TEXAS MUNICIPAL POWER AGENCY

BOARD OF DIRECTORS MEETING

CAMBRIA HOTEL RICHARDSON
3605 SHIRE BLVD.
RICHARDSON, TEXAS

THURSDAY, December 10, 2020
9:30 AM

Preliminary matters:

- Call to order
- Public comments

The following matters are scheduled for discussion and for possible action:

1. Committee Reports

   Audit and Budget Committee report relating to the results of the December 10, 2020 Committee meeting.

2. Consent Agenda Items:

   A. Consider approval of meeting minutes of the September 10, 2020 and November 12, 2020 Board of Directors meetings.

3. Planning & Operating Committee report relating to results of the Planning & Operating Committee meeting of December 9, 2020.

4. Status report relating to mine reclamation and land matters.

5. Resolution no. 2020-12-1**,** relating to the authorization and issuance of Texas Municipal Power Agency Mine Reclamation Notes, taxable series; providing the terms, conditions, and specifications for such notes; providing for the notes to be issued in one or more series; authorizing the execution of one or more note purchase agreements for the notes; declaring such notes to constitute mine reclamation bonds of the agency; providing for the notes to evidence the payment obligations of the agency with respect to one or more letters of credit to be delivered to the Texas Railroad Commission on behalf of the agency by Wells Fargo Bank, National Association, pledging certain revenues of the agency in payment of such obligations and interest thereon; approving the form, and authorizing the execution and delivery, of a paying agent/registrar agreement and other documents and agreements as required by and associated with such notes; approving and authorizing certain authorized officers and employees to act on behalf of the agency in delivering such notes within the limitations and procedures specified herein, and resolving other matters incident and related thereto.

6. Status report relating to Power Production environmental and regulatory compliance matters.

7. Status report relating to the Decommissioning Plan.

8. FY20 Year-end Budget Status Report.

9. Resolution No. 2020-12-2, approving the annual proportional share calculation of Member City ownership interests in Agency assets; and resolving matters incidental and related thereto.

10. Resolution No. 2020-12-3, receiving the audited financial statements of the Agency for the fiscal year ended September 30, 2020; and resolving matters incidental and related thereto.

11. Resolution No. 2020-12-4, authorizing a refund of transmission revenues to the Member Cities; and resolving matters incidental and related thereto.

12. Status report relating to the TMPA transmission operations and five-year transmission capital project plan.

13. Resolution No. 2020-12-5, amending the FY2021 Annual Transmission System Capital Budget by appropriating funds for the Denton West to Jim Christal Transmission Line Pole Replacement Project; and resolving matters incidental and related thereto.

14. Resolution No. 2020-12-6, amending the FY2021 Annual Transmission System Capital Budget by appropriating funds for the Shelby to Nevada Transmission Line Tower Replacement Project; and resolving matters incidental and related thereto.

15. Resolution No. 2020-12-7, amending the FY2021 Annual Transmission System Capital Budget by appropriating funds for the Ben Davis to Royse Transmission Line Tower Replacement Project; and resolving matters incidental and related thereto.

16. Executive session will be held pursuant to the Open Meetings Act (Chapter 551, Government Code) for the following items:

    A. General Manager Annual Performance Review (personnel matter under Section 551.074, Government Code).

    B. Sale of the Gibbons Creek Steam Electric Station. (legal advice under Section 551.071, Government Code, value of real property, under Section 551.072, Government Code, and competitive matters under Section 551.086, Government Code.)

    C. Real property matters – Liquidation Strategy for Mine Property (value of real property under Section 551.072, Government Code, and legal advice under Section 551.071, Government Code).

In the Board's discretion, the Board may discuss and/or take action on one or more of the above executive session items in open meeting. In regard to items scheduled on this agenda for discussion and/or action in the open portion of the meeting, the Board may, in its discretion, address one or more of such items in executive session if and to the extent permitted by the Texas Open Meetings Act.

17. Resolution No. 2020-12-8, authorizing the sale of the Gibbons Creek Steam Electric Station; describing the conditions and circumstances for the sale, and the public purposes that will be achieved; and resolving matters incidental and related thereto.

18. Resolution No. 2020-12-9, amending the annual budget for the generation business for the Fiscal Year October 1, 2020 through September 30, 2021 (the “FY21 Generation Budget”) for the purpose of appropriating funds in connection with the sale of the Gibbons Creek Steam

Electric Station, including for the establishment of an environmental escrow account; amending the charges associated with the FY21 Generation Budget (the "FY21 Generation Budget Charges"); and resolving matters incidental and related thereto.

19. Resolution No. 2020-12-10, amending the fiscal year 2021 budget for the Mine Business; appropriating funds therefore; providing for said budget administration; providing for severability; and resolving matters incidental and related thereto.

20. Resolution No. 2020-12-11, amending charges for the Mine Business; designating an effective date for the charges; authorizing and directing that written notice be mailed to the Member Cities setting forth the charges; and resolving matters incidental and related thereto.

21. Resolution No. 2020-12-12, amending the fiscal year 2021 budget for the Transmission Business; appropriating funds therefore; providing for said budget administration; providing for severability; and resolving matters incidental and related thereto.

22. Future Meeting Dates.

23. Adjourn.

December 10, 2020

AGENDA ITEM NO. 1

SUBJECT: Committee Reports

- Audit and Budget Committee report relating to the results of the December 10, 2020 Committee meeting.

BACKUP MATERIAL:

- Audit and Budget Committee meeting package can be viewed on the Board's secure website in the December 10, 2020 Board Meeting folder.

December 10, 2020

AGENDA ITEM NO. 2

SUBJECT: Consent Agenda Items

DISCUSSION: These items, since they deal with routine business, have been grouped together as consent items so that they can be approved with a single vote of the Board.

If a Board Member desires to discuss any of these items, the Board Member may so request at the meeting, and the matter will be discussed and voted on separately from the remaining consent items.

It is expected that the use of a consent agenda will streamline the decision-making process and allow the Board time to focus on more important items.

BACKUP MATERIAL:

Consent Agenda Item(s):

A. Consider approval of meeting minutes of the September 10, 2020 and November 12, 2020 Board of Directors meetings.

ACTION REQUESTED: Consideration and action on the Consent Agenda Item(s).

TEXAS MUNICIPAL POWER AGENCY

BOARD OF DIRECTORS MEETING MINUTES

VIA VIDEO CONFERENCE CALL

DUE TO THE EXISTENCE OF AN EMERGENCY RELATED TO THE CORONA VIRUS EPIDEMIC, AND IN ACCORDANCE WITH GOVERNOR ABBOTT'S SUSPENSION OF CERTAIN PROVISIONS OF THE TEXAS OPEN MEETINGS ACT, MEMBERS OF THE PUBLIC MAY ATTEND BY USING THE FOLLOWING FREE-OF-CHARGE VIDEOCONFERENCE LINK TO THE VIDEOCONFERENCE CALL:

https://us02web.zoom.us/meeting/register/tZ0rcOGurDwsHNOo7Py66ZnP2DxvYtPjZ-nS

THURSDAY, September 10, 2020
10:00 AM

President Jefferies called the meeting to order at 10:03 AM.

The following people were present at the meeting.

