

ORDINANCE NO. 688

AN ORDINANCE of the City Council of the City of Gig Harbor, Washington providing for the issuance of a water and sewer revenue bond not to exceed \$890,851 in principal amount to evidence a loan to the City from the Department of Ecology to provide financing for part of the cost of improvements to the City's Wastewater Treatment Facility; fixing the date, form, maturity and terms and covenants of such a bond; and establishing terms and conditions for the issuance of additional bonds on a parity with such bond.

WHEREAS, the City of Gig Harbor, Washington (the "City") now owns, operates, and maintains a combined water and sewerage system; and

WHEREAS, the City plans to make certain improvements to the City's Wastewater Treatment Facility (the "Improvements"); and

WHEREAS, the State Department of Ecology (the "Department") has offered to lend the City not to exceed \$890,851 from the Washington State Water Pollution Control State Revolving Fund in order to finance a portion of the costs of the Improvements; and

WHEREAS, to evidence such loan the Council deems it necessary to now issue and sell a water and sewer revenue bond in principal amount not to exceed \$890,851 par value; and

WHEREAS, the City has issued and outstanding the following series of outstanding revenue and refunding revenue bonds secured by a parity lien on the revenues of the System as follows:

Authorizing Ordinance	Date of Issue	Designation	Original Principal Amount	Current Amount Outstanding
468	December 15, 1985	Water and Sewer Revenue Refunding Bonds, 1985 (the "1985 Bonds")	\$ 740,000	\$ 265,000
553 and 557	May 1, 1989	Water and Sewer Revenue Bonds, 1989 (the "1989 Bonds")	2,040,000	105,000
677	July 1, 1994	Water and Sewer Revenue and Refunding Bonds, 1994 (the "1994 Bonds")	2,995,000	2,995,000

(which 1985 Bonds, 1989 Bonds and 1994 Bonds are referred to herein collectively as the "Outstanding Parity Bonds"); and

WHEREAS, each of the ordinances authorizing the issuance of the Outstanding Parity Bonds permits the City to issue bonds in the future on a parity of lien therewith upon compliance with certain conditions;

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:

"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.

"Arbitrage Certificate" means the certificate of that name executed and delivered by the City at the time of issuance and delivery of the Bond.

"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.

"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 Bond 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.

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

"Bond" means the not to exceed \$890,851 par value of "Water and Sewer Revenue Bond (Department of Ecology Loan)" of the City evidencing a loan from the Washington State Water Pollution Control State Revolving Fund authorized by and to be issued for the purposes provided in this Resolution and in the Loan Agreement.

"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.

"Completion Date" means the date on which the City accepts the completed Improvements from the contractor. Punch list items may remain to be completed after this date.

"Construction Fund" means Fund No. 410 Sewer Capital Fund of the City.

"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.

"Department" means the State of Washington Department of Ecology, as lender for the Loan.

"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 Bond.

"Improvements" means those additions, betterments and improvements authorized to be undertaken by Ordinance No. 617.

"Loan" means the loan from the Department to the City made pursuant to the Loan Agreement.

"Loan Agreement" means the agreement with respect to the Loan between the City and the Department approved pursuant to Section 16 hereof.

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

"Outstanding Parity Bonds" means those water and sewer revenue and refunding bonds identified in the recitals of this ordinance. The Outstanding Parity Bonds include the 1985 Bonds, the 1989 Bonds and the 1994 Bonds.

"Outstanding Parity Bond Ordinances" means, collectively, Ordinance No. 468, passed by the Council on December 9, 1985, and Ordinance No. 677 passed by the Council on July 11, 1994.

"Parity Bonds" means the Bond, the Outstanding Parity Bonds and any Future Parity Bonds.

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

"Repair and Replacement Account" means the account of that name within the Construction Fund.

"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 Requirement" means the lesser of (i) Average Annual Debt Service on all Parity Bonds or (ii) the maximum amount permitted to be deposited therein under Section 148 of the Code.

"Revenue Fund" means the "City of Gig Harbor Utility Revenue Fund" created by Section 12 of Ordinance No. 468, into which fund all of the Revenue of the System is to be deposited, as collected.

"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 City Administrator, Clerk-Treasurer.

Words importing the singular number include the plural number and vice versa.

