

CITY OF GIG HARBOR, WASHINGTON

UNLIMITED GENERAL OBLIGATION BOND, 2005

ORDINANCE NO. 1016

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A BOND OF THE CITY IN THE PRINCIPAL AMOUNT OF \$3,500,000 FOR THE PURPOSE OF PROVIDING PERMANENT FINANCING FOR FUNDS REQUIRED TO ACQUIRE WATERFRONT SPACE AND LAND AND INITIATE RESTORATION OF THE EDDON BOATYARD, AS AUTHORIZED BY ORDINANCE OF THE CITY COUNCIL AND APPROVED BY THE QUALIFIED ELECTORS OF THE CITY; PROVIDING THE DATE, FORM, TERMS AND MATURITY OF SAID BOND; PROVIDING THE METHOD OF REPAYMENT; AND APPROVING THE SALE OF SUCH BOND.

PASSED ON SEPTEMBER 26, 2005

PREPARED BY:

PRESTON GATES & ELLIS LLP
Seattle, Washington

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* This Table of Contents is provided for convenience only and is not a part of this ordinance.

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WHEREAS, at an election held in the City of Gig Harbor, Washington (the "City") on November 2, 2004, the number and proportion of the qualified electors of the City required by law for the adoption thereof voted in favor of a proposition authorizing the issuance of bonds of the City in the aggregate principal amount of \$3,500,000 ("Bond Authorization") to acquire waterfront space and land and initiate restoration of the Eddon Boatyard (the "Projects") as authorized by Ordinance No. 970, passed on September 13, 2004 (the "Election Ordinance") by the City Council; and

WHEREAS, pursuant to Ordinance No. 987, the City issued its Unlimited Tax General Obligation Bond Anticipation Note, 2005 on February 11, 2005 in the principal amount of \$3,500,000, which was sold to Bank of America, N.A., Seattle, Washington (the "Bank") and remains outstanding in the principal amount of \$3,500,000; and

WHEREAS, the City Council deems it necessary and in the best interest of the citizens of the City to issue a bond to provide permanent financing for the Projects; and

WHEREAS, the Bank has proposed to purchase a bond to provide such permanent financing under the terms and conditions set forth in this ordinance; and

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:

Bank means Bank of America, N.A., Seattle, Washington.

Bond means the City of Gig Harbor, Washington, Unlimited General Obligation Bond, 2005, issued pursuant to this ordinance.

Bond Fund means the City of Gig Harbor Bond Redemption Fund, 2005, created in the office of the Treasurer of the City pursuant to Section 8 of this ordinance.

Bond Register means the books or records maintained by the Registrar containing the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount outstanding.

City means the City of Gig Harbor, Washington, a political subdivision duly organized and existing under and by virtue of the laws of the State of Washington.

Code means the Internal Revenue Code of 1986, as amended, and shall include all applicable regulations and rulings relating thereto.

Council means the City Council, as the general legislative body of the City.

Note means the City of Gig Harbor, Washington, Unlimited General Obligation Note, 2005, issued pursuant to Ordinance No. 987 on February 11, 2005 in the principal amount of \$3,500,000.

Projects mean the acquisition of waterfront space and land and the initiation of restoration of the Eddon Boatyard.

Proposal Letter means the proposal from the Bank dated August 22, 2005.

Registrar means the Treasurer.

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

Rules of Interpretation. In this ordinance, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including unlimited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several articles and Sections of this ordinance, and any table of contents or marginal bonds appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect;

(e) All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

Section 2. **Authorization of the Bond.** In order to provide permanent funding for the Projects, the City hereby authorizes the issuance and sale of a general obligation bond in the principal amount of \$3,500,000 (the “Bond”).

Section 3. Description of the Bond.

The Bond shall be designated as the “City of Gig Harbor, Washington Unlimited General Obligation Bond, 2005,” shall be dated as of the date of its original issuance, shall be issued as a single instrument, fully registered as to both principal and interest, shall be in the denomination of \$3,500,000, shall be numbered R-1 and shall bear interest at the rate of 3.79% 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 December 1, 2005 and shall mature on December 1, 2024. The principal of the 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>
2006	\$ 74,000
2007	136,000
2008	141,000
2009	147,000
2010	152,000
2011	158,000
2012	164,000
2013	170,000
2014	177,000
2015	184,000
2016	190,000
2017	198,000
2018	205,000
2019	213,000
2020	221,000
2021	229,000
2022	238,000
2023	247,000
2024	256,000

If principal amounts are prepaid (at the option of the City or otherwise) a prepayment fee shall be payable. The prepayment fee shall be in an amount sufficient to compensate the Bank for any loss, cost or expense incurred by it as a result of the prepayment, including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds

obtained by it to maintain the purchase price of the Bond or from fees payable to terminate the deposits from which such funds were obtained. The City shall also pay any customary administrative fees charged by the Bank in connection with the foregoing. 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.

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 4. Registration.

(a) *Appointment of Registrar.* The City hereby appoints the Treasurer to act as Registrar. The Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond in accordance with the provisions of the Bond and this ordinance and to carry out all of the Registrar's powers and duties under this ordinance.

(b) *Bond Register.* The Bond shall be in registered form as to both principal and interest.

(c) *Registered Ownership.* The City may deem and treat the Bank as the absolute owner thereof for all purposes, and the City shall not be affected by any notice to the contrary. Payment of the Bond shall be made only as described in Sections 3 and 8 hereof. All such payments made as described in Sections 3 and 8 shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid. The Bond is not transferable, except to a successor to the business and assets of the Bank.

