

**ESCROW AGREEMENT**

This Escrow Agreement (“**Escrow Agreement**”), dated as of \_\_\_\_\_, 2020, is made by and among: Gibbons Creek Environmental Redevelopment Group, LLC, a limited liability company organized under the laws of the State of Texas (“**Purchaser**”), Texas Municipal Power Agency, a municipal corporation and municipal power agency created under Chapter 163 of the Texas Utilities Code (“**Seller**”), and \_\_\_\_\_, as escrow agent (“**Escrow Agent**”). Capitalized terms used in this Escrow Agreement but not otherwise defined herein shall have the meanings given them in the APA (defined below), a copy of which has been furnished to Escrow Agent solely to allow it to reference such meanings.

**RECITALS**

WHEREAS, Seller and Purchaser have entered into an Asset Purchase Agreement (“**APA**”) dated as of \_\_\_\_\_, 2020, providing for, among other things, the purchase by Purchaser of the Purchased Assets subject to the terms and conditions of the APA and, as a condition to such sale, the deposit by Seller of the Escrow Funds (defined below) into escrow pursuant to this Escrow Agreement; and

WHEREAS, pursuant to the APA, Purchaser and Seller have agreed that Seller shall deposit an aggregate of Twenty-Eight Million Five Hundred Forty-Six Thousand (\$28,546,000) into escrow to ensure and partially fund Purchaser’s performance of the Bonded Obligations (as that term is defined in the Regulatory Closure Bond (defined below)) or Seller’s or Member Cities’ performance of the Bonded Obligations as provided in this Escrow Agreement.

**NOW THEREFORE**, in consideration of, the Recitals set forth above, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, Purchaser and Escrow Agent agree as follows:

**DEFINITIONS**

**Definitions.** Any capitalized term not defined herein shall have the meaning ascribed to it in the APA. In addition to the terms defined in the Recitals, as used in this Escrow Agreement:

“**Monthly Distribution**” means thirty four (34) equal monthly payments totaling the Escrow Funds, which monthly payments are to be made from the Escrow Account (defined below) to Purchaser on the \_\_\_ day of each month starting the first month following Closing until the Escrow Funds are depleted, such monthly payments being conditioned, and subject to being adjusted, suspended or terminated, pursuant to the terms of this Escrow Agreement. If the Escrow Funds are increased or decreased from time to time for any reason, the amount of all future Monthly Distributions shall be automatically adjusted to be equal to the remaining Escrow Funds divided by the number of future Monthly Distributions (*i.e.*, 34 less the number of prior Monthly Distributions previously made at such time).

“**Project Schedule**” means the remediation project schedule attached hereto as Exhibit A, which schedule contains tasks and events necessary to complete the Bonded Obligations.

AGREEMENT

Section 1. ESCROW ACCOUNT.

Section 1.1 Deposits into Escrow Account.

(a) Concurrently herewith, to secure Purchaser's performance of the Bonded Obligations, Seller shall deposit cash in the amount of Twenty-Eight Million Five Hundred Forty-Six Thousand (\$28,546,000) with Escrow Agent to be held by the Escrow Agent pursuant to this Escrow Agreement.

(b) The Escrow Agent hereby agrees to establish and maintain an account (the "**Escrow Account**") to hold all monies deposited with the Escrow Agent pursuant to this Escrow Agreement and all interest, dividends, and other distributions and payments earned thereon or received by the Escrow Agent with respect thereto from time to time (the "**Escrow Funds**").

(c) The assets in the Escrow Account are to be retained by the Escrow Agent as an escrow trustee pursuant to this Escrow Agreement. The assets (and income earned on them) may be disbursed from the Escrow Account only in accordance with Sections 1.3 and 1.4 below. The parties intend for this Escrow Agreement to create a true escrow, and the parties agree that Purchaser's only interest in, and right to receive, the Escrow Funds are through the Monthly Distributions as outlined in, and limited by, Sections 1.3, 1.4 and 2.3 below.

(d) Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard, invest and disburse the Escrow Funds on behalf of Seller pursuant to the terms and conditions hereof.

Section 1.2 Investment of Amounts Held in Escrow Account.