Section 2. Compliance With Parity Conditions. The Council hereby finds and determines as required by Section 21 of Ordinance No. 468 and Section 12 of Ordinance No. 553, as follows:

First: At the time of the issuance of the Bond, there will be no deficiency in the Bond Fund or the Reserve Account.

Second: Pursuant to Section 11 of this ordinance, the principal of and interest on the Bond is payable out of the Bond Fund, and the requirements for funding the Reserve Account pursuant to Section 15 of Ordinance No. 468, Section 8(B) of Ordinance No. 553 and Section 18 of Ordinance No. 677 have been met in Sections 11 and 14 of this ordinance.

Third: Prior to the delivery of the Bond, the City shall have on file a certificate of an independent professional engineer or certified public accountant dated not earlier than 90 days prior to the date of delivery of the Bond and showing that the Net Revenue determined and adjusted as provided in the Outstanding Parity Bond Ordinances for each calendar or fiscal year after the issuance of the Bond together with Assessment Income will equal at least 1.30 times the amount required in any such year for the payment of the principal of and interest on all Parity Bonds currently outstanding, including the Bond.

The limitations contained and the conditions provided in the Outstanding Parity Bond Ordinances having been complied with or assured, the payments required herein to be made out of the Revenue of the System to pay and secure the payment of the principal of and interest on the Bond shall constitute a lien and charge upon such Revenue equal in rank to the lien and charge thereon of the payments to be made into the Bond Fund and Reserve Account to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds.

Section 3. Authorization of the Bond. In order to pay part of the costs of carrying out the system or plan of additions to and betterments and extensions of the System described herein as the Improvements, the City shall issue and sell its Water and Sewer Revenue Bond (Department of Ecology Loan) in the principal amount of not to exceed \$890,851 to evidence the Loan. The Bond shall be dated as of the date of its delivery to the Department; shall be fully registered; shall be in the denomination of the principal amount; shall bear interest on the actual outstanding principal balance of the Loan at the rate of 3.5% per annum.

Following the Completion Date, the Department shall calculate the final amount of the Loan, including the actual amount of all disbursements and interest accrued thereon through

the Completion Date, in accordance with the Loan Agreement. This final Loan amount shall be repaid, with interest thereon at the rate of 3.5% per annum, in equal semiannual payments of principal and interest beginning no later than one year after the Completion Date or five years from the first disbursement, whichever is earlier, with the last payment to be due 14 years after the Completion Date.

Both principal of and interest on the Bond shall be payable in lawful money of the United States of America to the registered owner thereof. Principal and interest on the Bond shall be paid by check or draft mailed to the registered owner at the address appearing on the records maintained by the Bond Registrar as of the 15th day preceding the interest payment date; provided that the last principal payment of the Bond shall be payable upon presentation and surrender of the Bond to the Bond Registrar by the registered owner.

Section 4. Registrar. The Bond Registrar shall be the Clerk-Treasurer of the City.

Section 5. Transfer of Bond. In every case of a transfer of the Bond, the surrendered Bond shall be cancelled by the Bond Registrar. As a condition of any such transfer, the City, at its option, may require the payment by the transferor of a sum sufficient to reimburse it for any tax or other governmental charge that may be imposed thereon.

The Bond Registrar shall not be required to issue, transfer, or exchange the Bond after the 15th day prior to any interest payment date.

The Bond may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. The City may deem the person in whose name the Bond is registered to be the absolute owner thereof for the purpose of receiving payment of the principal of and interest on such Bond and for any and all other purposes whatsoever.

Section 6. Prior Redemption. The City reserves the right to redeem the Bond, as a whole on any interest payment date or in part at any time upon 30 days' written notice (mailed as provided in the Loan Agreement) to the Department or other registered owner, at a price of par plus accrued interest to the date of redemption. Upon redemption of a portion of

the Bond, the principal and interest payments shall be adjusted, based on the remaining balance of the final Loan amount, so that such payments remain approximately equal.

