2006-07 Fiscal Year Expenditures $1,792,000

Fiscal Year 2007-08 Additional Sales Tax Revenues (Second full F/Y) $1,863,680
Increase Police Sworn by 1 additional position to the base $87,000
Maintain Expanded Patrol Operations $508,000
Maintain Expanded Gang Suppression and Narcotics Operations $255,250
Maintain 7 additional Sworn Fire personnel  
$557,637 
Hire 1 additional Fire Investigator  
$74,167 
Station and Equipment  
$20,000 
Maintain Literacy Programs/hours  
$187,200 
Expand Homework Assistance and Creative Expression Program  
$83,200 
Increase Established Capital Reserve Fund for New Fire Station  
$91,226 
Total 2007-08 Fiscal Year Expenditures  
$1,863,680 

Fiscal Year 2008-09 Additional Sales Tax Revenues (Third full F/Y)  
$1,938,227 
Additional Supplemental Resources (General Fund)  
$50,000 
Total Resources Available  
$1,988,227 

Increase Police Sworn by 1 additional position to the base  
$91,000 
Maintain Expanded Patrol Operations  
$566,000 
Maintain Expanded Gang Suppression and Narcotics Operations  
$320,763 
Maintain 8 additional Sworn Fire personnel  
$676,030 
Safety Equipment  
$5,000 
Maintain Literacy Programs/hours  
$194,688 
Expand Homework Assistance and Creative Expression Program  
$86,528 
Increase Established Capital Reserve Fund for New Fire Station  
$48,218 
Total 2007-08 Fiscal Year Expenditures  
$988,227 

Fiscal Year 2009-10 Additional Sales Tax Revenues (Fourth full F/Y)  
$2,015,756 
Additional Supplemental Resources (General Fund)  
$75,000 
Total Resources Available  
$2,090,756 

Maintain 8 additional Sworn Police personnel  
Maintain Expanded Patrol Operations  
$630,000 
Maintain Expanded Gang Suppression and Narcotics Operations  
$396,651 
Maintain 8 additional Sworn Fire personnel  
$723,352 
Maintain Literacy Programs/hours  
$202,476 
Expand Homework Assistance and Creative Expression Program  
$89,989 
Partial Year Debt Service Payment on New Fire Station Financing  
$48,288 
Total 2009-10 Fiscal Year Expenditures  
$2,090,756 

Fiscal Year 2010-11 Additional Sales Tax Revenues (Fifth full F/Y)  
$2,096,387
Additional Supplemental Resources (General Fund) $150,000
Total Resources Available $2,246,387

Maintain 8 additional Sworn Police personnel
Maintain Expanded Patrol Operations $664,000
Maintain Expanded Gang Suppression and Narcotics Operations $413,983
Maintain 8 additional Sworn Fire personnel $773,352
Maintain Literacy Programs/hours $210,575
Expand Homework Assistance and Creative Expression Program $93,589
Debt Service on New Fire Station Financing $90,889
Total 2010-11 Fiscal Year Expenditures $2,246,387

* Total Reserve Cash Available for Real Property Acquisition for New Fire Station in Fiscal Year 2008/09. $266,288
1. Assumes 4% growth rate in annual sales tax revenue.

2. Current General Fund monies and State and School Subventions provide for 44.5 Sworn Police Officers. Additional grant funding has provided for 2.5 additional Sworn Police Officers. Additional positions funded through this sales tax measure will add positions to the base of 45 Sworn Police Officers.

3. Additional General Fund Utility User’s Taxes generated from annexation activity during the course of this expenditure plan will be proposed to be specifically earmarked for additional Police positions. These additional positions will modify the base above the 45 positions as described in Note 2.

4. Literacy programs delivered through the Library will annually receive up to 15% of the new revenue provided by this sales tax measure.

5. The City will use base budget amounts established and approved under the Expenditure Control Budget System in determining additional funding for Police, Fire, and Literacy programs delivered through the Library to prevent erosion of existing General Fund support for these activities.
RESOLUTION NO. _____- 2005

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

WHEREAS, on December 6, 2005, the City Council approved Ordinance No. 1684 amending the City Municipal Code and 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 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 BE IT RESOLVED by the City Council of the City of Porterville that the “Preparatory Agreement” attached as Exhibit A and the “Administrative Agreement” attached as Exhibit B are hereby approved and the City Manager is hereby authorized to execute each agreement.

ADOPTED this 6th day of December, 2005.

__________________________________________
Kelly West, Mayor

ATTEST:

John Longley, City Manager

By: Georgia Hawley, Chief Deputy City Clerk
AGREEMENT FOR STATE ADMINISTRATION
OF CITY TRANSACTIONS AND USE TAXES

The City Council of the City of Porterville has adopted, and the voters of the City of Porterville (hereafter called “City” or “District”) have approved by the required majority vote, the City of Porterville 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 7285.91, 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. 1684, 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:

City of Porterville  
291 N. Main Street  
Porterville, CA 93257-3727  
Attention: City Clerk

**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, 2006. 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 PORTERVILLE

By ________________________________
   (Signature)

  John Longley
  (Typed Name)

  City Manager
  (Title)

Dated: December 6, 2005

STATE BOARD OF EQUALIZATION

By ________________________________
   (Executive Director)

Dated ________________________________
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 PORTERVILLE, 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:

    CITY OF PORTERVILLE  
291 NORTH MAIN STREET  
PORTERVILLE, CA 93257-3727  
ATTENTION: CITY CLERK

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 PORTERVILLE

By _________________________________  
(Signature)                                                                       (Executive Director)

    John Longley  
    (Typed Name)

    City Manager  
    (Title)

Dated:   December 6, 2005

(Rev. 11/02)