(a) All amounts held in the Escrow Account shall be invested in a money market deposit account as directed in Exhibit B attached hereto and forming a part hereof for all purposes or in United States Treasury Bills having a maturity date of sixty (60) days after date of purchase. All investments shall be made in the name of Escrow Agent. All investment earnings shall become part of the Escrow Funds and investment losses shall be charged against the Escrow Funds. Escrow Agent shall not be liable or responsible for loss in the value of any investment made pursuant to this Escrow Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of any such investment.

(b) The Escrow Agent shall liquidate all investments in the Escrow Account as necessary to provide funds in order to make any payments required by this Escrow Agreement. Annually, and quarterly, the Escrow Agent shall provide a written report to Purchaser and Seller detailing the balances in the Escrow Account, the investments held by the Escrow Account, any claims or payments made from or against the Escrow Account for the period, any deposits made to cover an investment loss, and all interest, dividends, income and/or losses associated with the Escrow Account.

(c) With respect to any Escrow Funds or investment instruction received by Escrow Agent after 11:00 a.m., U.S. Central Time, Escrow Agent shall not be required to invest such funds or to effect any investment instruction until the next business day upon which Escrow Agent is open to conduct its regular banking business. Receipt of the Escrow Funds, and investment or the reinvestment of the Escrow Funds, shall be confirmed by Escrow Agent by an account statement, and Purchaser, Seller or any Member City may inform Escrow Agent in writing of any error, omission or inaccuracy in any such account statement within ninety (90) days after receipt, and failure to do so shall conclusively be deemed confirmation and approval by Purchaser, Seller and each of the Member Cities of such account statement in its entirety, which shall thereafter not provide any basis for a claim against or liability of Escrow Agent.

Section 1.3 Use of Escrow Funds by Seller.

All Escrow Funds shall be paid by Seller in escrow to ensure and partially fund Purchaser's performance of the Bonded Obligations. If the Monthly Distributions under this Escrow Agreement have been suspended for sixty (60) consecutive days in accordance with Section 1.4, then Seller (or the Member Cities, as express third party beneficiaries of the APA and this Escrow Agreement) (i) shall have the right, but not the obligation, to perform any tasks and take any actions deemed necessary or appropriate by Seller or the Member Cities to complete the Bonded Obligations and (ii) shall be reimbursed upon demand by Escrow Agent from the Escrow Funds for all costs incurred by Seller or the Member Cities in performing such tasks and taking such actions; provided, however, that the Member Cities must appoint a designated representative to act on behalf of all Member Cities in the exercise of any of Seller's rights under this Escrow Agreement.

Section 1.4 Draws from Escrow Account.

(a) Each month the Escrow Agent shall pay the Monthly Distribution to Purchaser (to the extent that Escrow Funds are available therefor and subject to such payment being suspended or terminated as set forth in this Escrow Agreement) to partially fund the cost of the Bonded Obligations. Purchaser may use the Monthly Distribution only to fund the cost of the Bonded Obligations.

(b) Each month after the initial Monthly Distribution, at least five (5) business days prior to the scheduled payment date of that month's Monthly Distribution, Purchaser shall deliver to Seller, the Environmental Designee, and Escrow Agent a written progress report (each, a "**Progress Report**") summarizing the progress made by Purchaser in connection with the work necessary to complete the Bonded Obligations since the prior Progress Report and comparing the current status of such work with the projected status of such work on the Project Schedule. Each Progress Report shall include the following information with respect to the work set forth on the Project Schedule: (i) the progress (including percentage completion) made on each segment of the work; (ii) a reasonably detailed explanation of the actions (including percentage completion of such actions) taken by Purchaser during the previous month on each segment of the work; (iii) a reasonably detailed explanation of the actions that still need to be completed by Purchaser to complete each segment of the work and the estimated time frame for such actions; (iv) a summary

of the actions to be taken during the next two (2) months on each segment of the work; (v) an updated estimate of when each segment of the work will be completed; and (vi) documentation reasonably acceptable to the Environmental Designee showing the costs actually incurred by Purchaser to obtain Preliminary Regulatory Closure of the Site F landfill.

(c) If Environmental Designee does not provide Purchaser and Escrow Agent with written notice of an objection to such Progress Report (which written notice shall provide the basis for such objection) within such five (5) business day period or if Environmental Designee provides written notice that it has no objection sooner than the expiration of such five (5) business day period, then Escrow Agent is hereby authorized to disburse to Purchaser the Monthly Distribution for such month. The sole grounds for Environmental Designee's objection to a Progress Report shall be that the Environmental Designee believes, in good faith, that Purchaser has not substantially completed the work set forth in the Project Schedule for such month or that Purchaser is in breach of its obligations under the APA with respect to the Bonded Obligations.

