

EXHIBIT "A"

ORDINANCE NO. _____ -

AN ORDINANCE OF THE PEOPLE OF THE TOWN OF YUCCA VALLEY ADDING CHAPTER 3.26 TO THE YUCCA VALLEY MUNICIPAL CODE IMPOSING A LOCAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION, SUBJECT TO APPROVAL OF A MAJORITY OF THE ELECTORS VOTING ON THE TAX MEASURE AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2012.

WHEREAS, the Town of Yucca Valley has experienced, and continues to face, a dramatic and critical decline in revenues and has reached a point of fiscal crisis that could threaten vital Town services. State practices of taking local funds from Yucca Valley impact the Town's ability to address the community priorities, while State legislation, regulations and mandates also present tough financial challenges for Yucca Valley.

WHEREAS, Since mid-2006, the U.S. economy has been suffering severe recessionary economic conditions that are unprecedented since the Great Depression of the 1930's. The effects of the recession have had profoundly negative impacts upon the Town and communities in the region, with the decline in housing values and commercial business activity causing a decline in property and sales tax revenues incoming to municipalities. The negative impact of the general economic recession upon local government is further compounded by the California Legislature's enactment of ABx1 26 (June 28, 2011) and AB 1484 (June 27, 2012), which bills eliminate the existence of, and funding for, local redevelopment agencies. These bills will effectively take approximately \$5.0 million in existing assets from the Town and *permanently* eliminate tax increment revenues as a source of income (at least \$2.0 million per year) to the Town. Monies lost to the Town through recent legislation will be diverted to other districts to pay for the financial obligations that the State has been unable to meet.

WHEREAS, this unprecedented financial situation is due to several factors including: (1) the Town's General Funds have seen a revenue decline of 16% from fiscal year 2007/08 to 2010/11. This is due in part to the dramatic decrease in property values of 20% which caused an equivalent drop in property tax revenues; (2) the Town, like most other cities, has endured several years of damaging "money grabs" by the State of California, such as ABx1 26 and AB 1484 discussed above; (3) increasing general expenses to the Town such as the rising costs of fuel, electricity and supplies, and producing a balanced budget—while continuing to provide critical services at an acceptable level; and (4) declining sales tax revenues over the previous years due to the ongoing recession.

WHEREAS, the Town of Yucca Valley has worked diligently to reduce expenditures 14% from fiscal year 2009-10 to 2010-11, by cutting programs; reducing employee salary costs by 13% and benefit costs by 19%; reducing non-public safety staff by almost 20% since 2009; and critically examining all expenditures.

WHEREAS, the Town of Yucca Valley has implemented local pension reform measures, including a reduced-benefit pension program for new employees (two-tier pension) and requiring all employees to pay their share towards retirement costs (7-8% of gross salary).

WHEREAS, the Town estimates a deferred maintenance liability of approximately \$15 million on Town maintained roads. There is currently no identified funding source to address this community need.

WHEREAS, the State Water Resources Control Board recently voted to prohibit use of septic tanks in the Town of Yucca Valley, requiring the community to develop a centralized sewer system, or face significant penalties and fines.

WHEREAS, if the Town were to address this continuing shortfall and state mandates with further cuts alone, it would have to consider drastic cuts to programs such as police, street and sidewalk repair, graffiti removal, animal services, Code Enforcement, and Community Recreational programming.

WHEREAS, because of the scale of the Town's revenue needs and the depth of the cuts that have already been made, only two realistic choices remain for dealing with community priorities. Yucca Valley must either generate additional revenue or make deeper cuts to Town services.

WHEREAS, because citizens repeatedly rank public safety and street maintenance as their top priorities, the Town is proposing a solution that would help maintain these important services, while developing a centralized sewer system to replace septic tanks and protect groundwater quality, including a plan to reduce the cost for local property owners to connect to the sewer system.

WHEREAS, while an economic recovery from the ongoing recession is possible within the next several years, the State's recent legislation eliminating tax increment funding for local agencies represents a permanent cut to Town revenues, thus necessitating a long-term solution for providing new Town revenue sources. To this end, the Town proposes that a local revenue measure should be considered.

