

## BACHELOR GULCH METROPOLITAN DISTRICT

### A RESOLUTION AUTHORIZING IMPOSITION OF SALES TAX

WHEREAS, the Bachelor Gulch Metropolitan District (the “**District**”) is a quasi-municipal corporation and political subdivision of the State of Colorado and a duly organized and existing special district pursuant to Title 32, Article 1, Colorado Revised Statutes (“**C.R.S.**”); and

WHEREAS, the District is authorized pursuant to Section 32-1-1106, C.R.S., to levy a uniform sales tax, at a rate determined by the Board, upon every transaction or other incident with respect to which a sales tax is levied by the State that occurs within any area of the District that is not also within the boundaries of an incorporated municipality, subject to approval of the registered electors of the portion of the District in which the tax is to be levied, to fund safety protection, street improvements and transportation; and

WHEREAS, due to the need to pay for safety protection, street improvements and transportation, and the necessity of creating a revenue source therefor, the Board of Directors of the District has previously determined that the public interest requires that the rate of the District sales tax should be up to five percent (5%) upon every transaction or other incident with respect to which a sales tax is levied by the State that occurs within any area of the District that is not also within the boundaries of an incorporated municipality; and

WHEREAS, the Board has submitted to the eligible electors of the District the question of levying a sales tax and receiving and spending all District revenues at the election to be held on November 2, 2010 (the “**Election**”), with the form of such question attached hereto as Exhibit A; and

WHEREAS, pursuant to Section 29-2-105, CRS, the Board must formally adopt a resolution to impose the sales tax.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Bachelor Gulch Metropolitan District as follows:

1. **Definitions.** For the purposes of this Resolution, the words herein contained shall have the meanings set forth herein and in Sections 39-26-102, C.R.S., as they currently exist or may hereafter be amended. The definitions in these statutes are incorporated herein by this specific reference.

2. **Sales Tax.**

(a) **Sales Tax Imposed.** There is hereby imposed on the sale of tangible personal property at retail, and the furnishing of services, as provided in Section 29-2-105(1)(d), C.R.S., a sales tax equal to 3% of the gross receipts (the "**Sales Tax**"). The tangible personal property and services taxable under this Resolution shall be the same as the tangible personal property, and services taxable pursuant to Section 39-26-104, C.R.S., and subject to the same exemptions as those specified in Section Title 39, Article 26, Part 7, C.R.S. The imposition of the Sales Tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Department of Revenue. If any vendor, during any reporting period, shall collect as the Sales Tax an amount in excess of the amount of the Sales Tax imposed by this Resolution, he shall remit to the Executive Director the full amount of the Sales Tax herein imposed and also such excess.

(b) **Place of Sale.** For the purpose of the Sales Tax, 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 a destination outside the limits of the District or to a common carrier for delivery to a destination outside the limits of the District. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Title 39, Article 26, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the District, or has more than one place of business, the place at which the retail sales are consummated for the purpose of the Sales Tax shall be determined by the provisions of Title 39, Article 26, C.R.S., and by rules and regulations promulgated by the Department of Revenue.

(c) **Excepted from Sales Amount.** The amount subject to the Sales Tax shall not include the amount of any sales or use tax imposed by Title 39, Article 26, C.R.S.

(d) **Specific Ownership Tax Exemption.** All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the Sales Tax when such sales meet both of the following conditions:

(i) The purchaser is a non-resident of, or has his principal place of business outside the limits of the District, and

(ii) Such personal property is registered or required to be registered outside the limits of the District under the laws of the State of Colorado.

(e) **Mobile Telecommunications.** The Sales Tax shall be imposed in accordance with the provisions of the Act, and, pursuant to Section 117 (b) of the Act,

mobile telecommunications service taxable by District may be subject to the Sales Tax on the service only if the Customer's place of primary use is within the geographical boundaries of the District. Unless the context otherwise requires:

(i) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. Sections 116 to 126, as amended.

(ii) "Customer" means customer as defined in Section 124 (2) of the Act.

(iii) "Mobile telecommunications service" means mobile telecommunications service as defined in Section 124 (7) of the Act.

(iv) "Place of primary use" means the place of primary use as defined in Section 124 (8) of the Act.

3. **Sales Tax Collection.** The Executive Director of the Department of Revenue of the State of Colorado (the "**Executive Director**") shall perform the collection, administration and enforcement of the Sales Tax in the same manner as the collection, administration and enforcement of the Colorado State Sales Tax. Unless otherwise provided by Title 29, Article 2, C.R.S., the provisions of Title 39, Article 26, C.R.S., shall govern the collection, administration, and enforcement of the Sales Tax, and the provisions of such statutes are incorporated into this Resolution by reference.

4. **Use of Revenues.** The revenues derived from the Sales Tax shall be used for any purpose authorized by law.

5. **Duration.** The Sales Tax provided herein shall commence January 1, 2011, and continue until repealed.

6. **Election.** Before the Sales Tax provided by this Resolution shall become effective, it shall be submitted to and must receive the approval of a majority of the registered electors of the District voting thereon at the Election

7. **Headings and Recitals.** The headings to the various sections and subsections to this Resolution have been inserted solely for the convenience of the reader, are not a part of this Resolution, and shall not be used in any manner to interpret this Resolution. The Recitals to this Resolution are incorporated herein by reference.

8. **Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body of competent jurisdiction to be invalid or unenforceable, in whole or

in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation, and if any provision hereof or the application thereof is determined by a court or administrative body of competent jurisdiction to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

9. **Repeal of Inconsistent Resolutions, Bylaws, Rules and Regulations.** All resolutions, bylaws, rules and regulations, or parts thereof, that are inconsistent with or in conflict with this Resolution, are hereby repealed to the extent of such inconsistency or conflict.

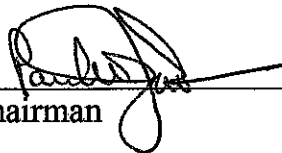
10. **Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Resolution and Colorado law) by the Board or by the officers, employees and agents of the District related to the imposition of the Sales Tax for the purposes herein set forth are hereby ratified, approved and confirmed in all respects.

11. **Effective Date.** This Resolution shall take effect and be enforced immediately upon its approval by the Board.

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ADOPTED this 27<sup>th</sup> day of October, 2010.

Bachelor Gulch Metropolitan District

By  \_\_\_\_\_  
Chairman

Attest:

 \_\_\_\_\_  
Secretary

**EXHIBIT A  
TO  
RESOLUTION IMPOSING SALES TAX**

SHALL BACHELOR GULCH METROPOLITAN DISTRICT TAXES BE INCREASED \$3,000,000 ANNUALLY IN 2011 AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER BY THE IMPOSITION PURSUANT TO SECTION 32-1-1106, C.R.S., OF A SALES TAX OF NO MORE THAN 5.0% (AS DETERMINED BY THE BOARD OF DIRECTORS) FOR THE PURPOSES OF FINANCING, CONSTRUCTING, OPERATING AND MAINTAINING STREETS, SAFETY PROTECTION AND TRANSPORTATION IMPROVEMENTS; SUCH SALES TAX TO BE IN ADDITION TO ANY OTHER TAXES LEVIED BY THE DISTRICT; AND SHALL THE DISTRICT BE AUTHORIZED TO COLLECT, RETAIN AND SPEND THE PROCEEDS OF SUCH SALES TAX AND ALL OTHER AMOUNTS RECEIVED ANNUALLY FROM ANY REVENUE SOURCES WHATSOEVER AS A VOTER-APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND ANY OTHER LAW?