(d) If Environmental Designee does provide Purchaser and Escrow Agent with written notice of an objection to such Progress Report within such five (5) business day period or if Purchaser does not provide a Progress Report when due, Escrow Agent shall suspend all future Monthly Distributions until Escrow Agent has received either (i) joint written instructions of Purchaser and Seller evidencing an agreement regarding such payment(s), or (ii) a certified copy of an Order with respect to such payment(s). The Escrow Agent shall be entitled to employ all appropriate due diligence to ascertain that said Order is, in fact, a final and non-appealable judgment for which payment may be made. It is the intent of the parties that as soon as practical after Seller receives an updated Progress Report showing that Purchaser has achieved substantial completion of the work, as determined by the Environmental Designee, necessary for the release of any suspended Monthly Distribution or when any such breach of Purchaser's obligations under the APA has been cured, Seller shall provide the joint written instructions under clause (i) of this paragraph to immediately release the applicable suspended Monthly Distribution.

(e) Notwithstanding anything herein to the contrary, Escrow Agent shall not make any Monthly Distributions to Purchaser to the extent that such distribution would decrease the remaining balance of the Escrow Funds to less than \$2,854,600 (*i.e.*, 10% of the Escrow Funds deposited by Seller) unless Purchaser has obtained and delivered to Seller the Post-Closure Bonds as required by Section 9.06 of the APA and Seller has confirmed its receipt and approval of the Post-Closure Bonds. If the Post-Closure Bonds have not been obtained and delivered to Seller as required by the APA and this Escrow Agreement, then Seller (or the Member Cities' designated representative) (i) shall have the right, but not the obligation, to perform any tasks and take any actions deemed necessary or appropriate by Seller or the Member Cities to obtain and pay the premium for the Post-Closure Bonds or to perform any Environmental Post-Closure Requirements and (ii) shall be reimbursed upon demand by Escrow Agent from the Escrow Funds for all costs incurred by Seller or the Member Cities in performing such tasks and taking such actions.

(f) Seller and Purchaser agree that \$13,600,00 is the mutually-agreed estimated cost to obtain Preliminary Regulatory Closure of the Site F landfill. If, upon Preliminary Regulatory Closure of the Site F landfill, the aggregate costs actually incurred by Purchaser to obtain Preliminary Regulatory Closure of the Site F landfill is less than \$13,600,000, Seller shall be entitled, after written notice to Purchaser and Escrow Agent, to a distribution of such difference (or any portion thereof) from the Escrow Funds. Seller's right to a distribution of Escrow Funds under this Section 1.4(f) is superior to Purchaser's rights to receive any Monthly Distributions or other distributions of Escrow Funds, but payment of any such amounts to Seller shall be deferred to the extent that such distribution would decrease the remaining balance of the Escrow Funds to less than \$2,854,600 (*i.e.*, 10% of the Escrow Funds deposited by Seller) until such time as Purchaser has obtained and delivered to Seller the Post-Closure Bonds as required by Section 9.06 of the APA and Seller has confirmed its receipt and approval of the Post-Closure Bonds.

(g) Upon distribution of all Escrow Funds from the Escrow Account, the Escrow Account shall be closed and this Escrow Agreement shall be terminated. Neither the existence of nor the exhaustion of the Escrow Account, nor the termination thereof, shall release or diminish Purchaser's obligations or liabilities under the APA, including, without limitation, Purchaser's obligations pursuant to Article IX of the APA.

(h) Subject to the requirements of Sections 1.4(e) and 1.4(f) above, if, after reviewing any Progress Report, Environmental Designee determines that Purchaser has substantially completed the work set forth in the Project Schedule for the current month and for the next month, then Escrow Agent shall release to Purchaser the Monthly Distribution for the current month and for the next month at the same time and the timeframe for completing all future work set forth in the Project Schedule will be accelerated by one (1) month.

