

CITY OF GIG HARBOR, WASHINGTON

LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND, 2003

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ORDINANCE NO. 945

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND IN THE PRINCIPAL AMOUNT OF \$807,659.10; PROVIDING THE FORM, TERMS, CONDITIONS AND COVENANTS OF SAID BOND; PROVIDING FOR THE SALE THEREOF; AND PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE.

APPROVED ON NOVEMBER 24, 2003

PREPARED BY:

PRESTON GATES & ELLIS

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WHEREAS, the City Council of the City of Gig Harbor, Washington (the "City"), by Ordinance No. 833, created Local Improvement District No. 99-1 (the "District"); and

WHEREAS, the assessment roll for the District has been confirmed in the manner required by law by Ordinance No. 934 in the amount of \$1,889,492.42, of which \$1,081,833.32 has been prepaid; and

WHEREAS, it is deemed necessary and desirable that the City issue its Local Improvement District No. 99-1 Bond in the amount of \$807,659.10, which is the amount of assessments unpaid; and

WHEREAS, the City has heretofore accepted the offer of Bank of America, N.A. to purchase the Bond on the terms and conditions set forth therein and herein;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN, AS FOLLOWS:

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

**Assessments** means the assessments levied in Local Improvement District No. 99-1, which assessments are pledged to be paid into the LID No. 99-1 Fund, including installments thereof and any interest and penalties due or which may become due thereon.

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

**Bond** means the Local Improvement District No. 99-1 Bond authorized by this ordinance to be issued.

**Bond Register** means the books or records maintained by the Registrar containing the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond owned by such owner or nominee.

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

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

**District** means Local Improvement District No. 99-1 of the City.

**Government Obligations** has the meaning given such term in RCW Ch. 39.53, as such chapter may be hereafter amended or restated.

**Guaranty Fund** means the Guaranty Fund of the City authorized and maintained pursuant to Ch. 35.54 RCW.

**Improvements** means the street and drainage improvements made within the District as described in Ordinance No. 833.

**LID No. 99-1 Fund** means the Local Improvement District No. 99-1 Fund created by Ordinance No. 833 of the City.

*Registrar* means the Treasurer for the purposes of registering and authenticating the Bond, maintaining the Bond Register, and paying the principal of and interest on the Bond as the same become due and payable.

*Treasurer* means the Finance Director of the City, or other officer or officers succeeding to the duties of such office.

Section 2. Authorization of Bond. For the purpose of paying the costs of the Improvement and issuing the Bond, the City shall issue its Local Improvement District No. 99-1 Bond, 2003 (the "Bond") in the principal amount of \$807,659.10. The Bond shall be dated as of the date of its delivery to Bank of America, N.A. (the "Bank"), shall be in fully registered form, shall be numbered for the purpose of identification and control, shall be in the denomination of \$807,659.10, and shall bear interest from its date at the per annum rate of 4.53%, computed on the basis of a 360-day year of twelve 30-day months. Interest shall be payable annually beginning November 1, 2004, and thereafter on the 1<sup>st</sup> day of November of each year, and the Bond shall mature November 1, 2015. Principal on the Bond may be prepaid as provided in Section 4 hereof.

The Bond shall be an obligation only of the LID No. 99-1 Fund and the Local Improvement Guaranty Fund of the City (the "Guaranty Fund") and shall not be a general obligation of the City. All money received by the City in payment of, penalties, if any, and interest on the Assessments levied in the District shall be paid into the LID No. 99-1 Fund and used to pay the principal of and interest on the Bond, and as security for such payment the LID No. 99-1 Fund is hereby pledged.

Both the principal of and interest on the Bond shall be payable in lawful money of the United States of America. Interest on the Bond shall be paid by check or draft mailed to the

registered owner or assigns at the address appearing on the Bond Register as of the 15th day of the month prior to which an interest payment is due. All principal payments shall be paid by check or draft mailed to the Bank, as the registered owner of the Bond, and the amount of the principal paid shall be noted on the Bond,. Upon receipt of the final payment of principal and interest, the Bank shall surrender the Bond at the office of the Registrar for cancellation in accordance with law.

Section 3. Registrar; Bond Register. The Treasurer shall serve as registrar and paying agent for the Bond (the "Registrar"). The Registrar shall keep, or cause to be kept, sufficient books or records for the registration of the Bond. The Registrar is authorized to authenticate and deliver the Bond in accordance with the provisions of this ordinance and to carry out all of the Registrar's powers and duties under this ordinance. The Bond Register shall be maintained by the Registrar, and shall contain the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond.

