

CITY OF GIG HARBOR, WASHINGTON

WATER AND SEWER REVENUE AND REFUNDING BOND, 2003

ORDINANCE NO. 946

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE AND REFUNDING BOND OF THE CITY IN THE PRINCIPAL AMOUNT OF \$1,811,000 TO PROVIDE PERMANENT FINANCING FOR CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY AND TO REFUND ON A CURRENT BASIS CERTAIN OUTSTANDING WATER AND SEWER REVENUE AND REFUNDING BONDS OF THE CITY; PROVIDING THE DATE, FORM, TERMS AND MATURITY OF THE BOND; AND APPROVING THE SALE OF THE BOND.

APPROVED ON NOVEMBER 24, 2003

PREPARED BY:

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WHEREAS, the City of Gig Harbor the (“City”) issued its Water and Sewer Revenue Bond Anticipation Note, 2001 (Junior Lien) in the principal amount of \$1,500,000 (the “Note”) authorized by Ordinance No. 887 of the City for the purpose of providing temporary financing for certain improvement to the System (the “Improvements”); and

WHEREAS, Ordinance No. 887 authorizes prepayment of the Note on any date, subject to certain penalties specified therein; and

WHEREAS, the City has issued its Water and Sewer Revenue and Refunding Bonds, 1994 dated July 1, 1994, issued pursuant to Ordinance No. 677 in the original principal amount of \$2,995,000 and currently remaining outstanding maturing on September 1 of the following years and bearing interest at the following rates:

Maturity Years (September 1)	Principal Amounts	Interest Rates
2004	\$300,000	6.00%
2005	160,000	6.10

(the “1994 Bonds”)

WHEREAS, Ordinance No. 677 authorizes the defeasance and redemption on March 1, 2004 of the 1994 Bonds at a price of par plus accrued interest; and

WHEREAS, it is now deemed necessary and desirable to issue and sell a water and sewer revenue and refunding bond in order to provide permanent financing for the Improvements (by pre-paying the Note) and to refund the 1994 Bonds; and

WHEREAS, the City has received an offer from Bank of America, N.A. to purchase such revenue and refunding bond on terms and conditions that are acceptable to this Council; and

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

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

Acquired Obligations means the Government Obligations acquired by the City under the terms of this ordinance to effect the defeasance and refunding of the 1994 Bonds.

Annual Debt Service means, with respect to any issue of Parity Bonds, the amount required in a given calendar year for the payment of the principal of and interest on such Parity Bonds.

Assessments means any assessments levied in any utility local improvement district of the City created for the acquisition or construction of additions and improvements to and extensions of the System, if such assessments are pledged to be paid into the Bond Fund. The word ***Assessments*** shall also include any installments of assessments and any interest or penalties which may be due thereon.

Assessment Income means the principal of and interest on assessments levied in any utility local improvement district and pledged to be paid into the Bond Fund. In the case of

assessments payable in installments, Assessment Income shall be allocated to the years in which it would be received if the unpaid principal balance of each assessment roll were paid in equal principal amounts over the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming the assessment roll.

Average Annual Debt Service means the average amount of annual debt service which will become due in any fiscal year hereafter on all Parity Bonds then outstanding.

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

Bond means the City of Gig Harbor, Washington Water and Sewer Revenue and Refunding Bond, 2003, issued pursuant to this ordinance.

Bond Fund means the City of Gig Harbor Utility Bond Redemption Fund created in the office of the Treasurer of the City pursuant to Section 13 of Ordinance No. 468.

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 the owner and the remaining principal amount of the Bond held by the owner or nominee.

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

Code means the federal Internal Revenue Code of 1986, as the same shall be amended from time to time, and all regulations promulgated or applicable thereunder.

Costs of Maintenance and Operation mean all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses with respect to the System, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the System, municipal taxes or payments to the City in lieu of taxes.

Council means the City Council as the general legislative authority of the City as the same shall be duly and regularly constituted from time to time.

Debt Service Account means the account of that name created in the Bond Fund by Ordinance No. 468.

Future Parity Bonds means any water and sewer revenue bonds which the City may hereafter issue having a lien upon the Revenue of the System for the payment of the principal thereof and interest thereon equal to the lien upon the Revenue of the System of the Bonds.

Improvements means those additions, betterments and improvements to the System authorized by Ordinance No. 887.

Maximum Annual Debt Service means the highest remaining Annual Debt Service Requirement for outstanding Parity Bonds.