WHEREAS, a local revenue measure would give Yucca Valley local control over local funds, for local community priorities including but not limited to cost-efficiently financing the wastewater treatment plant and collection system, maintaining neighborhood police patrols and 911 response, and maintaining and repairing existing neighborhood streets and alleys.

WHEREAS, the Town Council desires to submit to the voters a proposal to enact a one cent (i.e., 1%) transaction and use tax for a period of thirty (30) years in the Town of Yucca Valley, with the funds to be deposited in the Town's General Fund and be used for general Town purposes and services. If enacted, by law, these funds would be protected from Sacramento.

WHEREAS, by taking this step, keeping the Town safe, crime rates low, emergency response times low for all areas of the Town, and keeping the Town well maintained with critical public facility/sewer infrastructure, the Town can protect property values and preserve the Town's small town atmosphere.

WHEREAS, the proposed measure includes an independent taxpayers' oversight committee, mandatory financial audits, and yearly reports to the community to ensure the funds are spent as promised.

WHEREAS, California Constitution Article XIIC, Section 2, provides any general tax must be submitted to the electorate and approved by a majority vote of the electorate.

WHEREAS, California Constitution Article XIIC, Section 2, provides that an election regarding a general tax must be consolidated with a regularly-scheduled general municipal election for members of the Town Council.

WHEREAS, a general municipal election on Tuesday, November 6, 2012 has been called by Resolution No. 12-15, adopted on June 26, 2012; and

NOW THEREFORE, on the basis of the foregoing, the People of the Town of Yucca Valley at the November 6, 2012, general municipal election do hereby Ordain as follows:

SECTION 1. A new Chapter 3.26 is hereby added to the Yucca Valley Municipal Code to read as follows:

"Chapter 3.26
TRANSACTIONS AND USE TAX

3.26.010: SHORT TITLE:

This Chapter shall be known as the Town of Yucca Valley Transactions and Use Tax Ordinance. This Chapter shall be applicable only in the incorporated territory of the Town.

3.26.020: BASIC DEFINITIONS:

As used in this Chapter, "Town" means the Town of Yucca Valley and "tax" means the transactions and use tax imposed under the provisions of this Chapter.

3.26.030: OPERATIVE DATE:

"Operative Date" means the first day that the tax is imposed and collected. The 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 as set forth below.

3.26.040: PURPOSE:

This Chapter is adopted to achieve the following, among other 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 Town to adopt this tax ordinance which shall be operative only 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 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 may be administered and collected by the State Board of Equalization 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 State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that may 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 ordinance.

E. To provide transactions and use tax revenues to the Town to be used for the general governmental purposes of the Town, including but not limited to, infrastructure (i.e. wastewater treatment, streets, sidewalks, flood control, public facilities, parks) construction and financing, infrastructure maintenance, public safety, community services, economic development, animal care and control, and other Town provided services.

3.26.050: CONTRACT WITH STATE:

Prior to the operative date, the Town shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided however, that if the Town shall not have 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.

3.26.060: IMPOSITION OF TRANSACTIONS TAX; 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 Town at the rate of one percent (1.00 %) 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.

3.26.070: PLACE OF TRANSACTION:

For the purposes of this Chapter, 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 State Board of Equalization.

3.26.080: IMPOSITION OF USE TAX; USE TAX RATE:

An excise tax is hereby imposed on the storage, use or other consumption in the Town 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 (1.00 %) 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.

3.26.090: PROCEEDS OF TAX:

The proceeds of the transactions and use tax imposed by this Chapter shall be deposited into the General Fund of the Town to be used for all general government purposes which may include, but are not limited to, infrastructure (i.e. wastewater treatment, streets, sidewalks, flood control, public facilities, parks) construction and financing, infrastructure maintenance, fire and police protection, street and sidewalk repair and maintenance, library and museum services, park repair and maintenance, recreational programs, building and code enforcement services, planning and zoning services, capital equipment requirements, repair and replacement of Town facilities, capital improvement projects, operational expenses, fiduciary responsibilities, administration, indebtedness and general obligations of the Town. The tax imposed by this Chapter is intended to be and is, a general tax, the proceeds of which are to be spent as the Town Council shall in its discretion, from time to time, determine.