Section 4. Redemption. The principal amount of the Bond shall be prepaid without penalty by application of Assessments and prepayments thereof, in whole or in part, on any interest payment date whenever there shall be sufficient money in the LID No. 99-1 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on the Bond. Prepayments of principal shall be noted on the Bond. No prepayments may be made from sources other than Assessments and prepayments thereof.

Notice of any such permitted intended prepayment of principal shall be given not less than 3 days prior to the date fixed for prepayment by telephone or in writing to the registered owner of the Bond. The requirements of this section shall be deemed to be complied with when

notice is mailed as herein provided regardless of whether or not it is actually received by the owner of the Bond.

Section 5. Payment of Assessments; Interest on Assessments. The City has heretofore levied Assessments payable into the LID No. 99-1 Fund by Ordinance No. 934 in the total amount of \$1,889,492.42, of which \$1,081,833.32 was prepaid prior to the passage of this ordinance and \$807,659.10 remains payable in annual installments together with interest and penalties thereon in the manner and at the times specified in Ordinance No. 934. The balance of Assessments remaining unpaid at the end of the thirty-day prepayment period shall bear interest at a rate of 5.03%, which is 1/2% greater than the interest rate on the Bond. Both principal of and interest on the Bond are payable solely out of the LID No. 99-1 Fund and from the Guaranty Fund.

Section 6. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. 1

\$807,659.10

STATE OF WASHINGTON

CITY OF GIG HARBOR

LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND, 2003

REGISTERED OWNER: Bank of America, N.A.

PRINCIPAL AMOUNT: EIGHT HUNDRED SEVEN THOUSAND SIX HUNDRED FIFTY NINE AND 10/100 DOLLARS

INTEREST RATE: 4.53%

MATURITY DATE: November 1, 2015

Laws of Washington 1965, Chapter 7, § 35.45.070 provides, in part, as follows:

Neither the holder nor owner of any bond, interest coupon, or warrant issued against a local improvement fund shall have any claim therefor against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the bond or warrant was issued and except also for payment from the local improvement guaranty fund of the city or town as to bonds issued after the creation of a local improvement guaranty fund of the city or town. The city or town shall not be liable to the holder or owner of any bond, interest coupon, or warrant for any loss to the local improvement guaranty fund occurring in the lawful operation thereof.

The City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, solely out of the sources referred to herein, on the Maturity Date set forth above, the Principal Amount set forth above in lawful money of the United States of America, with interest on the unpaid balance hereof from the date hereof at the Interest Rate per annum set forth above, payable November 1, 2004, and annually thereafter on November 1st of each year until payment of the principal sum has been made or duly provided for. Interest on and principal of this bond is payable by check or draft mailed on the date such interest is due to the registered owner hereof at the address appearing on the bond registration books as of the 15th day of the month prior to which an interest payment is due. Upon receipt of the final payment of principal and interest, the Registered Owner shall presentation and surrender the Bond at the office of the City's Treasurer (the "Registrar") for cancellation in accordance with law.

Principal of this bond is subject to prepayment in advance of its scheduled maturity, in whole or in part on any interest payment date whenever there shall be sufficient money in the LID No. 99-1 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on this bond. Prepayments of principal shall be entered below. Notice of any such intended prepayment shall be given by telephone or in writing to the Registered Owner not fewer than 3 days prior to such prepayment.

This bond, both principal and interest, is payable only out of the Local Improvement District No. 99-1 Fund (the "LID No. 99-1 Fund") created by Ordinance No. 833 of the City, and from the local improvement guaranty fund of the City created pursuant to Chapter 209, Session Laws, 1927, and acts amendatory thereof. The City has irrevocably obligated and bound itself to pay into the LID No. 99-1 Fund all assessments levied within LID No. 99-1. The owner of this bond shall have no claim therefor against the City except for payment from the special assessments made for the improvements for which this bond was issued, and except as against the local improvement guaranty fund of the City, and the City shall not be liable to any owner of such Bond for any loss to the guaranty fund occurring in the lawful operation thereof by the City. The remedy of the owner of this bond in case of nonpayment of either principal or interest shall be confined to the enforcement of the assessments and to the guaranty fund. The Bond is not a general obligation of the City.

The City has designated the Bond as a "qualified tax-exempt obligation" under Section 265(b) of the Internal Revenue Code of 1986, as amended.

This bond is authorized by Ordinance No. 945 of the City, passed on November 24, 2003 (the "Bond Ordinance"), and is issued to finance improvements in Local Improvement District No. 99-1.

