



ORDINANCE NO. 28621

1 AN ORDINANCE of the City of Tacoma, Washington, relating to Tacoma Power,
2 approving terms relating to debt service reserve accounts established for
3 certain of the City's senior lien electric system revenue bonds; authorizing
4 the extension of qualified insurance to satisfy the debt service reserve
5 account requirement for such bonds; and approving certain other matters in
6 connection therewith.

7 WHEREAS the City of Tacoma, Washington ("City"), by Ordinance
8 No. 23514, passed on November 20, 1985 (as amended and supplemented,
9 including as amended and restated by Ordinance No. 28146, passed on April 30,
10 2013, collectively, the "Senior Bond Ordinance"), acting through its Department of
11 Public Utilities, Light Division (d.b.a. "Tacoma Power"), authorized the issuance of
12 senior lien electric system revenue bonds of the City to be issued in series having
13 a parity of lien and charge on the Revenues of the Electric System after the
14 payment of Operating Expenses (as those terms are defined therein), if certain
15 conditions are met, and made covenants in connection with the issuance of such
16 revenue bonds, and

17 WHEREAS the City has issued and has currently outstanding the following
18 series of electric system revenue bonds (the "Outstanding Parity Bonds"):
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Name of Bonds	Authorizing Supplemental Ordinance	Bonds Dated
Electric System Revenue Bonds, Series 2010B (Taxable Build America Bonds – Direct Payment) (the “2010B Bonds”)	27889	July 27, 2010
Electric System Revenue Bonds, Series 2010C (Taxable Clean Renewable Energy Bonds – Direct Payment) (“2010C Bonds”)	27889	July 27, 2010
Electric System Revenue and Refunding Bonds, Series 2013A (the “2013A Bonds”)	28146	June 13, 2013
Electric System Revenue Refunding Bonds, Series 2013B (the “2013B Bonds”)	28146	June 13, 2013
Electric System Revenue Bonds, Series 2017 (the “2017 Bonds”)	28444	September 1, 2017

and

WHEREAS the City reserved the right in the Senior Bond Ordinance and in the supplemental ordinances authorizing the issuance of the Outstanding Parity Bonds (together, the “Outstanding Parity Bond Ordinances”) to issue additional parity bonds upon satisfaction of certain requirements (“Future Parity Bonds”, and together with the Outstanding Parity Bonds, the “Parity Bonds”), and

WHEREAS the City has established a debt service reserve account (the “Reserve Account”) and subaccounts within the Reserve Account to secure the payment of principal of and interest on the 2010B Bonds, the 2010C Bonds, the 2013A Bonds and the 2013B Bonds (the “Reserve Account Secured Bonds”), and

WHEREAS such reserve subaccounts created in the Reserve Account secure only the payment of principal of and interest on the Reserve Account



1 Secured Bonds and any Future Parity Bonds that the City elects to have secured
2 by such subaccounts, and do not secure the payment of the principal of or interest
3 on the 2017 Bonds, and

4 WHEREAS, with the consent of the appropriate percentage of Parity Bond
5 owners, the Outstanding Parity Bond Ordinances permit the Council to, at any
6 time, pass an ordinance amending or supplementing the applicable Outstanding
7 Parity Bond Ordinances for the purpose of providing that in calculating the Reserve
8 Account Requirement (as defined in the Outstanding Parity Bond Ordinances), the
9 City may deduct the direct payment the City is expected to receive in respect of the
10 2010B Bonds, the 2010C Bonds, and other Future Parity Bonds for which the
11 federal government will provide the City with a direct payment of a portion of the
12 interest from the interest portion of Annual Debt Service (as defined in the
13 Outstanding Parity Bond Ordinances), and

14 WHEREAS, by their purchase of the bonds, the City has received the
15 consent of the requisite amount of owners of the Outstanding Parity Bonds, and

16 WHEREAS the City now desires to deduct the direct payment the City is
17 expected to receive from its calculation of Annual Debt Service as authorized in the
18 Outstanding Parity Bond Ordinances, and

