

CITY OF GIG HARBOR, WASHINGTON

UNLIMITED GENERAL OBLIGATION BOND ANTICIPATION NOTE, 2005

ORDINANCE NO. 987

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A SHORT TERM NOTE OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF \$3,500,000 FOR THE PURPOSE OF PROVIDING FUNDS REQUIRED TO ACQUIRE WATERFRONT SPACE AND LAND AND INITIATE RESTORATION OF THE EDDON BOATYARD AS AUTHORIZED BY RESOLUTION OF THE BOARD OF DIRECTORS AND APPROVED BY THE QUALIFIED ELECTORS OF THE CITY AT A SPECIAL ELECTION HELD THEREIN ON NOVEMBER 2, 2004; PROVIDING THE DATE, FORM, TERMS AND MATURITY OF SAID NOTE; PROVIDING THE METHOD OF REPAYMENT OR REFINANCING FOR THE NOTE AT MATURITY; AND APPROVING THE SALE OF SUCH NOTE.

PASSED ON JANUARY 24, 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, 2002, 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, the City Council deems it necessary and in the best interest of the citizens of the City to issue a short term obligation in anticipation of the issuance of long term obligations; and

WHEREAS, Bank of America, N.A., Seattle, Washington (the "Bank") has offered to purchase the Note authorized herein 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.

Bonds means the unlimited tax general obligation bonds authorized to be issued by the City in Section 2 of this ordinance.

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

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.

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

Draw or Draws means incremental draws on the Note as requested by the City.

Interest Rate means a floating rate equal to 65% of the Prime Rate, less 76 basis points.

Loan Draw Record means the administrative records kept by the Bank to record the date and dollar amounts of the draws on the Note and the loan repayments made by the City.

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

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

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

Note Registrar means the Treasurer.

Prime Rate means the rate of interest publicly announced from time to time by the Bank as its “Prime Rate.” The Prime Rate is set by the Bank based upon various factors, including the Bank’s costs and desired return, general economic conditions and other factors and is used as a reference point for pricing some loans. The Bank may price loans to its customers at, above or below the Prime Rate. Any change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of a change in the Bank’s Prime Rate.

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

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 notes 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 Projects and the Bonds.

(a) *Improvements.* The City is acquiring waterfront space and land, and initiating the restoration of the Eddon Boatyard (the “Projects”) as authorized by Ordinance No. 970, passed on September 13, 2004 by the City Council and approved by voters at the November 2, 2004 election.

(b) *Bonds.* For the purpose of providing permanent financing for the Projects, the City will issue and deliver its unlimited tax general obligation bonds or other evidences of general obligation indebtedness (the “Bonds”) in amounts and at times as shall be required to pay and redeem the Note. The final terms and conditions of issuance of the Bonds shall be as set forth by ordinance of the Council.

Section 3. Authorization of Note and Note Details.

(a) *Authorization of Note.* In order to provide funding for the Projects pending issuance and delivery of the Bonds, the City hereby authorizes the issuance and sale of an unlimited general obligation bond anticipation note in the aggregate principal amount of not to exceed \$3,500,000 (the “Note”).

(b) *Terms of the Note.* The Note shall be designated as the “City of Gig Harbor, Washington Unlimited General Obligation Bond Anticipation Note, 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 not to exceed \$3,500,000, shall be numbered N-1 and shall bear interest at the Interest Rate (computed on the basis of a year of 365/366 days and actual days elapsed) on the unpaid principal balance, payable quarterly on May 1, 2005, August 1, 2005, November 1, 2005, with the outstanding principal balance and all unpaid and accrued interest payable in full at maturity on February 1, 2006. The Interest Rate shall be adjusted as of each date on which a change in the Prime Rate becomes effective.

(c) *Draws.* The aggregate principal amount of all Draws made under the Note may not exceed \$3,500,000. The available principal of the Note shall be disbursed as borrowings from time to time by the Bank upon request from the City (each such disbursement herein referred to as a “Draw”). Draws shall be recorded on the Loan Draw Record attached to the Note, or in such other form as the City and the Bank may agree. Interest on each Draw shall accrue from the date of that Draw and shall be computed on the basis as described above on the principal amount of the Draw outstanding for the actual number of days the principal amount of the Draw is outstanding. Draws may be made to make interest payments on the Note.

The proceeds of any Draw shall be deposited into a fund as designated by the Treasurer and shall be expended solely to pay the costs of the Projects, and the costs of issuing and selling the Note, as authorized herein.

(d) *Prepayment of the Note.* The Note may be prepaid by the City at its option at any time in whole or in part, without penalty, upon one day's advance notice to the Bank. The Note is non-revolving and advances may not be re-borrowed once repaid.

Section 4. Registration.

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

(b) *Note Register.* The Note 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 Note 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 Note to the extent of the amount or amounts so paid. The Note is not transferable, except to a successor to the business and assets of the Bank, conditioned on such successor assuming all obligations to provide the line of credit evidenced by the Note.