Net Revenue means the Revenue of the System less the Costs of Maintenance and Operation.

1994 Bonds means the City's Water and Sewer Revenue and Refunding Bonds, 1994 dated July 1, 1994, issued pursuant to Ordinance No. 677 in the original principal amount of \$2,995,000 and currently remaining outstanding maturing on September 1 of the following years and bearing interest at the following rates:

Maturity Years (September 1)	Principal Amounts	Interest Rates
2004	\$300,000	6.00%
2005	160,000	6.10

1994 Bond Ordinance means Ordinance No. 677 of the City.

Note means the City's Water and Sewer Revenue Bond Anticipation Notes, 2001 (Junior Lien), issued pursuant to Ordinance No. 887 under date of July 31, 2001 in the principal amount of \$1,500,000.

Parity Bonds means the Bond and any Future Parity Bonds.

Refunding Account means the account by that name established within the Bond Fund pursuant to Section 6 of this ordinance.

Registrar means the Treasurer of the City as registrar and paying agent for the Bond.

Registered Owner means the person in whose name the Bond is registered on the Bond Register.

Reserve Account means the account created in the Bond Fund by Section 15 of Ordinance No. 468 and shall include any subaccount created therein.

Reserve Account Requirement means the lesser of (A) 10% of the net proceeds of each series of Parity Bonds, (B) Maximum Annual Debt Service, (C) 1.25 times average Annual Debt Service, or (D) such amount as shall be required to maintain the exemption of interest of any series of Parity Bonds from taxation under the Code.

Revenue Fund means the "City of Gig Harbor Utility Revenue Fund" authorized to be created by Section 12 of Ordinance No. 468, into which fund all of the Revenue of the System is to be deposited, as collected. The Revenue Fund may be maintained as one or more separate funds of the City into which all of the Revenue of the System shall be deposited.

Revenue of the System means all earnings, revenue and moneys received by the City from or on account of the operation of the System, including the income from investments of money in the Revenue Fund and the Bond Fund or from any other investment thereof. "Revenue

of the System" shall also include any federal or state reimbursements of operating expenses to the extent such expenses are included as "Costs of Maintenance and Operation."

System means the existing sanitary sewerage collection and treatment system of the City, as it now exists and as it may later be added to, extended and improved, and the existing water supply and distribution system of the City, as it now exists and as it may later be added to, extended and improved for as long as any Parity Bonds remain outstanding.

Term Bonds means any Parity Bonds identified as such in the ordinance authorizing the issuance thereof, the payment of which is provided for by a requirement for mandatory deposits of money into a "sinking fund account" in the Bond Fund.

Treasurer means the Finance Director of the City.

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 limited 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; and

(f) Words importing the singular number include the plural number and vice versa.

Section 2. Authorization of the Bond. For the purpose of pre-paying the Note, refunding the 1994 Bonds and paying costs of issuance, the City Council hereby authorizes the issuance and sale of its water and sewer revenue and refunding bond (the "Bond"). The Bond shall be designated as the "City of Gig Harbor, Washington, Water and Sewer Revenue and Refunding Bond, 2003," shall be dated as of its date of delivery, shall be issued in fully registered form in the denomination of \$1,811,000, shall bear interest on unpaid principal from its date at a per annum rate of 3.89% (calculated on the basis of a 360-day year with twelve 30-day months), payable on the first days of each March and September, commencing March 1, 2004, shall mature on September 1, 2013 and shall be payable in installments of principal on September 1 of the following years in the following amounts:

<u>Year</u> <u>(September 1)</u>	<u>Principal Payment</u>
2004	\$117,000
2005	161,000
2006	167,000
2007	173,000
2008	181,000
2009	188,000
2010	194,000
2011	202,000
2012	210,000
2013	218,000

The Bond shall not be a general obligation of the City. The Bond shall be an obligation only of the Bond Fund and shall be payable and secured as provided herein. The Bond does not constitute an indebtedness of the City within the meaning of the constitutional provisions and limitations of the State of Washington.

The Treasurer shall act as transfer agent, paying agent and registrar for the Bond (the "Registrar"). Both principal of and interest on the Bond shall be payable in lawful money of the United States of America. Upon final payment of all principal and interest thereon, the Bond shall be submitted to the Registrar for cancellation and surrender.

The Bond Register shall be maintained by the Registrar, and shall contain the name and mailing address of the registered owner of the Bond or nominee of such registered owner.