Board Members:

Buppy Simank and Kean Register – City of Bryan
James Ratliff and Tom Jefferies – City of Garland
Sue Ann Harting and Summer Spurlock – City of Greenville
Bill Cheek and Chris Watts – City of Denton

Staff:

Bob Kahn, Craig York, Lyndi Birkhead, Jan Horbaczewski, Daniel Meadows, Murphy Hawkins, and Tracy Stracener

Others:

Carl Shahady – Tiemann, Shahady & Hamala, P.C.
Gary Miller, Doug Lyles, Gary Massey, Will Smith and Joe Hegwood – BTU
Terry Naulty, Cassandra Ogden, Nick Vincent, and Antonio Puente – Denton Municipal Electric
Jeff Janke, Tom Hancock, Steve Martin, and Darrell Cline – Garland Power & Light
Alicia Hooks and Cliff Copeland – GEUS
Steven Adams - SPFI
Kamie VanDeusen
Alan Pepper
Mike Dunn
Morris Reedy
Natalie Johnson
Genny Carillo
Catherine Fraser
Janet Dudding
Keerthana Rameshbabu
Larry Oliver

Lauren Aldoroty
Miranda Peterson
Pamela Johnson
Rachel Porter
Raymond Tarpley
Shane Johnson
Tazim Jamal
Zak D
Kevin Richardson
Donna Hanna-Calvert
Audrey Patton
Scott Reschly
Richard Howe
John Ivy
Others attended by phone or without adding their name

Public Comments:

Mr. Jefferies asked for comments from the audience. Approximately 17 people offered comments relating to their opposition to the power plant being re-opened for operations.

1. **Resolution No. 2020-9-1, acknowledging the contributions of David Bairrington to the Agency; expressing the Agency's appreciation for 6 years of dedicated service; and expressing the hopes of the Agency for an enjoyable and fruitful future.**

Mr. Cheek moved, seconded by Mr. Register, approval of resolution no. 2020-9-1.

Motion carried; voting as follows:

Cheek – Aye	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

2. **Consent Agenda Items:**

   A. **Consider approval of meeting minutes of the September 9, 2020 Board of Directors meeting.**

Mr. Ratliff moved, seconded by Ms. Harting, approval of all consent agenda items.

Motion carried; voting as follows:

Cheek – Aye	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

3. **Planning & Operating Committee report relating to results of the Planning & Operating Committee meeting of June 3, 2020.**

An update was provided by Mrs. Hooks.

4. Status report relating to mine reclamation and land matters.

An update was provided by Mr. Horbaczewski.

5. Status report relating to Power Production environmental and regulatory compliance matters.

An update was provided by Mr. York.

6. Status report relating to the Decommissioning Plan.

An update was provided by Mr. York.

7. FY20 Third Quarter Budget Updates.

An update was provided by Mrs. Birkhead.

8. Status report relating to the TMPA transmission operations and five-year transmission capital project plan.

An update was provided by Mr. Cline.

9. Resolution No. 2020-9-2, amending the FY2020 Annual Transmission System Capital Budget by appropriating funds for the Olinger to Greenville Airport Marker Project; and resolving matters incidental and related thereto.

Mr. Watts moved, seconded by Mr. Ratliff, approval of resolution no. 2020-9-2.

Motion carried; voting as follows:

Cheek – Aye	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

10. Executive Session.

Mr. Jefferies announced that the Board would convene in executive session pursuant to Sections 551.071, 551.072, and 551.086 of the Government Code.

The open session was recessed, and the executive session was called to order by Mr. Jefferies at 11:02 AM.

The open session resumed at approximately 12:02 PM.

11. Motion to ratify the appeal of the Attorney General's decision relating to the Sierra Club's Public Information Act Request.

Mr. Cheek moved, seconded by Mr. Simank, approval of the motion.

Motion carried; voting as follows:

Cheek – Aye	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

12. Resolution No. 2020-9-3, authorizing a contract for surveying services relating to the Gibbons Creek Lignite Mine; and resolving matters incidental and related thereto.

After receiving clarification concerning the surveyor's scope of work from Mr. Hawkins, Mr. Ratliff moved, seconded by Ms. Harting, approval of resolution no. 2020-9-3.

Motion carried; voting as follows:

Cheek – Aye	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

13. Resolution No. 2020-9-4, authorizing the employment of Shackelford, Bowen, McKinley & Norton, LLP to perform legal services relating to the potential sale of Agency properties; and resolving matters incidental and related thereto.

Mr. Cheek moved, seconded by Mr. Simank, approval of resolution no. 2020-9-4.

Motion carried; voting as follows:

Cheek – Aye	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

14. Election of Officers (President, Vice President, and Secretary) and approval of appointments to standing committees (Audit & Budget Committee and Personnel Committee) in accordance with Agency Rules & Regulations.

Mr. Ratliff moved to nominate Ms. Harting for the office of President, Mr. Watts for the office of Vice President, and Mr. Simank for the office of Secretary-Treasurer. It was seconded by Mr. Register. Voting as follows:

Cheek – Aye	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

Ms. Harting named the committees as follows:

Personnel – Harting - Chair, Register, Jefferies, Cheek
Audit and Budget – Watts – Chair, Ratliff, Simank, Spurlock

Mr. Cheek moved, seconded by Mr. Ratliff, for approval of the committees. Voting as follows:

Cheek – Aye	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

15. Future meeting dates and subjects.

By general consensus of the Board, the next Board meeting is tentatively set for December 10, 2020 in Garland.

16. Adjourn.

By general consensus of the Board, the meeting adjourned at approximately 12:17 PM.

Tracy Stracener
Assistant Secretary
TMPA Board of Directors

TEXAS MUNICIPAL POWER AGENCY

BOARD OF DIRECTORS MEETING MINUTES

VIA VIDEO CONFERENCE CALL

DUE TO THE EXISTENCE OF AN EMERGENCY RELATED TO THE CORONA VIRUS EPIDEMIC, AND IN ACCORDANCE WITH GOVERNOR ABBOTT'S SUSPENSION OF CERTAIN PROVISIONS OF THE TEXAS OPEN MEETINGS ACT, MEMBERS OF THE PUBLIC MAY ATTEND BY USING THE FOLLOWING FREE-OF-CHARGE VIDEOCONFERENCE LINK TO THE VIDEOCONFERENCE CALL:

https://us02web.zoom.us/meeting/register/tZIpde-orDIsH9WggGMI1ecTZrUWmz8ejHli

THURSDAY, November 12, 2020
9:00 AM

President Harting called the meeting to order at 9:02 AM.

The following people were present at the meeting.

Board Members:

Buppy Simank and Kean Register – City of Bryan
James Ratliff and Tom Jefferies – City of Garland
Sue Ann Harting and Summer Spurlock – City of Greenville
Chris Watts – City of Denton
Bill Cheek - Absent

Staff:

Bob Kahn, Craig York, Lyndi Birkhead, Jan Horbaczewski, Murphy Hawkins, and Tracy Stracener

Others:

Carl Shahady – Tiemann, Shahady & Hamala, P.C.
Gary Miller and Joe Hegwood – BTU
Terry Naulty, Cassandra Ogden, and Antonio Puente – Denton Municipal Electric
Jeff Janke, Tom Hancock, Steve Martin, and Darrell Cline – Garland Power & Light
Alicia Hooks and Cliff Copeland – GEUS
Steven Adams – SPFI
Dan Culver
Doug Lyles
Gary Massey
Greg Buis
Jerry Fielder
Kristian Cantens
Mark Zimmerer
Steven Johnson
Terri Hester

Pamela Johnson
Raymond Tarpley
Others attended by phone or without adding their name

Public Comments:

Ms. Harting asked for comments from the audience. Approximately 2 people offered comments relating to the sale of the power plant.

1. Executive Session.

Ms. Harting announced that the Board would convene in executive session pursuant to Sections 551.071, 551.072, and 551.086 of the Government Code.

The open session was recessed, and the executive session was called to order by Ms. Harting at 9:11 AM.

The open session resumed at approximately 9:32 AM.

2. Resolution No. 2020-11-1, authorizing the execution of a surface waiver agreement; and resolving matters incidental and related thereto.

Mr. Ratliff moved, seconded by Mr. Jefferies, approval of resolution no. 2020-11-1.

Motion carried; voting as follows:

Cheek – Absent	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

3. Resolution No. 2020-11-2, approving an Amended and Restated Note Purchase Agreement relating to Texas Municipal Power Agency System Subordinated System Net Revenue/Transmission Revenue Converting Security Direct Purchase Revolving Notes, Series A.

Mr. Jefferies moved, seconded by Mr. Ratliff, approval of resolution no. 2020-11-2.

