

ORDINANCE NO. 2254

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX REVENUE BONDS, SERIES 1985, OF THE CITY OF GRAND JUNCTION, COLORADO, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,210,000, FOR THE PURPOSE OF CONSTRUCTING, ACQUIRING, AND INSTALLING A MUNICIPAL SWIMMING POOL FACILITY; PRESCRIBING THE FORM OF SAID BONDS AND PROVIDING FOR THE PAYMENT THEREOF FROM THE SALES AND USE TAX MONEYS PLEDGED TO THE CITY'S SALES AND USE TAX CAPITAL IMPROVEMENT FUND; ADOPTING OTHER DETAILS IN CONNECTION THEREWITH AND DECLARING AN EMERGENCY.

WHEREAS, by Ordinance No. 2251, passed and adopted on December 18, 1985, the City of Grand Junction, Colorado (the "City"), has created the "City of Grand Junction Sales and Use Tax Capital Improvement Fund" (the "Fund"), and has pledged to the Fund certain proceeds of the City's 2% sales and use tax; and

WHEREAS, pursuant to such ordinance, the City Charter, and Article XX, Section 6 of the Colorado Constitution, the City is authorized, by ordinance and without an election, to issue bonds or other obligations for the purpose of constructing, acquiring, and installing capital improvements, payable solely from the sales and use tax revenues credited to the Fund; and

WHEREAS, the City Council (the "Council") has determined that a municipal swimming pool facility should be constructed, acquired, and installed, and that sales and use tax revenue bonds in the aggregate principal amount of \$1,210,000 (the "Bonds"), should be issued therefor; and

WHEREAS, the Bonds shall have an irrevocable and first lien, but not necessarily an exclusive first lien, on the sales and use tax revenues pledged to the Fund; and

WHEREAS, the City has received a proposal from Kirchner Moore & Company, Denver, Colorado, concerning the purchase of the Bonds; and

WHEREAS, the Council has determined that the Bonds shall be sold to Kirchner Moor & Company, in accordance with their proposal, and that such sale is to be the best advantage of the City; and

WHEREAS, insofar as it is necessary to issue the Bonds immediately in order to (i) pay the costs of the swimming pool facility which have heretofore become due and payable, and (ii) avoid the January 1, 1986 effective date of certain proposed federal legislation, which legislation may have a detrimental effect upon the City's ability to issue the Bonds and invest the proceeds thereof, the provisions hereof are necessary to the preservation of the public peace, health, and safety; and

WHEREAS, it is necessary to authorize the issuance of the Bonds and provide for the form thereof, the Bond details, the payment of the Bonds, and other provisions relating to the authorization,

issuance, and sale of the Bonds:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

Section 1. Definitions. As used herein, unless the context clearly indicates otherwise, the following capitalized terms shall have the respective meanings set forth below:

**Bonds:** the City's Sales and Use Tax Revenue Bonds, Series 1985, dated December 15, 1985, in the aggregate principal amount of \$1,210,000, as authorized by this Ordinance; provided however, that for purposes of Section 17 hereof, the term "Bonds" shall also include Parity Lien Bonds.

**Bond Account:** the account of the Fund established by Ordinance No. 2251 for the purpose of paying the principal of, premium if any, and interest on the Bonds and any Parity Lien Bonds.

**Bond Insurance Policy:** the municipal bond new issue insurance policy issued by the Bond Insurer and guaranteeing the timely payment of the principal of and interest on the Bonds.

**Bond Insurer:** Financial Guaranty Insurance Company, a New York stock insurance company, or any successor thereto.

**Bond Purchase Agreement:** the agreement dated December 18, 1985, between the City and the Underwriter, concerning purchase of the Bonds by the Underwriter.

**Bond Registrar:** Central Bank of Denver, a banking corporation, in Denver, Colorado, or its successor, which shall perform the registration and transfer functions of bond registrar as set forth in this Ordinance.

**Certified Public Accountant:** a certified public accountant within the meaning of Section 12-2-115, C.R.S., licensed to practice in the State of Colorado.

**Charter:** the home rule charter of the City adopted pursuant to Article XX of the Colorado Constitution.

**City:** the City of Grand Junction, Colorado.

**Code:** the codification of all of the City's ordinances known as the City of Grand Junction Code of Ordinances.

**Combined Maximum Annual Principal and Interest Requirements:** with regard to any one or more issues, the maximum annual payments of principal of or interest on said issue or issues to become due during any calendar year; provided however, that if any issue has a single principal payment date and is issued as interim securities in anticipation of permanent financing, such principal amount shall be excluded from this computation.

Construction Fund: the "City of Grand Junction Swimming Pool Facility Construction Fund" established by this Ordinance.

Council: the City Council of the City.

C.R.S.: the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

Declaration of Trust: the declaration dated as of December 15, 1985, made by the Paying Agent for the purpose of creating a trust relationship with respect to the duties of the Paying Agent.

Event of Default: any one or more of the events set forth in Section 22 of this Ordinance.