The Bond may be transferred only on the Bond Register maintained by the Registrar for that purpose upon the surrender thereof by the registered owner or nominee or his duly authorized agent and only if endorsed in the manner provided thereon and thereupon a new fully registered Bond of like principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor. Such exchange or transfer shall be without cost to the owner or transferee.

Section 3. Optional Redemption. The City has reserved the right to prepay the Bond prior to its maturity in whole or in part at any time, upon at least 5 days' written notice to the Bank subject only to prepayment fees as stated in Exhibit A attached hereto.

Section 4. Priority of Payments from Revenue Fund There has heretofore been established in the office of the Treasurer a special fund of the City known as the "City of Gig Harbor Utility Revenue Fund" (the "Revenue Fund"), into which the Revenue of the System is deposited as collected. The Revenue Fund shall be held separate and apart from all other funds

and accounts of the City, and the Revenue of the System shall be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation of the System;

Second, to make all payments required to be made into the Bond Fund to pay the interest on any Parity Bonds;

Third, to make all payments required to be made into the Bond Fund to pay the maturing principal of any Parity Bonds;

Fourth, to make all payments required to be made into the Reserve Account created to secure the payment of the Parity Bonds;

Fifth, to make all payments required to be made into any other revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the City having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

Sixth, to retire by redemption or purchase any outstanding revenue bonds or revenue warrants of the City, to make necessary additions, betterments and improvements and repairs to or extensions and replacements of the System, or for any other lawful City purposes.

Section 5. Bond Fund. A special fund of the City known as the "Utility Bond Redemption Fund" (the "Bond Fund") has heretofore been created by the City for the sole purpose of paying and securing the payment of Parity Bonds.

(a) *Payments into Debt Service Account.* A special account to be known as the "Debt Service Account" has heretofore been created in the Bond Fund for the purpose of paying the principal of, premium, if any, and interest on Parity Bonds.

As long as any Parity Bonds remain outstanding, the City hereby obligates and binds itself to set aside and pay from the Bond Fund into the Debt Service Account those amounts necessary, together with such other funds as are on hand and available in the Debt Service Account, to pay the principal of and the interest on such Parity Bonds as the same respectively become due and payable. Such payments from the Bond Fund shall be made in a fixed amount without regard to any fixed proportion on or before the 20th day of each month, an amount such that, if the same amount were so set aside and paid into said Debt Service Account on the 20th day of each succeeding calendar month thereafter prior to the next date upon which an installment of interest or principal and interest falls due on the Bonds, the aggregate of the amounts so set aside and paid into the Debt Service Account will on such date be equal to the installment of interest or principal and interest.

(b) *Payments into Reserve Account.* A Utility Reserve Account has heretofore been created in the Bond Fund for the purpose of securing the payment of the principal of and the interest on all bonds payable out of such Fund.

In the event that the City issues any Term Bonds in the future and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the term Average Annual Debt Service shall be deemed to exclude from principal an amount of Term Bonds equal to such mandatory payments, and from interest, the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the dates of the respective deposits.

The City hereby covenants and agrees that on the date of issuance of the Bonds it will pay into the Reserve Account (out of Revenue of the System or any funds on hand legally available

for such purpose) one fifth of the Reserve Requirement, and thereafter not less than approximately equal additional annual payments so that by five years from the date of issuance of the Bonds there will have been paid into the Reserve Account an amount which, with the money already on deposit therein (or any insurance policy(ies) or letter(s) of credit), will be equal to the Reserve Requirement.

The City hereby further covenants and agrees that in the event it issues any Future Parity Bonds that it will provide in the ordinance authorizing the issuance of the same that it will pay into the Reserve Account out of the Revenue of the System or Assessments (or, at the option of the City, out of any other funds on hand legally available for such purpose) not less than approximately equal additional annual payments so that by five years from the date of such Future Parity Bonds there will have been paid into the Reserve Account an amount which, with the money already on deposit therein (or any insurance policy(ies) or letter(s) of credit), will be equal to the Reserve Requirement.

The City further covenants and agrees that when the required deposits have been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Reserve Requirement. Whenever there is a sufficient amount in the Revenue Bond Fund, including the Reserve Account and the Debt Service Account, to pay the principal of, premium if any, and interest on all outstanding Parity Bonds, the money in the Reserve Account may be used to pay such principal, premium and interest. Money in the Reserve Account may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any outstanding Parity Bonds, as long as the monies left remaining on deposit in the Reserve Account are equal to the Reserve Requirement.