Motion carried; voting as follows:

Cheek – Absent	Harting – Aye
Jefferies – Aye	Ratliff – Aye
Register – Aye	Simank– Aye
Spurlock – Aye	Watts – Aye

4. Future meeting dates and subjects.

By general consensus of the Board, the next Board meeting is tentatively set for December 10, 2020 in Richardson.

16. Adjourn.

By general consensus of the Board, the meeting adjourned at approximately 9:44 AM.

Tracy Stracener
Assistant Secretary
TMPA Board of Directors

December 10, 2020

AGENDA ITEM NO. 3

SUBJECT: Planning & Operating Committee report relating to results of the Planning & Operating Committee meeting of December 9, 2020.

DISCUSSION: The P&O Committee Chair will present major discussion topics and action items taken at the December 9, 2020 P&O Committee meeting.

BACKUP MATERIAL: None.

ACTION REQUESTED: Discussion.

December 10, 2020

AGENDA ITEM NO. 4

SUBJECT: Status report relating to mine reclamation and land matters.

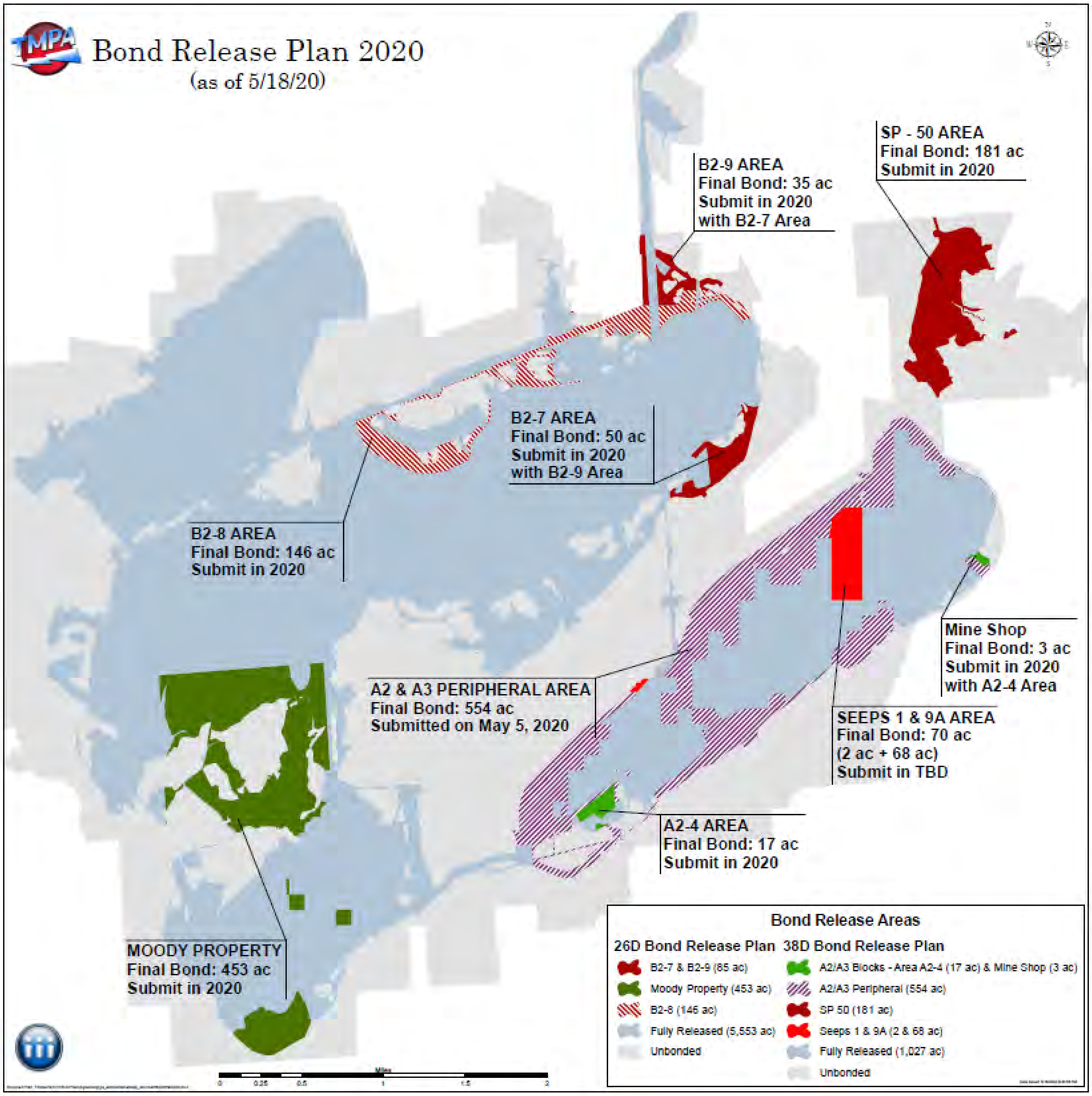
DISCUSSION:

The 2020 Bond Release Plan is summarized in Table 1 and depicted in Figure 1. Items shown in blue font in the table have been completed: items in green were submitted in 2020 and are in review at the Railroad Commission; items in red remain to be submitted.

Table 1 – Plan and Status of Final Bond Release (as of 11/20/20)

Packet(s)	Area (acres)	Owned by TMPA (acres)	Owned by 3rd parties (acres)	Status
26D – Mine shop facilities	71	0	71	Released 2000
26D – Gas well pads and roads	98	74	24	Released 2001-2006
26D – A1 Block	904	343	561	Released 01/15/13
38D – Rev. 14 (map adjustments)	295	257	38	Approved 07/31/13
26D – Rev. 21 (map adjustments)	254	212	42	Approved 12/8/14
26D – Falco + Ciesielski property	111	0	111	Released 08/25/15
38D – Rail spur (Permit 38D part)	55	55	0	Released 10/20/15
38D – Rev. 35 (map adjustments)	111	82	29	Approved 02/7/17
26D – Rev. 40 (map adjustments)	3	3	0	Approved 02/23/18
26D – Kolbachinski property	7	0	7	Released 02/27/18
26D – Rail spur (Permit 26D part)	131	131	0	Released 06/5/18
38D – A2/A3 Blocks (core area)	971	957	14	Approved 06/18/19
26D – "Big" application	4,293	4,045	248	Released 01/14/20
Total Released	**7,304 ac (83% of total)**	**6,159 ac (86% of TMPA land)**	**1,145 ac (69% of 3rd parties' land)**	
38D - A2/A3 Blocks (peripheral area), incl. Phase I and II release of Pond SP-50 area	**554**	**544**	**10**	**Submitted 05/5/20**
26D - Area B2-7 + B2-9	**85**	**85**	**0**	**Submitted 09/14/20**
26D - Moody property	**453**	**0**	**453**	**Submitted 10/7/20**
26D - Area B2-8	146	146	0	Submit Spring 2021
38D - A2/A3 Blocks – Area A2-4 (17 ac) + Mine Shop (3 ac)	20	20	0	Submit Spring 2021
38D - Pond SP-50	181	181	0	Submit Spring 2021
38D - Seep buffer areas	48	48	0	Submit Spring 2021
38D - Seeps 1 and 9A	22	22	0	Submit – TBD
Sub-Total Remaining	**1,509**	**1,046**	**463**	
TOTAL (both permits)	**8,813**	**7,205**	**1,608**	

Figure 1 – Status of Bond Release (as of 11/20/20)



Status of full bond release on TMPA mine property proposed for sale (10,611 acres)

As of 11/20/20, the bonded acreage on TMPA property proposed for sale is down to 817 acres (8% of the 10,611 acres proposed for sale). Thus, 92% of the sale area is completely unencumbered by reclamation requirements.

Permit 38D Peripheral Area Bond Release

The Permit 38D Peripheral Area bond release application was submitted on 05/5/20. RCT Staff declared it administratively complete on 08/3/20 and issued their Technical Analysis recommending approval on 08/10/20. The application is now in the hands of the Administrative Law Judge in the Hearings Division.