19 WHEREAS the City is permitted to satisfy the Reserve Account
20 Requirement with respect to the Reserve Account Secured Bonds by the purchase
21 of Qualified Insurance (as defined in the Outstanding Parity Bond Ordinances), and

22 WHEREAS the City obtained Qualified Insurance through the purchase of a
23 reserve account surety policy (the "Surety Policy") from Financial Security



1 Assurance ("FSA"), now known as Assured Guaranty Municipal Corp. ("Assured"),
2 with a commitment dated July 23, 1999, which is scheduled to expire on January 1,
3 2020, and

4 WHEREAS, the City now desires to extend the term of the reserve account
5 Surety Policy from Assured as provided herein; Now, Therefore,

6 BE IT ORDAINED BY THE CITY OF TACOMA:

7 ARTICLE I

8 DEFINITIONS

9 Section 1.1. Definitions and Interpretation of Terms. Unless otherwise
10 defined in the recitals and elsewhere in this Supplemental Ordinance, capitalized
11 terms used herein shall have the meanings set forth in the Outstanding Parity
12 Bond Ordinances.
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14 ARTICLE II

15 AUTHORIZATION

16 Section 2.1. Election Regarding Calculation of the Debt Service Reserve
17 Account Requirement. The City hereby supplements the applicable Outstanding
18 Parity Bond Ordinances to provide, as authorized therein, that in calculating the
19 Reserve Account Requirement, the City may deduct the direct payment the City is
20 expected to receive in respect of the 2010B Bonds, the 2010C Bonds, and other
21 Future Parity Bonds for which the federal government will provide the City with a
22 direct payment of a portion of the interest from the interest portion of Annual Debt
23 Service.
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Section 2.2. Extension of Qualified Insurance. The City hereby authorizes an extension of the term of the existing Surety Policy from Assured to a date determined to be in the best interest of the City and agreed upon by Assured.

Section 2.3. Provisions Relating to the Surety Policy. So long as (1) any of the Reserve Account Secured Bonds are outstanding or any Policy Costs (defined herein) are owed to Assured and (2) the Surety Policy satisfies the Reserve Account Requirement relating to any of the Reserve Account Secured Bonds, the applicable Outstanding Parity Bond Ordinances are hereby supplemented to provide the following terms and conditions related to the Surety Policy, notwithstanding anything to the contrary set forth in the Outstanding Parity Bond Ordinances:

A. The Surety Policy constitutes a permitted debt service reserve instrument under the applicable provisions of the Outstanding Parity Bond Ordinances. Upon any payment by Assured under the Surety Policy, Assured shall furnish to the City written instructions as to the manner in which payment of amounts owed to Assured as a result of such payment under the Surety Policy shall be made. Amounts drawn under the Surety Policy shall be used solely to pay scheduled payments of principal and interest due on the Reserve Account Secured Bonds.

B. The City shall pay Assured the principal amount of any draws under the Surety Policy and pay all related reasonable expenses incurred by Assured and shall pay interest thereon from the date of payment by Assured at the Late Payment Rate. "Late Payment Rate" means the lesser of (a) the greater of (i) the