Section 2. **DUTIES OF ESCROW AGENT, LIABILITIES, LIMITATIONS AND OTHER TERMS AND CONDITIONS OF THE ESCROW AGENT.**

Section 2.1 **Duties and Responsibilities.**

The duties, responsibilities and obligations of Escrow Agent shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. Under no circumstance will the Escrow Agent be deemed to be a fiduciary to any party or any other person under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of any other party to perform in accordance with this Escrow Agreement. Escrow Agent shall not be subject to, nor required to comply with, any other agreement between or among Purchaser and Seller or to which either Purchaser or Seller is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Escrow Agreement) from Purchaser or Seller. Escrow Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

Section 2.2 Judicial Orders, Judgments, Decrees, Writs or other Process.

If at any time Escrow Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Escrow Funds (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Escrow Funds) (hereinafter collectively defined as “**Legal Decree**”), Escrow Agent is authorized to comply with any such Legal Decree in any reasonable manner and may consult the advice of legal counsel of its choosing if it deems such advice necessary with regard to any such compliance; and if Escrow Agent complies with any such Legal Decree, Escrow Agent shall not be liable to any of the parties hereto or to any other person or entity even though such Legal Decree may be subsequently modified or vacated or ultimately determined to have been without legal force or effect.

Section 2.3 Claim against Regulatory Closure Bond.

(a) Endurance Assurance Corporation, a Delaware corporation (“**Surety**”), has issued the Regulatory Closure Bond effective \_\_\_\_\_, 2020 (the “**Regulatory Closure Bond**”), on behalf of Purchaser and for the benefit of Seller to guarantee, among other things, the full and faithful performance by Purchaser of all of Purchaser’s obligations under the APA with respect to the Bonded Obligations.

(b) If Seller asserts a claim against the Regulatory Closure Bond and Surety performs under the Regulatory Closure Bond to (i) cure Purchaser’s default, (ii) perform, or cause to be performed, Purchaser’s obligations, or (iii) pay any sum under the Regulatory Closure Bond (a “**Bond Claim**”), then Seller or Surety may provide written notice to Escrow Agent that a Bond Claim has been made and, from and after such notice to Escrow Agent, Surety shall be entitled (but not required) unilaterally to exercise any or all of Purchaser’s rights and perform any or all of Purchaser’s obligations under this Escrow Agreement (on behalf of, and to the exclusion of, Purchaser), including without limitation performing any or all of the Bonded Obligations, receiving Monthly Distributions and other distributions of Escrow Funds that would otherwise be payable to Purchaser, submitting Progress Reports, and curing Purchaser’s defaults under this Escrow Agreement, until such time as Surety notifies Escrow Agent and Seller in writing that such Bond Claim has been fully satisfied and directing Escrow Agent to resume issuance of Monthly Distributions to Purchaser.

Section 2.4 Limitations on Liability of Escrow Agent.

(a) Escrow Agent shall not be liable for any action taken or omitted or for any loss resulting from its actions or its performance or lack of performance of its duties hereunder in the absence of gross negligence or willful misconduct on its part. In no event shall Escrow Agent be liable (i) for acting in accordance with or relying upon any joint written instruction from Purchaser and Seller given pursuant to Section 1, (ii) DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL, INDIRECT OR EXPECTANCY LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE

FORM OF ACTION, or (iii) for an amount in excess of the value of the Escrow Account, valued as of the date of deposit.

(b) Upon prior written notice to and approval from Purchaser and Seller, Escrow Agent may consult with legal counsel as to any matter relating to this Escrow Agreement, and Escrow Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel. Any such expense of Escrow Agent's legal counsel shall be deducted from the Escrow Funds. Seller shall reimburse the Escrow Funds for one-half of the amounts so deducted within ten (10) days of receiving notice of such deduction.

(c) Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of Escrow Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

#### Section 2.5 Monthly Statements.

Escrow Agent shall provide to Purchaser and Seller monthly statements identifying transactions, transfers, withdrawals, deposits or holdings of the Escrow Fund and each such statement shall be deemed to be correct and final upon receipt thereof by Purchaser and Seller, unless Escrow Agent is notified in writing to the contrary within thirty (30) business days of the date of such statement.

#### Section 2.6 Genuineness of Documents.

Escrow Agent shall not be responsible in any respect for the form, execution, validity, value or genuineness of documents, or for any description therein, or for the identity, authority or rights of persons executing or delivering or purporting to execute or deliver any such document.

