

CITY OF GIG HARBOR, WASHINGTON
LIMITED TAX GENERAL OBLIGATION BOND, 2008

ORDINANCE NO. 1144

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING A LIMITED TAX GENERAL OBLIGATION BOND IN THE PRINCIPAL SUM OF \$2,395,000 FOR THE PURPOSE OF FINANCING TRANSPORTATION IMPROVEMENTS AND PARKS PROJECTS; PROVIDING THE TERMS OF THE BOND; AND PROVIDING FOR THE SALE OF THE BOND.

PASSED ON OCTOBER 27, 2008

PREPARED BY:

K&L PRESTON GATES ELLIS LLP
SEATTLE, WASHINGTON

CITY OF GIG HARBOR
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WHEREAS, the City Council (the “Council”) of the City of Gig Harbor, Washington (the “City”), has deemed it in the best interest of the City and its citizens that the City finance transportation improvements and parks projects (the “Project”); and

WHEREAS, the City has received an offer from Bank of America, N.A., to purchase a bond to provide financing for the Project, and the City has determined that it is in the best interest of the City to sell the bond to the Bank;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN as follows:

Section 1. Definitions. As used in this ordinance, the following words shall have the following meanings, unless a different meaning clearly appears from the context:

Act means Chapter 39.50 RCW.

Bank means Bank of America, N.A., or its corporate successor.

Bond means the City of Gig Harbor, Washington, Limited Tax General Obligation Bond, 2008 in the principal amount of \$2,395,000, issued pursuant to this ordinance.

Bond Fund means the City’s “Limited Tax General Obligation Bond Redemption Fund,” as described in Section 4 of this ordinance.

Bond Register means the registration books showing the name, address and tax identification number of each registered owner of the Bond, maintained pursuant to Section 149(a) of the Code.

Bond Registrar means the Treasurer who will register and authenticate the Bond, maintain the Bond Register, effect transfer of ownership of the Bond and pay principal of and interest on the Bond.

City means the City of Gig Harbor, Washington, a municipal corporation duly organized and existing under the laws of the State of Washington.

Code means the federal Internal Revenue Code of 1986, as amended from time to time, and the applicable regulations thereunder.

Council means the duly constituted City Council as the general legislative authority of the City.

Government Obligations means those obligations now or hereafter defined as such in chapter 39.53 RCW.

Private Person means any natural person engaged in a trade or business or any trust, estate, partnership, association, company or corporation.

Private Person Use means the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management or incentive payment contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use of property as a member of the general public includes attendance by the Private Person at municipal meetings or business rental of property to the

Private Person on a day-to-day basis if the rental paid by such Private Person is the same as the rental paid by any Private Person who desires to rent the property. Use of property by nonprofit community groups or community recreational groups is not treated as Private Person Use if such use is incidental to the governmental uses of property, the property is made available for such use by all such community groups on an equal basis and such community groups are charged only a *de minimis* fee to cover custodial expenses.

Project means transportation improvements and parks projects.

Treasurer means the Finance Director of the City or any successor to the functions of the Finance Director.

Section 2. Authorization of the Bond and Bond Terms. The City hereby authorizes the issuance and sale of the Bond in the aggregate principal amount of \$2,395,000 to provide financing for transportation improvements and parks projects (the "Project") and to pay costs of issuance of the Bond. The Bond shall be a limited tax general obligation of the City; shall be designated the "City of Gig Harbor, Washington, Limited Tax General Obligation Bond, 2008"; shall be dated the date of its delivery to the Bank; shall be fully registered; shall be in the denomination of \$2,395,000; shall be numbered R-1 and shall bear interest at the rate of 3.98% per annum on the unpaid principal balance (computed on the basis of a 360-day year of twelve 30-day months), payable semiannually on each June 1 and December 1, commencing June 1, 2009 and shall mature on December 1, 2018. The principal of the Bond shall be repaid on December 1 of the following years and in the following principal installments:

<u>Year</u> <u>(December 1)</u>	<u>Principal Amount</u>
2009	\$ 195,000
2010	210,000
2011	215,000
2012	225,000
2013	235,000
2014	245,000
2015	250,000
2016	260,000
2017	275,000
2018*	285,000

* Maturity

Section 3. Registration. The Treasurer shall act as authenticating agent, paying agent and registrar for the Bond (collectively, the “Bond Registrar”). Both principal of and interest on the Bond shall be payable in lawful money of the United States of America. Installments of the principal of and interest on the Bond shall be paid by check or draft of the City mailed on the date such interest is due or by electronic funds transfer made on the date such payment is due to the Bank. Upon final payment of all installments of principal and interest thereon, the Bond shall be submitted to the Bond Registrar for cancellation and surrender.

The Bond is not transferable except to a successor to the assets or business of the Bank or another financial institution.

Section 4. Bond Fund and Provision for Tax Levy Payments. There has previously been established a fund of the City known as the “Limited Tax General Obligation Bond Redemption Fund” (the “Bond Fund”) which is used to pay debt service on all outstanding limited tax general obligation bonds of the City, including the Bond.

On or prior to each date on which a payment of principal and/or interest is due on the Bond, the City will deposit an amount into the Bond Fund sufficient to pay such principal and/or interest.

The City hereby irrevocably covenants for as long as the Bond is outstanding and unpaid, that each year it will include in its budget and levy an *ad valorem* tax, within and as a part of the tax millage levy permitted to cities without a vote of the people, upon all the property within the City subject to taxation in an amount which will be sufficient, together with all other funds of the City which may legally be used and which the City may apply for such purposes, to pay the principal of and interest on the Bond as the same shall become due. Money in the Bond Fund not needed to pay the interest or principal next coming due may temporarily be deposited in such institutions or invested in such obligations as may be lawful for the investment of City money. Any interests or profit from the investment of such money shall be deposited in the Bond Fund.

The City hereby irrevocably pledges that a sufficient portion of each annual levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Bond will be and is hereby irrevocably set aside, pledged and appropriated for the payment of the principal of and interest on the Bond. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of the taxes and for the prompt payment of the principal of and interest on the Bond as the same shall become due.

Section 5. Prepayment. Any prepayment of the Bond prior to its scheduled maturity may result in the imposition of a prepayment fee. The prepayment fee shall be in an amount sufficient to compensate the Bank for any loss expense incurred by it as a result of the prepayment, as documented by the Bank, including any loss arising from the liquidation or reemployment of funds obtained by it to maintain the funds used to purchase the Bond or from fees payable to terminate the deposits from which such funds were obtained. For purposes of this paragraph, the Bank shall be deemed to have funded the purchase of the Bond by a matching deposit or other borrowing in the applicable interbank market, whether or not the purchase of the

Bond was in fact so funded. In no case shall a prepayment fee apply if the Bank's internally derived cost of funds is higher on the date of prepayment than it was on the date the fixed rate of the Bond was set.

If there occurs (a) any nonpayment of principal, interest, fees or other amounts when due, or (b) any failure to maintain the tax-exempt status of the Bond, the Bank may increase the interest rate payable on the Bond by two (2.0) percentage points.

Section 6. Form of the Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. 1

\$2,395,000

STATE OF WASHINGTON
CITY OF GIG HARBOR
LIMITED TAX GENERAL OBLIGATION BOND, 2008

Registered Owner: Bank of America, N.A.

Interest Rate: 3.98%

Maturity Date: December 1, 2018

Principal Amount: Two Million Three Hundred Ninety-Five Thousand and No/100 Dollars

The City of Gig Harbor, Washington, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington (herein called the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns, the Principal Amount above, plus interest at the Interest Rate set forth above, pursuant to Ordinance No. 1144 of the City (the "Bond Ordinance").

This bond shall bear interest at a rate of 3.98% per annum on the unpaid principal balance (computed on the basis of a 360-day year of twelve 30-day months), payable semiannually on each June 1 and December 1, commencing June 1, 2009 and shall mature on December 1, 2018. The principal of this bond shall be repaid on December 1 of the following years and in the following amounts.