1 per annum rate of interest, publicly announced from time to time by JPMorgan
2 Chase Bank at its principal office in the City of New York, as its prime or base
3 lending rate (the "Prime Rate") (any change in such Prime Rate to be effective on
4 the date such change is announced by JPMorgan Chase Bank) plus 3% and
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6 (ii) the then applicable highest rate of interest on the Reserve Account Secured
7 Bonds, and (b) the maximum rate permissible under applicable usury or similar
8 laws limiting interest rates. The Late Payment Rate shall be computed on the
9 basis of the actual number of days elapsed over a year of 360 days. In the event
10 JPMorgan Chase Bank ceases to announce its Prime Rate, the Prime Rate shall
11 be the prime or base lending rate of such national bank as Assured shall
12 designate. If the interest provisions of this subsection B shall result in an effective
13 rate of interest which, for any period, exceeds the limit of the usury or any other
14 laws applicable to the indebtedness created herein, then all sums in excess of
15 those lawfully collectible as interest for the period in question shall, without further
16 agreement or notice between or by any party hereto, be applied as additional
17 interest for any later periods of time when amounts are outstanding hereunder to
18 the extent that interest otherwise due hereunder for such periods plus such
19 additional interest would not exceed the limit of the usury or such other laws, and
20 any excess shall be applied upon principal immediately upon receipt of such
21 moneys by Assured, with the same force and effect as if the City had specifically
22 designated such extra sums to be so applied and Assured had agreed to accept
23 such extra payment(s) as additional interest for such later periods. In no event
24 shall any agreed-to or actual exaction as consideration for the indebtedness
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1 created herein exceed the limits imposed or provided by the law applicable to this
2 transaction for the use or detention of money or for forbearance in seeking its
3 collection.

4 C. Repayment of draws and payment of expenses and the interest accrued
5 thereon at the Late Payment Rate (collectively, "Policy Costs") shall commence in
6 the first month following each draw, and each such monthly payment shall be in an
7 amount at least equal to 1/12th of the aggregate of Policy Costs related to such
8 draw. Amounts in respect of Policy Costs paid to Assured shall be credited first to
9 interest due, then to the expenses due, and then to principal due.

10 D. As and to the extent that payments are made to Assured on account of
11 principal due, the coverage under the Surety Policy will be increased by a like
12 amount, subject to the terms of the Surety Policy.

13 E. All cash and investments in the Reserve Account shall be transferred to
14 the debt service fund for payment of debt service on the Reserve Account Secured
15 Bonds before any drawing may be made on the Surety Policy or on any alternative
16 credit instrument. Payment of any Policy Costs shall be made prior to
17 replenishment of any such cash amounts. Draws on all alternative credit
18 instruments (including the Surety Policy) on which there is available coverage shall
19 be made on a pro rata basis (calculated by reference to available coverage under
20 each such alternative credit instrument) after applying available cash and
21 investments in the Reserve Account. Payment of Policy Costs and reimbursement
22 of amounts with respect to alternative credit instruments shall be made on a
23 pro-rata basis prior to replenishment of any cash drawn from the Reserve Account.
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1 For the avoidance of doubt, “available coverage” means the coverage then
2 available for disbursement pursuant to the terms of the applicable alternative credit
3 instrument without regard to the legal or financial ability or willingness of the
4 provider of such instrument to honor a claim or draw thereon or the failure of such
5 provider to honor any such claim or draw.
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7 F. Upon a failure to pay Policy Costs when due or any other breach of the
8 terms of this Supplemental Ordinance, Assured shall be entitled to exercise any
9 and all legal and equitable remedies available to it, including those provided under
10 the Outstanding Parity Bond Ordinances, other than (i) acceleration of the maturity
11 of the Reserve Account Secured Bonds or (ii) remedies which would adversely
12 affect owners of the Reserve Account Secured Bonds.
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14 G. The Outstanding Parity Bond Ordinances shall not be discharged until
15 all Policy Costs owing to Assured shall have been paid in full. The City’s obligation
16 to pay such amounts shall expressly survive payment in full of the Reserve
17 Account Secured Bonds. In order to secure the City’s payment obligations with
18 respect to the Policy Costs, there is hereby granted and perfected in favor of
19 Assured a security interest (subject only to the priority of payment provisions set
20 forth under the Outstanding Parity Bond Ordinances) in all revenues and collateral
21 pledged as security for the Reserve Account Secured Bonds.
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24 H. The Bond Registrar shall ascertain the necessity for a claim upon the
25 Surety Policy in accordance with the provisions of this Supplemental Ordinance
26 and shall provide notice to Assured in accordance with the terms of the Surety
Policy at least five business days prior to each date upon which interest or principal