Federal Securities: direct obligations of, or obligations the timely payment of the principal of and interest on which is unconditionally guaranteed by, the United States of America.

Fund: the "City of Grand Junction Sales and Use Tax Capital Improvement Fund" established by Ordinance No. 2251, which includes the Bond Account, the Reserve Account, the Subordinate Bond Account, the Subordinate Reserve Account, and the Project Account.

Ordinance: this Ordinance, which authorizes issuance of the Bonds.

Ordinance No. 2251: the ordinance adopted by the City on December 18, 1985, establishing the Fund and the various accounts thereof.

Owner: the registered owner of any bond as shown by the registration books maintained by the Bond Registrar on behalf of the City; provided however, that for purposes of Sections 22 and 23 hereof, if the Bond Insurer is not in default of its obligations under its Bond Insurance Policy, the Bond Insurer shall be deemed the owner of the Bonds insured by it.

Parity Lien Bonds: bonds, notes, certificates, contracts, or any other similar obligations, issued to construct, acquire, or install capital improvements or to pay the principal of, premium if any, and interest on such obligations, payable in whole or in part from, and secured by an irrevocable and first lien upon, the Pledged Revenue.

Paying Agent: Central Bank of Denver, a banking corporation, in Denver, Colorado, or its successor, which shall perform the function of paying agent as set forth in this Ordinance.

Paying Agent and Registrar Agreement: the agreement dated as of December 15, 1985, between the City and the Paying Agent/Registrar, concerning payment and registration of the Bonds.

Permitted Investments: the following securities or obligations, to the extent permitted by applicable law:

(i) Federal Securities; or

(ii) Debentures issued by the federal housing administration under section 204-A of the "National Housing Act".

Pledged Revenue: fifty percent (50%) of the proceeds of the Sales and Use Tax.

Project: the acquisition of facilities and equipment, as necessary, and the construction of improvements for use by or in connection with a municipal swimming pool facility.

Project Account: the account of the Fund established by Ordinance No. 2251 for the purpose of paying the costs of providing capital improvements.

Project Costs: the costs of acquiring and constructing the Project, including without limitation, all costs of the issuance of the Bonds; all engineering, inspection, fiscal, and legal expenses in connection with the Project; costs of financial, professional, and other advice in connection with the Project; contingencies; and all other expenses as may be necessary or incident to the financing, acquisition, improvement, equipment, and completion of the Project and the placing of the same in operation.

Record Date: the last day of the calendar month next preceding each interest payment date of the Bonds.

Reserve Account: the account of the Fund established hereby for the purpose of further securing the payment of the principal of, premium if any, and interest on the Bonds and Parity Lien Bonds.

Sales and Use Tax: the 2% sales and use tax of the City imposed by Chapter 24 of the Code.

Subordinate Bond Account: the account of the Fund established by Ordinance No. 2251 for the payment of the principal of, premium if any, and interest on any Subordinate Lien Bonds.

Subordinate Lien Bonds: bonds, notes, certificates, contracts, or any other similar obligations, issued to construct, acquire, or install capital improvements or to pay the principal of, premium if any, and interest on any such obligations, payable in whole or in part from the Pledged Revenue, and having a lien thereon subordinate to the first lien of the Bonds and any Parity Lien Bonds.

Subordinate Reserve Account: the account of the Fund established by Ordinance No. 2251 for the purpose of further securing the payment of the principal of, premium if any, and interest on any Subordinate Lien Bonds.

Underwriter: Kirchner Moore & Company, of Denver, Colorado, the original purchaser of the Bonds.

Section 2. Authorization. In accordance with the Constitution of the State of Colorado; the Charter; Ordinance No. 2251; and the provisions of this Ordinance, the City hereby authorizes the issuance of its sales and use tax revenue bonds, each to be designated "Sales and Use Tax Revenue Bond, Series 1985", in the total principal amount of \$1,210,000, for the purpose of paying the Project Costs. The Project is hereby determined to be a capital improvement within the meaning of Ordinance No. 2251.

Section 3. Special Obligations. All of the Bonds, together with the interest thereon and any premium due in connection therewith, shall be payable only out of (i) the Bond Account of the Fund, into which the City covenants to deposit the Pledged Revenue in amounts sufficient to pay promptly, when due, the principal of, premium if any, and interest on the Bonds, or (ii) if necessary, the Reserve Account of the Fund. The Owners may not look to any general or other fund of the City for the payment of the principal of, premium if any, and interest on the Bonds, and the Bonds shall not constitute a debt or an indebtedness of the City within the meaning of any Charter Code, constitutional, or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City.

Section 4. Bond Details. The Bonds shall be issued only as fully registered Bonds without coupons in the denomination of \$5,000 each or any integral multiple thereof. Unless the City shall otherwise direct, the registered Bonds shall be numbered separately from 1 upward, with the number of each Bond preceded by "R-".