In the event there shall be a deficiency in the Debt Service Account to meet maturing installments of either interest on or principal of and interest on the outstanding bonds payable out of such Account, such deficiency shall be made up from the Reserve Account by the withdrawal of monies therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up out of Revenue of the System or Assessments after making necessary provision for the payments required to be made by subparagraphs First, Second, Third, Fourth and Fifth of Section 4 hereof.

(c) *Priority of Lien of Payments into Bond Fund.* The amounts so pledged to be paid into the Bond Fund are hereby declared to be a lien and charge upon the Revenue of the System junior in lien to the Costs of Maintenance and Operation, equal to the lien of the charges upon such Revenue to pay and secure the payment of the principal of and interest on any Future Parity Bonds, and prior and superior to all other charges of any kind or nature whatsoever.

(d) *Application and Investment of Money in the Bond Fund.* Moneys in the Bond Fund shall be invested in any investments that are permitted by law for the investment of City funds. Investments in the Debt Service Account shall mature prior to the date on which such money shall be needed for required interest or principal payments. Investments in the Reserve Account shall mature not later than the last maturity of the Parity Bonds secured thereby. All interest earned and income derived by virtue of such investments shall remain in the Bond Fund and be used to meet the required deposits into any account therein.

(e) *Sufficiency of Revenues.* The Council hereby finds that in fixing the amounts to be paid into the Bond Fund out of the Revenue of the System, it has exercised due regard for the Costs of Maintenance and Operation and has not obligated the City to set aside and pay into such

Fund a greater amount of such Revenue than in its judgment will be available over and above the Costs of Maintenance and Operation.

Section 6. Refunding Account. There is hereby authorized to be created in the Bond Fund an account known as the "Refunding Account" which Account is to be drawn upon for the sole purpose of paying the principal of and interest on the 1994 Bonds on their date of redemption and of paying costs related to the refunding of the 1994 Bonds.

A portion of the proceeds of sale of the Bond shall be credited to the Refunding Account, and shall be used immediately upon receipt thereof to defease the 1994 Bonds as authorized by the 1994 Bond Ordinance and to pay a portion of the costs of issuance of the Bond. The City shall defease the 1994 Bonds and discharge such obligations by the use of money in the Refunding Account to purchase certain Government Obligations (which obligations so purchased, are herein called "Acquired Obligations"), bearing such interest and maturing as to principal and interest in such amounts and at such times which, together with any necessary beginning cash balance, will provide for the payment of:

- (a) interest on the 1994 Bonds due and payable on March 1, 2004; and
- (b) the redemption price (100% of the principal amount thereof) on March 1, 2004 of the 1994 Bonds.

Section 7. Call For Redemption of 1994 Bonds. The City hereby irrevocably sets aside sufficient funds out of the purchase of Acquired Obligations from proceeds of the Bond to make the payments described in Section 6 of this ordinance.

The City hereby irrevocably calls the 1994 Bonds for redemption on March 1, 2004 in accordance with the provisions of the 1994 Bond Ordinance, authorizing the redemption and retirement of the 1994 Bonds prior to their fixed maturities.

Said defeasance and call for redemption of the 1994 Bonds shall be irrevocable after the final establishment of the escrow account and delivery of the Acquired Obligations.

The Treasurer is hereby authorized and directed to enter into an escrow agreement with a financial institution to be selected by the Treasurer in order to acquire and hold the Acquired Obligations and to provide for the giving of notice of the redemption of the 1994 Bonds in accordance with the applicable provisions of the 1994 Bond Ordinance.

Section 8. Defeasance. In the event that money and/or Government Obligations maturing or having guaranteed redemption prices at the option of the holder at such time or times and bearing interest to be earned thereon in amounts (together with such money, if any) sufficient to redeem and retire the Bond in accordance with the its terms, are hereafter irrevocably set aside in a special account and pledged to effect such redemption and retirement, then no further payments need be made into the Bond Fund or any account therein for the payment of the principal of and interest on all or any portion of the Bond, and the Bond shall then cease to be entitled to any lien, benefit or security of this ordinance, except the right to receive the funds so set aside and pledged, and such Bond shall no longer be deemed to be outstanding hereunder, or under any ordinance authorizing the issuance of bonds or other indebtedness of the City.

Section 9. Tax Covenants. 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 the 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 bonds" under Section 141 of the Code.

The Bond is hereby designated as a "qualified tax-exempt obligation" pursuant to Section 265(b) of the Code for investment by financial institutions. The City does not expect to issue more than \$10,000,000 in tax-exempt obligations during 2003.

