

ORDINANCE 1505

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A LIMITED TAX GENERAL OBLIGATION BOND IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$4,250,000 TO PROVIDE FUNDS TO ACQUIRE LAND FOR CITY USE AND OTHER CAPITAL PROJECTS OF THE CITY; AND DELEGATING CERTAIN AUTHORITY TO APPROVE THE FINAL TERMS OF THE BOND TO THE DESIGNATED REPRESENTATIVE IN CONNECTION WITH THE SALE

WHEREAS, the City of Gig Harbor, Washington (the "City") is in need of acquiring land for City use and other capital projects (the "Project"); and

WHEREAS, the City is authorized by Title 35 and ch. 39.46 to issue general obligation bonds payable from, *inter alia*, regular tax levies of the City; and

WHEREAS, the City Council (the "Council") has determined that all or a portion of the costs of the Project should be financed through the issuance of a limited tax general obligation bond of the City in the principal amount of not to exceed \$4,250,000 (the "Bond"); and

WHEREAS, the Council has determined to delegate to certain City officials the authority, for a limited time, to solicit proposals and accept a bid for the purchase of the Bond and approve the final principal amount, the interest rate, maturity date, and prepayment provisions of the Bond authorized herein under such terms and conditions as are approved by this ordinance;

NOW THEREFORE, the City Council of the City of Gig Harbor, Washington, do ordain as follows:

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

Approved Bid means the winning bid submitted for the Bond and all terms stated therein and may include a separate agreement, at the option of and approved by the Designated Representative.

Bond means the City of Gig Harbor, Washington Limited Tax General Obligation Bond, 2023, to be issued in the aggregate amount of not to exceed \$4,250,000 issued pursuant to this ordinance.

Bond Counsel means K&L Gates LLP.

Bond Fund means the Limited Tax General Obligation Bond Redemption Fund, 2023 created pursuant to Section 9 of this ordinance.

Bond Register means the registration records maintained by the Bond Registrar for the purpose of identifying ownership of the Bond.

Bond Registrar means the fiscal agent of the State of Washington, initially appointed by the Designated Representative for the purposes of registering and authenticating the Bond, maintaining the Bond Register, effecting transfer of ownership of the Bond and paying interest on and principal of the Bond. The term **Bond Registrar** shall include any successor to the functions of the fiscal agent appointed by the Designated Representative pursuant to RCW 39.46.030(3)(b).

City means the City of Gig Harbor, Washington, a municipal corporation of the State of Washington.

City Administrator means the duly qualified, appointed and acting City Administrator of the City, or any other officer who succeeds to the duties now delegated to that office.

Closing Date means the date of issuance and delivery of the Bond to the Purchaser.

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

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.

Designated Representative means any of the following: (a) the Mayor, (b) the Finance Director, (c) the City Administrator or (d) any official or employee of the City designated in writing by any of the foregoing.

Final Maturity Date means the date as determined in the Approved Bid, but no later than December 1, 2032.

Finance Director means the duly qualified, appointed and acting Finance Director of the City, or any other officer who succeeds to the duties now delegated to that office.

First Interest Payment Date means the first interest payment date for the Bond set forth in the Approved Bid.

Fiscal Agent means U.S. Bank Trust Company, National Association, as the fiscal agency of the State of Washington, pursuant to the Agreement for Fiscal Agency Services, dated February 1, 2015, as amended, between the State of Washington and U.S. Bank Trust Company, National Association.

Mayor means the duly qualified, elected and acting Mayor of the City, or any other person who succeeds to the duties now delegated to that office.

Placement Agent means D.A. Davidson & Co., Seattle, Washington.

Principal Payment Dates mean the dates on which principal of the Bond is payable in accordance with the Approved Bid.

Project means the acquisition of land for City use and other capital projects.

Project Fund means the fund maintained pursuant to Section 7 of this ordinance.

Purchaser means the initial purchasing entity or bank purchaser of the Bond.

Registered Owner means the person named as the registered owner of a Bond in the Bond Register.

Rule means the SEC's Rule 15c2-12 under the Securities Exchange Act of 1934, as the same may be amended from time to time.

SEC means the United States Securities and Exchange Commission.

Interpretation. In this ordinance, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any

particular article, section, subdivision or clause hereof, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several articles and sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect; and

(e) All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

Section 2. Project; Authorization of Bond and Bond Details.