<u>Year</u> <u>(December 1)</u>	<u>Principal Amount</u>
2009	\$ 195,000
2010	210,000
2011	215,000
2012	225,000
2013	235,000
2014	245,000
2015	250,000
2016	260,000
2017	275,000
2018	285,000

Both principal of and interest on this bond are payable in lawful money of the United States of America. Upon the final payment of principal and interest of this bond, the Bank shall present and surrender this bond to the Treasurer of the City, as "Registrar". This bond may be prepaid at the option of the City, subject to a prepayment fee in accordance with the terms of the Bond Ordinance.

This bond is not transferable except in whole to a successor to the assets or business of the Bank or financial institution.

This bond is issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and Ordinances of the City, including the Bond Ordinance. This bond is issued pursuant to the Bond Ordinance for the purpose of providing the financing for transportation improvements and parks projects.

This bond is not a "private activity bond" as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"). The City has designated this bond as a "qualified tax-exempt obligation" under Section 265(b) of the Code for investment by financial institutions.

The City hereby irrevocably covenants and agrees with the owner of this bond that it will include in its annual budget and levy taxes annually, within and as a part of the tax levy permitted to cities without a vote of the electorate, upon all the property subject to taxation in amounts sufficient, together with all other money legally available therefor, to pay the principal of and interest on this bond as the same shall become due. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of such principal and interest.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Registrar.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Washington and ordinances of the City, that all acts, conditions and things required to be done precedent to and in the issuance of this bond have happened, been done and performed, and that this bond does not exceed any constitutional or statutory limitations.

IN WITNESS WHEREOF, the City of Gig Harbor, Washington, has caused this bond to be signed on behalf of the City with the manual signature of the Mayor, to be attested by the manual signature of the Clerk of the City, as of this 28 day of October, 2008.

CITY OF GIG HARBOR, WASHINGTON

By 
Mayor

ATTEST:


City Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: 10/28/08

This bond is the Limited Tax General Obligation Bond, 2008 of the City dated October 27, 2008 described in the within-mentioned Bond Ordinance.

FINANCE DIRECTOR OF THE CITY OF
GIG HARBOR, as Bond Registrar

By 

Section 7. Execution and Authentication of the Bond. The Bond shall be signed on behalf of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk.

The Bond shall not be valid or obligatory for any purpose or entitled to the benefits of this ordinance unless the Certificate of Authentication in the form recited above has been manually

executed by the Bond Registrar. Such Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bond shall cease to be an officer or officers of the City before the Bond shall have been authenticated or delivered by the Bond Registrar, or issued by the City, the Bond may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Bond may also be signed and attested on behalf of the City by such persons as at the actual date of execution of the Bond shall be the proper officers of the City although at the original date of the Bond any such person shall not have been such officer of the City.

Section 8. Lost or Stolen Bond. If the Bond is lost, stolen or destroyed, the Bond Registrar may authenticate and deliver a new Bond of like amount, maturity and tenor to the Bank upon the Bank's paying the expenses and charges of the City in connection with preparation and authentication of the replacement Bond and upon its filing with the City satisfactory evidence that the Bond was actually lost, stolen or destroyed and of its ownership, and upon furnishing the City with satisfactory indemnity.

Section 9. Sale of the Bond. The Bond shall be sold to the Bank at a price of par in accordance with the terms of this ordinance. Upon delivery of the Bond, the City (a) shall pay Bank, an origination fee of 0.05% (\$1,197.50) of the par amount of the Bond, and shall pay the Bank's legal fees in the amount of \$600, which payments shall be made by check, wire transfer or other mutually acceptable means to the respective payee. D.A. Davidson & Co. shall act as the structuring agent and shall arrange for the placement of the Bond with the Bank. The City

shall reimburse the Bank for payment of a structuring fee of \$11,975 to D.A. Davidson & Co. upon the closing and delivery of the Bond to the Bank.

