

**A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO
TO AUTHORIZE THE ADOPTION OF A COUNTYWIDE SALES TAX IN THE AMOUNT OF 1% FOR
PURPOSES OF MAINTAINING THE OURAY COUNTY ROAD AND BRIDGE SYSTEM**

WHEREAS, there are approximately 290 miles of Ouray County roads that are maintained by the Ouray County Road and Bridge Department ("Road and Bridge"); and

WHEREAS, the revenues that support the Ouray County Road and Bridge Department currently come from two main sources, property tax and Highway Users Tax Fund ("HUTF"), with HUTF monies averaging between forty percent (40%) and forty-six percent (46%) of total Road and Bridge funding; and

WHEREAS, the Board has received information that suggests that HUTF funds may be reduced by twenty percent (20%) for the 2009 fiscal year, thereby reducing Road and Bridge revenues by approximately \$120,000.00 for 2009; and

WHEREAS, continued reductions in the HUTF funds appear likely; and

WHEREAS, the current revenues that are devoted to the Road And Bridge Fund have been inadequate to properly maintain and make capital improvements to Ouray County roads, and the expected reduction in revenues from HUTF will significantly affect the road maintenance services provided by Road and Bridge; and

WHEREAS, increases in the cost of fuel have had a significant impact on the Road and Bridge Department's budget as fuel prices have increased approximately forty-three percent (43%) over last year and it is expected that fuel prices will remain high and likely continue to increase in future years; and

WHEREAS, with the anticipated decrease in revenues and increase in operating expenses for Road and Bridge, the gradual degradation of the Ouray County road system is a reality facing the Board of County Commissioners ("Board") of the County of Ouray, Colorado ("County") and the citizens of Ouray County; and

WHEREAS, the Board recognizes that it has a fiduciary duty to protect all of the assets of Ouray County and the Ouray County Road and Bridge system is a primary, critical asset of Ouray County and adequately maintaining this asset is vital to the health, safety and welfare of the citizens and visitors to Ouray County; and

WHEREAS, the Board has conducted several public meetings at which possible avenues to address the expected reduction in funding for Road and Bridge were discussed; an analysis prepared by Commissioner Batchelder relative to the future funding and expenses of the Road and Bridge Department was presented; possible reductions in spending for the 2009 budget were proposed by the Road and Bridge Superintendent and public comments were solicited; and

WHEREAS, the Board has determined that the public interest and the needs of the County require that provisions be made for the maintenance, repair or reconstruction of county roads and the acquisition of necessary equipment for the maintenance, repair and reconstruction of county roads in order to stabilize the trend of degradation of the roads in the near-term horizon; and

WHEREAS, the Board has determined that a one percent sales tax on tangible personal property at retail and the furnishing of services is an equitable means of addressing deficiencies in the funding mechanism for maintenance, repairs and reconstruction of county roads; and

WHEREAS, Senate Bill 08-128 "Concerning the Elimination of the Statutory Limit on the Total Amount of Sales or Use Tax That May Be Levied by Certain Governmental Entities" was adopted by the Colorado Legislature in the 2008 legislative session and signed by the Governor on May 21, 2008, which bill eliminates the previous cap on sales tax; and

WHEREAS, Article 2, Title 29, Colorado Revised Statutes (hereinafter the "Article") provides for the imposition of a sales tax on the sale of tangible personal property at retail and the furnishing of services, subject to approval of the registered electors of Ouray County; and

WHEREAS, after careful consideration of the need to replace expected losses in HUTF funding and provide additional funding for the repair, maintenance and reconstruction of county roads, the Board has determined that the public interest requires that the rate of the County sales tax should be an additional one percent (1%) on the sale of tangible personal property at retail or the furnishing of services; and

WHEREAS, if the sales tax is approved by a majority of electors of Ouray County, the sales tax will be deposited to the "Ouray County Road and Bridge Sales Tax Fund" to be used exclusively for providing funds for the costs incurred to maintain the Ouray County road and bridge system;

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Ouray that there shall be referred to the registered electors of Ouray County, at the general election to be held on November 4, 2008, the following proposal:

Section 1. Sales Tax Definitions. For the purposes of Sections 1 through 4, inclusive, of this Resolution, the words used in this Resolution shall have the meanings set forth herein and in C.R.S. §39-26-102 as it currently exists or may hereafter be amended. The definitions in such statutes are incorporated herein by this specific reference.

Section 2. Sales Tax Imposed.

(a) There is hereby imposed on the sale of tangible personal property at retail and the furnishing of services as provided in C.R.S. §29-2-105 (1) (d), a sales tax equal to 1% 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 C.R.S. §39-26-104, and subject to the same exemptions as those specified in Part 7 of Article 26 of Title 39, Colorado Revised Statutes, PROVIDED THAT all sales made to charitable organizations, in the conduct of their regular charitable functions and activities and occasional sales by a charitable organization all as set forth in C.R.S. §39-26-718 shall expressly be made exempt from the Sales Tax and the sale of such items is not made taxable under this Resolution. 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) For the purpose of the Sales Tax, all retail sales shall be considered 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 County or to a common carrier for delivery to a destination outside the limits of the County. The gross receipts from such sales shall include delivery charges when such

charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the County, 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 Article 26 of Title 39, C.R.S., and by rules and regulations promulgated by the Department of Revenue.