The Bonds shall be dated as of December 15, 1985, shall bear interest payable semiannually on June 15 and December 15, commencing on June 15, 1986, and shall mature on December 15 each year as follows:

Maturity Principal Amount	Interest Rate	
1986	\$ 90,000	5.60%
1987	100,000	6.00
1988	100,000	6.50
1989	100,000	6.75

1990115,0007.00		
1991120,0007.25		
1992130,0007.50		
1993140,0007.70		
1994150,0007.90		
1995165,0008.00		

The maximum net effect interest rate authorized for the Bonds is 8.00% per annum, and the actual net effective interest rate of the Bonds is 7.824% per annum. The average interest rate is 7.824%.

Section 5. Payment of Bonds; Paying Agent and Bond Registrar. The principal of and premium, if any, on each Bond is payable in lawful money of the United States of America to the Owner of such Bond upon presentation at the principal office of the Paying Agent. Interest on any Bond is payable to the Owner, at his address as it appears on the registration books maintained by or on behalf of the City by the Bond Registrar, at the close of business on the Record Date, irrespective of any transfer or exchange of such Bond subsequent to such Record Date and prior to such interest payment date. Such payment shall be paid by check or draft of the Paying Agent.

The principal of, premium if any, and interest on the Bonds shall be paid in accordance with the terms of a Paying Agent and Registrar Agreement between the City and the Paying Agent/Bond Registrar.

Section 6. Prior Redemption. Bonds maturing on and after December 15, 1991, are subject to redemption prior to maturity, at the option of the City, as a whole or in integral multiples of \$5,000, in inverse order of maturity, and if less than an entire maturity is to be redeemed then by lot within such maturity, on December 15, 1990, and on any interest payment date thereafter, upon payment of par, accrued interest, and a premium of 1.00% of the principal amount so redeemed.

There shall be no optional redemption of the Bonds unless the money to be used therefor has been on deposit in the applicable fund or account for a period of at least 123 days during which period no petition has been filed by or against the City under the United States Bankruptcy Code, or if such petition has been filed, it has been dismissed during such 123 day period.

If less than all of the Bonds within a maturity are to be redeemed on any prior redemption date, the Bonds to be redeemed shall be selected by lot not less than forty-five (45) days prior to the date fixed for redemption, in such manner as the Bond Registrar shall determine. The Bonds shall be redeemed only in integral multiples of \$5,000. In the event a Bond is of a denomination larger than \$5,000, a portion of such bond may be redeemed, but only in the principal amount of \$5,000, a portion of such Bond may be redeemed, but only in the principal amount of \$5,000 or any integral multiple thereof. Such Bond shall be treated for the purpose of redemption as that number of Bonds which results from dividing the principal amount of such Bond by \$5,000.

In the event any of the Bonds or portions thereof (which shall be in amounts equal to \$5,000 or any integral multiple thereof) are called for redemption as aforesaid, notice thereof identifying the Bonds or portions thereof to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid), not more than thirty (30) days prior to the date fixed for redemption, to the Owner of each Bond to be redeemed in whole or in part at the address shown on the registration books maintained by or on behalf of the City by the Bond Registrar. Failure to give such notice by mailing to any Owner, or any defect therein, shall not affect the validity of any proceeding for the redemption of other Bonds. All Bonds so called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time.

Section 7. Form and Execution of Bonds. The Bonds shall be signed with the facsimile or manual signature of the Mayor and President of the City Council, sealed with a facsimile or manual impression of the seal of the City, and countersigned and attested by the facsimile or manual signature of the City Clerk. Should any officer whose facsimile or manual signature appears on the Bonds cease to be such officer before delivery of the Bonds to the Underwriter, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

There shall also be printed on the Bonds a certificate of insurance in the form provided by the Bond Insurer.

The Bonds shall be in substantially the following form:

(Form of Bond)

No. R- ____ \$ ____	
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(Front of Bond)

UNITED STATES OF AMERICA  
STATE OF COLORADO

COUNTY OF MESA  
CITY OF GRAND JUNCTION

SALE AND USE TAX REVENUE BOND, SERIES 1985

INTEREST RATE MATURITY DATE ORIGINAL ISSUE DATE CUSIP			

REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS	
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The City of Grand Junction, in the County of Mesa and State of Colorado, for value received, hereby promises to pay, out of the special fund hereinafter designated but not otherwise, to the registered owner named above or registered assigns, on the maturity date specified above, the principal amount specified above, and in like manner to pay interest on such principal amount (computed on the basis of a 360-day year to twelve 30-day months) from the interest payment date next preceding the date of registration and authentication of this Bond, unless this Bond is registered and authenticated prior to June 15, 1986, in which event this Bond shall bear interest from December 15, 1985, at the interest rate per annum specified above, payable semiannually on June 15 and December 15 each year, commencing on June 15, 1986, until such principal amount is paid, unless this Bond shall have been previously called for redemption and payment shall have been duly provided for or made. The principal of this Bond and premium, if any, are payable in lawful money of the United States of America to the registered owner upon presentation at Central Bank of Denver, a banking corporation, in Denver, Colorado, or its successor, as Paying Agent. The Paying Agent has executed a Declaration of Trust with respect to its duties as Paying Agent.

