

**CITY OF GIG HARBOR, WASHINGTON
ORDINANCE NO. 918**

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING
A LIMITED TAX GENERAL OBLIGATION BOND IN THE
PRINCIPAL SUM OF \$2,080,000 FOR THE PURPOSE OF
FINANCING THE ACQUISITION OF REAL ESTATE FOR
CITY USE; PROVIDING THE TERMS OF THE BOND;
AND PROVIDING FOR THE SALE OF THE BOND.**

WHEREAS, the City Council (the “Council”) of the City of Gig Harbor, Washington (the “City”), has deemed it in the best interest of the City and its citizens that the City acquire certain real estate for City use (the “Project”); and

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

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

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

Act means Chapter 39.50 RCW.

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

Bond means the City of Gig Harbor, Washington, Limited Tax General Obligation Bond, 2002 in the principal amount of \$2,080,000, issued pursuant to this ordinance.

Bond Fund means the City’s “Limited Tax General Obligation Bond Redemption Fund,” as described in Section 5 of this ordinance..

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

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

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

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

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

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

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

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

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

Project means the acquisition of real estate, situated at 3207 Harborview Drive, Gig Harbor, WA 98335, for City use.

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

Section 2. Authorization of the Bond. The City hereby authorizes the issuance and sale of the Bond in the aggregate principal amount of \$2,080,000 to provide permanent financing for the acquisition of real estate for City use (the “Project”) and to pay costs of issuance of the Bond. The Bond shall be a limited tax general obligation of the City; shall be designated the “City of Gig Harbor, Washington, Limited Tax General Obligation Bond, 2002”; shall be dated the date of its delivery to the Bank; shall be fully registered; shall be in the denomination of \$2,080,000; and shall bear interest from its date at the rate of 3.63% per annum calculated on the basis of a 360-day year with 30-day months. Principal and interest on the Bond shall be payable in semiannual installments of \$117,973.01 (including principal and interest) beginning on December 1, 2002 and on each June 1 and December 1 thereafter, with final payments of principal and interest nevertheless payable at maturity on December 1, 2012. Payments shall be applied first to interest and then to principal.

Section 3. Registration and Transfer. The Treasurer shall act as transfer agent, paying agent and registrar for the Bond (collectively, the “Bond Registrar”). Both principal of and interest on the Bond shall be payable in lawful money of the United States of America by check or warrant drawn on the Bond Registrar and mailed to the registered owner of the Bond on each interest and principal payment date. Upon payment of the final principal and interest installment on the Bond, the registered owner shall present and surrender the Bond at the Treasurer’s office.

The Bond Register shall be maintained by the Bond 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 Bond Registrar for that purpose upon the surrender thereof by the registered owner or nominee or his/her 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 4. Prepayment. The City may prepay all or a portion of the principal amount owing on the Bond at any time without notice to the Bank. However, such prepayment may be subject to a prepayment penalty as described in the offer of the Bank attached to this ordinance as Exhibit A.

Section 5. Bond Fund and Provision for Tax Levy Payments. There has previously been established a fund of the City known as the “Limited Tax General Obligation Bond Fund” (the “Bond Fund”) which is used to pay debt service on all outstanding limited tax general obligation bonds of the City, including the Bond.

The City hereby irrevocably covenants for as long as any of the Bond is outstanding and unpaid, that each year it will include in its budget and levy an *ad valorem* tax, within and as a part of the tax millage levy permitted to cities without a vote of the people, upon all the property within the City subject to taxation in an amount which will be sufficient, together with all other funds of the City which may legally be used and which the City may apply for such purposes, to pay the principal of and interest on the Bond as the same shall become due. All of such taxes and any of such other money so applied by the City Council shall be paid into the Bond Fund. None of the money in the Bond Fund shall be used for any other purpose than the payment of the principal of and interest on the Bond. Money in the Bond Fund not needed to pay the interest or principal next coming due may temporarily be deposited in such institutions or invested in such obligations as may be lawful for the investment of City money. Any interests or profit from the investment of such money shall be deposited in the Bond Fund.