Once approved, this will reduce the bonded acreage on TMPA property proposed for sale by approximately 544 acres (another 5% of the 10,611 acres proposed for sale, bringing the total unencumbered by reclamation requirements to 97%).

Next bond release application – Permit 26D, Areas B2-7 and B2-9 (85 acres)

TMPA submitted a bond release application for Areas B2-7 and B2-9 (85.1 acres) on 09/14/20. All this land is on TMPA property. Once approved, this will reduce the bonded acreage on TMPA property proposed for sale by 85 acres (another 1% of the 10,611 acres proposed for sale, bringing the total unencumbered by reclamation requirements to 98%).

Plan for Bond Release on Moody Property (453 acres)

On 10/7/20, TMPA submitted a bond release application for the Moody Property (452.8 acres) (shown in dark green on Figure 1). The Railroad Commission inspected this area on 11/4/20.

Mine Acid Seeps

TMPA met with the RCT on 02/15/19 to discuss its proposed Seep 9A mitigation plan. This consists, in part, of reducing the hydrostatic pressure that is driving Seep 9A by permanently lowering the water levels in End Lakes A3P-1 and A3P-2 by about 3 feet.

Godsey Engineering prepared a design for the lowering of the lakes and the modifications to the end lake spillways started in October 2020. Piezometers have been installed in the seep area itself to monitor the level of the water table and the chemistry of the water as the levels in the end lakes are lowered.

Agricultural Land Use Tax Valuation

TMPA received an agricultural land use valuation for the mine property on 01/1/17 and has paid the following taxes:

2017 – $14,487
2018 – $15,388
2019 – $15,427

The annual tax payments are accounted for in TMPA's Mine budget through FY22 (to account for potential delays in the sale of the mine property due to COVID-19).

Pond SP-50

Staff has been focused on establishing trees and grass on the islands at Pond SP-50 since they were constructed in November 2017. The standard set by the Railroad Commission is 30 live trees per acre. The islands measure approximately 12 acres, so the requirement is 360 trees.

A survey conducted in July 2020 gave a count of 950 trees (the previous survey in May 2019 was approximately 1,300 trees). TMPA will submit a final bond release application for the Pond SP-50 area after the Permit 38D Peripheral Area Bond Release has been approved, projected to occur in late CY20 or early CY21.

Archeological Exhibit

In view of the proposed relocation to offices in Bryan in early 2020, TMPA is raising the priority for the transfer of its archeological exhibit currently located in the lobby of the Administration Building. On 04/3/20, the Texas Historical Commission (THC) formally gave its approval for the exhibit to be moved to Bryan City Hall and TMPA signed an agreement with the City of Bryan on 06/3/20.

Preparations are being made to move the exhibit once COVID-19 restrictions have been lifted.

Geological boring data

TMPA is sorting through its geological logs (some of which date back to Texas Municipal Power Pool days in the 1970s) and is setting these aside to be inventoried and prepared for transfer to the Bureau of Economic Geology in Austin. The total number of archive boxes is estimated to be about one hundred. This material will be moved once COVID-19 restrictions have been lifted.

Potential delay in sale of mine property and resulting impact to the Mine Division budget

In previous years, budgets have assumed that the mine property would be sold in FY21 and therefore the only costs estimated beyond that date were those associated with long-term monitoring and permitting associated with Seeps 1 and 9A.

However, if the mine is not sold in FY21 owing to COVID-19 and adverse market conditions, there will be continuing mine land maintenance costs of about $405K per year.

BACKUP MATERIAL: None

ACTION REQUESTED: None

Jan K. Horbaczewski
11/20/2020

Jan K. Horbaczewski

December 10, 2020

AGENDA ITEM NO. 5

SUBJECT: Resolution no. 2020-12-1**,** relating to the authorization and issuance of Texas Municipal Power Agency Mine Reclamation Notes, taxable series; providing the terms, conditions, and specifications for such notes; providing for the notes to be issued in one or more series; authorizing the execution of one or more note purchase agreements for the notes; declaring such notes to constitute mine reclamation bonds of the agency; providing for the notes to evidence the payment obligations of the agency with respect to one or more letters of credit to be delivered to the Texas Railroad Commission on behalf of the agency by Wells Fargo Bank, National Association, pledging certain revenues of the agency in payment of such obligations and interest thereon; approving the form, and authorizing the execution and delivery, of a paying agent/registrar agreement and other documents and agreements as required by and associated with such notes; approving and authorizing certain authorized officers and employees to act on behalf of the agency in delivering such notes within the limitations and procedures specified herein, and resolving other matters incident and related thereto.

DISCUSSION: Each year, TMPA must adjust the amount of and renew its mine reclamation bonding with the Railroad Commission of Texas ("RCT). For the 2021 renewal, bond renewal documents must be filed with the RCT by no later than February 18, 2021.

The current bonding and proposed bonding are as follows:

	Current Bonding	Proposed Bonding
Permit 26D	$11.6 million collateral bond	$3.4 million collateral bond
Permit 38D	$6.5 million collateral bond	$6.5 million collateral bond

The Resolution would enable TMPA to renew the reclamation bonds by authorizing the issuance of mine reclamation notes. The notes secure the letters of credit which serve as collateral for the bonds.

BACKUP MATERIAL: None.

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-1.

RESOLUTION NO. 2020-12-1

ADOPTED BY THE
BOARD OF DIRECTORS
OF THE
TEXAS MUNICIPAL POWER AGENCY

DECEMBER 10, 2020

AUTHORIZING THE ISSUANCE OF

TEXAS MUNICIPAL POWER AGENCY
MINE RECLAMATION NOTES
TAXABLE SERIES

TABLE OF CONTENTS

RESOLUTION 2020-12-1

RELATING TO THE AUTHORIZATION AND ISSUANCE OF TEXAS MUNICIPAL POWER AGENCY MINE RECLAMATION NOTES, TAXABLE SERIES; PROVIDING THE TERMS, CONDITIONS, AND SPECIFICATIONS FOR SUCH NOTES; PROVIDING FOR THE NOTES TO BE ISSUED IN ONE OR MORE SERIES; AUTHORIZING THE EXECUTION OF ONE OR MORE NOTE PURCHASE AGREEMENTS FOR THE NOTES; DECLARING SUCH NOTES TO CONSTITUTE MINE RECLAMATION BONDS OF THE AGENCY; PROVIDING FOR THE NOTES TO EVIDENCE THE PAYMENT OBLIGATIONS OF THE AGENCY WITH RESPECT TO ONE OR MORE LETTERS OF CREDIT TO BE DELIVERED TO THE TEXAS RAILROAD COMMISSION ON BEHALF OF THE AGENCY BY WELLS FARGO BANK, NATIONAL ASSOCIATION, PLEDGING CERTAIN REVENUES OF THE AGENCY IN PAYMENT OF SUCH OBLIGATIONS AND INTEREST THEREON; APPROVING THE FORM, AND AUTHORIZING THE EXECUTION AND DELIVERY, OF A PAYING AGENT/REGISTRAR AGREEMENT AND OTHER DOCUMENTS AND AGREEMENTS AS REQUIRED BY AND ASSOCIATED WITH SUCH NOTES; APPROVING AND AUTHORIZING CERTAIN AUTHORIZED OFFICERS AND EMPLOYEES TO ACT ON BEHALF OF THE AGENCY IN DELIVERING SUCH NOTES WITHIN THE LIMITATIONS AND PROCEDURES SPECIFIED HEREIN, AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.