Payment of each installment of interest shall be made to the



registered owner hereof whose name shall appear on the registration books of the City maintained by or on behalf of the City by Central Bank of Denver, a banking corporation, in Denver, Colorado, or its successor, as Bond Registrar, at the close of business on the last day of the calendar month next preceding each interest payment date (the "Record Date"), and shall be paid by check or draft of the Paying Agent mailed to such registered owner at his address as it appears on such registration books.

Bonds maturing on and after December 15, 1991, are subject to redemption prior to maturity, at the option of the City, as a whole or in integral multiples of \$5,000, in inverse order of maturity, and if less than an entire maturity is to be redeemed then by lot within such maturity, on December 15, 1990, and on any interest payment date thereafter, upon payment of par, accrued interest, and a premium of 1.00% of the principal amount so redeemed.

REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF FULLY SET FORTH IN THIS PLACE.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the authorizing Bond Ordinance until the certificate or authentication hereon shall have been signed by the Bond Registrar.

IN TESTIMONY WHEREOF, the City Council of the City of Grand Junction has caused this Bond to be signed by the facsimile signature of the Mayor and President of the City Council, sealed with a facsimile of the seal of the City, and countersigned and attested by the facsimile signature of the City Clerk, all as of the 15th day of December, 1985.

CITY OF GRAND JUNCTION,  
MESA COUNTY, COLORADO

(FACSIMILE SEAL)

By: (Facsimile Signature)

\_\_\_\_\_  
Mayor and President of City Council

COUNTERSIGNED AND ATTESTED:

(Facsimile Signature)

\_\_\_\_\_  
City Clerk

(Form of Bond Registrar's Certificate of Authentication)

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within-mentioned Bond Ordinance.

Date of Registration and Authentication:

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CENTRAL BANK OF DENVER, A BANKING CORPORATION,  
DENVER, COLORADO,  
as Bond Registrar

By:

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Authorized Signatory

(For of Certificate of Insurance)

(Insert form provided by Bond Insurer)

(Back of Bond)

#### ADDITIONAL PROVISIONS

This Bond is one of a series aggregating One Million Two Hundred Ten Thousand Dollars (\$1,210,000) par value, all of like date, tenor, and effect except as to number, principal amount, interest rate, and date of maturity, issued by the City Council of the City of Grand Junction, Colorado, for the purpose of paying the costs of constructing, acquiring, and installing a municipal swimming pool facility, by virtue of and in full conformity with the Constitution of the State of Colorado, the City Charter and City Ordinances, and pursuant to the duly adopted Ordinance authorizing the issuance of this Bond. It is hereby recited, certified, and warranted that all of the requirements of law have been fully complied with by the proper officers in issuing this Bond.

The principal of, premium if any, and interest on this Bond are payable only out of (i) the Bond Account of a special fund of the City created in full conformity with law and designated as the "City of Grand Junction Sales and Use Tax Capital Improvement Fund" (the "Fund"), into which the City covenants and agrees to deposit, from the proceeds derived from 50% of the City's 2% sales and use tax (the "Pledged Revenue"), amounts sufficient to pay the principal of, premium if any, and interest on the Bonds when the same become due and payable; or (ii) if necessary, the Reserve Account of the Fund, all as more particularly set forth in the Ordinance authorizing the issuance of this Bond. The Bonds of this issue constitute an irrevocable and first lien upon the Pledged Revenue, but not necessarily an exclusive first lien. Subject to expressed conditions, obligations in addition to the Bonds of this issue may be issued and made payable from the Pledged Revenue having a lien thereon subordinate and junior to the lien of the

Bonds of this issue or, subject to additional expressed conditions, having a lien on the Pledged Revenue on a parity with the lien of the Bonds of this issue, in accordance with the provisions of said Ordinance.

It is hereby recited, certified, and warranted that for the payment of this Bond, the City has created and will maintain the Fund, and will deposit therein out of the Pledged Revenue the amounts specified in the authorizing Bond Ordinance and out of the Fund, as an irrevocable charge thereon, will pay the principal of, premium if any, and interest on this Bond in the manner provided by said Ordinance. For a description of the Fund, the Pledged Revenue, the manner in which the authorizing Bond Ordinance may be amended, and the nature and extent of the security afforded thereby for the payment of this Bond, reference is made to the authorizing Bond Ordinance.

This Bond does not constitute a debt or indebtedness of the City within the meaning of any City Charter, ordinance, constitutional, or statutory provision or limitation, and shall not be considered or held to be a general obligation of the City.

The Bonds will be redeemed only in integral multiples of \$5,000. In the event a Bond is of a denomination larger than \$5,000, a portion of such Bond may be redeemed, but only in the principal amount of \$5,000 or any integral multiple thereof. Such Bond shall be treated for the purposes of redemption as that number of Bonds which results from dividing the principal amount of such Bond by \$5,000.

