ORDINANCE NO. A-375

AN ORDINANCE OF THE COUNTY OF KERN, STATE OF CALIFORNIA, ADDING CHAPTER 4.18 TO TITLE 4 OF THE ORDINANCE CODE IMPOSING A KERN COUNTY UNINCORPORATED AREA TRANSACTIONS AND USE TAX OF 1.0% TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION AND SUBJECT TO VOTER APPROVAL

THE PEOPLE OF THE COUNTY OF KERN ORDAIN AS FOLLOWS:

Section 1. Pursuant to California Revenue and Taxation Code 7285, the Kern County Board of Supervisors hereby enacts a one percent (1.0%) Transactions and Use Tax for general purposes, to be deposited within the Kern County general fund.

This ordinance shall be published in accordance with Government Code section 25124.

Section 2. This ordinance shall not become effective unless approved by majority vote of the qualified voters of the unincorporated area of the county voting in an election on the issue.

Section 3. Chapter 4.18 of Title 4 of the Ordinance Code of the County of Kern is added to read as follows:

CHAPTER 4.18

UNINCORPORATED KERN COUNTY PUBLIC SAFETY/VITAL SERVICES/LOCAL CONTROL MEASURE

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4.18.010 Title.

This chapter shall be known as the Unincorporated Kern County Public Safety/Vital Services/Local Control Measure. This ordinance shall be applicable in the unincorporated territory of the County.

4.18.020 Operative Date.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance.

4.18.030 Purpose and Application.

The purpose of this Chapter is to achieve the following, among other purposes, and shall be interpreted so as to accomplish those purposes:

A. To impose a retail transactions and use tax on the unincorporated area of the County 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 of Part 1.7 of Division 2 which authorizes the County to adopt this tax ordinance for general purposes provided a majority 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 California Department of Tax and Fee Administration (CDTFA) in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the CDTFA in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

4.18.040 Use of the Tax.

Revenues from the tax shall be used for general purposes, including vital services, primarily benefiting the unincorporated area. For purposes of this chapter, the term "vital services" shall include, but is not limited to, the following activities: law enforcement, fire, medical emergency 911 response; preventing property crime; recruiting/retaining qualified

firefighters/sheriff deputies; attracting new industries/jobs; retaining and attracting local business/jobs, repairing roads, addressing homelessness, and, addressing mental health/addiction challenges.

4.18.050 Contract with State of California.

Prior to the operative date, the County shall contract with the CTDFA to perform all functions incident to the administration and operation of this transactions and use tax ordinance. However, if the County has not contracted with the CDTFA 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.

4.18.060 Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the unincorporated territory of the County at the rate of one percent (1.0%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

4.18.070 Place of Sale.

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 CDTFA.

4.18.080 Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one percent (1.0 %) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

4.18.090 Adoption of Provisions of State Law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

4.18.100 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 County 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 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 County or any agency, officer, or employee thereof rather than by or against the CDTFA, 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 "County" 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.

1. "A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars ($500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

4.18.110 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.

4.18.120 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 County which is shipped to a point outside the County, 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 County 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 Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-County 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-County 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 subparagraphs (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 County 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 contract 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 a 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 subparagraphs (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 County 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 County or participates within the County 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 County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

7. "A retailer engaged in business in the County" 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 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 County.

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 County 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.

4.18.130 Amendments to Revenue and Taxation 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.

4.18.140 Enjoining Collection Forbidden.

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 the County, or against any officer of the State or the County, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

4.18.150 Election Costs.

Payment for the costs of the election shall be the responsibility of the County. If the election results in approval of the ordinance by at least a majority vote of those voters voting on the ordinance, the County shall be reimbursed for the cost of the election from the proceeds of the tax.

4.18.160 Increase in Appropriations Limit.

The appropriations limit of the County shall be increased by the anticipated amount of revenue generated by the tax to allow spending of the tax for the period allowed by law.

4.18.170 Accountability of Use of Revenue.

The County shall ensure that the revenues from the tax are identified separately within the County's annual budget document and made available through common public platforms, including, but not limited to, the County's web site. The independently-elected Kern County Auditor-Controller shall compile and report annually to the Board of Supervisors and the public regarding revenue from the tax and expenditures of such revenues incurred by departments receiving disbursements of the tax and that provide services in the unincorporated area of the County to ensure compliance with Revenue and Taxations Code 7285. The Kern County Auditor-Controller may audit at any time the tax revenues are received and expenditures made. Such audits shall be made available to the public for review.

4.18.180 Severability.

If 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.

4.18.190 Fiscal Powers.

Nothing in this ordinance shall be construed to restrict the fiscal management powers and authority of the Kern County Board of Supervisors.

4.18.200 Citizen Oversight Committee.

Prior to the operative date of this ordinance, the Board of Supervisors shall establish by resolution a Citizen Oversight Committee comprised of residents of the unincorporated area to review the expenditure of revenues generated by the tax imposed by this ordinance and to advise the County Administrative Office and the Board of Supervisors regarding the Committee's views on how best to utilize the tax revenues within the unincorporated area.

4.18.210 Effective Date.

This ordinance relates to the levying and collecting of the County transactions and use taxes and shall take effect immediately upon adoption by the Board of Supervisors, following approval by the electorate.

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STATE OF CALIFORNIA
COUNTY OF KERN
I, Kathleen Krause, Clerk of the Board of Supervisors, do hereby certify the foregoing to be a full, true and correct copy of the original Ordinance A-395; 12/13/2022; AM14 **on file in my office.**

Witness my hand and seal of the Board of Supervisors.

This 16th **day of** December **20** 22

KATHLEEN KRAUSE
Clerk of the Board of Supervisors

Seal **By:** _____ **Deputy**