The proper officials of the City are hereby authorized and directed to do all things necessary for the prompt execution and delivery of the Bond and the items required to be delivered to the Bank and for the proper use and application of the proceeds of sale thereof.

Section 10. Application of Proceeds of Bond. At the time of delivery of the Bond, the amount of \$1,160,000 shall be deposited into the City's Street Capital Fund (No. 102) and the amount of \$1,214,000 shall be deposited into the Park Development Fund (No. 109) and used to pay the costs of the Project and to pay costs of issuing the Bond.

Section 11. Tax Covenants; Special Designation.

(a) *Arbitrage Covenant.* The City hereby covenants that it will not make any use of the proceeds of sale of the Bond or any other funds of the City which may be deemed to be proceeds of such Bond pursuant to Section 148 of the Code which will cause the Bond to be an "arbitrage bond" within the meaning of said section and said Regulations. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Bond) and the applicable Regulations thereunder throughout the term of the Bond.

(b) *Private Person Use Limitation for Bond.* The City covenants that for as long as the Bond is outstanding, it will not permit:

(1) More than 10% of the Net Proceeds of the Bond to be used for any Private Person Use; and

(2) More than 10% of the principal or interest payments on the Bond in a Bond Year to be directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for

any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use.

The City further covenants that, if:

(3) More than five percent of the Net Proceeds of the Bond is to be used for any Private Person Use; and

(4) More than five percent of the principal or interest payments on the Bond in a Bond Year are (under the terms of this ordinance or any underlying arrangement) directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use, then, (i) any Private Person Use of the projects described in subsection (3) hereof or Private Person Use payments described in subsection (4) hereof that is in excess of the five percent limitations described in such subsections (3) or (4) will be for a Private Person Use that is related to the state or local governmental use of the projects financed or refinanced with Bond proceeds, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Bond used for the state or local governmental use portion of the project to which the Private Person Use of such portion of such projects relates. The City further covenants that it will comply with any limitations on the use of the Project by other than state and local governmental users that are necessary, in the opinion of its bond counsel, to preserve the tax exemption of the interest on the Bond. The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bond.

(c) *Designation under Section 265(b)(3) of the Code.* The Bond is hereby designated by the City as a “qualified tax-exempt obligation” under Section 265(b)(3) of the Code for investment by financial institutions. The City does not anticipate issuing more than \$10,000,000 in qualified tax-exempt obligations during 2008.

Section 12. Information Provided to the Bank. With respect to the Bond, the City is exempt from ongoing disclosure requirements of the Rule. While the Bond is outstanding, the City will provide the following information to the Bank:

(a) The City’s annual budget, within 30 days of commencement of each new fiscal year;

(b) Internally-prepared unaudited annual financial statements for the City, within seven months of the end of each fiscal year;

(c) The City’s annual State Audit Report within 10 days of receipt from the State Auditor; and

(d) Such other financial information as may be reasonably requested by the Bank from time to time.

Section 13. Severability. If any provision in this ordinance is declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 14. General Authorization; Ratification of Prior Acts. The Treasurer and other appropriate officers of the City are authorized to take any actions and to execute documents as in their judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by, this ordinance. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified.

Section 15. Effective Date. This ordinance shall take effect five days after its passage and publication in the manner provided by law.


PASSED by the City Council at a regular open public meeting on October 27, 2008.

CITY OF GIG HARBOR, WASHINGTON



Mayor

ATTEST:



City Clerk

First Reading: October 13, 2008

Date Adopted: October 27, 2008

Date of Publication: November 11, 2008

Effective Date: November 3, 2008

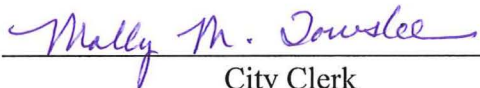
CERTIFICATE

I, the undersigned, City Clerk of the City of Gig Harbor, Washington (the "City") and keep of the records of the City Council (the "Council"), DO HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. 1144 of the Council (the "Ordinance"), duly passed at a regular meeting thereof held on the 27th day of October, 2008.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of October, 2008.



City Clerk