Notice of prior redemption shall be given by mailing a copy of the redemption notice, not less than thirty (30) days prior to the date fixed for redemption, to the registered owner of this Bond at the address shown on the registration books maintained by the Bond Registrar, in the manner set forth in the authorizing Bond Ordinance. All Bonds called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time.

The Bond Registrar shall not be required to issue or transfer any Bonds: (1) during a period beginning on the Record Date and ending at the close of business on the ensuing interest payment date, or (2) during the period beginning on any date of selection of Bonds to be redeemed and ending on the day on which the applicable notice of redemption is given. The Bond Registrar shall not be required to transfer any Bonds selected or called for redemption, in whole or in part. The City, the Paying Agent, and the Bond Registrar may deem and treat the registered owner of any Bond as the absolute owner thereof for all purposes (whether or not such Bond shall be overdue) and any notice of the contrary shall not be binding upon the City, the Paying Agent, or the Bond Registrar.

This Bond is transferable by the registered owner hereof, in

person or by his attorney duly authorized in writing, at the principal office of the Bond Registrar, but only in the manner, subject to the limitations, and upon payment of the charges provided in the authorizing Bond Ordinance and upon surrender and cancellation of this Bond. This Bond may be transferred upon the registration books upon delivery to the Bond Registrar of this Bond, accompanied by a written instrument or instruments of transfer in form and with guaranty of signature satisfactory to the Bond Registrar, duly executed by the owner of this Bond or his attorney-in-fact or legal representative, containing written instructions as to the details of the transfer of the Bond, along with the social security number or federal employer identification number of such transferee. In the event of the transfer of this Bond, the Bond Registrar shall enter the transfer of ownership in the registration books and shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of authorized denominations of the same maturity and interest rate for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time. The Bond Registrar shall charge the owner of this Bond for every such transfer an amount sufficient to reimburse it for its reasonable fees and for any tax or other governmental charge required to be paid with respect to such transfer.

(Form of Transfer)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto \_\_\_\_\_

SOCIAL SECURITY OR FEDERAL EMPLOYER  
IDENTIFICATION NUMBER OF ASSIGNEE

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature of Registered Owner:



such Bond for every such transfer of a Bond an amount sufficient to reimburse it for its reasonable fees and for any tax or other governmental charge required to be paid with respect to such transfer.

The Bond Registrar shall not be required to issue or transfer any Bonds: (1) during a period beginning on the Record Date and ending at the close of business on the ensuing interest payment date, or (2) during the period beginning on any date of selection of Bonds to be redeemed and ending on the day on which the applicable notice of redemption is given. The Bond Registrar shall not be required to transfer any Bonds selected or called for redemption, in whole or in part.

New Bonds delivered upon any transfer shall be valid special revenue obligations of the City, evidencing the same obligation as the Bonds surrendered, shall be secured by this Ordinance, and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The City, the Paying Agent, and the Bond Registrar may deem and treat the Owner of any Bond as the absolute owner thereof for all purposes (whether or not such Bond shall be overdue), and any notice to the contrary shall not be binding upon the City, the Paying Agent, or the Bond Registrar.

Upon the occurrence of an Event of Default which requires the Bond Insurer to make payments under the Bond Insurance Policy, the Bond Insurer shall be provided access to the registration books of the City maintained by the Bond Registrar.

Section 11. Destruction of Bonds. Whenever any outstanding Bond shall be delivered to the Bond Registrar for cancellation pursuant to this Ordinance, and upon payment of the principal amount and interest represented thereby, or whenever any outstanding Bond shall be delivered to the Bond Registrar for transfer pursuant to the provisions hereof, such Bond shall be cancelled and destroyed by the Bond Registrar and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Bond Registrar to the City.

Section 12. Lost Bonds. Any Bond that is lost, stolen, destroyed, or mutilated may be replaced or paid by the Bond Registrar in accordance with and subject to the limitations of applicable law. The applicant for any such replacement Bond shall post such security, pay such costs, and present such proof of ownership and loss as may be required by applicable law, or in the absence of specific requirements, as may be required by the Bond Registrar.

Section 13. Disposition of Bond Proceeds. The Bonds, when executed and registered as provided by law, shall be delivered to the Underwriter in accordance with the Bond Purchase Agreement, and the proceeds derived therefrom shall be used exclusively for the purposes of: (i) funding the Reserve Account in the amount of the

Combined Maximum Annual Principal and Interest Requirements for the Bonds: and (ii) paying the Project Costs. Neither the Underwriter nor the subsequent Owners of any of the Bonds shall be responsible for the application or disposal by the City or any of its officers of the funds derived from the sale thereof.

All or any portion of the Fund and the Bond proceeds may be temporarily invested or reinvested, pending such use, in securities or obligations which are Permitted Investments. It is hereby covenanted and agreed by the City that it will not make, or permit to be made, any use of the original proceeds of the Bonds, the moneys deposited to the Fund, or any moneys treated as proceeds of the Bonds within the meaning of the Internal Revenue Code of 1954, as amended, and pertinent regulations, rulings, and decisions, or take, or permit to be taken any action with respect to such proceeds or Fund, which will cause the interest on the Bonds to lose its exemption from federal income taxation under Section 103 of the Internal Revenue Code of 1954, as amended, and pertinent regulations, rulings, and decisions.

