

ORDINANCE NO. 2537

AN ORDINANCE AUTHORIZING THE CITY OF GRAND JUNCTION, COLORADO TO PLEDGE CERTAIN SALES TAX REVENUES TO GUARANTEE CERTAIN OUTSTANDING BONDS OF THE GRAND JUNCTION WEST WATER AND SANITATION DISTRICT, MESA COUNTY COLORADO, AS PART OF A COMPREHENSIVE ANNEXATION PLAN; APPROVING THE FORM OF THE GUARANTEE; PROVIDING FOR THE PAYMENT OF ANY CLAIMS ON THE GUARANTEE FROM A PORTION OF THE REVENUES OF THE SALES AND USE TAX IMPOSED BY THE CITY; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, by Ordinance No. 2251, passed and adopted on December 18, 1985 (the "Fund Ordinance"), the City of Grand Junction, Colorado (the "City"), has created the "City of Grand Junction, Colorado 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 the Fund 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 the City should enter into an agreement with the Grand Junction West Water and Sanitation District, Mesa County, Colorado (the "District"), whereby the District will be annexed into the City, and the District will be dissolved (except that the District will still levy taxes to pay its outstanding bonds, as described below); and

WHEREAS, the District currently has outstanding its General Obligation Refunding Bonds Series 1987A and Series 1987B (collectively, the "District Bonds") originally issued in the aggregate principal amount of \$1,590,000 and currently outstanding in the aggregate principal amount of \$1,433,435.14; and

WHEREAS, the District Bonds are secured primarily by the full faith and credit of the District and secondarily by guarantees of certain individual property owners in the District; and

WHEREAS, as a part of the annexation negotiations it has been agreed that the District will be annexed into the City and dissolved, except that it will continue in existence to the extent necessary to levy property taxes to pay the District Bonds and that, if the District is annexed into the City and dissolved (except to the extent necessary to adequately provide for the payment of the District Bonds), the City will guarantee the District Bonds, by the issuance of a City sales and use tax guarantee (the "Guarantee"), which guarantee will constitute a "Subordinate Lien Bond" as defined and described in the Fund Ordinance; and

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

WHEREAS, the City has determined and hereby determines that the City will be issuing an obligation to acquire capital improvements by the issuance of the Guarantee because the City's issuance of the Guarantee is a condition to the annexation of the District and upon the annexation of the District the improvements which were refinanced by the District Bonds will become City property; and

WHEREAS, the City has determined and hereby determines that the issuance of the Guarantee furthers a valid public purpose because the Guarantee makes possible the annexation of the District into the City which will expand the property tax and sales and use tax base of the City; and

WHEREAS, the form of the Guarantee has been presented to this meeting of Council.

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

Section 1. Definitions. All terms which are not defined herein shall have the same meanings as in the Fund Ordinance which is attached thereto as Exhibit A and by this reference incorporated herein.

Section 2. Authorization. In accordance with the Fund Ordinance, the Charter, the provisions of this Ordinance and the Constitution of the State of Colorado, the City hereby authorizes the issuance of its sales and use tax revenue guarantee, in an amount not to exceed the amount of District Bonds outstanding at any time and interest upon such District Bonds at the rates specified therein. The Guarantee is hereby determined to be issued to acquire capital improvements within the meaning of the Fund Ordinance.

Section 3. Special Obligation. The Guarantee shall be payable only out of the Subordinate Bond Account of the Fund, into which the City covenants to deposit Pledged Revenues in an amount sufficient to pay the amount, if any, which the City is called upon to pay pursuant to the Guarantee. The owner of the Guarantee may not look to any general or other fund of the City for the payment of the Guarantee, and the Guarantee shall not constitute a debt or an indebtedness of the City within the meaning of the Charter, Code, constitution, or any statutory provision or limitation; nor shall it be considered or held to be a general obligation to the City.

Section 4. Guarantee Details. Upon the effective date of this Ordinance, the Guarantee shall be issued to United Bank of Grand Junction-Downtown (the "District Bondowner"), the owner of all of the District Bonds. The Guarantee shall be dated the date of its execution by the City.

Section 5. Payments on Guarantee. The Guarantee is payable in lawful money of the United States of America to the District Bondowner upon a valid draw, as described in the Guarantee.

Section 6. Form and Execution of Guarantee. The Guarantee shall be signed with the manual or facsimile signature of the Mayor and President of the City Council, sealed with a facsimile or manual signature of the City Clerk. Should any officer whose facsimile or manual signature appears on the Guarantee cease to be such officer before delivery of the Guarantee to the District Bondowner, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

The Guarantee shall be substantially in the form of the Guarantee presented to Council at this meeting, with such insertions and completions as are necessary or desirable to effect the transaction authorized by this Ordinance.

Section 7. Delivery of Guarantee. Upon the effective date of this Ordinance, the City shall execute the Guarantee and deliver it to the District Bondowner.