- (c) The amount subject to the Sales Tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S.
- (d) 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 nonresident of, or has his principal place of business outside the limits of the County; and
 - (ii) Such personal property is registered or required to be registered outside the limits of the County under the laws of the State of Colorado.
- (e) As set forth in C.R.S. 29-2-105 (2), no Sales Tax shall apply to the sale of construction and building materials, as the term is used in C.R.S. §29-2-109, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is required to be paid. As set forth in C.R.S. 29-2-105 (3), no Sales Tax shall apply to the sale of tangible personal property or the furnishing of services if the transaction was previously subjected to a sale or use tax lawfully imposed on the purchaser by another statutory or home rule county equal to or in excess of that sought to be imposed by the subsequent statutory or home rule county.

Section 3. Sales Tax Collection. The collection, administration, and enforcement of the Sales Tax shall be performed by the Executive Director of the Department of Revenue of the State of Colorado (the "Executive Director") in the same manner as the collection, administration, and enforcement of the Colorado State Sales Tax. Unless otherwise provided by Article 2 of Title 29, C.R.S., the provisions of Article 26 of Title 39, C.R.S. shall govern the collection, administration, and enforcement of the Sales Tax. Every vendor collecting Sales Tax as required herein shall be entitled to retain a fee in the amount of three-and-one-third percent of the sums collected, as provided by C.R.S. §39-26-105.

Section 4. Use of Revenues.

- (a) One hundred percent (100%) of the revenues received by Ouray County from the Sales Tax shall be deposited to the "Ouray County Road and

Bridge Sales Tax Fund” (the “Fund”). All records of such Fund shall be open to public inspection consistent with the requirements of the Colorado Public (Open) Records Act. The revenues deposited to such Fund shall be used exclusively for the costs incurred to maintain the Ouray County road and bridge system and shall be expended when authorized by the Board by transfer to the Road and Bridge Fund. The Fund may be used only for the following:

- (i) repair, maintenance and reconstruction to Ouray County roads or bridges, including personnel costs, outside contracting, engineering, materials and such other costs and expenses that may be incidental to repairs, maintenance or reconstruction of roads or bridges; and
- (ii) maintaining and acquiring materials and equipment for the maintenance, repair or reconstruction of Ouray County roads and bridges.

- (b) Monies credited to the Fund shall not be available to be pledged or expended by interfund (other than to the Road and Bridge Fund) transfer or otherwise for any general purpose of the County.

Section 5. Duration of Sales Tax. The Sales Tax provided herein shall commence on January 1, 2009 and continue until repealed.

Section 6. Election. Before this Resolution shall become effective, it shall be submitted to and receive the approval of a majority of the registered electors of Ouray County voting thereon at the election to be held on Tuesday, November 4, 2008. The election shall be conducted as follows:

- (a) Conduct of Election. The Board hereby designates the Ouray County Clerk as the Election Official for the Conduct of the Election on behalf of the County, with the authority and direction to proceed with any action necessary or appropriate to effectuate the provisions of this Resolution and all constitutional and statutory provisions governing the conduct of this election. The County Clerk and Recorder, as election officer, shall undertake all measures necessary to comply with the election provisions set forth in Colo. Const., Art. X, Section 20 (3), including, but not limited to, the mailing of required election notices and ballot issue summaries.

- (b) Ballot Title. The ballot title for the Sales Tax question shall be in substantially the following form:

SHALL OURAY COUNTY TAXES BE INCREASED \$510,000 ANNUALLY (FIRST FULL FISCAL YEAR DOLLAR INCREASE IN 2009) AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED, BY THE IMPOSITION OF A 1% SALES TAX ON THE SALE OF TANGIBLE PERSONAL PROPERTY AT RETAIL OR THE FURNISHING OF SERVICES, AND SHALL THE NET

REVENUES FROM SUCH SALES TAX BE DEPOSITED TO THE "OURAY COUNTY ROAD AND BRIDGE SALES TAX FUND" AND SHALL SUCH SALES TAX COMMENCE JANUARY 1, 2009, AND MAY ALL REVENUES GENERATED FROM SUCH SALES TAX BE COLLECTED, RETAINED AND SPENT AS A VOTER APPROVED REVENUE CHANGE, OFFSET AND EXCEPTION TO THE LIMITS THAT WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

_____ YES _____ NO

Section 7. Effective Date. Upon passage of this Resolution and approval thereof at a subsequent election by the registered electors of Ouray County, Colorado the proposals described in this Resolution shall take effect immediately upon approval of the electorate and the Sales Tax shall become effective on January 1, 2009.

Section 8. Severability. If any portion of this Resolution is found to be void or ineffective, it shall be deemed severed from this Resolution and the remaining provisions shall remain valid and in full force and effect.

Section 9. Publication. Upon adoption, the Ouray County Clerk and Recorder shall publish the text of this Resolution four separate times, a week apart, in the official newspaper of the County, and in the official newspaper of each incorporated municipality in the County.

Section 10. Amendment. At any time prior to the deadline for finalizing election questions and ballot titles as provided by the applicable election laws, the Board may amend this Resolution by the proper adoption of a Resolution setting forth the amendment. Amendments may include, but not be limited to, the amount, duration, and uses of the Sales Tax.

Section 11 Authorization. The officers of the County are authorized and directed to take all action necessary and appropriate to effectuate the provisions of this Resolution.

Section 12. TABOR. For purposes of Colo. Const., Art. X, Section 20, the receipt and expenditure of the Sales Tax, if approved by the voters, together with any earnings on the investment of the proceeds of the Sales Tax shall constitute a voter-approved revenue change.

APPROVED AND ADOPTED THIS _____ DAY OF _____, 2008.

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Attest:

K. Keith Meinert, Chair

Don Batchelder, Vice Chair

Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of the Board

Heidi M. Albritton, Commission Member