Section 14. Funds and Accounts. Pursuant to Ordinance No. 2251 and the provisions hereof, there are established the following funds and accounts which shall be established as book accounts and maintained in accordance with this Ordinance and Ordinance No. 2251:

(a) the Construction Fund; and

(b) the Fund, within which are the Bond Account, the Reserve Account, the Subordinate Bond Account, the Subordinate Reserve Account, and the Project Account.

Section 15. Construction Fund. There shall be credited to the Construction Fund the proceeds from the sale of the Bonds remaining after the Reserve Account is funded and after payment of the underwriting discount and any other expenses of issuing the Bonds. All moneys credited to the Construction Fund shall be applied solely to the payment of the Project Costs. All sums derived from the investment of moneys in the Construction Fund shall remain in and become part of the Construction Fund. When all Project Costs have been paid, any balance remaining in the Construction Fund shall be credited to the Bond Account.

Section 16. Pledge of Revenue and Lien. The Pledged Revenue is hereby pledged to the payment of the principal of, premium if any, and interest on the Bonds. The Bonds shall constitute an irrevocable and first lien upon the Pledged Revenue, but not necessarily an exclusive first lien.

Section 17. Capital Improvement Fund. Pursuant to Ordinance No. 2251, the City has established the Fund and has pledged to deposit the Pledged Revenue thereto, as follows:

"From and after the effective date of this Ordinance, the Pledged

Revenue received by the City shall be applied only in the following order of priority:

FIRST: There shall be deposited to the Bond Account an amount of Pledged Revenue sufficient, when combined with other moneys in the Bond Account which are available, to pay the principal of, premium if any, and interest on each issue of Bonds coming due on the next ensuing principal or interest payment date for each such issue of Bonds. Such amount shall be determined in accordance with the ordinance or ordinances authorizing the issuance of such Bonds.

SECOND: After the above deposit has been made in full, there shall be deposited to the Reserve Account an amount of Pledged Revenue equal, when combined with other moneys in the Reserve Account which are available, to the Combined Maximum Annual Principal and Interest Requirements of any Bonds.

THIRD: After the above deposits have been made in full, there shall be deposited to the Subordinate Bond Account an amount of Pledged Revenue sufficient, when combined with other moneys in the Subordinate Bond Account which are available, to pay the principal of, premium if any, and interest on each issue of Subordinate Lien Bonds coming due on the next ensuing principal or interest payment date for each such issue of Subordinate Lien Bonds. Such amount shall be determined in accordance with the ordinance or ordinances authorizing the issuance of any Subordinate Lien Bonds.

FOURTH: After the above deposits have been made in full, there shall be deposited to the Subordinate Reserve Account an amount of Pledged Revenue equal, when combined with other moneys in the Subordinate Reserve Account which are available, to the Combined Maximum Annual Principal and Interest Requirements of any Subordinate Lien Bonds.

FIFTH: After the above deposits have been made in full, there shall be deposited to the Project Account an amount sufficient, when combined with other moneys in the Project Account which are available, to pay the costs of providing capital improvements.

SIXTH: After the above deposits have been made in full, any remaining Pledged Revenue shall be deposited to any other fund or account of the City, as directed by the Council."

Section 18. Bond Account. Moneys in the Bond Account shall be used only to pay the principal of, premium if any, and interest on the Bonds and any Parity Lien Bonds when due.

Section 19. Reserve Account. Moneys in the Reserve Account shall be used to pay the principal of, premium if any, or interest on the Bonds and any Parity Lien Bonds when due, if moneys in the Bond Account are insufficient for such purpose. The Reserve Account shall be funded initially by the deposit thereto of Bond proceeds in the amount of the Combined Maximum Annual Principal and Interest Requirements for the Bonds, and such moneys are



hereby appropriated.

Section 20. Additional Covenants and Agreements. The City hereby further irrevocably covenants and agrees with each and every Owner that so long as any of the Bonds remain outstanding:

(a) It will not amend or repeal Ordinance No. 2251, or Chapter 24 of the Code, or any other ordinance now in effect relating to the imposition, collection, and enforcement of the Sales and Use Tax by decreasing the Sales and Use Tax rate or the allocation of the revenues therefrom to the Fund, or in any way that would adversely affect the amount of Pledged Revenue which would otherwise be collected and deposited to the Fund. Nothing shall prevent the City from amending its ordinances in order to increase the rate of the Sales and Use Tax or the amount thereof allocated to the Fund, or to make certain changes in the administration, collection, or enforcement of the Sales and Use Tax, provided that such changes would not materially adversely affect the Owners.

(b) It will administer, enforce, and collect, or cause to be administered, enforced, and collected, the Sales and Use Tax, and shall take such action as may be necessary to collect delinquent payments in accordance with law.