This City Council hereby finds and determines that the refunding of the 1994 Bonds by the issuance and sale of the Bond at this time will effect savings to the City. In making such finding and determination this City Council has given consideration to the debt service requirements of the portion of the Bond attributable to the refunding of the 1994 Bonds, the debt service requirements of the 1994 Bonds, and the costs of the issuance of the Bond attributed to the refunding of the 1994 Bonds.

Section 10. Bond Covenants.

(a) *Maintenance of System.* The City shall at all time maintain, preserve and keep the properties of the System in good repair, working order and condition and will from time to time make all necessary and proper repairs, renewals, replacements, extensions and betterments thereto, so that at all times the business carried on in connection therewith will be properly and advantageously conducted and said properties of the System and the business in connection therewith administered in an efficient manner and at a reasonable cost.

(b) *Collection and Application of Assessments.* The City will promptly collect all Assessments levied in utility local improvement districts that have been heretofore created by the City and all Assessments levied in utility local improvement districts heretofore created, and all utility local improvement districts that are hereafter created to secure the payment of the principal of and interest on Parity Bonds and will pay the same into the Bond Fund. The same may be

used to meet required payments into any Account of the Bond Fund and may be used to pay the principal of and interest on any Parity Bonds without said Assessments being particularly allocated to the payment of any particular series of bonds payable out of such Fund. It is hereby further provided, however, that nothing in this ordinance or in this subsection shall be construed to prohibit the City from issuing revenue bonds having a lien on the Revenue of the System and the money in the Revenue Fund junior to the lien on such revenue and money for the payment of the principal of and interest on the Bonds and pledging as security for the payment of such junior lien bonds assessments levied in any utility local improvement district that may have been created to pay part or all of the cost of improvements to the System for which such junior revenue bonds were specifically issued.

(c) *Rates and Charges.* The City shall fix, maintain and collect rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System, which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that:

(1) the Revenue of the System derived therefrom, together with Assessments collected, will at all times be sufficient (A) to pay the Costs of Maintenance and Operation, (B) to pay the principal of and interest on all Parity Bonds, as and when the same shall become due and payable, (C) to make adequate provision for the payment of the any Term Bonds, (D) to make when due all payments which the City is obligated to make into the Reserve Account and all other payments which the City is obligated to make pursuant to this ordinance, and (F) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the revenue therefrom or payments in lieu thereof and any and all other amounts which the City may

now or hereafter become obligated to pay from the Revenue of the System by law or contract; and

(2) the Net Revenue together with Assessment Income in each calendar year will equal at least 1.25 times the maximum amount required to be paid in any succeeding calendar year for the principal of and interest on all Parity Bonds then outstanding. In the event the City issues any Term Bonds, and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the words "principal of and interest on all outstanding Parity Bonds" in the preceding sentence shall be deemed to exclude from "principal" an amount of Term Bonds equal to such mandatory payments, and from "interest" the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the date of the respective deposits.

(d) *Net Revenue.* After making or providing for the monthly payments from the Revenue Fund as required by Section 4 hereof, there shall be maintained in the Revenue Fund sufficient moneys to enable the City to meet the Costs of Maintenance and Operation of the System on a current basis. The City shall not change any rate or charge for service of the System as now established by the existing rate ordinance or ordinances that will reduce substantially the annual Net Revenues below that which would have been obtained before such change, unless the City shall have on file a certificate from a licensed professional engineer experienced in the design, construction and operation of municipal utilities or from an independent certified public accountant stating that the rates and charges as so changed will provide Net Revenues sufficient to comply with all the covenants and requirements of this ordinance.

(e) *Sale of Properties.* The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition, provision is made for the payment into the Bond Fund of cash or Government Obligations sufficient (taking into account interest to be earned on any such Government Obligations) to pay the principal of and interest on all then outstanding Parity Bonds, nor will it sell or otherwise dispose of any part of the useful operating properties of the System unless such facilities are replaced or provision is made for payment into the Bond Fund of the greatest of the following:

- (1) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and Accounts therein) that the Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Revenue of the System for such period; or
- (2) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and Accounts therein) that the Net Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Net Revenue of the System for such period; or
- (3) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the depreciated cost value of the facilities sold or disposed of bears to the depreciated cost value of the entire System immediately prior to such sale or disposition.

The proceeds of any such sale or disposition of a portion of the properties of the System (to the extent required above) shall be paid into the Reserve Account in the Bond Fund.

Notwithstanding any other provision of this paragraph, the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund.

