ORDINANCE NO. **2022-04**

AN ORDINANCE OF THE CITY OF AVENAL ENACTING A ONE CENT GENERAL SALES TAX.

THE PEOPLE of the City of Avenal do ordain as follows:

Section 1. PURPOSE. The provisions of this ordinance are necessary for the safety of the public and for the preservation of essential city services for the residents of the City of Avenal ("**City**"). By adopting **Resolution No. 2022-40** by a vote of at least two-thirds vote of all members of the City Council, the City Council authorized placing this ordinance before the voters of the City of Avenal at an election to be held on **November 8, 2022**.

Section 2. CODE ADOPTION. Chapter 5B of Title 3 of the Municipal Code of the City of Avenal is added to read in its entirety as follows:

Chapter 5B
TRANSACTIONS AND USE TAX

5B-010: SHORT TITLE.

This chapter shall be known as the City of Avenal Transactions and Use Tax Ordinance. The City of Avenal hereinafter shall be called "city." This chapter shall be applicable within the incorporated territory of the city.

5B-020: OPERATIVE DATE.

"Operative date" refers to the first day of the first calendar quarter commencing more than one hundred ten days after the adoption of this chapter.

5B-030: PURPOSE.

This chapter is adopted to achieve the following, among 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 7285.9 of Part 1.7 of Division 2 which authorizes the city to adopt this tax ordinance which shall be operative if 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 which 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 which imposes a tax and provides a measure therefore which can be administered and collected by the California Department of Tax and Fee Administration in a manner which adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting California state sales and use taxes.

D. To adopt a retail transactions and use tax ordinance which can be administered in a manner which 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.

5B-040: CONTRACT FOR ADMINISTRATION.

Prior to the operative date, the city shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided that if the city shall not have contracted with the California Department of Tax and Fee Administration 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.

5B-050: TRANSACTIONS TAX RATE.

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 percent (1%) 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 chapter.

5B-060: PLACE OF SALE.

For the purposes of this chapter, all retail sales shall be deemed 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 as may be prescribed and adopted from time to time by the California Department of Tax and Fee Administration.

5B-070: USE TAX RATE.

An excise tax is hereby imposed upon the storage, use or other consumption within the city of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption within said territory at the rate of one percent (1%) 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.

5B-080: ADOPTION OF STATE LAW PROVISIONS.

Except as otherwise provided in this chapter 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 chapter as though fully set forth herein.

5B-090: LIMITATIONS UPON 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 therefore. However, the substitution shall not be made in any of the following:

    1. Insofar as the word "state" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State

Department of Tax and Fee Administration, State Treasury or the Constitution of the State of California;

2. Whenever the result of said 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 California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this chapter;

3. As to those sections referring to the exterior boundaries of the State of California;

4. As to those sections, including but not necessarily limited to, 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; and

5. Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 and 6828.

B. The word "city" shall not 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.

5B-100: 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 seller's permit shall not be required by this chapter.

5B-110: 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. The amount 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;

2. 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;

3. 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 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;

4. 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 chapter; and

5. 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 a lease prior to the operative date of this chapter.

6. For the purposes of subsections 4 and 5 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 chapter, the storage, use or other consumption in this city of tangible personal property:

1. 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 (Part 1.5 commencing with section 7200) or the amount of any state-administered transactions or use tax;

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 by sections 6366 and 6366.1 of the Revenue and Taxation Code;

3. If the purchaser became obligated to purchase the property for a fixed price by a contract entered into prior to the operative date of this chapter;

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 chapter;

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 subsection 7, a retailer engaged in business within 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; and

7. A "retailer engaged in business within 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 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 within the city.

D. Any person subject to use tax under this chapter 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.

5B-120: AMENDMENTS.

A. This Chapter may be amended by ordinance of the Avenal City Council without a vote of the People except that, as required by Article XIIIC of the California Constitution, voter approval is required for any

amendment which would increase the rate of any tax levied pursuant to this Chapter above the maximum rates established by this Chapter.

B. All amendments subsequent to November 8, 2022 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 Chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Chapter. Said amendments shall not require voter approval.

C. The following amendments to this chapter must be approved by the voters of the city: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of the preceding paragraph); or extending the effective date of this Chapter. Otherwise, the city council may amend this chapter without submitting the amendment to the voters for approval, provided that such ordinance amendment does not increase or decrease the tax rate approved by the voters. The People of the City of Avenal affirm that each and all of the following actions shall not constitute an increase of the rate of a tax:

(1) The restoration of the rate of the tax to a rate which is no higher than the maximum allowed by this Chapter, if the City Council has acted to suspend or reduce the rate of the tax;

(2) An action which interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the text of this Chapter;

(3) The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax;

(4) The establishment of a class of Persons which are exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Chapter); or

(5) The City Council's adoption of a resolution, as authorized by Section 5B-140, to raise the tax rate, provided that the rate may not be increased to a rate which is higher than the maximum established in this Chapter.

5B-130: ENJOINING COLLECTION FORBIDDEN.

No injunction, writ of mandate or prohibition, or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or the city, or against any officer of the state or the city, to prevent or enjoin the collection under this chapter, 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.

5B-140: SUSPENSION OF COLLECTION.

The City Council shall have authority to temporarily suspend collection of all or a portion of the tax imposed by this chapter by resolution unanimously approved by all members of the entire City Council, subject to the restrictions in the City agreement with the California Department of Tax and Fee Administration. The City Council may at any time also repeal or supersede such resolution. However, the authority to levy the tax imposed by this chapter shall not expire or otherwise terminate, unless terminated by a duly enacted ordinance which is approved at a regular meeting of, and by unanimous vote of all five (5) of the seats on, the City Council.

Section 3. CEQA REVIEW. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15060(c)(2), 15061(b)(3) and 15378(b)(2) and (4). The City Manager is hereby directed to ensure that a *Notice of Exemption* is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

Section 4. NO LIABILITY. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Avenal, or any official, employee or agent thereof.

Section 5. PENDING ACTIONS. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 6. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or

circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Avenal hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 7. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Avenal Municipal Code as amended by this ordinance, if any, are substantially the same as provisions in the Avenal Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 7. EFFECTIVE DATE. Pursuant to Elections Code § 9217, this ordinance shall be deemed adopted on the date when the final vote is declared by the City Council and this ordinance shall go into effect ten (10) days after that date, contingent upon approval by a majority of the voters voting on the measure in the November 8, 2022 election. However, pursuant to Revenue and Taxation Code § 7265, the authority to levy the general sales tax in the foregoing ordinance shall take effect first day of the first calendar quarter commencing more than one hundred ten (110) days after the adoption of this ordinance, or at such other time authorized within Section 2.

THE FOREGOING ORDINANCE was approved by the City Council of the City of Avenal, State of California, on **June 23 , 2022** at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES: **Gravelle, Hernandez, Ramirez, Preciado**

NOES: **None**

ABSTAIN: **None**

ABSENT: **Verdugo**

ALVARO PRECIADO, Mayor

ATTEST: Maria A. Ortiz, City Clerk

CLERKS CERTIFICATE

City of Avenal}
County of Kings } ss.
State of California }

I, Maria A. Ortiz, City Clerk of the City of Avenal hereby certify that the foregoing is a full, true and correct copy of an ordinance approved by the City Council of the City of Avenal at a meeting held on the 23 day of June, 2022, by the vote as set forth therein.

DATED: June 23, 2022

ATTEST:

Maria A. Ortiz, City Clerk