

ORDINANCE NO. 850

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A BOND ANTICIPATION NOTE FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR IMPROVEMENTS WITHIN LOCAL IMPROVEMENT DISTRICT NO. 99-1 IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,200,000; PROVIDING THE FORM, TERMS AND MATURITY OF SAID NOTE; CREATING A SPECIAL FUND FOR THE PAYMENT OF SAID NOTE; AND APPROVING THE SALE OF SUCH NOTE.

WHEREAS, the City of Gig Harbor, Washington (the “City”) formed Local Improvement District No. 99-1 (the “District”) by Ordinance No. 833 on December 13, 1999; and

WHEREAS, the City Council (the “Council”), has deemed it in the best interest of the City and its citizens that the City commence improvements to LID No. 99-1 as described in Ordinance No. 833 (collectively, the “Improvements”); and

WHEREAS, the City has received a written offer from KeyBank National Association, Gig Harbor, Washington (the “Bank”), to purchase a bond anticipation note in an amount equal to \$1,200,000 (the “Note”), to provide financing for the Improvements and to pay the costs of issuance of the Note, and the City has determined that it is in the best interest of the City to accept the written offer and sell the Note to the Bank; and

WHEREAS, this City Council has determined that it is in the best interest of the residents of the City that such obligations be issued under the terms and conditions set forth in this ordinance;

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

Section 1. Definitions. As used in this ordinance, the following words shall have the following meanings:

Act means Chapter 39.50 RCW.

Bank means KeyBank National Association, Gig Harbor, Washington, or its corporate successor.

Bonds means any general obligation bonds or the local improvement district bonds of the City to be issued for the purpose of providing permanent financing for the Improvements.

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

City Treasurer means the Treasurer of the City, or any successor to the functions of the City Treasurer.

Closing Date means the date of original issuance and delivery of the Note to the Bank.

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 body of the City.

District means Local Improvement District No. 99-1.

Guaranty Fund means the City's Guaranty Fund maintained pursuant to RCW ch. 35.54.

Improvements means the improvements to be undertaken within the District as more specifically set out in Ordinance No. 833 passed by the City Council on December 13, 1999.

Local Improvement District No. 99-1 Project Fund means the City's Local Improvement District No. 99-1 Fund created pursuant to Section 8 of this ordinance.

Note means the City of Gig Harbor, Washington Limited General Obligation Bond Anticipation Note, 2000, the sale and issuance of which is authorized herein.

Note Fund means the 2000 Note Redemption Fund, created in the office of the City Treasurer by Section 5 of this ordinance.

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

Registrar means the City Treasurer.

SEC means the Securities and Exchange Commission.

Section 2. Authorization of the Note. For the purpose of providing interim financing of the Improvements pending their completion and the issuance of the Bonds, the Council hereby authorizes the issuance and sale of a limited general obligation bond anticipation note in the aggregate principal amount of \$1,200,000 to the Bank under the terms and conditions set forth in the Bank's commitment letter dated July 5, 2000 (the "Note"). The Note shall be designated as the "City of Gig Harbor, Washington Limited General Obligation Bond Anticipation Note, 2000," shall be dated as of the Closing Date, shall be issued in fully registered form in the denomination of \$1,200,000, shall bear interest at a per annum rate of 4.93 %, payable at maturity and shall mature 15 months from the Closing Date. Interest on the Note shall be calculated on the basis of a year of 365 days and the actual number of days elapsed.

Section 3. Prepayment of the Note. The City may prepay the Note in whole or in part, at any time, without penalty. Prepayments shall be applied first to interest and then principal.

Section 4. Registration and Payment. The Note shall be in registered form as to both principal and interest, and the City Treasurer is hereby appointed to act as the “Registrar.” The Note shall not be transferable.

Both principal of and interest on the Note shall be payable in lawful money of the United States of America. The final payment of principal of and interest on the Note shall be payable only upon presentation and surrender thereof by the Bank at the office of the Registrar.

Section 5. Note Fund--Security and Sources of Payment of the Note. There is hereby authorized to be established and the City Treasurer is authorized and requested to establish a special fund of the City to be known as the “2000 Note Redemption Fund” (the “Note Fund”), which fund shall be a trust fund and shall be drawn upon only for the payment of the principal of and interest on the Note. The City hereby irrevocably covenants and agrees that on or before the date 15 months from the Closing Date, proceeds of the Bonds or the refunding notes or, in the alternative, assessments levied within LID No. 99-1, in an amount sufficient to pay the principal of and interest on the Note as the same become due shall be deposited in the Note Fund.

The Note shall be an obligation of the Note Fund and additional funds of the City as specified by the City, and shall be a general obligation of the City. For so long as the foregoing pledge of the general credit of the City is in effect, the City hereby further irrevocably covenants that, unless the principal of and interest on the Note are paid from other sources, it will make annual levies of taxes upon all of the property in the City subject to taxation within and as a part of the tax levy permitted to the City without a vote of the electors in amounts sufficient to pay such principal and interest 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 for the prompt payment of such principal and interest.