(a) *Project.* The City shall purchase land for City use and provide funds for other capital projects (the "Project"). The proceeds of the Bond shall be used to fund or reimburse the City for the costs of the Project and for the costs of selling the Bond.

(b) *Authorization of Bond and Bond Details.* For the purpose of funding or reimbursing the costs of the Project and paying the costs of issuance related thereto, the City shall issue its limited tax general obligation bond in the principal amount of not to exceed \$4,250,000 (the "Bond").

The Bond shall be designated as the "City of Gig Harbor, Washington, Limited Tax General Obligation Bond, 2023," shall be dated as of the Closing Date, shall be fully registered as to both principal and interest, shall be issued as a single fully registered bond, and shall be numbered in such manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification.

The Bond shall bear interest at the per annum rate(s), payable on the date(s) and maturing in principal amount(s) set forth in the Approved Bid, pursuant to Section 10 of this ordinance.

Section 3. Registration, Exchange and Payments. The City hereby initially specifies and adopts the system of registration approved by the Washington State Finance Committee from time to time through the appointment of state fiscal agents. The duties of the Bond Registrar hereunder shall be limited to authenticating the Bond and to remitting money to the Purchaser on the payment dates as provided therein. Principal of and interest on the Bond shall be payable in lawful money of the United States of America. Installments of principal of and interest on the Bond shall be paid by check, wire, or electronic transfer on the date due to the Purchaser; *provided, however*, upon final payment of all installments of principal and interest thereon, the Bond shall be submitted to the Bond Registrar for cancellation and surrender.

The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond and to carry out all of the Bond Registrar's powers and duties under this ordinance.

The Bond shall not be transferable, except in whole to a financial institution subject to the further limitations set forth in the Approved Bid.

Section 4. Prepayment. The Bond shall be subject to prepayment, if any, as provided in the Approved Bid.

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

NO. R-1 UNITED STATES OF AMERICA [\$4,250,000]
STATE OF WASHINGTON
CITY OF GIG HARBOR
LIMITED TAX GENERAL OBLIGATION BOND, 2023

INTEREST RATE: _____ % per annum

MATURITY DATE: [December 1, 2032]

REGISTERED OWNER: _____

TAX IDENTIFICATION #: _____

PRINCIPAL AMOUNT: [FOUR MILLION TWO HUNDRED FIFTY THOUSAND] AND NO/100 DOLLARS

THE CITY OF GIG HARBOR, WASHINGTON, a municipal corporation organized and existing under and by virtue of the laws and Constitution of the State of Washington (the "City"), hereby acknowledges itself to owe, and for value received promises to pay to the Registered Owner identified above, or registered assigns, the Principal Amount specified above, together with interest thereon, at the Interest Rate, which interest shall be payable [semi][annually] on _____ 1 and _____ 1 of each year until paid, commencing on _____ 1, 202___. Principal shall be repaid in annual installments as provided on Exhibit A attached hereto. Interest shall be calculated on the basis of [a 360-day year consisting of twelve 30-day months]. The final payment of all outstanding principal, together with interest thereon, shall be due on [December 1, 2032].

Both principal of and interest on this bond are payable in lawful money of the United States of America. Payments made to the Registered Owner shall be applied first to accrued interest and then to principal as of the date such payment is actually received by the Registered Owner. Installments of the principal of and interest on this bond shall be paid by check or draft of the fiscal agent of the State of Washington (the "Bond Registrar") mailed on the date such principal and interest is due or by electronic funds transfer made on the date such interest is due to the Registered Owner at the address appearing on the Bond Register. Upon final payment of all installments of principal and interest thereon, this bond shall be submitted to the Bond Registrar for cancellation and surrender.

This bond may be prepaid in accordance with the following terms;

_____.

This bond is issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and Ordinance No. _____ duly passed by the City Council on December 12, 2022 (the "Bond Ordinance"). Capitalized terms used in this bond have the meanings given such terms in the Bond Ordinance.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Bond Registrar or its duly designated agent.

This bond is issued pursuant to the Bond Ordinance for providing funds to acquire land for City use and for other capital projects of the City.