Section 7. Form of the Bond. The Bond shall be in substantially the following form:

No. 1	\$890,851
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UNITED STATES OF AMERICA

STATE OF WASHINGTON

CITY OF GIG HARBOR

WATER AND SEWER REVENUE BOND

(DEPARTMENT OF ECOLOGY LOAN)

Registered Owner: State of Washington Department of Ecology

Principal Amount: EIGHT HUNDRED NINETY THOUSAND EIGHT HUNDRED FIFTY ONE  
AND NO/100 DOLLARS

The City of Gig Harbor, Washington (the "City"), for value received, hereby promises to pay to the Registered Owner identified above, or registered assigns, a principal amount not to exceed \$890,851, and interest thereon, calculated as set forth below, at the rate of 3.5% per annum solely from the special fund of the City known as the "City of Gig Harbor Utility Bond Redemption Fund" (the "Bond Fund"). Reference is made to the Bond Ordinance for definitions of capitalized terms not otherwise defined herein.

This bond evidences a loan (the "Loan") to the City by the State of Washington Department of Ecology (the "Department") made pursuant to that certain Loan Agreement by and between the City and the Department, as amended (the "Loan Agreement").

In accordance with the Loan Agreement, the Department shall calculate the final amount of the Loan following the Completion Date (as such term is defined in the Bond Resolution), by adding the actual amount of all Loan disbursements and interest accrued thereon through the Completion Date. This final Loan amount shall be repaid in equal semiannual payments of principal and interest beginning one year after the Completion Date, with the last payment to be due 14 years after the Completion Date. The Department shall attach a copy of this amortization schedule to this bond when it makes this calculation, and this bond shall be paid in accordance therewith.

Both principal of and interest on this bond are payable in lawful money of the United States of America. Principal and interest shall be paid by mailing a check or draft (on the date such interest is due) to the registered owner or assigns at the address shown on the Bond Register as of the 15th day of the month prior to the interest payment date, provided, that the last principal payment shall be paid to the registered owner or assigns upon presentation and surrender of this bond at the office of the City Treasurer.

The City does hereby pledge and bind itself to set aside from the Revenue Fund out of the Revenue of the System and to pay into the Bond Fund and the accounts created therein the various amounts required by the Bond Ordinance to be paid into and maintained in such Fund and accounts, all within the times provided by the Bond Ordinance.

To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid from the Revenue Fund out of the Revenue of the System into the Bond Fund and the accounts therein shall be a lien and charge thereon equal in rank to the lien and charge upon said Revenue of the amounts required to pay and secure the payment of the City's water and sewer revenue refunding bonds and water and sewer revenue bonds issued under dates of December 15, 1985, May 1, 1989, and July 1, 1994, respectively, and any revenue bonds of the City hereafter issued on a parity with the such outstanding bonds and the bonds of this issue and superior to all other liens and charges of any kind or nature, except the Costs of Maintenance and Operation of the System.

This bond is not a general obligation of the City. The City hereby covenants and agrees with the owner and holder of this bond that it will keep and perform all the covenants of this bond and the Bond Ordinance.

The City reserves the right to redeem this bond as a whole on any interest payment date or in part at any time at par plus accrued interest to the date of redemption.

This bond is transferable only upon the registry books of the Bond Registrar by surrender of this certificate to the Bond Registrar, duly assigned and executed as indicated below. Such exchange or transfer shall be without cost to the owner or transferee. The City may deem the person in whose name this bond is registered to be the absolute owner thereof for the purpose of receiving payment of the principal of and interest on such bond and for any and all other purposes whatsoever. The Bond Registrar shall not be obligated to transfer or exchange this bond during a period beginning at the opening of business on the 15th day next preceding any interest payment date and ending at the close of business on the interest payment date, or, in the case of any proposed redemption of the bond, after the mailing of notice of such redemption.

This bond shall not become valid or obligatory for any purpose until the certificate of authentication set forth hereon has been signed by the Bond Registrar.

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 the ordinances and resolution of the City and that all acts, conditions and things required to be done precedent to and in the issuance of this bond have happened, have been done and have been performed as required by law.

IN WITNESS WHEREOF, the City has caused this bond to be signed by the manual or facsimile signature of its President of the Board and attested by the manual or facsimile signature of its Secretary of the Board and its corporate seal to be impressed or a facsimile thereof imprinted hereon this 23rd day of January, 1995.

