
CONTINUING COVENANT AGREEMENT

DATED _____, 2020,

BETWEEN

CITY OF TACOMA, WASHINGTON
ACTING BY AND THROUGH ITS PUBLIC UTILITIES BOARD

AND

KEY GOVERNMENT FINANCE, INC.

RELATING TO

\$ _____
CITY OF TACOMA, WASHINGTON
WATER SYSTEM SUBORDINATE REVENUE
REFUNDING BOND, SERIES 2020

§ _____

**CITY OF TACOMA, WASHINGTON
WATER SYSTEM SUBORDINATE
REVENUE REFUNDING BOND, SERIES 2020

CONTINUING COVENANT AGREEMENT**

This CONTINUING COVENANT AGREEMENT (as supplemented and amended hereafter, this “Agreement”) is entered into on _____, 2020, by and between the **CITY OF TACOMA, WASHINGTON** (the “City”), a municipal corporation duly organized and existing under the laws of the State of Washington, acting by and through its Public Utilities Board, and **KEY GOVERNMENT FINANCE, INC.** (together with its successors and assigns, in such capacity, the “Purchaser”).

RECITALS:

WHEREAS, the City has authorized the issuance of its Water System Subordinate Revenue Refunding Bond, Series 2020 in the principal amount of \$ _____ (the “Bond”) pursuant to Ordinance No. ____ adopted by the City Council on _____, 2020 (the “Bond Ordinance”); and

WHEREAS, proceeds of the Bond will be used to defease and refund, on a current basis, the City's Water System Revenue Refunding Bonds, Series 2010A, issued pursuant to Ordinance No. 27902, passed on July 20, 2010, and to pay costs of issuance of the Bond; and

WHEREAS, the Purchaser is willing to purchase the Bond and the City is willing to sell the Bond to the Purchaser subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Purchaser hereby agree as follows:

Section 1. Definitions. Capitalized terms not otherwise defined herein, including in the recitals hereto which are incorporated into this Agreement by reference, shall have the meanings given in the Bond Ordinance.

Section 2. Agreement to Purchase and Sell. Upon the terms and conditions and upon the basis of the representations set forth herein, the Purchaser hereby agrees to purchase from the City, and the City hereby agrees to sell and deliver to the Purchaser, the Bond as evidence of a loan made by the Purchaser to the City. Schedule A attached hereto, which is incorporated by reference into this Agreement, contains a brief description of the Bond, the purchase price to be paid and the date of delivery and payment therefor (the “Closing”).

Proceeds of the Bond shall be used to defease and refund, on a current basis, the City's Water System Revenue Refunding Bonds, Series 2010A, issued pursuant to Ordinance No. 27902, passed on July 20, 2010, and to pay costs of issuance of the Bond.

The Bond shall bear interest at the interest rate set forth in Schedule A (the "Interest Rate"), subject to the Default Rate (as defined herein). The principal of and accrued interest on the Bond shall be payable in lawful money of the United States of America by check, warrant, ACH transfer or by other means mutually acceptable to the Purchaser and the City, without the need for presentation or surrender of the Bond, on the dates set forth in Schedule A and in the payment schedule attached to the Bond.

Section 3. Representations of the City. The City represents to the Purchaser as follows:

(a) The City is a duly created and existing municipal corporation under the constitution and laws of the State.

(b) The Bond Ordinance has been duly enacted by the Council, has not been amended (except as described herein), modified, rescinded or superseded, and is a legal, valid and binding obligation of the City. The City is not in breach of or in default under the Bond Ordinance.

(c) The City has full legal right, power and authority under the constitution and the laws of the State to enter into and to perform, and has duly authorized the execution and delivery of this Agreement. When executed and delivered, this Agreement will be a legal, valid and binding obligation of the City.

(d) The City is duly authorized and has full legal right, power and authority to issue, sell and deliver the Bond to be purchased by the Purchaser and, when issued and delivered, the Bond will be a legal, valid, binding and enforceable obligation of the City.

(e) The City is duly authorized and has full legal right, power and authority to undertake the transactions contemplated by the Bond Ordinance and this Agreement.

(f) The officials of the City executing this Agreement, the Bond and any other documents and certificates related thereto to be delivered at the time of Closing, have been or will have been duly elected or appointed and are or will be qualified to serve as such officials of the City, and are or will be, duly authorized to execute and deliver such documents on behalf of the City.

(g) This Agreement and the Bond do not and will not conflict with or create a breach or default under any existing law, regulation, order or agreement to which the City is subject or by which it is bound.