3.26.100: ADOPTION OF PROVISIONS OF STATE LAW:

Except as otherwise provided in this Chapter and except insofar as they are inconsistent with the provisions of Parts 1.5 or 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.

3.26.110: 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 Town shall be substituted therefore. However, the substitution shall not be made:

1. When 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. When the result of that substitution would require action to be taken by or against this Town 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 Chapter.

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:

- i. 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
- ii. 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 "Town" 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.

3.26.120: 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.

3.26.130: EXEMPTIONS AND EXCLUSIONS:

A. There shall be excluded from the calculation 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 Town, Town 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 Town which is shipped to a point outside the Town, 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 Town shall be satisfied:

- i. 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-Town 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
- ii. With respect to commercial vehicles, by registration to a place of business out-of-Town 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 Chapter, the storage, use or other consumption in this Town 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 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 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 Town 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 Town or participates within the Town 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 Town or through any representative, agent, canvasser, solicitor, subsidiary, or person in the Town under the authority of the retailer.

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

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.

3.26.140: CHANGES IN LAW:

All amendments subsequent to the effective date of this Chapter 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.

3.26.150: 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 Town, or against any officer of the State or the Town, 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.

3.26.160: INDEPENDENT ANNUAL AUDIT:

The proceeds resulting from this Transactions and Use Tax shall be deposited into the Town's General Fund and become subject to the same independent annual audit requirements as other general fund revenue. The independent auditor's report will be presented annually to the Taxpayers' Oversight Committee, the Town Council, and made available for public review.

3.26.170: TAXPAYERS' OVERSIGHT COMMITTEE:

By no later than the Operative Date of the tax authorized by this Chapter, the Town Council shall establish a committee consisting of no fewer than three (3) members of the public regarding the receipt of revenue and expenditure of funds from the tax authorized by this Chapter. The committee members shall be either Town residents or representatives of businesses located and doing business within the Town's jurisdiction. The committee members shall be appointed by the Town Council and shall serve without reimbursement or compensation. Within thirty (30) days of the Effective Date of this Ordinance, the Town Council shall adopt a resolution establishing the composition of the committee, setting the terms of office of the committee members, and defining the scope of the committee's responsibilities. The committee shall issue an annual report to the community, detailing the amounts collected under this Chapter and an analysis of the amounts allocated to specific Town services and programs and recommendations for future allocations of funding, consistent with 3.26.090. The committee's reports and recommendations shall be a matter of public record and shall be considered by the Town Council at a public meeting.

3.26.180: ALL FUNDS STAYING LOCAL:

All tax revenues collected under the authority of this Chapter shall be expended solely on local municipal services as defined in 3.26.090, and shall not be used for any other purposes.

3.26.190: EFFECTIVE DATE:

This ordinance levying the tax described herein shall be effective ten days after the date on which the Town Council has declared that the voters of the Town of Yucca Valley have approved said ordinance by a vote of no less than a majority of the votes cast by the electors voting on the tax measure set forth in this ordinance at the general municipal election to be held on Tuesday, November 6, 2012.

3.26.200: TERMINATION DATE:

The authority to levy the tax imposed by this Chapter shall expire on the thirtieth (30th) anniversary of the last day of the calendar quarter preceding the operative date.

3.26.210: PENALTIES:

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor.

3.26.220: AMENDMENTS:

The tax rate in this Chapter may only be increased by a vote of the people of the Town of Yucca Valley; provided, however, that the Town Council may amend this Chapter to reduce the amount of the tax authorized herein or to otherwise implement or advance the purpose and intent of this Chapter.

SECTION 2. If any section, subsection, sentence, clause or phrase of this Ordinance or the application thereof to any person or circumstance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The People of the Town of Yucca Valley hereby declared that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional.

I hereby certify that Ordinance No. ___ was passed, approved and adopted by the People of the Town of Yucca Valley, California, voting on the 6th day of November, 2012.

MAYOR

ATTEST:

TOWN CLERK