By the Bond Ordinance, the City has irrevocably covenanted that, unless the principal of and interest on this bond are paid from other sources, it will make annual levies of taxes without limitation as to rate or amount upon all of the property in the City subject to taxation for the payment of debt service on the Bond in amounts sufficient to pay such principal and interest as provided in the Bond. 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 payment of such principal and interest.

This bond has been designated by the City as a "qualified tax-exempt obligation" for investment by financial institutions under Section 265(b) of the Code.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this bond have happened, been done and performed and that the issuance of this bond does not violate any constitutional, statutory or other limitation upon the amount of bonded indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Gig Harbor, Washington, has caused this bond to be signed on behalf of the City with the manual or facsimile signature of the Mayor, to be attested by the manual or facsimile signature of the Clerk of the City, and a facsimile of the seal of the City to be impressed, imprinted or otherwise reproduced hereon, as of this _____ day of _____, 2023.

[SEAL]
WASHINGTON

CITY OF GIG HARBOR,

By _____ /s/ manual or facsimile signature
Mayor

ATTEST:

_____/s/ manual or facsimile signature_____
City Clerk

The Certificate of Authentication for the Bond shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This bond is the bond described in the within-referenced Bond Ordinance as the City of Gig Harbor, Washington Limited Tax General Obligation Bond, 2023, dated _____, 2023.

WASHINGTON STATE FISCAL
AGENT, as Bond Registrar

By

Authorized Signer

* * * * *

Exhibit A
Debt Service Schedule

Section 6. Execution of Bond. The Bond shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and City Clerk, and the seal of the City shall be impressed, imprinted or otherwise reproduced thereon. The Bond shall not be valid or obligatory for any purpose or entitled to the benefits of this ordinance unless and until a Certificate of Authentication, in the form hereinbefore recited, has been manually executed by or on behalf of the Bond Registrar or its duly designated agent.

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, the 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 be signed and attested on behalf of the City by such persons who at the date of the actual execution of the Bond are 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 7. Project Fund; Disposition of Bond Proceeds. The proceeds of the Bond shall be deposited into a project account and used to pay or reimburse the City for the costs of acquiring the land for City use, other capital projects of the City and to pay costs of issuance of the Bond.

The Finance Director shall invest the net proceeds of the Bond in such obligations as may now or hereafter be permitted to cities of the State of Washington by law and that will mature prior to the date on which such money shall be needed. Earnings on such investments, except as may be required to pay rebatable arbitrage pursuant to the Federal Tax Certificate, if any, may be used for City purposes or transferred to the Bond Fund for the uses and purposes therein provided.

Section 8. Tax Covenants; Special Designation.

(a) *Arbitrage Covenant.* The City hereby covenants that it will not make any use of the proceeds of sale of the Bond or any other funds of the City which may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code which will cause the Bond to be an "arbitrage bond" within the meaning of said section and said regulations. 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.

(b) *Designation under Section 265(b) of the Code.* The City hereby designates the Bond 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 2023 (excluding obligations permitted by the Code to be excluded for purposes of the City's qualification as a qualified small issuer).

Section 9. Bond Fund and Provision for Tax Levy Payments. A special fund of the City known as the "Limited Tax General Obligation Bond Redemption Fund, 2023" which fund or account may be designated or re-designated in accordance with the practices of the City from time to time (the "Bond Fund"), is hereby authorized to be established and maintained in the office of the Finance Director of the City. The taxes hereafter levied for the purpose of paying principal of and interest on the Bond and other funds to be used to pay the Bond shall be deposited in the Bond Fund no later than the date such funds are required for the payment of 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 funds.

The City hereby irrevocably covenants and agrees for as long as the Bond is outstanding and unpaid that each year it will include in its budget and levy an *ad valorem* tax upon all the property within the City subject to taxation in an amount that will be sufficient, together with all other revenues and money of the City legally available for such purposes, to pay the principal of and interest on the Bond as the same shall become due. All of such taxes so collected and any other money to be used for such purposes shall be paid into the Bond Fund.

The City hereby irrevocably pledges that the annual tax provided for herein to be levied for the payment of such principal and interest shall be within and as a part of the tax levy permitted to cities without a vote of the people, and 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 said taxes and for the prompt payment of the principal of and interest on the Bond as the same shall become due.