1 is due on the Reserve Account Secured Bonds. Where deposits are required to be
2 made by the City with the Bond Registrar to the debt service fund for the Reserve
3 Account Secured Bonds more often than semi-annually, the Bond Registrar shall
4 give notice to Assured of any failure of the City to make timely payment in full of
5 such deposits within two business days of the date due.
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7 I. The City will pay or reimburse Assured, solely from the revenues pledged
8 for payment of the Reserve Account Secured Bonds, any and all charges, fees,
9 costs, losses, liabilities, and expenses which Assured may pay or incur, including,
10 but not limited to, fees and expenses of attorneys, accountants, consultants, and
11 auditors and reasonable costs of investigations, in connection with (i) any accounts
12 established to facilitate payments under the Surety Policy, (ii) the administration,
13 enforcement, defense, or preservation of any rights in respect of this Supplemental
14 Ordinance or the Outstanding Parity Bond Ordinances (the "Related Documents"),
15 including defending, monitoring, or participating in any litigation or proceeding
16 (including any bankruptcy proceeding in respect of the City) relating to the Related
17 Documents, any party to the Related Documents, or the transactions contemplated
18 by the Related Documents, (iii) the foreclosure against, sale, or other disposition of
19 any collateral securing any obligations under the Related Documents, if any, or the
20 pursuit of any remedies under the Related Documents, to the extent such costs
21 and expenses are not recovered from such foreclosure, sale, or other disposition,
22 (iv) any amendment, waiver, or other action with respect to, or related to the Surety
23 Policy or the Related Documents whether or not executed or completed, or (v) any
24 action taken by Assured to cure a default or termination or similar event (or to
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1 mitigate the effect thereof) under the Related Documents; costs and expenses
2 shall include a reasonable allocation of compensation and overhead attributable to
3 time of employees of Assured spent in connection with the actions described in
4 clauses (ii) through (v) above. Assured reserves the right to charge a reasonable
5 fee as a condition to executing any amendment, waiver, or consent proposed in
6 respect of the Related Documents. Amounts payable by the City hereunder shall
7 bear interest at the Late Payment Rate from the date such amount is paid or
8 incurred by Assured until the date Assured is paid in full.
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10 J. The obligation of the City to pay, solely from the revenues pledged for
11 payment of the Reserve Account Secured Bonds, all amounts due under this
12 Supplemental Ordinance shall be an absolute and unconditional obligation of the
13 City and will be paid or performed strictly in accordance with this Supplemental
14 Ordinance, irrespective of (i) any lack of validity or enforceability of or any
15 amendment or other modifications of, or waiver with respect to the Reserve
16 Account Secured Bonds or the Related Documents, (ii) any amendment or other
17 modification of, or waiver with respect to the Surety Policy, (iii) any exchange,
18 release, or non-perfection of any security interest in property securing the Reserve
19 Account Secured Bonds or the Related Documents, (iv) whether or not such
20 Reserve Account Secured Bonds are contingent or matured, disputed or
21 undisputed, liquidated or unliquidated, (v) any amendment, modification, or waiver
22 of or any consent to departure from the Surety Policy or the Related Documents,
23 (vi) the existence of any claim, setoff, defense (other than the defense of payment
24 in full), reduction, abatement, or other right which the City may have at any time
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1 against the Bond Registrar or any other person or entity other than Assured,
2 whether in connection with the transactions contemplated in the Related
3 Documents or any unrelated transactions, (vii) any statement or any other
4 document presented under or in connection with the Surety Policy proving in any
5 and all respects invalid, inaccurate, insufficient, fraudulent, or forged or any
6 statement therein being untrue or inaccurate in any respect, or (viii) any payment
7 by Assured under the Surety Policy against presentation of a certificate or other
8 document which does not strictly comply with the terms of the Surety Policy.
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10 K. The City shall fully observe, perform and fulfill each of the provisions (as
11 each of those provisions may be amended, supplemented, modified, or waived
12 with the prior written consent of Assured) of the Outstanding Parity Bond
13 Ordinances applicable to it, each of the provisions thereof being incorporated
14 herein by reference as if set forth directly herein. No provision of the Related
15 Documents shall be amended, supplemented, modified, or waived, without the
16 prior written consent of Assured, in any material respect or otherwise in a manner
17 that could adversely affect the payment obligations of the City hereunder or the
18 priority accorded to the reimbursement of Policy Costs under the Outstanding
19 Parity Bond Ordinances. Assured is hereby expressly made a third party
20 beneficiary of the Related Documents.
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24 L. The City covenants to provide to Assured, promptly upon request, any
25 information regarding the Reserve Account Secured Bonds or the financial
26 condition and operations of the City as reasonably requested by Assured. The City
will permit Assured to discuss the affairs, finances, and accounts of the City or any