Section 5. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. N-1

\$3,500,000

STATE OF WASHINGTON

CITY OF GIG HARBOR
UNLIMITED GENERAL OBLIGATION BOND, 2005

Registered Owner: Bank of America, N.A.
Seattle, Washington

Interest Rate: 3.79%

Maturity Date: DECEMBER 1, 2024

Taxpayer ID: 94-1687665

Principal Amount: THREE MILLION FIVE HUNDRED 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. 1016 of the City (the "Bond Ordinance").

The Bond shall bear interest at a rate of 3.79% 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 December 1, 2005 and shall mature on December 1, 2024. The principal of the Bond shall be repaid on December 1 of the following years and in the following amounts.

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2017	198,000
2018	205,000
2019	213,000

2020	221,000
2021	229,000
2022	238,000
2023	247,000
2024	256,000

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 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.

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 permanent financing for certain capital improvements to property and facilities within the City.

This bond is a general obligation of the City and is payable from a special fund of the City, designated as the City of Gig Harbor Bond Redemption Fund, 2005. The City has pledged and is obligated to deposit amounts, from the proceeds of Bonds or other sources, amounts sufficient to pay and redeem this bond upon maturity. The full faith, credit and resources of the City are pledged, and the City shall levy taxes, if necessary, without limitation as to rate or amount, to pay the principal of and interest on this bond.

THIS BOND IS NOT TRANSFERABLE, except to a successor to the business and assets of the Bank.

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.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this bond have happened, been done and performed and that the issuance of this bond does not violate any constitutional, statutory or other limitation upon the amount of indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Gig Harbor, Washington has caused this bond to be signed with the manual or facsimile signature of the Mayor, to be attested by the manual or facsimile signature of the City Clerk and the seal of the City impressed or otherwise reproduced hereon, all as of this 11th day of October, 2005.

CITY OF GIG HARBOR, WASHINGTON

By _____
Mayor

ATTEST:

By _____
City Clerk

The Registrar's Certificate of Authentication on the Bond shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____, 2005

This bond is described in the within-mentioned Ordinance and is the General Obligation Bond, 2005 of the City of Gig Harbor, Washington, dated October 11, 2005.

FINANCE DIRECTOR OF THE CITY OF
GIG HARBOR, as Registrar

By _____
Authorized Signer

Section 6. Execution of Bond. The Bond shall be signed by the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk and the seal of the City impressed or otherwise reproduced thereon. The Bond shall not be valid for any purpose until the Certificate of Authentication on the Bond shall have been signed by the Registrar.

Section 7. Tax Covenants. The City hereby covenants that it will not make any use of the proceeds of the 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. 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.

The City further covenants that it will not take any action or permit any action to be taken that would cause the Bond to constitute a “private activity bond” under Section 141 of the Code.

The City hereby designates the Bond as a “qualified tax-exempt obligation” for purchase by financial institutions pursuant to Section 265(b)(3) of the Code. The City does not anticipate that it will issue more than \$10,000,000 in qualified tax-exempt obligations during 2005.

Section 8. Bond Fund. A special fund of the City known as the “City of Gig Harbor Bond Redemption Fund, 2005” (the “Bond Fund”) is hereby authorized to be created in the office of the Treasurer. The Bond Fund shall be drawn upon for the sole purpose of paying the principal of and interest on the Bond.

The City hereby irrevocably covenants that, unless the principal of and interest on the Bonds are paid from other sources, it will make annual levies of taxes without limitation as to rate or amount upon all of the property in the City subject to taxation in amounts sufficient to pay such principal and interest as the same shall become due and will pay the same into the Bond Fund. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of such taxes and for the prompt payment of such principal and interest.

Section 9. Sale of 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 Banc of America Securities LLC, as structuring agent, a fee of .50% of the par amount of the Bond, (b) shall pay the Bank an origination fee of \$3,500 and (c) shall pay the Bank’s legal fees in the amount of \$500, which payments shall be made by check, wire transfer or other mutually acceptable means to the respective payee.

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 Bond Proceeds. Proceeds of the Bond shall be used immediately upon receipt to refund the Note. Any remaining proceeds of the Bond shall be deposited into a fund as designated by the Treasurer and shall be expended solely to pay the costs of the Projects.

Section 11. Lost, Stolen or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed, the City may execute and the Registrar may deliver a new Bond of like date and tenor to the Bank and upon its filing with the Registrar evidence satisfactory to said Registrar that the Bond was actually lost, stolen or destroyed, and upon furnishing the Registrar with indemnity satisfactory to the Registrar.

Section 12. Information Provided to the Bank. The City will provide the following information to the Bank:

- (1) The City's annual budget, within 90 days of commencement of each new fiscal year;
- (2) Internally-prepared annual financial statements for the City, within 240 days of the City's fiscal year end; and
- (3) The City's annual State Audit Report within 10 days of receipt from the State Auditor.

Section 13. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants

and agreements of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 14 Effective Date. This ordinance shall be effective five days from its passage and publication as required by law.

PASSED by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of said Council held this 26th day of September, 2005.

CITY OF GIG HARBOR, WASHINGTON

Mayor

ATTEST:

City Clerk

First Reading:	September 26, 2005
Date Approved:	September 26, 2005
Date of Publication:	September 28, 2005
Effective Date:	October 3, 2005

CERTIFICATE

I, the undersigned, City Clerk of the City of Gig Harbor, Washington (the “City”) and keeper of the records of the City Council (the “City Council”), DO HEREBY CERTIFY:

1. That the attached Ordinance is a true and correct copy of Ordinance No. 1016 of the City Council (the “Ordinance”), duly passed at a regular meeting thereof held on the 26th day of September, 2005.

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 legal quorum was present throughout the meeting and a legally sufficient number of members of the City 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 26th day of September, 2005.

City Clerk