(h) No governmental or public agency approval, consent, permit or authorization other than the Bond Ordinance and the resolution adopted by the City's Public Utilities Board on _____, 2020 is required in connection with the sale of the Bond to the Purchaser.

(i) There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental body pending or, to the best of the knowledge of the City, threatened against the City to restrain or enjoin the acceptance of this Agreement, the passage of the Bond Ordinance or the execution and delivery of the Bond, or the collection and application of the Gross Revenue of the Water System as contemplated by the Bond Ordinance and this Agreement, that, in the reasonable judgment of the City, would have a material and adverse effect on the ability of the City to pay the amounts due under this Agreement and the Bond.

(j) The City has never non-appropriated or defaulted on any of its payment or performance obligations or covenants, under any of its bonds, notes, leases, or other obligations of indebtedness for which its revenues or general credit are pledged.

(k) The City's audited financial statements for the Water System as of and for the fiscal year ended December 31, 2018, is a fair presentation of the financial position of the Water System as of the date indicated and the results of its operations and changes in its fund balances for the periods specified. Since December 31, 2018, there has been no material adverse change in the condition, financial or otherwise, of the Water System from that set forth in the audited financial statements as of and for the period ended that date; and the Water System has not incurred since December 31, 2018, any material liabilities, directly or indirectly, except in the ordinary course of its operations.

(l) The City will not take or omit to take any action that will in any way cause the proceeds from the sale of the Bond to be applied or results in such proceeds being applied in a manner other than as provided in the Bond Ordinance.

(m) Each representation, warranty or agreement stated in any certificate signed by any official of the City and delivered to the Purchaser in connection with the transactions contemplated by the Bond Ordinance and this Agreement, at or before the Closing, shall constitute a representation, warranty or agreement by the City upon which the Purchaser shall be entitled to rely.

(n) The City is not currently, nor has it been at any time, in default in the payment of the principal of or interest on any obligation issued by it.

(o) The Bond will not be (i) assigned a separate rating by any rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of offering document or official statement, or (iv) assigned a CUSIP number by Standard & Poor's CUSIP service.

Section 4. Representations of the Purchaser. The Purchaser does hereby represent that:

(a) The Purchaser has sufficient knowledge and experience in financial and business matters, including lending to political subdivisions and the purchase and ownership of tax-exempt municipal obligations, to be able to evaluate the risks and merits represented by the loan represented by the purchase of the Bond.

(b) The Purchaser has authority to purchase the Bond and to execute this Agreement and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Bond.

(c) The Purchaser is a “qualified institutional buyer” as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended.

(d) The Purchaser understands that an official statement, prospectus, offering circular, or other comprehensive offering statement has not been provided with respect to the Bond. The Purchaser has made its own inquiry and analysis with respect to the City, the Bond and the security therefor, and other material factors affecting the security for and payment of the Bond.

(e) The Purchaser acknowledges that it has reviewed information, including financial statements and other financial information, regarding the City, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City, the Bond and the security therefor, so that it has been able to make an informed decision to purchase the Bond; provided, however, that this representation shall not constitute a waiver of any rights or remedies the Purchaser may have with respect to any untrue information it may have received or any material information which was withheld from or omitted from information provided for its review.

(f) The Purchaser understands that the Bond: (i) is not registered under the Securities Act of 1933, as amended, and is not registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (ii) is not listed on any stock or other securities exchange, and (iii) has not been rated by any credit rating agency.

(g) The Bond is being acquired by the Purchaser at the price of par for its own account and not with a present view toward resale or distribution; provided, the Bond shall be transferrable without the consent of the City so long as such transfer is (i) made to either a “qualified institutional buyer” as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an “accredited investor” by virtue of being a “bank,” as defined in Section 3(a) (2) of the Securities Act of 1933, as amended (the “Securities Act”), (ii) made in compliance with this Agreement, the Bond Ordinance and all federal and state securities laws, (iii) the Purchaser provides written notice to the Bond Registrar of any such transfer prior to such transfer, and (iv) the subsequent purchaser executes an investor letter in substantially the form attached hereto as Exhibit A. The Purchaser also acknowledges that any transfer of the Bond which fails to comply with this provision and the transfer limitations set forth herein shall be null and void.

So long as no Event of Default has occurred, the Purchaser shall serve as servicing agent for any transferee or participant of the Bond, so that the City shall be required to make payment to, provide notice and otherwise deal only with the Purchaser with respect to matters that arise under this financing, including this Agreement, the Bond and the Bond Ordinance. Notwithstanding the preceding sentence, notice of such transfer or participation shall be provided to the Bond Register noting the servicing role of the Purchaser.