Section 10. Sale of the Bond The Council has determined that it would be in the best interest of the City to delegate to the Designated Representative for a limited time the authority, working with the City's Placement Agent, to solicit proposals from financial institutions and review and select a financial institution as the Purchaser. The actions of the Designated Representative in reviewing and approving a term sheet distributed to financial institutions is hereby ratified and approved. The Designated Representative is further authorized to approve the final principal amount, interest rate, maturity dates, including the Final Maturity Date, the Principal Payment Dates and the First Interest Payment Date, prepayment provisions and other terms and conditions of the Bond so long as (i) the principal amount of the Bond does not exceed \$4,250,000; (ii) the interest rate of the Bond, if issued as a fixed rate per annum, does not exceed 5.25%, or if issued as a variable rate, uses an index approved by the Designated Representative; (iii) the true interest cost of the Bond does not exceed 5.00%; and (iv) the maximum term of the Bond shall be no later than December 1, 2032. Upon approval of the final terms, the Designated Representative will execute a certificate confirming the final sales terms which certificate shall be made available to the Council.

The authority granted to the Designated Representative by this section shall remain in effect until June 30, 2023. If the sale for the Bond has not been completed by June 30, 2023, the authorization for the issuance of the Bond shall be rescinded, and the Bond shall not be issued nor its sale approved unless the Bond shall have been re-authorized by ordinance of the City. The ordinance reauthorizing the issuance and sale of the Bond may be in the form of a new ordinance repealing this ordinance in whole or in part or may be in the form of an amendatory ordinance establishing terms and conditions for the authority delegated under this section.

Upon the adoption of this ordinance, the proper officials of the City including the Designated Representative, are authorized and directed to undertake all other actions necessary for the prompt sale, execution and delivery of the Bond and further to execute all closing certificates and documents required to effect the closing and delivery of the Bond in accordance with the terms of the Approved Bid. In furtherance of the foregoing, the Designated Representative is authorized to approve and enter into agreements for the payment of costs of issuance, including the fees and expenses specified in the Approved Bid, including fees and expenses of the Purchaser and other retained services, including Bond Counsel, Placement Agent, Fiscal Agent, and other expenses customarily incurred in connection with issuance and sale of the Bond.

Section 11. Undertaking to Provide Information. The City is exempt from the ongoing disclosure requirements of the Rule by reason of the exemption set forth in subsection (d)(1) of that Rule with respect to the issuance of securities in authorized denominations of \$100,000 or more. If approved in the Approved Bid, the City may

undertake to provide certain City operational or financial information to the Purchaser during the term of the Bond.

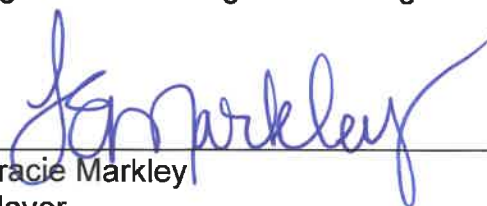
Section 12. Ordinance and Laws a Contract with the Purchaser. This ordinance is adopted under the authority of and in full compliance with the Constitution and laws of the State of Washington. In consideration of the loan made by the Purchaser, evidenced by the Bond, the provisions of this ordinance and of said laws shall constitute a contract with the Purchaser, and the obligations of the city and its Council under said laws and under this ordinance shall be enforceable by any court of competent jurisdiction; and the covenants and agreements herein and in the Bond set forth shall be for the equal benefit of the Purchaser and any permitted transferee or assignee.

Section 13. Ratification; General Authorization. The Mayor, City Administrator and Finance Director 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.

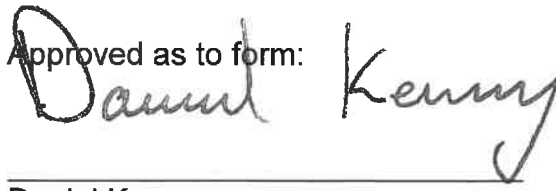
Section 14. Severability. If one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and 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 of the Bond.

Section 15. Effective Date. This ordinance shall take effect and be in full force five (5) days after this ordinance or a summary thereof consisting of the title is published.

ADOPTED by the Council of the City of Gig Harbor at a regular meeting thereof, held this 12th day of December, 2022.



Tracie Markley
Mayor

Approved as to form: 

Daniel Kenny
City Attorney

Attest:


Joshua Stecker, CMC
City Clerk