#### Section 2.7 Effectiveness of Notices.

Notices, instructions or other communications between Escrow Agent and the other parties hereto shall be in writing and shall be given to the addresses set forth in Section 13 hereof (or to such other address as may be substituted therefor by written notification to Escrow Agent and the other parties hereto). Notices to Escrow Agent shall be deemed to be given when actually received by Escrow Agent's Corporate Trust and Escrow Services Division<sup>1</sup>. Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by either Purchaser or Seller or by a person or persons authorized by either such party. Whenever under the terms hereof the time for giving a notice or performing an act falls upon a Saturday, Sunday, or banking holiday, such time shall be extended to the next day on which Escrow Agent is open for business.

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<sup>1</sup> DRAFTING NOTE: Replace with appropriate reference.

Section 2.8 Indemnification of Escrow Agent.

Purchaser and Seller, jointly and severally, shall be liable for and shall reimburse and indemnify Escrow Agent and hold Escrow Agent harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorney's fees and expenses) (collectively, for purposes of this Section 2.8 only, "**Agent Losses**") arising from or in connection with or related to this Escrow Agreement or being Escrow Agent hereunder (including but not limited to Agent Losses incurred by Escrow Agent in connection with its successful defense, in whole or in part, of any claim of gross negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require Escrow Agent to be indemnified for Agent Losses finally determined to have been primarily caused by its gross negligence or willful misconduct, and provided further that each of Purchaser and Seller, as between themselves, shall bear its share of such Agent Losses to the extent that such party's actions or omissions resulted in such Agent Losses. The provisions of this Section 2.8 shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 2.9 Removal of Escrow Agent; Resignation of Escrow Agent.

(a) By joint written instruction, Purchaser and Seller may remove Escrow Agent at any time by giving to Escrow Agent thirty (30) calendar days prior notice in writing signed by Purchaser and Seller. Escrow Agent may resign at any time by giving to Purchaser and Seller fifteen (15) calendar days prior written notice thereof.

(b) Within ten (10) calendar days after giving the foregoing notice of removal to Escrow Agent or receiving the foregoing notice of resignation from Escrow Agent, Purchaser and Seller shall jointly agree on and appoint a successor escrow agent. If a successor escrow agent has not accepted such appointment by the end of such 10-day period, Escrow Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent. The costs and expenses (including reasonable attorneys' fees and expenses) incurred by Escrow Agent in connection with such proceeding shall be deducted from the Escrow Funds.

(c) Upon receipt of the identity of the successor escrow agent, Escrow Agent shall deliver the Escrow Funds then held hereunder to the successor escrow agent, less any amounts to be deducted from the Escrow Funds for any remaining fees, costs and expenses or other obligations owed to Escrow Agent.

(d) Upon delivery of the Escrow Funds to successor escrow agent, Escrow Agent shall have no further duties, responsibilities or obligations hereunder.

Section 2.10 Ambiguities; Conflicting Instructions.

(a) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by Escrow Agent hereunder, Escrow Agent may, in its sole discretion, refrain from taking any action other than retaining possession of the Escrow Funds, unless Escrow Agent receives written instructions, signed by Purchaser and Seller, which eliminates such ambiguity or uncertainty.

(b) In the event of any dispute between or conflicting claims by or among Purchaser and Seller, and/or any other person or entity with respect to the Escrow Funds, Escrow Agent shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to the Escrow Funds so long as such dispute or conflict shall continue, and Escrow Agent shall not be or become liable in any way to either Purchaser or Seller for failure or refusal to comply with such conflicting claims, demands or instructions. To the extent reasonably practicable, the parties agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same. Escrow Agent shall be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing satisfactory to Escrow Agent or (ii) Escrow Agent shall have received security satisfactory to it sufficient to hold it harmless from and against any and all Losses which it may incur by reason of so acting. Escrow Agent may, in addition, elect, in its sole discretion, to commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary. The costs and expenses (including reasonable attorney's fees and expenses) incurred in connection with such proceeding shall be paid by one-half by Purchaser and one-half by Seller.

Section 2.11 Reliance.

The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the written direction or consent of both Purchaser and Seller or their respective agents, representatives, successors, or assigns, given in accordance with the provisions hereof. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's authority. Concurrent with the execution of this Escrow Agreement, the parties shall deliver to the Escrow Agent authorized signer's forms in the form of Exhibit C and Exhibit D to this Escrow Agreement.