The City hereby covenants and agrees with the owner of the Bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed. Reference is hereby made to the Bond Ordinance for the definitions of defined terms used herein.

Reference to the Bond Ordinance and any and all modifications and amendments thereto is made for a description of the nature and extent of the security for the Bond, the funds pledged, and the terms and conditions upon which the Bond is issued.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Washington and ordinances of the City, and that acts, conditions, and things required to be done precedent to and in the issuance of this bond have happened, been done, and performed.

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 its Mayor, to be attested by the manual or facsimile signature of its Clerk this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

CITY OF GIG HARBOR, WASHINGTON

[SEAL]

By \_\_\_\_\_ /s/  
Mayor

ATTEST:

\_\_\_\_\_  
/s/  
Clerk





DATED: \_\_\_\_\_, \_\_\_\_.

SIGNATURE GUARANTEED:

\_\_\_\_\_

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

Section 7. Execution of Bond. The Bond shall be signed on behalf of the City by the manual or facsimile signature of the Mayor, and shall be attested by the manual or facsimile signature of the Clerk.

Only such Bond as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the 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 such officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the 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 such Bond shall be the proper officers of the City although at the original date of such Bond any such person shall not have been such officer of the City.

Section 8. Defeasance. In the event that money and/or Government Obligations maturing at such time or times and bearing interest to be earned thereon in amounts (together with such money if necessary) sufficient to redeem and retire the Bond in accordance with its terms are set aside in a special account to effect such redemption or retirement and such money and/or the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the LID No. 99-1 Fund for the payment of the principal of and interest on the Bond, and the owner of the Bond shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the funds so set aside and pledged, and the Bond shall be deemed not to be outstanding hereunder.

Section 9. Sale of the Bond. The proposal of the Bank dated October 9, 2003 for sale of the Bond to the Bank, heretofore approved by the Council, is hereby ratified and confirmed, and the City agrees to pay the fees and perform the reporting requirements specified therein, and to pay a structuring fee to Banc of America Securities LLC. The appropriate City officials are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Bond and for the proper application and use of the proceeds thereof.

Section 10. Disposition of Bond Proceeds. The Bond proceeds shall be deposited into the LID No. 99-1 Fund and used to pay any remaining costs of the Improvements and pay costs of issuing the Bond.

Section 11. Bond Designated "Qualified Tax-Exempt Obligation." The Bond is hereby designated as a "qualified tax-exempt obligation" for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended (the "Code"). The City does not expect to issue more than \$10,000,000 in qualified tax exempt obligations during 2003.

Section 12. Lost or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed, the Registrar may execute and deliver a new Bond of like amount, date, and tenor to the registered owner thereof upon the owner paying the expenses and charges of the City in connection therewith and upon his/her filing with the Registrar evidence satisfactory to the Registrar that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the Registrar with indemnity satisfactory to the Registrar.

Section 13. Bond Not Arbitrage Bond; Not Private Activity Bond. The City covenants and agrees that throughout the term of the Bond no part of the proceeds of the Bond or any other money or obligations held under this ordinance shall at any time be used for any purpose or invested in such a manner, nor shall the City take any other action, that would cause the Bond to be (i) an "arbitrage bond" under the Code or (ii) a "private activity bond" under the Code.

Section 14. 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 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. Prior Acts. Any act taken pursuant to the authority of this ordinance but prior to its effective date is hereby ratified and confirmed.

Section 16. Effective Date. This ordinance shall become effective five days from its passage and publication as required by law.

PASSED by the City Council at a regular meeting held this 24th day of November, 2003.

GIG HARBOR, WASHINGTON

By *Gretchen McElbert*  
Mayor

ATTEST:

*Molly M Jowles*  
Clerk

First Reading: November 10, 2003

Date Adopted: November 24, 2003

Date of Publication: *December 3*, 2003

Effective Date: *December 8*, 2003

CERTIFICATE OF CLERK

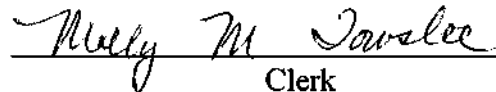
I DO HEREBY CERTIFY that I am the duly chosen, qualified and acting Clerk of the City of Gig Harbor, Washington (the "City"), and keeper of the records of the City; and

I HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. 945 of the City (the "Ordinance"), as finally passed at a regular meeting of the City Council held on the 24th day of November, 2003, 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 City Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of November, 2003.

  
Clerk