Section 6. Execution and Delivery of Note. The Note 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. The official seal of the City shall be impressed or a facsimile thereof imprinted on the Note. In case any officer whose signature shall appear on any Note shall cease to be an officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes, and such Note may be authenticated and delivered the same as if such officer had remained in office until such delivery.

The Note shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance only if a Certificate of Authentication thereon in the form hereinafter specified in Section 11 shall be manually executed by the Registrar. Such Certificate of Authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

Section 7. Sale of the Note. The Note shall be sold to KeyBank National Association, Gig Harbor, Washington in accordance with its proposal for the purchase of the Note dated July 5, 2000 and the acceptance of such proposal is hereby ratified and confirmed. The Bank shall be paid a loan origination fee of \$1,200 on the Closing Date, which may be paid in the form of a drawing under the Note.

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 under the terms of its commitment dated July 5, 2000 and for the proper use and application of the proceeds of sale thereof.

Section 8. Application of Note Proceeds. There is hereby authorized to be created a special fund of the City designated as the "Local Improvement District No. 99-1 Project Fund"

(the "LID No. 99-1 Fund"). Following the execution and delivery of the Note, the City may make drawings on the Note and such proceeds shall be used, together with other moneys on deposit therein and available therefor, for the undertaking of the Improvements and for paying all expenses incidental thereto (including but not limited to costs of issuance of the Note, engineering, financing, legal or any other incidental costs). In order to obtain a drawing, the City shall notify the Bank in writing each time that a draw is required to pay the costs of the Improvements or costs of issuance of the Note. The Bank will then notify the City Treasurer of the delivery date of the cashier's check (or wire transfer) representing the draw. The proceeds of drawings shall be deposited in the LID No. 99-1 Fund. Thereafter, approved warrants may be drawn upon the LID No. 99-1 Fund and delivered to vendors or contractors. It is anticipated that draws will be made on no more than a monthly basis and shall be made in an amount sufficient to pay warrants approved by the City for costs of the Improvements and costs of issuance.

All moneys held in the LID No. 99-1 Fund may be invested in any legal investment for the City's funds, and all investments shall be scheduled to mature as costs of the Improvements are reasonably anticipated to be incurred. Interest earned and income or profits derived by virtue of investments of moneys in the LID No. 99-1 Fund may remain in the LID No. 99-1 Fund and may be used for the payment of costs of the Improvements. Upon the completion of the Improvements and the payment of all expenses incidental thereto, including the payment of all retainages for construction, the balance on hand in the LID No. 99-1 Fund shall be transferred to the Note Fund, and the LID No. 99-1 Fund shall be closed.

Section 9. Lost, Destroyed or Mutilated Note. In the event the Note is lost, destroyed, or mutilated, the City will cause a new Note to be issued, authenticated and delivered

substantially similar to the original, to replace the same, in such manner and upon such reasonable terms and conditions as the Registrar may from time to time determine.

Section 10. Covenants of the City. The City hereby makes the following covenants to the Bank:

(a) *Punctual Payment of the Note.* The City covenants that amounts on deposit in the Note Fund shall be drawn upon solely for the purpose of paying the principal of and interest on the Note. The City further covenants that it will duly and punctually pay or cause to be paid the principal of and interest on the Note at the place, on the date and in the manner provided in the Note and herein. The City further covenants and agrees that it will deposit moneys from the sources herein provided or issue refunding notes in such amount and at such time as will enable it to make the deposits into the Note Fund required by Section 5 of this ordinance.

(b) *Note to Remain Tax-Exempt; Nonarbitrage Covenant.* 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 Note 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 Note. 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 any Note or other funds that would result in constituting the Note as an “arbitrage bond” within the meaning of such term as used in Section 148 of the Code.

The City represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a issuer whose arbitrage certifications may not be relied upon.

Section 11. Form of Note and Certificate of Authentication. The Note shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. R-1

\$1,200,000

(or so much thereof as is
shown on the attached grid)

STATE OF WASHINGTON

CITY OF GIG HARBOR, WASHINGTON
LIMITED GENERAL OBLIGATION
BOND ANTICIPATION NOTE, 2000

Registered Owner: KeyBank National Association
 Gig Harbor Center
 Mailcode WA-31-99-0145
 3216 Judson Street
 Gig Harbor, WA 98335

Tax Identification Number: _____

Principal Amount: \$1,200,000 (or so much thereof as is shown on the attached grid)

Maturity Date: _____, 2001

Interest Rate: _____%

Interest calculated on the basis of: 365 day year and actual days elapsed.