WHEREAS, the Texas Municipal Power Agency ("TMPA"), a municipal corporation and political subdivision of the State of Texas established pursuant to the provisions of Chapter 163 of the Texas Utilities Code, and the City of Bryan, the City of Denton, the City of Garland, and the City of Greenville, Texas, each of which cities is a municipal corporation of the State of Texas and a home rule city (herein collectively "Cities" or individually "City"); and

WHEREAS, in 1975, in recognition that each City desired an economical, reliable source of power and energy to meet the growing demands of its customers, the Cities enacted concurrent ordinances, as defined by Section 163.051, Texas Utilities Code, and its predecessors, creating TMPA for the purpose of generation, transmission and sale or exchange of electric energy to the Cities; and

WHEREAS, pursuant to S.B. 776, enacted by the 84th Texas Legislature, the Cities, being all of the existing "Participating Public Entities" in TMPA, have elected to adopt the powers and governance provisions for TMPA as provided under Subchapter C-1 of Chapter 163,Texas Utilities Code (the "TMPA Act"), by adoption of concurrent ordinances; and

WHEREAS, until on or about September 30, 2018 each City purchased power and energy from TMPA in accordance with a power sales contract between the Cities and TMPA (as amended from time to time to the date thereof, the "PSC"); and

WHEREAS, the Agency Debt Discharge Date occurred on September 1, 2018, and term of the PSC has now terminated in accordance with the terms thereof; and

WHEREAS, in anticipation of the termination of the PSC, TMPA and each City determined that further contractual agreements between and among TMPA and each City to address operations of TMPA in matters other than the purchase of power and energy and to provide for the mutual rights and responsibilities of TMPA and the Cities as to the operations of TMPA, including asset management, decommissioning, environmental remediation, indemnities, and the winding up of affairs of TMPA upon dissolution, are necessary and appropriate and consistent with the TMPA Act; and

WHEREAS, such contractual agreements have been included in a Joint Operating Agreement between TMPA and each City, which is effective as of September 1, 2016, as amended by (i) Amendment No. 1 to the Joint Operating Agreement, which amendment has now become ineffective, (ii) Amendment No. 2 to the Joint Operating Agreement, effective as of September 22, 2017 and (iii) Amendment No. 3 to the Joint Operating Agreement, effective as of September 17, 2019 (as amended, such agreement is hereinafter the "JOA"); and

WHEREAS, the TMPA Act, Chapter 1371, Texas Government Code, as amended ("Chapter 1371") and other laws of the State of Texas authorize TMPA to issue bonds and other indebtedness secured from all or part of its revenues after first providing for the payment of its operating and maintenance costs; and

WHEREAS, on December 12, 2019, the Board of Directors of TMPA (the "Board") adopted Resolution Number 2019-12-2 (the "Series 2020 MRB Resolution") authorizing the issuance of up to $20,000,000 of Texas Municipal Power Agency Mine Reclamation Notes Taxable Series; and

WHEREAS, the General Manager of TMPA, acting in accordance with delegations made to him as the "Pricing Officer" of TMPA pursuant to the Series 2020 MRB Resolution approved the issuance of the (i) Texas Municipal Power Agency Mine Reclamation Notes, Taxable Series G, in the principal amount of $11,605,000 (the "2020 Taxable Series G Notes"), securing a letter of credit provided by Wells Fargo Bank, National Association, delivered to the Railroad Commission of Texas for Surface Mining and Reclamation Permit No. 26D and (ii) Texas Municipal Power Agency Mine Reclamation Notes, Taxable Series H, in the aggregate principal amount of $6,505,000 (the "2020 Taxable Series H Notes"), securing a letter of credit provided by Wells Fargo Bank, National Association, delivered to the Railroad Commission of Texas for Surface Mining and Reclamation Permit No. 38D; and

WHEREAS, none of the 2020 Taxable Series G Notes or the 2020 Taxable Series H Notes are currently outstanding; and

WHEREAS, the notes authorized by this Resolution (the "Notes") are being authorized for the same purpose as, and to replace, the 2020 Taxable Series G Notes and the 2020 Taxable Series H Notes, to ensure continued compliance by TMPA with its mine remediation plan, as required by the Texas Surface Coal Mining and Reclamation Act, Chapter 134, Natural Resources Code (the "Mining Act"), all as further described herein; and

WHEREAS, TMPA is authorized by the TMPA Act, Chapter 1371 and other applicable laws to issue obligations such as the Notes authorized hereby, in one or more series, to fund costs of "eligible projects" (as such term is defined in Government Code Section 1371.001(2)(A)(i), as amended), which include capital costs associated with the environmental remediation of the TMPA lignite mine as set forth in the TMPA mine remediation plan, as required by the Mining Act; and

WHEREAS, for good and valuable consideration, the Cities have agreed in the JOA to make payments under certain circumstances to TMPA to pay debt service coming due on TMPA "Mine Reclamation Bonds;" and

WHEREAS, the Notes constitute Mine Reclamation Bonds within the meaning of the JOA and this Resolution constitutes an "obligation authorization," as defined in Chapter 1371; and

WHEREAS, the Board has determined to secure the Notes from a first lien on and pledge of the JOA Payments, as provided in this Resolution; and

WHEREAS, the Board finds that it is necessary for TMPA to provide the Texas Railroad Commission (the "RRC") one or more letters of credit (collectively, the "Letter of Credit") for the benefit of the RRC to serve as collateral to secure TMPA's collateral bond to the RRC for TMPA's Surface Mining and Reclamation Permit Nos. 26D and 38D, which Letter of Credit shall be issued by Wells Fargo Bank, National Association (the "Issuing Bank") in an aggregate amount not to exceed $11,000,000 and;

WHEREAS, to facilitate the delivery of the Letter of Credit to the RRC, the Board finds it necessary and beneficial to enter into one or more note purchase agreements (collectively, the "Note Purchase Agreement") with the Note Purchaser (as such term is hereinafter defined) to secure the payment and performance of all obligations of TMPA to the Issuing Bank in connection with the delivery of the Letter of Credit, and in furtherance thereof, the Board hereby authorizes the Notes and their installment deliveries to the Note Purchaser to induce the Issuing Bank to enter into the Note Purchase Agreement and deliver the Letter of Credit to the RRC, all as is required of TMPA by Subchapter F of the Mining Act and applicable regulations relating thereto; and

WHEREAS, the Board finds and determines that it should issue the Notes, in a principal amount not to exceed $11,000,000, pursuant to this Resolution to finance Project Costs (as hereinafter defined) of Eligible Projects (as hereinafter defined), all in accordance with and subject to Chapter 1371 and the terms, conditions and limitations contained herein; and

WHEREAS, the Board finds, determines and represents that (i) the proceeds of any draw upon the Letter of Credit by the RRC are for the payment, on behalf or for the benefit of TMPA, of Project Costs of Eligible Projects, (ii) such proceeds and the drawing upon the Letter of Credit shall constitute and shall be the payment of the purchase price of the corresponding Authorized Installment (as hereinafter defined) pursuant to the provisions of this Resolution and (iii) the Issuing Bank's delivery of the Letter of Credit to the RRC is additional and sufficient consideration for the transactions and agreements contemplated in this Resolution; and

WHEREAS, the Board intends to refinance the Notes with refunding bonds issued under Chapter 1207, Texas Government Code, as amended, and, therefore (in accordance with Section 1371.057(c) of Chapter 1371), TMPA will treat the Notes as having the intended term and payment schedule of such refunding bonds, as determined by the Authorized Representative (as hereinafter defined).

WHEREAS, the Notes authorized to be issued by this Resolution are to be issued and delivered pursuant to the TMPA Act, Chapter 1371 and other applicable laws; now therefore

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

ARTICLE I

FINDINGS AND RECITALS; DEFINITIONS

Section 1.01. INCORPORATION OF FINDINGS AND RECITALS. (a) The findings and recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

Section 1.02. DEFINED TERMS USED IN THIS RESOLUTION. Unless the context shall indicate a contrary meaning or intent, and in addition to the terms defined elsewhere in this Resolution or by reference to other resolutions and agreements, the terms defined below, for all purposes of this Resolution or any resolution amendatory or supplemental thereto, shall be construed, are used and are intended to have meanings as follows:

"Acts" - The TMPA Act and Chapter 1371 and other applicable laws pertaining to the issuance of obligations such as the Notes.