CITY OF GIG HARBOR, WASHINGTON

By  
Mayor, City of Gig Harbor

ATTEST:

Clerk, City of Gig Harbor

CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This bond is the Water and Sewer Revenue Bond (Department of Ecology Loan) of the City dated January 24, 1995, described in the within mentioned Bond Resolution.

CLERK-TREASURER OF THE CITY OF  
GIG HARBOR, as Bond Registrar

By

Section 8. 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 and shall have the seal of the City impressed or a facsimile thereof imprinted thereon.

Only such Bond as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, 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 so signed 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 9. Lost, Stolen or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed before redemption, the Bond Registrar may deliver a new bond of like amount, date, maturity, interest rate, tenor, and effect to the registered owner or nominee thereof upon the owner paying the expenses and charges of the City in connection therewith and upon filing with the Bond Registrar evidence satisfactory to said Bond Registrar that such bond was actually lost, stolen or destroyed and ownership thereof, and upon furnishing the City with indemnity satisfactory to both.

Section 10. Priority of Payments from Revenue Fund. There has heretofore been established in the office of the City Administrator a special fund of the City known as the "City of Gig Harbor Utility Revenue Fund" (the "Revenue Fund"), as collected. The Revenue Fund shall be held separate and apart from all other funds and accounts of the City, 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 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 in the open market 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 11. 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 Bond, 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.

Commencing in 1995, the City shall make approximately equal annual payments to the Reserve Account so that no later than five years following the date of the Bond, there shall have been paid into the Reserve Account an amount with the money already on deposit therein (or insurance policy or letter(s) of credit), will be equal to the Reserve Requirement.

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 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 insurance policy 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 10 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 Outstanding Bonds and 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 12. 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 such Bond pursuant to Section 148 of the Code which will cause the Bond to be an "arbitrage bond" within the meaning of said section. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Bond) and the applicable Regulations thereunder throughout the term of the Bond.

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

The Bond is hereby designated as qualified tax-exempt obligations 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 1994 or 1995.

Section 13. 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

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(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 1.30 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 11 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 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 Bond 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 the Bond is 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 14. 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 11(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 or certified public accountant 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 1.30 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. 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 15. Adoption of System and Plan and Application of Bond Proceeds. The City hereby specifies and adopts a plan for the expansion of its Wastewater Treatment Facility increasing it to an average flow capacity of 1.6 million gallons per day.

This expansion consists of:

- A new 45 foot diameter secondary clarifier.
- Additional aeration basin
- Conversion of existing clarifier to gravity thickener
- Addition of aerobic selector zones in the existing aeration basins
- A sludge recycle line
- Autothermal thermophilic aerobic digester
- Dechlorination facility

Construction will be in accordance with approved Department plans and specification. This project will help eliminate some failed individual and community drainfield in the Gig Harbor area and improve surface water quality.

The City shall provide all equipment, connections and appurtenances together with all work as may be incidental and necessary to complete the Improvements. Plans and specifications for the Improvements are on file in the offices of the City.

The City shall acquire by purchase, lease or condemnation, all property, both real and personal, or any interest therein, or rights-of-way and easements which may be found necessary to acquire, construct and install the Improvements.

The estimated cost of this plan of additions and betterment and all costs incidental thereto, is hereby declared to be as nearly as practicable the sum of \$2,090,851, of which amount not to exceed \$890,851 is to be provided by the Loan.

The proceeds from the sale of the Bond shall be used for the sole purpose of paying a part of the cost and expense connected with carrying out the Improvements, to pay and redeem warrants, notes or interfund loans heretofore issued for any of such costs, and to pay costs of issuance of the Bond.

Section 16. Construction Fund; Disposition of Bond Proceeds. The City maintains a special fund designated as Fund No. 410 Sewer Capital Improvement Fund (the "Construction Fund") for the purpose of paying costs of the Improvements and other capital improvements to the System.

Amounts received as Loan disbursements shall be deposited in the Construction Fund and shall be used to pay costs of the Improvements and to pay costs of issuing the Bond.

Pending their expenditure, the City may temporarily invest the proceeds of the Bond in any investments permitted by law. The investment earnings shall be retained in the Construction Fund and expended for the purpose of such Fund.

If any principal or investment proceeds of the Bond remain after completion of the Improvements, or if completion of the Improvements should be determined not to be feasible or should be substantially delayed, the money remaining shall be used to pay the Bond.