(h) Purchaser (i) is an entity directly or indirectly controlled by a bank or under common control with a bank, other than a broker, dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, and (ii) the present intent of the Purchaser is to hold the municipal securities to maturity or earlier redemption or mandatory tender. Any placement agent, broker or financial advisor may rely upon the representations and warranties contained in this paragraph.

5. Conditions to Closing. As conditions to the Purchaser's obligation to make the loan hereunder:

(a) From the time of the execution and delivery of this Agreement to the date of Closing, there shall not have been, in the reasonable judgment of the Purchaser, any (i) material adverse change in the financial condition or general affairs of Water System including, without limitation, (1) any information contained in the City's audited financial statements for the Water System of and for the fiscal year ended December 31, 2018, and (2) any information known to the City relating to its financial condition or general affairs that the City believes may give rise to such a material adverse change, or (ii) event, court decision, proposed law or rule that may have the effect of changing the contemplated transactions.

(b) At the Closing, the City will deliver or make available to the Purchaser:

(i) the Bond, in definitive form, duly executed;

(ii) a certificate from authorized officials of the City, in form and substance acceptable to the Purchaser, to the effect that the representations of the City contained in this Agreement are true and correct as of the Closing;

(iii) the approving legal opinion, dated the date of Closing, of Pacifica Law Group LLP, Bond Counsel, addressed to the City and the Purchaser;

(iv) a certified copy of the Bond Ordinance;

(v) an executed counterpart of this Agreement;

(vi) an executed copy of the Federal Tax Certificate;

(vii) an Information Return for Tax-Exempt Bond Issues (Internal Revenue Service Form 8038 G), in a form satisfactory to Bond Counsel for filing, executed by a duly authorized officer of the City;

(viii) a transcript of all proceedings relating to the authorization and issuance of the Bond; and

(ix) such additional certificates, instruments and other documents as the Purchaser may deem necessary with respect to the issuance and sale of the Bond, all in form and substance satisfactory to the Purchaser.

6. Continuing Covenants of the City. So long as the Bond is outstanding, the City hereby covenants and agrees as follows:

(a) The City will deliver or make available to the Purchaser (i) the City's audited financial statements for the Water System no later than 270 days after the end of each fiscal year, beginning with its fiscal year ended December 31, 2019; (ii) the City's proposed budget for the Water System promptly after it is adopted; and (iii) such other information respecting the affairs, condition and/or operations, financial or otherwise, of the City and the Water System as the Purchaser may from time to time reasonable request.

(b) The City will provide the Purchaser prompt notice of any event or of any litigation or proceeding that is likely to have a material adverse impact on the financial condition of the Water System.

(c) The Net Revenue of the Water System in each fiscal year will be at least equal to the Coverage Requirement.

(d) The City covenants to comply with the terms of Senior Bond Ordinances.

(e) The City shall not issue any obligations or bonds on a parity of lien on the Net Revenues with the Bond without first satisfying the Subordinate Bonds Parity Requirement. Nothing in this Agreement shall restrict or prohibit the City from issuing additional bonds or obligations for refunding purposes or that are subordinate to the lien on Net Revenue of the Bond as further provided in the Bond Ordinance.

Section 7. Fees and Expenses. The City will pay the cost of the fees and disbursements of Bond Counsel; the fees and disbursements of counsel to the Purchaser, Davis Wright Tremaine LLC, the fees of the financial advisor to the City; and miscellaneous expenses of the City incurred in connection with the offering and delivery of the Bond.

The Purchaser will pay all reasonable direct "out-of-pocket" expenses incurred by the Purchaser, and all costs relating to the wiring of federal funds to purchase the Bond.

The obligation of the City to pay the above-described expenses and fees, except the fees of Purchaser's counsel, shall survive termination of this Agreement or the failure to consummate the transactions described herein. The City shall have no obligation to pay the fees of Purchaser's counsel if this Continuing Covenant Agreement is terminated prior to Closing.

Section 8. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder:

(a) failure to pay, or cause to be paid, when due any payment of the principal of or interest on the Bond;

(b) failure to comply with its obligations, or to perform any of its duties, under the Bond Ordinance or this Agreement, which failure continues and is not cured for

a period of more than 60 days after the Purchaser has made written demand to the City to cure such failure;

(c) insolvency of the City,

(d) unsatisfied judgment against City with respect to the Water System, in excess of \$10,000,000, or

(e) material misrepresentation to Purchaser by the City in the purchase of the Bond, as reasonably concluded by the Purchaser after investigation and discussion with the City.