Section 8. Transfer of Guarantee. The Guarantee may be transferred to a subsequent owner of the District Bonds only if the City consents to such transfer. If the City consents to such transfer, the City shall execute a new Guarantee upon the delivery of the Guarantee to the City by the District Bondowner. No transfer of the Guarantee shall be effective unless and until consented to by the City.

Section 9. Funds and Accounts. Pursuant to the Fund Ordinance and the provisions hereof, the Fund has been established and the following accounts within the Fund have been established as book accounts and maintained: the Bond Account, the Reserve Account, the Subordinate Bond Account, the Subordinate Reserve Account and the Project Account.

Section 10. Pledge of Revenue and Lien. The Pledged Revenue is hereby pledged to the payment of the Guarantee. The Guarantee shall constitute an irrevocable and subordinate lien upon the Pledged Revenue, but not necessarily an exclusively subordinate lien. For purposes of the Fund Ordinance, the Guarantee shall constitute a "Subordinate Lien Bond". The lien of the Guarantee upon the Pledged Revenue shall be subordinate to that of any Bonds now outstanding or hereafter issued in accordance with the Fund Ordinance (such Bonds being, pursuant to the Fund Ordinance, obligations issued to construct, acquire, or install capital improvements or to pay 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).

Section 11. Capital Improvement Fund. Pursuant to the Fund Ordinance, the City has established the Fund and has pledged to

deposit the Pledged Revenue thereto in a certain order of priority. The Guarantee, constituting a Subordinate Lien Bond, shall be paid from the Subordinate Bond Account, to the extent the Guarantee is drawn upon in accordance with its terms and to the extent Pledged Revenue is available to be deposited in such account in accordance with the Fund Ordinance.

Section 12. Subordinate Reserve Account. Unless and until there has been a draw on the Guarantee in accordance with its terms, the City shall not take into account the Guarantee in determining the amount required to be on deposit in the Subordinate Reserve Account. If the District Bondowner draws on the Guarantee, the City shall be required to take into account the Guarantee in funding the Subordinate Reserve Account. For purposes of determining the amount to be considered "debt service" on the Guarantee, the City shall consider the maximum amount paid by the City in any fiscal year as the maximum annual debt service on the Guarantee. This amount shall be used in determining the Combined Maximum Annual Principal and Interest Requirements on the Subordinate Lien Bonds.

Section 13. Additional Bonds.

(a) The City may issue additional bonds, notes, certificates, contracts, or any other obligations payable from the Pledged Revenue and having a lien thereon which is superior to the lien of the Guarantee, if 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 the Fund Ordinance.

(b) The City may issue additional Subordinate Lien Bonds if 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 by the Fund Ordinance.

Section 14. Amendment. Any limitation in this Ordinance may be waived or modified by the City; provided, however, that if such waiver or modification materially adversely affects the rights of the District Bondowner, the consent of the District Bondowner shall be required before such waiver or modification shall take effect.

Section 15. 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.

Section 16. Costs and Expenses. All costs and expenses incurred in connection with the issuance of the Guarantee shall be paid from legally available moneys of the City, and such moneys are hereby appropriated for that purpose.

Section 17. 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, issuance, and delivery of the Guarantee, are hereby ratified, approved, and confirmed.

Section 18. Ordinances Irrepealable. After the Guarantee has been issued, this Ordinance and the Fund Ordinance shall constitute an irrevocable contract between the City and the District Bondowner, and shall be and remain irrepealable until the Guarantee or the District Bonds shall have been fully paid, discharged or defeated, as provided in the District Bonds and the Guarantee.

Section 19. 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 20. 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 21. Effective Date. This Ordinance shall only become effective upon: (i) the passage of thirty days after its final passage and final publication; and (ii) the issuance of a final, irrepealable order of dissolution relating to the District, which order shall provide that the District will continue in existence to the extent necessary to adequately provide for the payment of the District Bonds; and (iii) the effective date of an annexation ordinance, annexing the territory contained in the District into the City, on terms and conditions acceptable to the City, and (iv) the passage of forty-five days after the effective date of the annexation ordinance described in clause (iii) and during such forty-five days no action pursuant to Section 32-12-116 Colorado Revised Statutes, as amended, is taken.

INTRODUCED, READ BY TITLE, PASSED ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL this 4th day of September, 1991.

Conner W. Shepherd

Mayor

(SEAL)

ATTEST:

Neva B. Lockhart, CMC

City Clerk

FINALLY ADOPTED AND APPROVED, AND ORDERED PUBLISHED ONCE IN FULL

AS AMENDED AND COMPLETED, this 18th day of September, 1991.

Conner W. Shepherd

Mayor

(SEAL)

ATTEST:

Neva B. Lockhart, CMC

City Clerk

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 2537, was introduced, read, and ordered published by the City Council of the City of Grand Junction, Colorado, at a regular meeting of said body held on the 4th day of September, 1991, and that the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, at least ten days before its final passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 19th day of September, 1991.

Neva B. Lockhart, CMC
City Clerk

Published: September 6, 1991

Final Publication: September 20, 1991

Effective: October 20, 1991