Section 3. COMPENSATION OF ESCROW AGENT.

The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit E, which compensation shall be deducted from the Escrow Funds. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any material service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement, or the subject matter hereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, and the same shall be recoverable from Purchaser and Seller, as applicable. If any amount due to the Escrow Agent hereunder is not paid within thirty (30)

calendar days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law. The Escrow Agent shall have, and is hereby granted, a prior lien upon the Escrow Funds with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Escrow Funds.

Section 4. **TAXES.**

As long as this Escrow Account and Escrow Funds exist, Purchaser shall report and bear the burden of all taxes, if any, on any interest, dividends, income and/or losses associated with the Escrow Account, subject to the terms of this Escrow Agreement. Purchaser will report all income, if any, that is earned on, or derived from, the Escrow Funds as its income, in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto. Prior to closing, Purchaser shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate form W-9 or W-8 and other forms and documents that the Escrow Agent may reasonably request. Purchaser understands that if such tax reporting documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Escrow Agreement. To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of funds held or payments made hereunder, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Funds. Purchaser agrees to indemnify and hold the Escrow Agent harmless from and against any taxes, additions for late payment, interest, penalties and other expenses that may be assessed against the Escrow Agent on or with respect to any payment or other activities under this Escrow Agreement, unless any such tax, addition for late payment, interest, penalties and other expenses was directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 4 is in addition to the indemnification provided in Section 2.8 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 5. **GOVERNING LAW.**

This Escrow Agreement shall be interpreted, construed, enforced and administered in accordance with the internal substantive laws (and not the choice of law rules) of the State of Texas. Subject to Section 10.05 of the APA, any Disputes or Claims arising out of or in connection with this Escrow Agreement and the transactions contemplated or documents required hereby shall be filed in any court of competent jurisdiction in Travis County, Texas, or the federal courts of the United States of America located in the Western District of Texas, Austin Division. The parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any Dispute arising out of or relating to this Escrow Agreement or any of the transactions contemplated hereby brought in such court or any defense of inconvenient forum for the maintenance of such Dispute. Each party agrees that a judgment in any such Dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. This consent to venue is being given solely for purposes of this Escrow Agreement and the transactions contemplated hereunder, and is not intended to, and

shall not, confer consent to venue with respect to any other Dispute in which a party to this Escrow Agreement may become involved

Section 6. **AMENDMENTS AND MODIFICATIONS.**

Except as otherwise permitted herein, this Escrow Agreement may be modified only by a written amendment signed by all the parties hereto, and no waiver of any provision hereof shall be effective unless expressed in a writing signed by the party to be charged.

Section 7. **CUMULATIVE RIGHTS AND REMEDIES.**

The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.

Section 8. **REPRESENTATIONS.**

Purchaser and Seller each, as to itself only and not as to the others party hereto, represents and warrants (a) that this Escrow Agreement has been duly authorized, executed and delivered on its or his behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by such Person do not and will not violate any applicable law or regulation.

Section 9. **INVALIDITY, ILLEGALITY; UNENFORCEABILITY.**

The invalidity, illegality or unenforceability of any provision of this Escrow Agreement shall in no way affect the validity, legality or enforceability of any other provision; and if any provision is held to be enforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

Section 10. **TERMINATION.**

This Escrow Agreement shall terminate upon the distribution of the entire Escrow Funds.

Section 11. **EXCLUSIVE BENEFIT OF THE PARTIES**

This Escrow Agreement is for the exclusive benefit of the parties hereto, Surety, and those third party beneficiaries specifically described in Section 12 below, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.

Section 12. **THIRD PARTY BENEFICIARIES.**

(a) The parties hereby agree that each Member City is an intended and express third party beneficiary of all of Purchaser's representations, warranties, covenants, agreements, indemnities, insurance, bonds, and other obligations under this Escrow Agreement and each of the rights or benefits granted to Seller under this Escrow