1 information Assured may reasonably request regarding the security for the
2 Reserve Account Secured Bonds with appropriate officers of the City and will use
3 commercially reasonable efforts to enable Assured to have access to the facilities,
4 books, and records of the City on any business day upon reasonable prior notice.
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6 M. Notices to Assured shall be sent to the following address (or such other
7 address as Assured may designate in writing): Assured Guaranty Municipal Corp.,
8 1633 Broadway, New York, New York 10019, Attention: Managing Director–
9 Surveillance, Re: Policy No. _____.
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11 ARTICLE III

12 MISCELLANEOUS

13 Section 3.1. Ratification of Prior Acts. Any action taken consistent with the
14 authority and prior to the effective date of this Supplemental Ordinance is ratified,
15 approved, and confirmed.
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17 Section 3.2. General Authorization. The appropriate officers, agents, and
18 employees of the City are authorized and directed to execute and deliver such
19 documents, agreements, notices, and certificates, and to take such other actions,
20 upon consultation with the City Attorney, as may be necessary or desirable and in
21 the best interests of the City to effect the accomplishment of the calculation of the
22 Reserve Account Requirement and the extension of the term of the Surety Policy
23 and to carry out the purposes and intents of this Supplemental Ordinance and the
24 transactions contemplated thereby, including, but not limited to, the payment of any
25 fee or premium associated with the extension of the term of the Surety Policy.
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Section 3.3. Ratification. Except as expressly provided herein, every term and condition contained in the Outstanding Parity Bond Ordinances shall apply to this Supplemental Ordinance and the Outstanding Parity Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations, and modification as may be appropriate to make the same conform to this Supplemental Ordinance.

Except as supplemented and amended by this Supplemental Ordinance, the Outstanding Parity Bond Ordinances are hereby ratified, approved, and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as amended and supplemented.

Section 3.4. Effective Date of Ordinance. This Supplemental Ordinance shall take effect and be in force 10 days after its passage, approval, and publication as required by law.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form and legality:

Pacifica Law Group LLP
Bond Counsel

By _____



CLERK'S CERTIFICATE

1 I, the undersigned, the duly chosen, qualified City Clerk of the City of
2 Tacoma, Washington, and keeper of the records of the Council (herein called the
3 "Council"), DO HEREBY CERTIFY:
4

5 1. That the attached Ordinance No. ____ (herein called the "Ordinance") is
6 a true and correct copy of an Ordinance of the Council, as finally passed at a
7 regular meeting of the Council held on the ___ day of _____, 2019, and duly
8 recorded in my office.

9
10 2. That said meeting was duly convened and held in all respects in
11 accordance with law, and to the extent required by law, due and proper notice of
12 such meeting was given; that a legal quorum was present throughout the meeting
13 and a legally sufficient number of members of the Council voted in the proper
14 manner for the passage of said Ordinance; that all other requirements and
15 proceedings incident to the proper passage of said Ordinance have been duly
16 fulfilled, carried out and otherwise observed, and that I am authorized to execute
17 this certificate.
18

19 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
20 official seal of the City as of this ____ day of _____, 2019.
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23 _____
24 City Clerk
25 City of Tacoma, Washington
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