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

Section 6. Tax Covenants; Special Designation.

(a) The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exemption from federal income taxation of the interest on the Bond and will take or require to be taken such acts as may reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from

federal income taxation of the interest on the Bond. Without limiting the generality of the foregoing, the City covenants that it will not take any action or fail to take any action with respect to the investment of the proceeds of the Bond or other funds that would result in constituting the Bond an “arbitrage bond” within the meaning of such term as used in Section 148 of the Code.

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

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

(ii) More than 10% of the principal or interest payments on the Bond (and any bonds issued to refund such Bond) in a year to be (under the terms of this resolution of any underlying arrangement) directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use.

The City further covenants that, if:

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

(iv) More than five percent of the principal or interest payments on the Bond in a year (or any bonds issued to refund the Bond) is (under the terms of this resolution or any underlying arrangement) directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the

City) in respect of property, or borrowed money, used or to be used for any Private Person Use, then, (1) any Private Person Use payments described in subsection (iv) hereof that is in excess of the five percent limitations described in such subsections (iii) or (iv) will be for a Private Person Use that is related to the state or local government, and (2) any Private Person Use will not exceed the amount of Net Proceeds of the Bonds used for the state or local governmental use portion of the project to which the Private Person Use of such portion of the projects relates. The City further covenants that it will comply with any limitations on the use of the projects by other than state and local governmental users that are necessary, in the opinion of its bond counsel, to preserve the tax exemption of the interest on the Bond.

(c) *Designation under Section 265(b)(3).* The City hereby designates the Bond as a “qualified tax-exempt obligation” under Section 265(b)(3) of the Code for banks, thrift institutions and other financial institutions.

Section 7. Lost or Stolen Bond. In case the Bond shall be lost, stolen or destroyed, the Bond Registrar may deliver a new Bond of like amount, date, maturity, interest rate, tenor, and effect to the registered owner upon the owner paying the expenses and charges of the City in connection therewith and upon filing with the Bond Registrar evidence satisfactory to the Bond Registrar that such Bond was actually lost, stolen or destroyed and of the ownership thereof, and upon furnishing the City with indemnity satisfactory to both.

Section 8. Form of the Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. 1

\$2,080,000

STATE OF WASHINGTON
CITY OF GIG HARBOR
LIMITED TAX GENERAL OBLIGATION BOND, 2002

Registered Owner: Bank of America, N.A.

Interest Rate: 3.63%

Maturity Date: December 1, 2012

Principal Amount: Two Million Eighty Thousand and No/100 Dollars

The City of Gig Harbor, Washington, for value received, hereby promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, the Principal Amount set forth above, unless redeemed prior thereto as provided herein, together with interest on such Principal Amount from the date hereof or the most recent date to which interest has been paid or duly provided for at the Interest Rate set forth above calculated on the basis of a 360-day year with 30-day months. Principal and interest on the Bond shall be payable in semiannual installments (including principal and interest) of \$117,973.01 beginning on December 1, 2002 and on each June 1 and December 1 thereafter, with final payments of principal and interest nevertheless payable on the Maturity Date. Payments shall be applied first to interest and then to principal.

Both principal of and interest on this bond are payable in lawful money of the United States of America. Interest and principal shall be paid by mailing a check or warrant (on the date such interest is due) to the registered owner or assigns at the address shown on the Bond Register. The final principal installment shall be paid to the registered owner hereof upon presentation and surrender of this bond at the office of the Finance Director of the City.

This bond is issued pursuant to Ordinance No.918 of the City, passed November 12, 2002 (the "Bond Ordinance"), to provide permanent financing for the acquisition of real estate for City use.

The City may prepay all or a portion of the outstanding principal amount of this bond without notice to the Registered Owner. However, such prepayment may be subject to a prepayment penalty as described in the offer of the Bank attached to the Bond Ordinance as Exhibit A.

This bond has been designated as a "qualified tax-exempt obligation" for banks, thrift institutions and other financial institutions.

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 Bond Registrar.