Agreement. Purchaser shall have the same obligations to each Member City as if such Member City was a party to this Escrow Agreement. The Member Cities, as express third-party beneficiaries of the APA and of this Escrow Agreement, shall have the collective right, through their designated representative, to directly (i) enforce the terms and conditions of this Escrow Agreement against Purchaser and its successors and assigns, (ii) prevent any breach thereof, or (iii) exercise any other right, or seek any remedy, that may be available to Seller pursuant to this Escrow Agreement or pursuant to any other agreement, instrument or document executed in connection with the consummation of the transactions contemplated by this Escrow Agreement or otherwise related to the subject matter of this Escrow Agreement, in each instance to the same extent that the Member Cities would if they were each a direct party to this Escrow Agreement or such other agreement, instrument or document. No waiver, inaction, incapacity, dissolution, winding down, termination, forfeiture, receivership, bankruptcy or other event or prohibition affecting Seller or any Member City shall affect any other Member City's rights as an express third-party beneficiary of this Escrow Agreement. In addition, no party may agree to any changes, modifications or amendments to this Escrow Agreement without the prior written consent of each Member City, which consent may be given, conditioned, delayed or withheld by any Member City in its sole and absolute discretion. The parties acknowledge and agree that each Member City is expressly relying on the rights set forth in this section in favor of such Member City, that the approval of each Member City is required for the sale of the Purchased Assets by Seller to Purchaser pursuant to the APA, and that the Member Cities would not have approved of the terms of this Escrow Agreement or of the sale of the Purchased Assets to Purchaser pursuant to the APA without obtaining the express third party beneficiary rights in favor of the Member Cities set forth in this section.

(b) The parties hereby agree that Surety is an intended and express third party beneficiary of this Escrow Agreement as set forth in Section 2.3 hereof.

Section 13. **NOTICES.**

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally to, or by nationally recognized overnight courier service, or mailed by registered or certified mail (return receipt requested) if and when received by, or sent via electronic mail if and when received by, the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to Seller:

Texas Municipal Power Agency  
 2751 Nash Street, Suite 130  
 Bryan, Texas 77802  
 Attn: General Manager  
 E-Mail: BKahn@texasmpa.org

(b) If to Purchaser:

Gibbons Creek Environmental Redevelopment Group, LLC  
435 S. Tryon Street, Suite 180  
Charlotte, NC 28202  
Attention: Mr. Scott Reschly  
E-Mail: sreschly@charah.com

(c) If to Escrow Agent:

NAME

\_\_\_\_\_

Attention: \_\_\_\_\_

Fax no.: \_\_\_\_\_

E-mail: [ \_\_\_\_\_ ]

Section 14. **COUNTERPARTS.**

This Escrow Agreement may be executed in counterparts and delivered by facsimile or electronic (.pdf) format, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

Section 15. **SECTION HEADINGS.**

The headings of sections in this Escrow Agreement are provided for convenience only and will not affect its construction or interpretation.

Section 16. **CONSTRUCTION OF ESCROW AGREEMENT.**

In the event that Purchaser and Seller have a dispute regarding the interpretation and/or construction of this Escrow Agreement, it is agreed that neither Purchaser nor Seller are deemed to be the drafter or author of any term or provision of this Escrow Agreement. Accordingly, in the event of such a dispute, Purchaser and Seller agree that no term or provision of this Escrow Agreement shall be construed against either Purchaser or Seller and the doctrine *contra proferentem* shall not apply or be asserted by either Purchaser or Seller against the other party.

[Signature page follows]

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

PURCHASER:

Gibbons Creek Environmental Redevelopment  
Group, LLC,  
a Texas limited liability company

By: Charah, LLC  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ESCROW AGENT:

NAME,  
as Escrow Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

SELLER:

Texas Municipal Power Agency

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

*EXHIBIT A to Escrow Agreement*

**PROJECT SCHEDULE**

*EXHIBIT B to Escrow Agreement*

**Agency and Custody Account Direction  
For Cash Balances**

Money Market Deposit Accounts

Direction to use the following Money Market Deposit Accounts for Cash Balances for the escrow account or accounts (the “**Account**”) established under the Escrow Agreement to which this Exhibit B is attached.

You are hereby directed to deposit, as indicated below, or as I shall direct further in writing from time to time, all cash in the Escrow Account in the following money market deposit account:

\_\_\_\_\_ Money Market Deposit Account (“**MMDA**”)

I understand that amounts on deposit in the MMDA are insured, subject to the applicable rules and regulations of the Federal Deposit Insurance Corporation (“**FDIC**”), in the basic FDIC insurance amount of \$250,000 per depositor, per insured bank. This includes principal and accrued interest up to a total of \$250,000.