"Agency Debt Discharge Date" - September 1, 2018, the date of final payment of all TMPA Debt other than the Transmission Debt and the Mine Reclamation Bonds that were then outstanding.

"Authorized Installment" - On the Original Issue Date, a principal portion of the Notes determined with respect to each series of Notes in the Pricing Certificate and on each Issue Date thereafter, a principal portion of the Notes equal to the amount of any draw upon the Letter of Credit by the RRC, reflecting payment by the Note Purchaser of the purchase price of such Authorized Installment of the Notes to the RRC on behalf of TMPA.

"Authorized Installment Draw Period" - The period commencing on the Original Issue Date of each Series and ending immediately following the effective date of the end of the term of the Letter of Credit issued with respect to such Series, whether by termination, non-renewal or otherwise.

"Authorized Representative" - One or more of the following officers or employees of TMPA, acting in concert or individually, to wit: the General Manager or any officer or employee of TMPA appointed as such by resolution of the Board of Directors.

"Board" - the Board of Directors of TMPA, and if TMPA shall have more than one board as permitted by the TMPA Act, "Board" shall mean the appointed board of TMPA that has responsibility for TMPA's generation business category.

"Chapter 1207" - Chapter 1207, Texas Government Code, as amended.

"Chapter 1371" - Chapter 1371, Texas Government Code, as amended.

"City" or "Cities" - Each of the following: the City of Bryan, Texas, the City of Denton, Texas, the City of Garland, Texas, or the City of Greenville, Texas, being the public entities that originally created TMPA; and "Cities" shall mean all four Cities, collectively.

"City Electric System" - The enterprise fund of each City that has been established in accordance with Chapter 1502, Texas Government Code, as amended (or predecessor statutes), which fund includes the financial operations of a City's electric generation and transmission facilities.

"Debt" - Any form of debt of TMPA whether bonds, notes, commercial paper or obligations of any kind for borrowed money, or any other obligation considered to be debt under generally accepted accounting principles, and irrespective of when issued.

"Defeasance Securities" - Any securities and obligations now or hereafter authorized by State law that are eligible to refund, retire or otherwise discharge obligations such as the Notes.

"Depository" - Such banks or trust companies, or any one of them at any time, selected by TMPA for the custody of the special funds to be maintained by TMPA.

"Eligible Projects" - As permitted by the Acts, including Chapter 1371, the acquisition, purchase, sale of any property, including any contractual obligations related thereto, for which, except with respect to the initial Authorized Installment, the RRC may draw upon the Letter of Credit for the payment thereof, on behalf or for the benefit of TMPA.

"Event of Default":

(i) the failure to make payment of the principal of or interest on any of the Notes when the same becomes due and payable; or

(ii) an Event of Default under the Note Purchase Agreement; or

(iii) default in the performance or observance of any other covenant, agreement or obligation of TMPA, the failure to perform which materially, adversely affects the rights of the Note Purchaser, including, but not limited to, their prospect or ability to be repaid in accordance with this Resolution, and the continuation thereof for a period of 60 days after notice of such default is given by the Note Purchaser to TMPA.

"Fiscal Year" - The 12 month period ending September 30 of each calendar year, or such other 12 consecutive month period as may be established as a Fiscal Year by the Board for TMPA.

"General Manager" - The person appointed by the Board to act as the General Manager of TMPA.

"Initial Note" - Collectively, the non-interest bearing Note, numbered T-1, delivered to and held by the Paying Agent/Registrar for each Series of Notes issued hereunder in accordance with Section 2.02 hereof.

"Issue Date" - The date of delivery of an Authorized Installment of the Notes.

"JOA" - The Joint Operating Agreement by and between TMPA and the Cities, effective September 1, 2016, as amended by Amendment No. 2 thereto, Amendment No. 3 thereto and any other amendments thereto approved by TMPA and the Cities from time to time.

"JOA Payments" - The payments unconditionally required to be made to TMPA by the Cities pursuant to Sections 2.6.2.6, 2.7, 2.11.3 and 3.2.1 of the JOA to enable TMPA to recover the cost of the services undertaken pursuant to the JOA, including to make payments due on Mine Reclamation Bonds (as defined in the JOA), which payments are required to be made without offset or counterclaim and without regard to whether power and/or energy is delivered by TMPA to the respective Cities. In the JOA, each City has covenanted to establish, maintain and collect rates and charges for the electric service of its City Electric System which shall produce revenues at least sufficient, together with other revenues available to such City Electric System and available electric system reserves, to enable it to pay to TMPA, when due, all amounts payable by each City under the JOA. The Cities' obligations to make the JOA Payments shall constitute an operating expense of their respective City Electric System, and are payable exclusively from such revenues.

"Letter of Credit" - Individually and collectively, as the context requires, the letters of credit or a specific letter of credit issued by the Issuing Bank pertaining to a Series of the Notes, as provided for in the Note Purchase Agreement (and any extension of such letters of credit or any substitute or replacement letter of credit of the Note Purchaser), which are provided to the RRC for the benefit of TMPA pursuant to Subchapter F of the Mining Act with respect to TMPA's Surface Mining and Reclamation Permit Nos. 26D and 38D.

"Maximum Available Amount" - The maximum amount that is available to be drawn on a Letter of Credit on any particular day.

"Maximum Maturity Date" - The 91st day after the earlier of (i) the stated termination date of the applicable Letter of Credit, as set forth in Section 2.01 of the respective Note Purchase Agreement and (ii) the last available draw on the applicable Letter of Credit.

"Maximum Rate" - A net effective interest rate (as defined in and calculated in accordance with the provisions of Chapter 1204, Texas Government Code) not to exceed fifteen percent (15%).

"Mine Reclamation Bonds" - Debt of TMPA issued in accordance with the JOA to pay Eligible Costs of TMPA's mine remediation work and related financing costs, which Debt is defined in the JOA as "Mine Reclamation Bonds."

"Mine Reclamation Note Payment Fund" - The fund by that name authorized to be established by Section 4.02 hereof.

"Mining Act" - The Texas Surface Coal Mining and Reclamation Act, Chapter 134, Natural Resources Code, as amended.

"Note Purchase Agreement" - Individually and collectively, as the context requires, each Note Purchase Agreement between TMPA and the Note Purchaser, including any amendment, supplement or extension of such Note Purchase Agreement pursuant to the terms thereof.

"Note Purchaser" or "owner" - Wells Fargo Bank, National Association and its successors and assignees.

"Notes" - The notes of all Series, including any Authorized Installments, governed by this Resolution, as described in Article II hereof.

"Original Issue Date" - The date of delivery of the initial Authorized Installment, the Note Purchase Agreement and the Letter of Credit.

"Outstanding" - Shall mean as of the date of calculation, all Notes theretofore executed, issued and delivered by TMPA, except –

(a) Notes theretofore canceled by the Paying Agent/Registrar or surrendered to the Paying Agent/Registrar for cancellation;

(b) Notes in lieu of, or in substitution for, which other Notes shall have been executed, issued and delivered by TMPA pursuant to the terms of this Resolution;

(c) Notes for the payment or redemption of which moneys, equal to the principal amount or redemption price thereof, as the case may be, with interest to the date of maturity or redemption, shall be held under this Resolution and set aside for such payment or redemption (whether at or prior to the maturity or redemption date), provided that if such Notes are to be redeemed, notice of such redemption shall have been given as provided in this Resolution; and

(d) Notes deemed to have been paid as provided in Section 6.01 of this Resolution.

"Paying Agent/Registrar" - Collectively, the Issuing Agent and Paying Agent designated in Section 2.03 of this Resolution or any successor to such agent.

"Pricing Certificate" - The Pricing Certificate of the Authorized Representative to be executed and delivered pursuant to Section 2.02(b) hereof in connection with the Notes.