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

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

IN WITNESS WHEREOF, the City of Gig Harbor, Washington, has caused this bond to be signed on behalf of the City with the manual signature of the Mayor, to be attested by the manual signature of the Clerk of the City, as of this 12th day of November, 2002.

CITY OF GIG HARBOR, WASHINGTON

By _____
Mayor

ATTEST:

City Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: November 12, 2002

This bond is the Limited Tax General Obligation Bond, 2002 of the City dated November 12, 2002 described in the within-mentioned Bond Ordinance.

FINANCE DIRECTOR of the City, as Bond
Registrar

By _____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____

PLEASE INSERT SOCIAL SECURITY OR TAXPAYER
IDENTIFICATION NUMBER OF TRANSFEREE

(Please print or typewrite name and address, including zip code of Transferee)

the within bond and all rights thereunder and does hereby irrevocably constitute and appoint _____ of _____, or its successor, as Agent to transfer said bond on the books kept by the Bond Register for registration thereof, with full power of substitution in the premises.

DATED: _____, _____.

SIGNATURE GUARANTEED:

Signature(s) must be guaranteed
pursuant to law.

NOTE: The signature of this Assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Section 9. Application of Proceeds of Bond. At the time of delivery of the Bond, the proceeds of the Bond shall be deposited into the City's Property Acquisition fund and used to pay the costs of the Project and to pay costs of issuing the Bond.

Section 10. Execution and Authentication of the Bond. The Bond shall be signed on behalf of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk.

Only such Bond as shall bear thereon a Certificate of Authentication in the form recited above, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

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

Section 11. Sale of the Bond. The Bond shall be sold to the Bank pursuant to the terms of this ordinance and its offer which is attached hereto as Exhibit A and incorporated by this reference. The City shall pay the loan fee of \$750 to the Bank on the date of issuance of the

Bond, and shall pay or reimburse the bank for its reasonable legal expenses incurred with regard to purchase of the Bond.

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

Section 13. General Authorization; Ratification of Prior Acts. The Treasurer and other appropriate officers of the City are authorized to take any actions and to execute documents as in their judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by, this ordinance. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified.

Section 14. Effective Date. This ordinance shall take effect five days after its passage and publication in the manner provided by law.

PASSED by the City Council at a regular open public meeting on November 12, 2002.

CITY OF GIG HARBOR, WASHINGTON

MAYOR

ATTEST:

CITY CLERK

First Reading:	October 28, 2002
Date Adopted:	November 12, 2002
Date of Publication:	November 20, 2002
Effective Date:	November 25, 2002

CERTIFICATE

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

1. That the attached ordinance is a true and correct copy of Ordinance No. 918 of the Council (the “Ordinance”), duly passed at a regular meeting thereof held on the 12th day of November, 2002.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of November, 2002.

City Clerk

CITY OF GIG HARBOR, WASHINGTON
LIMITED TAX GENERAL OBLIGATION BOND, 2002

ORDINANCE NO. 918

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING A LIMITED TAX GENERAL OBLIGATION BOND IN THE PRINCIPAL SUM OF \$2,080,000 FOR THE PURPOSE OF FINANCING THE ACQUISITION OF REAL ESTATE FOR CITY USE; PROVIDING THE TERMS OF THE BOND; AND PROVIDING FOR THE SALE OF THE BOND.

PASSED ON November 12, 2002

PREPARED BY:

PRESTON GATES & ELLIS LLP
SEATTLE, WASHINGTON

**SUMMARY OF ORDINANCE NO.
of the City of Gig Harbor, Washington**

On November 12, 2002 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. 918, the summary of text of which is as follows:

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING
A LIMITED TAX GENERAL OBLIGATION BOND IN THE
PRINCIPAL SUM OF \$2,080,000 FOR THE PURPOSE OF
FINANCING THE ACQUISITION OF REAL ESTATE FOR
CITY USE; PROVIDING THE TERMS OF THE BOND;
AND PROVIDING FOR THE SALE OF THE BOND.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting of November 12, 2002.

BY: _____
MOLLY M. TOWSLEE, CITY CLERK