THE CITY HEREBY PLEDGES ITS FULL FAITH AND CREDIT FOR THE REPAYMENT OF THIS NOTE. FOR SO LONG AS THE FOREGOING PLEDGE OF THE GENERAL CREDIT OF THE CITY IS IN EFFECT, THE CITY HEREBY FURTHER IRREVOCABLY COVENANTS THAT, UNLESS THE PRINCIPAL OF AND INTEREST ON THIS NOTE ARE PAID FROM OTHER SOURCES, IT WILL MAKE ANNUAL LEVIES OF TAXES UPON ALL OF THE PROPERTY IN THE CITY SUBJECT TO TAXATION WITHIN AND AS A PART OF THE TAX LEVY PERMITTED TO THE CITY WITHOUT A VOTE OF THE ELECTORS IN AMOUNTS SUFFICIENT TO PAY SUCH PRINCIPAL AND INTEREST 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 FOR THE PROMPT PAYMENT OF SUCH PRINCIPAL AND INTEREST.

The City of Gig Harbor, Washington (the "City") hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above from the 2000 Note Redemption Fund (the "Note Fund") created by Ordinance No. 850, passed on September 11, 2000 (the "Note Ordinance"), the Principal Amount indicated above on the Maturity Date and to pay interest thereon from its dated date, or the most recent date to which interest has been paid or duly provided for until payment of this note at the Interest Rate set forth above, payable on the Maturity Date.

Both principal of and interest on this note is payable in lawful money of the United States of America. Principal shall be paid to the Registered Owner or assigns upon presentation and surrender of this note to the City Treasurer (the "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 Registrar.

This note is created pursuant to the Note Ordinance payable solely from the Note Fund created pursuant to the Note Ordinance into which the City has covenanted and agreed to deposit the proceeds of local improvement district bonds of the City issued to finance the cost of improvements within Local Improvement District No. 99-1. The City has further covenanted to deposit money in the Note Fund from the proceeds of bonds or assessments, including the guaranty fund of the City.

THIS NOTE IS NOT TRANSFERABLE.

The City may prepay this note in whole or in part, at any time, without penalty. Prepayments shall be applied first to interest and then principal.

This note is not a "private activity bond." The City has designated this note 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.

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 and attested by the manual or facsimile signature of the City Clerk, and the seal of the City to be impressed or a facsimile thereof to be imprinted hereon, as of this 11th day of September, 2000.

CITY OF GIG HARBOR, WASHINGTON

By _____
Mayor

ATTEST:

City Clerk

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

CERTIFICATE OF AUTHENTICATION

This note is the note described in the within-mentioned Note Ordinance and is the Limited General Obligation Bond Anticipation Note, 2000 of the City of Gig Harbor, Washington, dated _____, 2000.

CITY OF GIG HARBOR, WASHINGTON

By _____
City Treasurer

Section 12. Tax Designation. The City hereby designates the Note as a "qualified tax-exempt obligation" for purchase by financial institutions pursuant to Section 265(b) of the Code. The City does not anticipate that it will issue more than \$10,000,000 in "qualified tax-exempt obligations" during the year 2000.

Section 13. General Authorization. The officials of the City are hereby authorized to do and perform from time to time any and all acts and things consistent with this ordinance necessary or appropriate to carry the same into effect.

Section 14. Effect of Partial Invalidity. In case any one or more of the provisions of this ordinance or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this ordinance or of said Note, but this ordinance and said Note shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, obligation or agreement contained in the Note or in this ordinance shall for any reason be held to be in violation of law, then such covenant, obligation or agreement shall be deemed to be the covenant, obligation or agreement of the City to the full extent permitted by law.

Section 15. Effect of Covenants, Etc. 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 City Council nor any officer thereof executing the Note shall be liable personally on the Note 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 16. LID Support Agreement. The City hereby approves the LID Support Agreement, upon final review by the City's financial advisor and bond counsel, and authorizes the City Administrator to sign it on behalf of the City.

Section 17. Ongoing Disclosure. The City is exempt from the ongoing disclosure requirements of the 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.

APPROVED by the City Council of City of Gig Harbor, Washington, at a regular meeting thereof held this 11th day of September, 2000.

CITY OF GIG HARBOR, WASHINGTON

By _____
Mayor

ATTEST:

City Clerk

First Reading: September 11, 2000

Date Adopted: September 11, 2000

Date of Publication: September 20, 2000

Effective Date: September 25, 2000

CERTIFICATE

I, the undersigned, City Clerk of 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. 850 of the Council (the "Ordinance"), duly approved at a regular meeting thereof held on the 11th day of September, 2000.

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 ____ day of September, 2000.

Clerk

**SUMMARY OF ORDINANCE NO. 850
of the City of Gig Harbor, Washington**

On September 11, 2000 the City Council of the City of Gig Harbor, Washington, approved Ordinance No.850, the summary of text of which is as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A BOND ANTICIPATION NOTE FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR IMPROVEMENTS WITHIN LOCAL IMPROVEMENT DISTRICT NO. 99-1 IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,200,000; PROVIDING THE FORM, TERMS AND MATURITY OF SAID NOTE; CREATING A SPECIAL FUND FOR THE PAYMENT OF SAID NOTE; AND APPROVING THE SALE OF SUCH NOTE.

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 September 11, 2000.

BY: _____
MOLLY M. TOWSLEE, CITY CLERK