(c) It will keep or cause to be kept books and records showing the proceeds of the Sales and Use Tax, in which complete entries shall be made in accordance with generally accepted accounting principles, and any Owner shall have the right at all reasonable times to inspect the records and accounts relating to the collection and receipts of the Sales and Use Tax.

(d) At least once a year, it will cause an audit of the records relating to the collection and receipts of the Sales and Use Tax to be prepared, and upon request shall make such audit available at cost to any Owner, and shall mail a copy of the report to the Underwriter and the Bond Insurer. Such audit may be made part of and included within the annual audit of the City, and made at the same time as such annual audit.

(e) In the event the Sales and Use Tax is replaced and superseded in some manner by some other source or sources, the revenues derived by the City from such other source or sources shall be appropriated in the same manner as if the City has levied and imposed the Sales and Use Tax. From and after the date of said replacement, the Bonds shall have an irrevocable and first lien but not necessarily an exclusive first lien, upon such replacement revenues to the same extent as the lien on the Pledged Revenue.

(f) The Bond Insurer shall be furnished with written notice of the resignation or removal of the Bond Registrar or Paying Agent and the appointment of a successor Bond Registrar or Paying Agent.

Section 21. Parity Lien Bonds.

(a) No additional bonds, notes, certificates, contracts, or any other obligations shall be issued payable from the Pledged Revenue and having a lien thereon which is superior to the lien of the Bonds.

(b) The City may issue Parity Lien Bonds if:

(i) The City is then in substantial compliance with all of the provisions and covenants of this Ordinance and Ordinance No. 2251.

(ii) The City is then current in the accumulation of all amounts required to be then accumulated in the Fund, as required by this Ordinance and Ordinance No. 2251.

(iii) The Pledged Revenue for the two calendar years immediately preceding the date of issuance of the Parity Lien Bonds has not declined. For purposes of such test, if any item subject to the Sales and Use Tax Pledged Revenue during such two year period shall be calculated as if such items had not been subject to the Sales and Use Tax during all of such two year period.

(iv) The Pledged Revenue for the calendar year immediately preceding the date of issuance of such Parity Lien Bonds is sufficient to pay an amount representing not less than 200% of the Combined Maximum Annual Principal and Interest Requirements for the Bonds, any outstanding Parity Lien Bonds, and the Parity Lien Bonds proposed to be issued. For purposes of such test, if there has been adopted an ordinance providing for an increase in the amount of Pledged Revenue to be deposited to the Fund during or since the preceding calendar year, the Pledged Revenue may be increased by adding to the actual Pledged Revenue for said preceding calendar year, a sum equal to 100% of the estimated increase in Pledged Revenue which would have been realized during said preceding calendar year, had such amendment been in effect during all of said preceding calendar year. A written certificate by a Certified Public Accountant that the provisions of this Section are met shall be obtained prior to issuance of any Parity Lien Bonds and shall conclusively determine the right of the City to authorize, issue, sell, and deliver Parity Lien Bonds.

(c) No Parity Lien Bonds having a variable interest rate shall be issued without the prior written consent of the Bond Insurer.

(d) So long as no Event of Default shall have occurred, nothing herein shall prevent the City from issuing Subordinate Lien Bonds.

Section 22. Events of Default. It is an Event of Default if:

(a) Payment of the principal of or premium due on any Bond is not made by the City when due at maturity or upon prior redemption.

(b) Payment of the interest on any Bond is not made by the City when due.

(c) The City defaults in the punctual performance of its covenants hereunder for sixty (60) days after written notice shall have been given by the Owners of not less than 25% of the outstanding principal amount of the Bonds.

(d) A petition in bankruptcy is filed by or against the City.

Section 23. Remedies. Upon the happening of any Event of Default, any Owner, or a trustee therefor, may protect and enforce the rights of any Owner by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenants, the appointment of a receiver (the consent to such appointment being hereby granted), injunctive relief, or requiring the Council to act as if it were the trustee of an express trust, or any combination of such remedies. All proceedings shall be maintained for the equal benefit and protection of all Owners. Any receiver appointed to protect the rights of Owners may receive and take possession of the Pledged Revenue and the Fund in the same manner as the City itself might do. The failure of any Owner to proceed does not relieve the City or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right, and the exercise of any right by any Owner shall not be deemed a waiver of any other right.

So long as the Bond Insurer has not defaulted in its obligations under the Bond Insurance Policy, the consent of the Bond Insurer shall be required to accelerate the maturity of Bonds insured by the Bond Insurer.

Section 24. Amendment. With in the limits of applicable law, any limitation in this Ordinance may be waived or modified by the written consent of the Owners of not less than seventy-five percent (75%) of the outstanding principal amount of the Bonds; except that the written consent of the Owners of one hundred percent (100%) of the outstanding principal amount of the Bonds is required to:

- (a) Extend the maturity of any Bond;
- (b) Reduce the principal amount or interest rate of any Bond;
- (c) Create a lien upon the Pledged Revenue ranking prior to the lien created by this Ordinance;
- (d) Reduce the principal amount of the Bonds required for consent to any waiver or modifications; or
- (e) Establish priorities between Bonds.

