

## RESOLUTION NO. 125-04

### A RESOLUTION SETTING FORTH THE INTENTION OF THE CITY OF GRAND JUNCTION, COLORADO, TO ISSUE ADJUSTABLE RATE REVENUE BONDS TO FINANCE A MANUFACTURING FACILITY FOR THE BENEFIT OF ACTION CAMPUS, LLC, OR ITS SUCCESSORS OR ASSIGNS

#### RECITALS:

1. The City of Grand Junction , Colorado (the “City”) is authorized and empowered under the provisions of the County and Municipality Development Revenue Bond Act, Article 3 of Title 29, Colorado Revised Statutes, as amended (the “Act”), to issue revenue bonds to pay the costs of a project (as defined in the Act) and to loan the proceeds of said revenue bonds to others to provide for the financing, acquiring, equipping, and improving of such a project.
2. Action Campus, LLC, or its successors or assigns (the “Borrower” desires that the City finance acquisition, construction, equipping, and improving of real and personal property in connection with an approximately 15,000 square-foot manufacturing facility (the “Project”) to be located at 2415 Blue Heron Road within the boundaries of the City.
3. The City has received information that it considers reliable that the Project will qualify as a project within the meaning of the Act.
4. The City desires to indicate its intention to finance the costs of financing, acquiring, constructing, equipping, and improving the Project by the issuance of tax-exempt revenue bonds under the Act in a principal amount not to exceed \$1,750,000 (the “Bonds”), which Bonds will be payable solely out of revenues derived from the repayment by the Borrower of the loan from the City.
5. The Borrower intends to commence the Project prior to the issuance of the Bonds.
6. The City’s ability to issue tax-exempt revenue bonds to finance such improvements is subject to the limitations set forth in the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes (the “Bond Allocation Act”).
7. The Borrower desires that such financing, acquiring, constructing, equipping, and improving of the Project commence immediately.
8. The City Council of the City hereby determines that the financing of the Project will promote the public health, welfare, safety, convenience and

prosperity, and promote and develop trade or economic activity by inducing manufacturing facilities to locate, expand, or remain in the City and the State of Colorado.

9. The Internal Revenue Service has issued 1.150-2 of the Income Tax Regulations (the "Regulations") dealing with the issuance of bonds, all or a portion of the proceeds of which are to be used to reimburse project expenditures incurred prior to the date of issuance; the Regulations generally require that a prior declaration of official intent be made by the City as issuer if the Borrower intends to reimburse itself for such prior expenditures out of the proceeds of a subsequently issued borrowing, that within 18 months of the payment of the expenditure or, if later, within 18 months of the date the project is placed in service, and that the expenditure be a capital expenditure or payment of costs of issuance; and the City as issuer and the Borrower desire to comply with the requirement of the Regulations with respect to the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF GRAND JUNCTION, COLORADO, AS FOLLOWS:**

- a) The City expects that the Borrower will finance all or any part of the acquisition, construction, improvement, and equipping of the Project with moneys of the Borrower currently on hand.
- b) The City presently intends and reasonably expects to participate in a tax-exempt borrowing for the benefit of the Borrower within 18 months of the date of the expenditures of moneys on the Project or the date upon which the Project is placed in service, but in no event more than three years after the expenditure is made, whichever is later.
- c) This Resolution is the first resolution of the City concerning all or a portion of the Project described in paragraph 1 hereof.
- d) The City Council hereby finds that the assistance it may give will further the purposes set forth in the Act, and that the Project will create economic benefits for the City and its inhabitants.
- e) In order to induce the Borrower to construct the Project within the City, subject to the provisions hereof, the City shall take all necessary or advisable steps to effect the issuance of tax-exempt revenue bonds (the "Bonds") pursuant to the Act in the aggregate principal amount not to exceed \$1,750,000 or such other amount as shall be determined and agreed upon between the Borrower and the City, to finance the Project. The Bonds will not be general obligations of the City. Neither shall the Bonds, including interest thereon, constitute the debt, indebtedness, or multiple-fiscal year direct or indirect financial obligation of the City within

the meaning of any limitation of the Constitution or indirect financial obligation or statutes of the State of Colorado, nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers. The Bonds shall be payable solely from, and secured by a pledge of revenues derived from and payable by the Borrower pursuant to financing agreements with the City.

- f) No costs or expenses, whether incurred by the City or any other party in connection with the issuance of the Bonds or the preparation of any documents by any legal or financial consultants retained in connection therewith, shall be borne by the City. All such costs or expenses shall be paid from the proceeds of the Bonds or otherwise borne by the Borrower.
- g) Prior to the execution of a loan agreement, indenture of trust, bond purchase agreement, or any other necessary documents and agreements in connection with such Bonds, documents, and/or agreements shall be submitted for approval to the City, and, if satisfactory to the City, their execution shall be authorized by ordinance of the City pursuant to law. Prior to any further action by the City Council, the Borrower shall provide the City with all information concerning the utilization of Bond proceeds for said Project, construction plans, and all financial information requested by the City.
- h) The City has received information which it considers to be reliable (a) that the Borrower proposes to undertake the Project, (b) that except for (i) expenditures aggregating no more than the lesser of \$100,000 or 5% of the proceeds of the bonds, (ii) preliminary expenditures (as described in the Regulations) in an amount not to exceed 20% of the issue price of the bonds, and (iii) other expenditures made not earlier than 60 days before the due date of the Resolution, no expenditures for the Project have been made by the Borrower that will be reimbursed from the proceeds of the Bonds, and (c) the Borrower reasonably expects to reimburse the expenditures made for costs of the Project out of the proceeds of the Bonds; and that this Resolution is a declaration of official intent pursuant to Section 1.150-2 of the Regulations.
- i) The City Council hereby awards to the Project \$1,750,000 of the City's 2005 portion of the State's private activity bond value cap (the "City's Volume Cap"). The appropriate officers of the City are hereby authorized to take all action that may be necessary to preserve the City's Volume Cap.
- j) All commitments of the City contained herein are subject to the following conditions, and any other requirements deemed necessary by the City:

1. The property on which the Project is proposed to be constructed be located within the City, and developed according to City Regulations.
  2. The Bonds shall be issued and sold no later than one year from the date hereof, and in the event the Bonds are not issued by such date, the City shall be under no obligation to perform any of the terms and conditions contained in this Resolution.
- k. Nothing herein requires the City to proceed with the issuance of the Bonds, it being in the sole discretion of the City Council as to whether the Bonds will be issued or not. The approval of this Resolution does not limit or restrict the City in the exercise of any of its legal powers with respect to the Project or the property on which it is to be located.
- l. If any section, paragraph, clause, or provision of the Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining sections, paragraphs, clauses, or provisions of this Resolution.
- m. The Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Grand Junction, Colorado, this 1<sup>st</sup> day of December, 2004.

**THE CITY OF GRAND JUNCTION,  
COLORADO**

/s/: Gregg Palmer  
Mayor Pro Tem

ATTEST:

/s/: Stephanie Tuin  
City Clerk