(f) *No Encumbrances.* The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Revenue of the System, or any part thereof, prior or superior to the lien thereon for the payment of Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, or upon any funds in the hands of the City, prior to or superior to the lien of Parity Bonds, or which might impair the security of Parity Bonds.

(g) *Insurance.* The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is usually carried by private corporations operating like properties, or will implement a self-insurance program with reserves adequate, in the judgment of the Council, to protect City and the owners of the Bonds against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance shall be paid into the Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in said Reserve Account and the balance, if any, shall at the option of the City,

be used either for repairs, renewals, replacements, or capital additions to the System, for the redemption of Parity Bonds, or for deposit into the Reserve Account.

(h) *Books and Accounts.* The City shall keep proper books of account which shall be kept in accordance with any applicable rules and regulations prescribed by the State of Washington. The City shall prepare, and any owner of Parity Bonds may obtain copies of, balance sheets and profit and loss statements showing in reasonable detail the financial condition of the System as of the close of each year, and the income and expenses of such year, including the amounts paid into the Revenue Fund, the Bond Fund, and into any and all special funds or accounts created pursuant to the provisions of this ordinance, and the amounts expended for maintenance, renewals, replacements, and capital additions to the System.

(i) *No Free Service.* The City will not furnish or supply or permit the furnishing or supplying of any commodity, service or facility furnished by or in connection with the operation of the System, free of charge to any person, firm or corporation, public or private, so long as any Bonds are outstanding and unpaid.

(j) *Sound Expenditures.* The City will not expend any of the Revenues derived by it from the operation of the System or the proceeds of any indebtedness payable from Revenue of the System for any extensions, betterments and improvements to the System which are not legally required or economically sound, and which will not properly and advantageously contribute to the conduct of the business of the System in an efficient manner.

(k) *Enforcement of Collection of Service Charges and Assessments.* The City shall promptly take action to enforce the payment of delinquent service charges and Assessments by such means as are legally available.

Section 11. Issuance of Future Parity Bonds. The City hereby further covenants and agrees with the owners of each of the Bonds for as long as any of the same remain outstanding as follows:

The City will not issue any bonds having a greater or equal priority of lien upon the Revenue of the System to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such bonds than the priority of lien created on such Revenue to pay and secure the payment of the principal of and interest on the Parity Bonds except as follows:

(a) The City reserves the right to issue Future Parity Bonds for the purposes of First, providing funds to acquire, construct, reconstruct, install, or replace any equipment, facilities, additions, betterments, or other capital improvements to the System for which it is authorized by law to issue revenue bonds, or Second, refunding at or prior to their maturity, any revenue bond anticipation notes, or outstanding revenue bonds or other obligations payable out of the Revenue of the System and to pledge that payments will be made out of the Revenue of the System and into the Bond Fund and the Reserve Account therein to pay and secure the payment of the principal of and interest on such Future Parity Bonds on a parity with the payments required herein to be made out of such Revenue into such Fund and Account to pay and secure the payment of the principal of and interest on any Parity Bonds then outstanding, upon compliance with the following conditions:

(1) At the time of the issuance of any Future Parity Bonds there is no deficiency in the Bond Fund or the Reserve Account.

(2) If there are Assessments levied in any utility local improvement district to pay for additions and improvements to and extensions of the System which will be constructed from the proceeds of such Future Parity Bonds, the ordinance authorizing such Future Parity Bonds shall require that such Assessments be paid into the Bond Fund.

(3) If there are Assessments pledged to be paid into a warrant or bond redemption fund for revenue bonds or warrants being refunded by Future Parity Bonds, the ordinance authorizing the Future Parity Bonds shall require such Assessments to be paid into the Bond Fund.

(4) The principal of and interest on the Future Parity Bonds shall be payable out of the Bond Fund and the requirements for Reserve Account payments in Section 14(b) hereof shall be met.

(5) Prior to the delivery of any Future Parity Bonds the City shall have on file a certificate of an independent professional engineer, certified public accountant or City representative dated not earlier than 90 days prior to the date of delivery of such Future Parity Bonds and showing that the Net Revenue determined and adjusted as hereafter provided for each calendar or fiscal year after the issuance of such Parity Bonds (the "Adjusted Net Revenue") together with Assessment Income will equal at least 1.25 times the amount required in any such year for the payment of the principal of and interest on all Parity Bonds then outstanding, including the Future Parity Bonds proposed to be issued, except that the certificate of a City representative shall be based on actual historical Net Revenue of the System and no adjustments to that revenue shall be allowed. In the event the City issues any Term Bonds, and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the words "principal of and interest on all outstanding Parity Bonds" in the preceding

sentence shall be deemed to exclude from "principal" an amount of Term Bonds equal to such mandatory payments, and from "interest" the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the dates of the respective deposits.