Upon the occurrence of any Event of Default and until such time as such Event of Default has been remedied or waived in writing by the Purchaser, at the election of the Purchaser, the interest rate on the Bond shall be increased to the Default Rate. The Default Rate shall be a rate equal to the Interest Rate plus 300 basis points (3.00%). Notwithstanding the foregoing, the Bond shall not be subject to acceleration prior to maturity.

If the rate of interest on the Bond shall ever exceed the maximum rate allowed by law, such excess interest shall be deferred until such date that the interest rate calculated thereunder ceases to exceed such maximum rate. If there remains any excess interest owed hereunder after termination of the Bond the City shall pay such interest as a fee to the Purchaser.

Section 9. Fees and Expenses. If the Purchaser incurs any expenses in connection with the enforcement of the payment of the Bond or other provisions of any related document, the City shall pay the Purchaser's reasonable costs and expenses, including reasonable attorney's fees.

Section 10. Waiver of Jury Trial. IN THE EVENT THAT A DISPUTE BECOMES THE SUBJECT OF A JUDICIAL ACTION, TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON OR ARISING OUT OF THIS CONTINUING COVENANT AGREEMENT AND THE RELATED DOCUMENTS, TO THE FULLEST EXTENT PERMITTED BY LAW. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE PURCHASER TO PURCHASE THE BOND AND THAT THE EXECUTION AND DELIVERY OF THIS CONTINUING COVENANT AGREEMENT BY THE CITY AND THE PURCHASER IS MADE IN RELIANCE UPON SUCH WAIVER. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT SUCH WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE FOLLOWING CONSULTATION WITH ITS RESPECTIVE LEGAL COUNSEL.

Section 11. Survival. This Agreement is intended to benefit only the parties hereto, and the City's representations and warranties shall survive any investigation made by or for the Purchaser, delivery and payment for the Bond, and the termination of this Agreement.

Section 12. Entire Agreement. This Agreement constitutes the complete and entire agreement between the City and the Purchaser and all prior communications and correspondence between the City and the Purchaser with respect to the subject matter of this Agreement, whether written or oral, are hereby superseded by this Agreement.

Section 13. Severability. The invalidity or unenforceability of any provision hereof as to any one or more jurisdictions shall not affect the validity or enforceability of the balance of this Agreement as to such jurisdiction or jurisdictions, or affect in any way such validity or enforceability as to any other jurisdiction.

Section 14. Waiver or Modification; Amendments. No waiver, modification or amendment of any one or more of the terms and conditions of this Agreement, the Bond Ordinance or the Bond shall be valid unless in writing and signed by the party or parties making such waiver or agreeing to such modification or amendment.

Section 15. Disputes; Venue. Any disputes or legal actions arising out of the transaction shall be brought in the courts of Pierce County, Washington, and each party, to the fullest extent permitted by law, shall consent to the jurisdiction of such courts.

Section 16. Governing Law. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Washington.

Section 17. Notices. All notices, requests, etc. required hereunder shall be sent to the following address or in accordance with the last unrevoked written direction from such party to the other parties hereto:

If to the Purchaser, to:

Key Government Finance, Inc.
1000 S. McCaslin Blvd.
Superior, CO 80027
Attention: Account Manager
janice.a.thoman@key.com
Tel: (720) 304-1636

If to the City, to:

City of Tacoma
3628 South 35th Street
Tacoma, Washington 98409
Attention:
Tel: (253)
Email:

Section 18. Headings. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

Section 19. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one instrument, and shall become effective when copies hereof which, when taken together, bear the signatures of all of the parties hereto shall be delivered to the City and the Purchaser.

Section 20. Washington Statutory Notice. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF TACOMA, WASHINGTON

By: _____
Name:
Its:

KEY GOVERNMENT FINANCE INC.

By: _____
Name: Its:

[signature page to Continuing Covenant Agreement]

Schedule A

I. Principal Amount of the Bond: \$ _____

II. Purchase Price of the Bond: \$ _____

III. Maturity Date: December 1, 2023.

IV. Interest Rate: Tax-exempt interest rate of [1.40]%, subject to the Default Rate. Interest will be calculated on a 30/360 day basis.

V. Debt Service Schedule: Interest payable semi-annually on each June 1 and December 1, beginning on December 1, 2020, and principal payable annually beginning December 1, 2020, each according to the following schedule.