I acknowledge that I have full power to direct investments of the Escrow Account.

I understand that I may change this direction at any time and that it shall continue in effect until revoked or modified by me by written notice to you.

\_\_\_\_\_

Authorized Representative

[Authorized Representative]

\_\_\_\_\_

Date

[Date]

\_\_\_\_\_  
[Authorized Representative]

*EXHIBIT C to Escrow Agreement*

**CERTIFICATE AS TO AUTHORIZED SIGNATURES**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Gibbons Creek Environmental Redevelopment Group, LLC and are authorized to initiate and approve transactions of all types for the Escrow Account or accounts established under the Escrow Agreement to which this Exhibit C is attached, on behalf of Purchaser.

Name / Title    Specimen Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

*EXHIBIT D to Escrow Agreement*

**CERTIFICATE AS TO AUTHORIZED SIGNATURES**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Texas Municipal Power Agency and are authorized to initiate and approve transactions of all types for the Escrow Account or accounts established under the Escrow Agreement to which this Exhibit D is attached, on behalf of Seller.

Name / Title    Specimen Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

*EXHIBIT E to Escrow Agreement*

**Fee Schedule**

Acceptance Fee: Waived

Initial Fees as they relate to \_\_\_\_\_ acting in the capacity of Escrow Agent: includes review of the Escrow Agreement; acceptance of the Escrow appointment; setting up of Escrow Account(s) and accounting records; and coordination of receipt of funds for deposit to the Escrow Account(s).

Acceptance Fee payable at time of Escrow Agreement execution.

Escrow Agent Annual Administration Fee: \$[\_\_\_\_].00

For ordinary administrative services by Escrow Agent: includes daily routine account management; investment transactions; cash transaction processing (including wire and check processing); monitoring claim notices pursuant to the agreement; disbursement of funds in accordance with the agreement; and mailing of trust account statements to all applicable parties. Additionally, a sweep fee of \_\_\_\_ basis points will be assessed by the Escrow Agent on the average monthly balance for Money Market (sweep) Investments. Float credit received by the bank for receiving funds that remain uninvested are deemed part of the Paying Agent/Escrow Agent's compensation.

Tax reporting is included for up to two (2) entities. Should additional reporting be necessary, a \$25 per reporting charge will be assessed.

This fee is payable in advance, with the first year fee due upon opening of the account. The Annual Fee covers a full year or any part thereof, and therefore will not be prorated or refunded in the year of early termination.

\_\_\_\_\_'s bid is based on the following assumptions:

- Number of Escrow Accounts to be established: One (1)
- Number of Deposits to Escrow Account: One (1)
- Number of Withdrawals from Escrow Funds: approximately 34
- Term of Escrow: approximately 3 years
- APPOINTMENT SUBJECT TO RECEIPT OF REQUESTED DUE DILIGENCE INFORMATION AS PER THE USA PATRIOT ACT
- THIS PROPOSAL ASSUMES THAT BALANCES IN THE ACCOUNT WILL BE INVESTED IN MONEY MARKET FUNDS
- ALL FUNDS WILL BE RECEIVED FROM OR DISTRIBUTED TO A DOMESTIC OR AN APPROVED FOREIGN ENTITY

- IF THE ACCOUNT DOES NOT OPEN WITHIN THREE (3) MONTHS OF THE DATE SHOWN BELOW, THIS PROPOSAL WILL BE DEEMED TO BE NULL AND VOID

Out-of-Pocket Expenses: At Cost

We will charge for out-of-pocket expenses in response to specific tasks assigned by the client or provided for in the Escrow Agreement. Possible expenses would be, but are not limited to, express mail and messenger charges, travel expenses to attend closing or other meetings. There are no charges for indirect out-of-pocket expenses.

This fee schedule is based upon the assumptions listed above which pertain to the responsibilities and risks involved in \_\_\_\_\_ undertaking the role of Escrow Agent. These assumptions are based on information provided to us as of the date of this fee schedule. Our fee schedule is subject to review and acceptance of the final documents. Should any of the assumptions, duties or responsibilities change, we reserve the right to affirm, modify or rescind our fee schedule. Extraordinary services (services other than the ordinary administration services of Escrow Agent described above) are not included in the annual administration fee and will be billed as incurred at the rates in effect from time to time.