"Project Costs" - All costs and expenses defined as "project costs" under the Chapter 1371 incurred in relation to Eligible Projects and permitted by law to be paid with the proceeds of the Notes.

"Resolution" - This Resolution No. 2020-12-__, providing for the issuance of the Notes, as such resolution may be amended from time to time in accordance with its terms.

"RRC" - The Railroad Commission of Texas and any successor thereto.

"Section" - Unless the context clearly requires otherwise, refers to a Section of this Resolution.

"Security Register" - The books and records kept and maintained by the Paying Agent/Registrar relating to the registration and payment of the Notes and the interest thereon.

"Series" – All of the notes designated as being of the same series, which shall be designated by an alphabetical identifier, e.g., the "Taxable Series I Notes" and the "Taxable Series J Notes," and any notes delivered in lieu thereof or in substitution thereof. If the Notes are issued in multiple series as authorized by Section 2.02 of this Resolution, "Series" shall refer to each such series issued hereunder.

"State" - The State of Texas.

"TMPA" - The Texas Municipal Power Agency, a municipal corporation and political subdivision of the State, as created and established (pursuant to the TMPA Act) and concurrent ordinances adopted by the governing bodies of the Cities, or its successor, as the issuer of the Notes.

"TMPA Act" - Texas Utilities Code, Chapter 163, Subchapter C-1, as amended, being the primary governing legislation for TMPA.

"Transmission Debt" - Bonds, debt or other obligations issued TMPA, which bonds, debt or other obligations are secured by a pledge of all or any part of the TMPA's net transmission revenues.

ARTICLE II

NOTE AUTHORIZATION AND SPECIFICATIONS

Section 2.01. AMOUNT, PURPOSE AND DESIGNATION OF THE NOTES. Under and pursuant to the authority granted by Chapter 1371 and this Resolution, and subject to the limitations contained herein, the Board hereby authorizes the issuance of one or more Series of notes designated "TEXAS MUNICIPAL POWER AGENCY MINE RECLAMATION NOTES, TAXABLE SERIES __" (the "Notes") in a maximum aggregate principal amount for all Series issued of not to exceed ELEVEN MILLION DOLLARS ($11,000,000). The Notes are authorized for the purpose of financing Project Costs of Eligible Projects, all in accordance with the Acts and the terms, conditions, and limitations contained in this Resolution. The authority to issue Notes from time to time under the provisions of this Resolution and the Note Purchase Agreement shall exist until the end of the Authorized Installment Draw Period regardless of whether at any time prior to the end of the Authorized Installment Draw Period there are any Notes outstanding.

Section 2.02. DATE, DENOMINATIONS, NUMBERS, MATURITIES, AND TERMS OF THE NOTES. (a) Terms of Notes. There initially shall be issued, sold and delivered fully registered notes reflecting Authorized Installments (except for the Initial Note of each Series), without interest coupons, numbered consecutively from R-1 upward (except the Initial Note provided to the Attorney General of the State of Texas which shall be numbered T-1), payable to the Note Purchaser, maturing not later than the Maximum Maturity Date, in the manner, on the dates, in the years and in the principal amounts, respectively, and dated, all as set forth in this Resolution, the Pricing Certificate to be executed and delivered by the Authorized Representative pursuant to subsection (b) of this Section and the Note Purchase Agreement. The Pricing Certificate is hereby incorporated in and made a part of this Resolution.

With respect to each Series issued hereunder, an Initial Note bearing interest at zero percent (0%) in the aggregate principal amount determined in the Pricing Certificate will be issued on the Original Issue Date and will be dated as set forth in the Pricing Certificate. The Initial Note shall, after approval by the Attorney General of the State of Texas and registration by the Comptroller of Public Account of the State of Texas, be held by the Paying Agent/Registrar, and concurrently with the delivery of the Initial Note, the initial Authorized Installment of the Notes, in the aggregate principal amount determined in the Pricing Certificate, will be issued, in accordance with the terms of the Note Purchase Agreement executed by TMPA and Wells Fargo Bank, National Association, as the Note Purchaser. The Initial Note shall not be authenticated by the Paying Agent/Registrar.

The initial Authorized Installment of the Notes of each Series delivered on the Original Issue Date shall be dated as determined in the Pricing Certificate. With respect to each Series, an Authorized Installment of the Notes delivered after the Original Issue Date shall be dated as of its Issue Date. The Authorized Installments of the Notes shall bear interest as determined in the Pricing Certificate and the Note Purchase Agreement from the Issue Date of an Authorized Installment of the Notes until payment of the principal amount thereof at maturity or prior redemption or prepayment.

Subject to applicable terms, limitations, and procedures contained herein, after the delivery of the initial Authorized Installment of each Series, Authorized Installments of the Notes may be sold and delivered pursuant to the terms of the Note Purchase Agreement in consideration of and in the amount of, any draw upon the respective Letter of Credit by the RRC, reflecting payment by the Note Purchaser of the purchase price of such Notes concurrently upon payment to the RRC, on behalf of TMPA, pursuant to such draw upon the Letter of Credit. Other than the initial Authorized Installments of $5,000 for each Series, no Authorized Installments of the Notes may be issued prior to the expiration date (June 8, 2021) of the letters of credit issued to the RRC by the Issuing Bank on February 19, 2020. No Authorized Installments may be issued and delivered after the end of the Authorized Installment Draw Period, and no Authorized Installment may be issued and delivered in an amount that exceeds the Maximum Available Amount in effect as of the date of the applicable draw on the Letter of Credit; provided that the aggregate principal amount of all Authorized Installments issued and delivered under this Resolution may at times exceed the then applicable Maximum Available Amount due to a reduction in such amount subsequent to the issuance of Authorized Installments pursuant to the terms of the Letter of Credit but in no case may the aggregate principal amount of all Authorized Installments issued and delivered under this Resolution exceed the amount of Notes authorized by the Pricing Certificate. TMPA shall promptly notify the Paying Agent/Registrar of any changes to the Maximum Available Amount made pursuant to the Note Purchase Agreement and of the end of the Authorized Installment Draw Period, provided that the Paying Agent/Registrar may alternatively receive actual notice of such events from the Note Purchaser.

The Note Purchaser shall give notice to TMPA and the Paying Agent/Registrar of any draw upon the Letter of Credit by the RRC, provided such notice is not required for the delivery of an Authorized Installment. The Paying Agent/Registrar shall issue and deliver an Authorized Installment in the principal amount of any draw on the Letter of Credit to the Note Purchaser pursuant to the terms of this Resolution and the Note Purchase Agreement; provided, however, in consideration of the delivery of the Letter of Credit and the unconditional obligation of the Note Purchaser thereunder, any particular Authorized Installment corresponding to the related draw on the Letter of Credit is deemed issued and delivered to the Note Purchaser on the date of any such drawing.

In the event the Pricing Certificate and the Note Purchase Agreement as provided in Section 2.05 shall not be executed on or before 5:00 p.m. on June 10, 2021, the delegation to the Authorized Representatives pursuant to this Resolution shall cease to be effective unless the Board shall act to extend such delegation.