[schedule to be added]

VI. Prepayment. The Bond may be prepaid prior to maturity, in whole at any time with a penalty of three percent (3%) in the first year, two percent (2%) in the second year, one percent (1%) in the third year, and with no penalty thereafter. The penalty shall be based on the outstanding principal balance at the time of prepayment. Prepayment shall include interest accruing to the date of prepayment.

VII. Closing Date: _____, 2020.

VIII. Other Terms: The Bond shall have such other terms and provisions as are provided in the Bond Ordinance and this Agreement.

IX. Default Rate: Interest Rate plus 300 basis points (3.00%).

EXHIBIT A
FORM OF
INVESTOR LETTER

_____, 20____

City of Tacoma
Tacoma, Washington

Re: City of Tacoma, Washington, Water System Subordinate Revenue Refunding
Bond, Series 2020

Ladies and Gentlemen:

The undersigned, on behalf of the Purchaser and not in his/her individual capacity, hereby represents that _____ (the “Purchaser”) has made such investigation of the information furnished to it by the City of Tacoma, Washington (the “City”) relating to its Water System Subordinate Revenue Refunding Bond, Series 2020, issued in the principal amount \$ _____ (the “Bond”), pursuant to Ordinance No. _____, passed by the City Council of the City on _____ (the “Bond Ordinance”) as it has deemed necessary. Capitalized terms used in this letter have the meanings given such terms in the Bond Ordinance.

In connection with the acquisition of the Bond by the Purchaser, the Purchaser hereby makes the following representations upon which you may rely:

1. The undersigned is a duly appointed, qualified and acting representative of the Purchaser and is authorized to cause the Purchaser to make the certifications and representations contained herein by execution of this letter on behalf of the Purchaser.

2. We understand that the Bond has not been registered pursuant to the Securities Act of 1933, as amended (the “Securities Act”), the securities laws of any state nor has the Bond Ordinance been qualified pursuant to the Trust Indenture Act of 1939, as amended, in reliance upon certain exemptions set forth therein. We acknowledge that the Bond (i) is not being registered or otherwise qualified for sale under the “blue sky” laws and regulations of any state, (ii) will not be listed on any securities exchange, and (iii) will not carry a rating from any rating service.

3. We have not offered, offered to sell, offered for sale or sold any interest in the Bond by means of any form of general solicitation or general advertising, and we are not an underwriter of the Bond within the meaning of Section 2(11) of the Securities Act.

4. We have sufficient knowledge and experience in financial and business matters, including lending to political subdivisions and the purchase and ownership of tax-exempt municipal obligations, to be able to evaluate the risks and merits represented by the loan represented by the purchase of the Bond.

5. We have authority to purchase the Bond and to execute this letter and any other instruments and documents required to be executed by the purchaser in connection with the purchase of the Bond.

6. The Purchaser is a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act or is a commercial bank organized under the laws of the United States, or any state thereof.

7. Purchaser (i) is an entity directly or indirectly controlled by a bank or under common control with a bank, other than a broker, dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, and (ii) the present intent of the Purchaser is to hold the municipal securities to maturity or earlier redemption or mandatory tender. Any placement agent, broker or financial advisor may rely upon the representations and warranties contained in this paragraph

8. The Purchaser understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Bond. The undersigned has made its own inquiry and analysis with respect to the City, the Bond and the security therefor, and other material factors affecting the security for and payment of the Bond.

9. The Purchaser acknowledges that it has reviewed information, including financial statements and other financial information, regarding the City, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City, the Bond and the security therefor, so that it has been able to make an informed decision to purchase the Bond; provided, however, that this representation shall not constitute a waiver of any rights or remedies the Purchaser may have with respect to any untrue information it may have received or any material information which was withheld from or omitted from information provided for its review.

10. The Bond is being acquired by the Purchaser at the price of par for its own account and not with a present view toward resale or distribution; provided, the Bond shall be transferrable without the consent of the City so long as such transfer is (i) made to either a “qualified institutional buyer” as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an “accredited investor” by virtue of being a “bank,” as defined in Section 3(a) (2) of the Securities Act of 1933, as amended (the “Securities Act”), (ii) made in compliance with the Bond Ordinance and all federal and state securities laws, (iii) the Purchaser provides written notice to the Bond Registrar of any such transfer prior to such transfer, and (iv) the subsequent purchaser executes an investor letter in substantially the same form as this

letter. The Purchaser also acknowledges that any transfer of the Bond which fails to comply with this provision and the transfer limitations set forth herein shall be null and void.

Very truly yours,

[_____]

By: _____

Name: _____

Title: _____