The Adjusted Net Revenue shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Parity Bonds as adjusted by such engineer or accountant to take into consideration changes in Net Revenue estimated to occur under one or more of the following conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, shall be outstanding:

- (i) any increase or decrease in Net Revenue which would result if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of such 12-month period, had been in force during the full 12-month period;
- (ii) any increase or decrease in Net Revenue estimated by such Engineer or Accountant to result from any additions, betterments and improvements to and extensions of any facilities of the System which (a) became fully operational during such 12-month period, (b) were under construction at the time of such certificate or (c) will be constructed from the proceeds of the Parity Bonds to be issued;
- (iii) the additional Net Revenue which would have been received if any customers added to the System during such 12-month period were customers for the entire period;

Such Engineer or Accountant shall base his or her certification upon, and his or her certificate shall have attached thereto, financial statements of the System audited by the State Examiner (unless such an audit is not available for a 12-month period within the preceding 24 months) and certified by the City Administrator, showing income and expenses for the period upon which the same is based.

The certificate of such Engineer or Accountant shall be conclusive and the only evidence required to show compliance with the provisions and requirements of this subsection (5).

Notwithstanding the foregoing requirement, if Future Parity Bonds are to be issued for the purpose of refunding at or prior to their maturity any part or all of the then outstanding Parity Bonds and the issuance of such refunding Parity Bonds results in a debt service savings and does not require an increase of more than \$5,000 in any year for principal and interest on such refunding Parity Bonds, the certificate required by subsection (a)(5) of this section need not be obtained.

(b) Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations which are a charge upon the Revenue of the System junior or inferior to the payments required by this ordinance to be made out of such Revenue into the Bond Fund and Reserve Account to pay and secure the payment of any outstanding Parity Bonds.

(c) Nothing herein contained shall prevent the City from issuing revenue bonds to refund maturing Parity Bonds for the payment which moneys are not otherwise available.

Section 12. Form of Bond and Certificate of Authentication. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

No. R-1

\$ _____

STATE OF WASHINGTON
CITY OF GIG HARBOR
WATER AND SEWER REVENUE AND REFUNDING BOND, 2003

INTEREST RATE: 3.89%

MATURITY DATE: SEPTEMBER 1, 2013

REGISTERED OWNER: BANK OF AMERICA, N.A.

PRINCIPAL AMOUNT: ONE MILLION EIGHT HUNDRED ELEVEN THOUSAND
DOLLARS

The City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns, but solely from the Bond Fund (hereinafter defined) on the Maturity Date the Principal Amount specified above and to pay interest thereon from the date hereof at the rate per annum of 3.89% computed on a 360-day year and twelve months of 30 days each.

This bond is issued pursuant to Ordinance No. 946 of the City, adopted on November 24, 2003 (the "Bond Ordinance"), for the purpose of providing permanent financing various capital improvements to the City's combined system of water and sewerage and to refund certain outstanding water and revenue and refunding bonds of the City, all in conformity with the Constitution and laws of the State of Washington.

Interest on this bond is payable on the first days of each March and September, commencing March 1, 2004, and principal is payable in installments of principal on September 1 of the following years in the following amounts:

<u>Year</u> <u>(September 1)</u>	<u>Principal Payment</u>
2004	\$117,000
2005	161,000
2006	167,000
2007	173,000
2008	181,000
2009	188,000
2010	194,000
2011	202,000
2012	210,000
2013	218,000

Upon final payment of all principal and interest thereon, this bond shall be submitted to the Finance Director of the City ("Registrar") for cancellation and surrender.

The City has reserved the right to repay the principal amount of this bond in whole or in part prior to its maturity on five days' written notice subject to prepayment fees as provided in the Bond Ordinance.

This bond is payable solely out of the Revenue of the System, and does not constitute a general obligation of the City. Both principal of and interest on this bond are payable solely out of the special fund of the City known as the Bond Fund. The City does hereby pledge and bind itself to set aside and pay into the Bond Fund the amounts required by the Bond Ordinance to be paid therein on or prior to the maturity of the Bond as the same shall become due from the proceeds of the Bonds (as authorized in the Bond Ordinance) or from the sources and in the priority specified in the Bond Ordinance.