Section 17. Repair and Replacement Account. There is hereby authorized to be created in the office of the Treasurer a special account to be known as the "Repair and Replacement Account" (the "Repair and Replacement Account") within the Construction Fund. The City covenants and agrees that commencing on the first interest payment date on the Bond, and annually thereafter, so long as the Bond remains outstanding, it will pay into the Repair and Replacement Account out of the Revenue Fund (after making necessary provision for the payments required to be made by subparagraphs First through Fourth of Section 10 hereof) amounts in approximately six equal payments sufficient to establish a balance therein by six

years from the Completion Date that will be equal to half of the Annual Debt Service on the Bond. So long thereafter as the Bond remains outstanding, a balance shall be maintained in the Repair and Replacement Account, as recalculated as of any date, equal to half of the Annual Debt Service on the Bond.

Money in the Repair and Replacement Account may be withdrawn to make necessary repairs to or extensions and replacements of the System. Any deficiency in the Repair and Replacement Account by reason of any such withdrawal shall be made up within three years out of the Revenue Fund after making necessary provision for the required payments described above.

Section 18. Sale of the Bond; Approval of Loan Agreement. The Bond shall be sold to the Department pursuant to the terms of this ordinance and the Loan Agreement, as amended, between the City and the Department, which is attached hereto and incorporated herein by this reference, is hereby approved in substantially the form attached. The Mayor and City's bond counsel are hereby authorized to execute such Loan Agreement, as amended, with such minor changes as they shall approve.

Section 19. 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 in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or the Bond.

Section 20. General Authorization. The Mayor, the City Administrator and Clerk-Treasurer and the Finance Director of the City and each of the other appropriate officers, agents and representatives of the City are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance.

Section 21. Prior Acts. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 22. Effective Date. This ordinance shall be effective five days after its passage and publication in the manner required by law.

Read for the first time on January 9, 1995, passed by the Council of the City of Gig Harbor, Washington, at a regular meeting held on the 23rd day of January, 1995.

CITY OF GIG HARBOR, WASHINGTON

By  
Mayor

ATTEST:

City Clerk

Published:

CERTIFICATE

I, the undersigned, the duly chosen, qualified and acting Clerk of the City of Gig Harbor, Washington, and keeper of the records of the Council of the City (herein called the "Council"), DO HEREBY CERTIFY:

1. That the attached Ordinance No. \_\_\_\_\_ (herein called the "Ordinance") is a true and correct copy of an ordinance of the City, as finally passed at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, and duly recorded in my office.
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 and affixed the official seal of  
the City this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

City Clerk, City of Gig Harbor,  
Washington

(CITY SEAL)

CITY OF GIG HARBOR

WATER AND SEWER REVENUE BOND

(DEPARTMENT OF ECOLOGY LOAN)

ORDINANCE NO. 688

AN ORDINANCE of the City Council of the City of Gig Harbor, Washington providing for the issuance of a water and sewer revenue bond not to exceed \$890,851 in principal amount to evidence a loan to the City from the Department of Ecology to provide financing for part of the cost of improvements to the City's Wastewater Treatment Facility; fixing the date, form, maturity and terms and covenants of such a bond; and establishing terms and conditions for the issuance of additional bonds on a parity with such bond.

PASSED ON: January 23, 1995

Prepared by:

PRESTON GATES & ELLIS  
Seattle, Washington

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Legals 1x - February 1st

SUMMARY OF ORDINANCE NO. 688  
of the City of Gig Harbor, Washington

On January 23, 1995, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. 688, the summary of text of which is as follows:

AN ORDINANCE of the City Council of the City of Gig Harbor, Washington providing for the issuance of a water and sewer revenue bond not to exceed \$890,851 in principal amount to evidence a loan to the City from the Department of Ecology to provide financing for part of the cost of improvements to the City's Wastewater Treatment Facility; fixing the date, form, maturity and terms and covenants of such a bond; and establishing terms and conditions for the issuance of additional bonds on a parity with such bond.

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

APPROVED by the City Council at their regular meeting of January 23, 1995.

BY: \_\_\_\_\_

Mark E. Hoppen

City Administrator