The consent of the Bond Insurer shall be required to amend any of the provisions hereof which are applicable to Bonds insured by the Bond Insurer.

Section 25. Defeasance. When all principal, premium if any, and

interest in connection with the Bonds have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and the Bonds shall no longer be deemed to be such due payment of the Bonds when the City has placed in escrow and in trust with a commercial bank located within or without the State of Colorado, and exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may be initially invested) to meet all requirements of principal premium if any, and interest as the same become due to their final maturities or upon designated prior redemption dates. The Federal Securities shall become due at or prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the City and such bank at the time of the creation of the escrow, or the Federal Securities shall be subject to redemption at the option of the holders thereof to assure such availability as so needed to meet such schedule. The investment of the amounts deposited in the escrow shall comply with Section 13 hereof.

If the Bond Insurance Policy so provides, amounts paid by the Bond Insurer thereunder shall not be deemed defeasance of the Bonds in accordance with this Section 25, and the Bonds shall continue to be outstanding until paid by the City in accordance with this Ordinance.

Section 26. Authorization to Execute Collateral Documents. The officers of the City and the members of the Council are hereby authorized and directed to take any and all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to the execution of a Paying Agent and Registrar Agreement, a Bond Purchase Agreement, the Bond Insurance Policy, and such certificates and affidavits as may be reasonably required by the Underwriter. In addition, the Paying Agent is hereby authorized to execute the Declaration of Trust.

Section 27. Costs and Expenses. All costs and expenses incurred in connection with the issuance and payment of the Bonds, including without limitation the premium due in connection with the Bond Insurance Policy, shall be paid either from the proceeds of the Bonds or from legally available moneys of the City, or from a combination thereof, in an aggregate amount not to exceed \$60,000, and such moneys are hereby appropriated for that purpose.

Section 28. Acceptance of Purchase Agreement. The Council hereby reaffirms its determination to accept the Bond Purchase Agreement as submitted by the Underwriter, and to sell the Bonds to the Underwriter upon the terms, conditions, and provisions as set forth in the Bond Purchase Agreement.

Section 29. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the City and members of the Council, not inconsistent with the provisions of this Ordinance, relating to the authorization, sale, issuance, and

delivery of the Bonds, are hereby ratified, approved, and confirmed.

Section 30. Authorization of Insurance. The Bond Insurer has committed to issue the Bond Insurance Policy with respect to the Bonds. The City hereby approves issuance of the Bond Insurance Policy and payment of the premium due in connection therewith.

Section 31. Ordinances Irrepealable. After any of the Bonds have been issued, this Ordinance and Ordinance No. 2251 shall constitute an irrevocable contract between the City and the Owners, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged as herein provided.

Section 32. Emergency Declaration. Insofar as it is necessary to issue the Bonds immediately in order to (i) pay the Project Costs which have heretofore become due and payable, and (ii) avoid the January 1, 1986 effective date of certain proposed federal legislation, which legislation may have a detrimental effect upon the City's ability to issue the Bonds and invest the proceeds thereof, the provisions of this Ordinance are hereby declared necessary to the preservation of the public peace, health, and safety, and shall take effect upon adoption in accordance with Article VI of the Charter.

Section 33. Severability. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 34. Repealer. All orders, resolutions, bylaws, ordinances, and regulations, of the City, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

Section 35. Recording and Authentication. Immediately on its passage this Ordinance shall be recorded in the Ordinance Record of the City kept for that purpose, and authenticated by the affidavit of publication and by the signatures of the Mayor and President of the City Council, and the City Clerk.

INTRODUCED AND PASSED AS AN EMERGENCY ORDINANCE this 18th day of December, 1985.

(SEAL)

Raymond G. Phipps

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Mayor and President of the City Council

ATTESTED:

Neva B. Lockhart, CMC

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City Clerk

I HEREBY CERTIFY that the foregoing emergency ordinance, entitled AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX REVENUE BONDS, SERIES 1985, OF THE CITY OF GRAND JUNCTION, COLORADO, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1, 210,000, FOR THE PURPOSE OF CONSTRUCTING, ACQUIRING, AND INSTALLING A MUNICIPAL SWIMMING POOL FACILITY; PRESCRIBING THE FORM OF SAID BONDS AND PROVIDING FOR THE PAYMENT THEREOF FROM THE SALES AND USE TAX MONEYS PLEDGED TO THE CITY'S SALES AND USE TAX CAPITAL IMPROVEMENT FUND; ADOPTING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY was introduced, read, passed and adopted as an emergency ordinance, numbered 2254, and ordered published by the unanimous vote of the members of the City Council of the City of Grand Junction, Colorado, at a regular meeting of said Council held on the 18th day of December, 1985.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of said City this 19th day of December, 1985.

Neva B. Lockhart

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Neva B. Lockhart, CMC  
City Clerk

Published: December 20, 1985