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

The City hereby irrevocably covenants and agrees with the Registered Owner of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed. Reference is hereby made to the Bond Ordinance for a complete statement of such covenants and for the definition of capitalized terms used herein.

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 or on behalf of the Registrar.

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 and the Bond of this issue 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 its Mayor and attested by the manual or facsimile signature of the City Clerk of the City, as of this _____ day of _____, 2003.

CITY OF GIG HARBOR, WASHINGTON

By _____ /s/ manual or facsimile _____
Mayor

ATTEST:

/s/ manual or facsimile
City Clerk

* * * * *

REGISTRATION CERTIFICATE

This bond is registered in the name of the Registered Owner on the books of the City, in the office of the Treasurer (the "Registrar"), as to both principal and interest, as noted in the registration blank below. All payments of principal of and interest on this bond shall be made by the City with full acquittance by the Registrar's wire transfer, made payable to the last Registered Owner as shown hereon and on the registration books of the Registrar at his/her address noted hereon and on the registration books of the Registrar.

<u>Date of Registration</u>	<u>Name and Address of Registered Owner</u>	<u>Signature of Registrar</u>
<u>, 2003</u>	<u>Bank of America, N.A.</u> <u>800 Fifth Avenue, Floor 34</u> <u>Seattle, WA 98104</u>	

Section 13. Execution and Delivery of Bond. The Bond shall be executed 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 of the City. In case any officer whose signature shall appear on any Bond shall cease to be an officer before the delivery of the Bond, such signature shall nevertheless be valid and sufficient for all purposes, and the Bond may be authenticated and delivered the same as if such officer had remained in office until such delivery.

The Bond shall not be valid for any purpose until authenticated by the Registrar.

Section 14. Sale of the Bond. The City hereby accepts the proposal of the Bank, delivered to the City Council dated October 9, 2003 in accordance with the terms contained in this ordinance and said proposal and the City agrees to the pay the fees and perform the reporting requirements specified therein, and to pay a structuring fee to Banc of America Securities LLC.

The City officials are hereby authorized and directed to do everything necessary to complete such sale and delivery of the Bond to the purchaser thereof upon the payment of the purchase price thereof, all in accordance with this ordinance and the proposal of the Bank

Section 15. Application of Bond Proceeds. Out of the net proceeds of the Bond received by the City \$72,930.40 will be deposited in the Bond Fund and used together with other funds of the City available therefor to refund the 1994 Bonds as provided in Section 6 hereof, and \$1,683,800.67 will be used to pay the Note, together with pre-payment penalties as provided in Ordinance No. 887. The remainder of the net proceeds of the Bond shall be deposited into the Bond Fund and used to pay debt service on the Bond and to pay costs of issuance of the Bond.

Section 16. 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 17. Effect of Covenants, Etc. All covenants, obligations and agreements of the City contained in this ordinance shall be deemed to be covenants, obligations and agreements of the City to the full extent authorized by the Act and permitted by the Constitution of the State of Washington. No covenant, obligation or agreement contained herein shall be deemed to be a covenant, obligation or agreement of any present or future official, member, agent or employee of the City in his or her individual capacity, and neither the members of the Council nor any officer thereof executing the Bond shall be liable personally on the Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No member, officer, agent

or employee of the City shall incur any liability in acting or proceeding or in not acting or proceeding, in good faith in accordance with the terms of this ordinance.

Section 18. Ongoing Disclosure. The City is exempt from the ongoing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 by reason of the exemption set forth in subsection (d)(i) of that rule with respect to the issuance of securities in authorized denominations of \$100,000 or more.

Section 19. Effective Date. This ordinance shall be effective five days after its passage and publication in the manner required by law.

PASSED by the Council of the City of Gig Harbor, Washington at a regular meeting held on the 24th day of November, 2003.

CITY OF GIG HARBOR, WASHINGTON

Opetches Alkire
Mayor

ATTEST:

Mally M. Joslee
City Clerk

First Reading: November 10, 2003

Date Adopted: November 24, 2003

Date of Publication: December 3, 2003

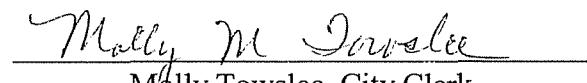
Effective Date: December 8, 2003

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 "Council"), DO HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. 946 of the Council (the "Ordinance"), duly passed at a regular meeting thereof held on the 24th day of July, 2003.
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 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 24th day of November, 2003.



Molly Towslee, City Clerk