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

UNITED STATES OF AMERICA

NO. N-1 \$3,500,000
(or as much thereof as is shown on the attached
Loan Draw Record)

STATE OF WASHINGTON

CITY OF GIG HARBOR
UNLIMITED GENERAL OBLIGATION BOND ANTICIPATION NOTE, 2005

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

Interest Rate: As provided herein

Maturity Date: FEBRUARY 1, 2006

Taxpayer ID: 94-1687665

Principal Amount: THREE MILLION FIVE HUNDRED THOUSAND AND NO/100
DOLLARS (or as much thereof as is shown on the attached Loan Draw
Record)

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, an amount equal to the total outstanding incremental draws (the "Draws") made in accordance with this note and Ordinance No. 987 of the City (the "Note Ordinance").

Draws made upon this note shall bear interest at a floating rate equal to 65% the Prime Rate, less 76 basis points (computed on the basis of a 365/366-day year for actual number of days elapsed) and shall accrue from the date of each Draw on the principal amount of such Draw outstanding for the actual number of days the principal amount of such Draw is outstanding. Interest on unpaid principal shall be paid quarterly on May 1, 2005, August 1, 2005 and November 1, 2005, with final payment of all outstanding and unpaid principal and interest due at maturity on February 1, 2006. Draws may be made to make interest payments on this note.

The City may make Draws upon this note at any time pursuant to the Note Ordinance. Draws shall be recorded on the Loan Draw Record attached to this note, or in such other form as the City and the Bank may agree. The City may borrow from time hereunder; provided that the aggregate principal amount of all Draws may not exceed \$3,500,000. This note may be repaid at the option of City at any time in whole or in part. However, this is a non-revolving note and advances may not be re-borrowed once repaid.

Both principal of and interest on this note are payable in lawful money of the United States of America. Upon the final payment of principal and interest of this Note, the Bank shall be paid present and surrender this note to the Treasurer of the City, as "Note Registrar".

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

This note 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 Note Ordinance. This note is issued pursuant to the Note Ordinance for the purpose of providing the financing for certain capital improvements to property and facilities within the City.

This note is a general obligation of the City and is payable from a special fund of the City, designated as the City of Gig Harbor Note 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 note 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 note.

THIS NOTE IS NOT TRANSFERABLE, except to a successor to the business and assets of the Bank, conditioned on such successor assuming all obligations to provide the line of credit evidenced by this note.

This note 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 note 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 note have happened, been done and performed and that the issuance of this note 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 note 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, all as of this 25th day of January, 2005.

CITY OF GIG HARBOR, WASHINGTON

By _____
Mayor

ATTEST:

By _____
City Clerk

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

CERTIFICATE OF AUTHENTICATION

Date of Authentication: January 25, 2005

This note is described in the within-mentioned Ordinance and is the General Obligation Bond Anticipation Note, 2005 of the City of Gig Harbor, Washington, dated January 24, 2005.

**FINANCE DIRECTOR OF THE CITY OF
GIG HARBOR, as Note Registrar**

By _____
Authorized Signer

The Loan Draw Record shall be substantially in the following form:

**CITY OF GIG HARBOR, WASHINGTON
UNLIMITED GENERAL OBLIGATION BOND ANTICIPATION NOTE, 2005**

LOAN DRAW RECORD

	Date	Amount	Total
[Draw][Repayment]			
Repayment			

Section 6. Execution of Note. The Note 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. The Note shall not be valid for any purpose until the Certificate of Authentication on the Note shall have been signed by the Note Registrar.

Section 7. Tax Covenants.

The City hereby covenants that it will not make any use of the proceeds of the sale of the Note or any other funds of the City which may be deemed to be proceeds of such Note pursuant to Section 148 of the Code which will cause the Note 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 Note) and the applicable regulations thereunder throughout the term of the Note.

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

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

The City hereby covenants with the Bank that it will deposit in the Note Fund proceeds of the Bonds or funds from other sources in amounts sufficient to pay when due the principal of and interest on the Note. The full faith and credit of the City are hereby pledged to the repayment of Note, and the City shall levy taxes, if necessary, without limitation as to rate or amount to pay the principal of and interest on the Note.

Section 9. Sale of Note. The Note shall be sold to the Bank at a price of par in accordance with the terms of this ordinance. Upon delivery of the Note, the City shall pay the Bank an origination fee of \$2,000 and will pay the Bank's legal fees in the amount of not to exceed \$500.00 which payment shall be made by check, wire transfer or other mutually acceptable means to the Bank or to its designated 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 Note 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. Lost, Stolen or Destroyed Note. In case the Note shall be lost, stolen or destroyed, the City may execute and the Note Registrar may deliver a new Note of like date and tenor to the Bank and upon its filing with the Note Registrar evidence satisfactory to said Note Registrar that the Note was actually lost, stolen or destroyed, and upon furnishing the Note Registrar with indemnity satisfactory to the Note Registrar.

Section 11. 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 the new budget cycle;
- (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 12. 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 Note.

Section 13. 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 24th day of January, 2005.

CITY OF GIG HARBOR, WASHINGTON

Mayor

ATTEST:

City Clerk

First Reading:	January 24, 2005
Date Approved:	January 24, 2005
Date of Publication:	January 26, 2005
Effective Date:	January 31, 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. 987 of the City Council (the "Ordinance"), duly passed at a regular meeting thereof held on the 24th day of January, 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 25th day of January, 2005.

City Clerk