(b) Selling and Delivering Notes. As authorized by Chapter 1371, Texas Government Code, as amended and this Resolution, an Authorized Representative is hereby authorized to act on behalf of TMPA in selling and delivering the Notes of all Series authorized hereunder, including the Authorized Installments, and carrying out the other procedures specified in this Resolution, including determining and fixing (i) the Original Issue Date of the Notes, (ii) the principal amount of the initial Authorized Installment, (iii) the price at which the Notes and the Authorized Installments will be sold, (iv) the date or dates in which the Notes and the Authorized Installments will mature, (v) the aggregate principal amount to mature on any such date or dates, (vi) the aggregate principal amount of Notes, (vii) the fixed or variable rate of interest to be borne by the Notes and the Authorized Installments, (viii) the interest payment periods, (ix) the dates, price, and terms, if any, upon and at which the Notes shall be subject to redemption or prepayment prior to maturity at the option of TMPA, (x) the dated dates of the Initial Note and the initial Authorized Installment of the Notes delivered on the Original Issue Date and (xi) all other matters relating to the issuance, sale, and delivery of the Notes and the delivery of the Note Purchase Agreement (as provided in Section 2.05 hereof), all of which shall be specified in the Pricing Certificate; provided that (A) the price to be paid for the Notes shall not be less than 100% of the aggregate original principal amount thereof plus accrued interest thereon from their date to their delivery and (B) none of the Notes shall bear interest at a rate greater than the Maximum Rate. It is further provided, however, that, notwithstanding the foregoing provisions, the Initial Note shall not be delivered unless prior to delivery, the Notes have been rated by a nationally recognized rating agency for municipal securities (I) in one of the four highest rating categories for long-term obligations or (II) in one of the three highest rating categories for short-term obligations, as required by Chapter 1371.

(c) General. The Notes (i) may be redeemed or prepaid prior to the respective scheduled maturity dates, (ii) shall have the characteristics set forth in this Resolution, (iii) shall be signed and sealed and (iv) the principal of and interest on the Notes shall be payable, all as provided, and in the manner required or indicated, in this Resolution, including the FORM OF NOTES set forth in Exhibit A to this Resolution and in the Note Purchase Agreement.

(d) Payments on Holidays. In the event that any date for payment of the principal of or interest on the Notes is a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment will be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close. Payment on such later date will not increase the amount of interest due and will have the same force and effect as if made on the original date payment was due.

Section 2.03. PAYMENT OF NOTES; PAYING AGENT/REGISTRAR. The principal of, premium, if any, and the interest on the Notes shall be payable in immediately available funds, without exchange or collection charges to the Note Purchaser, in any coin or currency of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

The appointment of Wells Fargo Bank, National Association as Paying Agent and Registrar for all Series of Notes issued hereunder is hereby approved. In the Note Purchase Agreement, the Note Purchaser, by accepting the appointment as Paying Agent/Registrar, will acknowledge receipt of copies of this Resolution, and is deemed to have agreed to the provisions thereof and hereof, but on and subject to the terms and provisions of the Paying Agent/Registrar Agreement. TMPA agrees and covenants to cause to be kept and maintained at the office of the Paying Agent/Registrar a Security Register, all as provided herein, in accordance with the terms and provisions of the Paying Agent/Registrar Agreement and such reasonable rules and regulations as the Paying Agent/Registrar and TMPA may prescribe. In addition, to the extent required by law, TMPA covenants to cause to be kept and maintained the Security Register or a copy thereof in the State of Texas. TMPA covenants to maintain and provide a Paying Agent/Registrar at all times until the Notes are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution, or other entity duly qualified and legally authorized to serve as and perform the duties and services of Paying Agent/Registrar for the Notes. TMPA will not, without the prior written consent of the Note Purchaser (such consent not to be unreasonably withheld), appoint or permit the appointment of a successor Paying Agent/Registrar.

The principal of, premium, if any, and interest on the Notes due and payable by reason of maturity, redemption, or otherwise, shall be payable only to the owner thereof appearing on the Security Register, and, to the extent permitted by law, neither TMPA nor the Paying Agent/Registrar, nor any agent of either, shall be affected by notice to the contrary.

Section 2.04. REDEMPTION. The Notes shall be subject to redemption or prepayment prior to scheduled maturity at such times and with such provisions as provided in the Pricing Certificate and the Note Purchase Agreement.

Section 2.05. NOTE PURCHASE AGREEMENT. The draft of the Note Purchase Agreement relating to the sale of each Series of the Notes, in substantially the form presented to the Board, is hereby approved pursuant to the terms of this Resolution, including the prepayment, redemption, term and interest rates applicable to any Notes purchased thereunder. Subject to the provisions of this Resolution, the Authorized Representative may determine the final terms of each Note Purchase Agreement consistent with Section 1371.056(c) of Chapter 1371. The Note Purchase Agreement shall constitute a "credit agreement" under Chapter 1371. Any Authorized Representative is hereby authorized to complete, amend and modify the Note Purchase Agreement and the President or the Vice President of the Board and any Authorized Representative are each hereby authorized to execute and deliver such Note Purchase Agreement, in the form so amended, completed and modified. Any Authorized Representative may enter into transactions under the Note Purchase Agreement and execute any instruments in connection therewith.

Section 2.06. REGISTRATION AND OWNERSHIP. (a) Registration of Notes. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each owner of any Note issued under and pursuant to the provisions of this Resolution.

(b) Ownership of Notes. The entity in whose name any Note shall be registered in the Security Register at any time shall be deemed and treated as the absolute owner thereof for all purposes of this Resolution, whether or not such Note shall be overdue, and, to the extent permitted by law, the Board and the Paying Agent/Registrar shall not be affected by any notice to the contrary; and payment of, or on account of, the principal of, premium, if any, and interest on any such Note or Authorized Installment shall be made only to such registered owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Section 2.07. FORM OF NOTES. The Notes and the Authentication Certificate of the Paying Agent/Registrar to appear on each of the Notes, shall be substantially in the form set forth in Exhibit A to this Resolution with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Resolution and may have such letters, numbers or other marks of identification and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as may be established by TMPA or determined by the officers executing such Notes as evidenced by their execution thereof. Any portion of the text of any Notes may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

The Notes shall be typewritten, photocopied, printed, lithographed, engraved, or produced in any other similar manner, all as determined by the officers executing such Notes as evidenced by their execution thereof.

ARTICLE III

EXECUTION; REPLACEMENT OF NOTES

Section 3.01. EXECUTION AND REGISTRATION. Notes shall be executed on behalf of TMPA by the President or in his absence by the Vice President of the Board under its seal reproduced or impressed thereon and attested by the Secretary or Assistant Secretary of the Board. The signature of said officers on the Notes may be manual or facsimile. Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Board as of their authorization shall be deemed to be duly executed on behalf of TMPA, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Notes to the Note Purchaser, all as authorized and provided in Chapter 1201, Texas Government Code.

Subject to Section 2.02(a) hereof, no Note (except for the Initial Note of each Series, which shall be authenticated and registered by the Comptroller of Public Accounts of the State of Texas) shall be entitled to any right or benefit under this Resolution, or be valid or obligatory for any purpose, unless there appears on such Note the Authentication Certificate of the Paying Agent/Registrar substantially in the form provided in Exhibit A to this Resolution, executed by the manual signature of an authorized officer or employee of the Paying Agent/Registrar, and such certificate duly signed upon any Note shall be conclusive evidence that such Note has been duly certified, registered, and delivered.

Section 3.02. CONTROL AND CUSTODY OF NOTES. The Authorized Representative shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of printed Notes.

Furthermore, any one or more of the President, Vice President, Secretary or Assistant Secretary of the Board and any Authorized Representative are each hereby authorized and directed to furnish and execute such documents relating to TMPA and its financial affairs as may be necessary for the issuance of the Notes, the approval of the Attorney General of the State of Texas and, together with TMPA's bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Notes to the Note Purchaser.

Section 3.03. MUTILATED, DESTROYED, LOST, AND STOLEN NOTES. If (1) any mutilated Note is surrendered to the Paying Agent/Registrar, or TMPA and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss or theft of any Note, and (2) there is delivered to TMPA and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to TMPA or the Paying Agent/Registrar that such Note has been acquired by a bona fide purchaser, TMPA shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of the same maturity date and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Note has become or is about to become due and payable, TMPA in its discretion may, instead of issuing a new Note, pay such Note and the interest due thereon to the date of payment.

Upon the issuance of any new Note under this Section, TMPA may require payment by the Note Purchaser of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Note issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Note shall constitute a replacement of the prior obligation of TMPA, whether or not the mutilated, destroyed, lost, or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Resolution equally and ratably with all other outstanding Notes.

ARTICLE IV

SECURITY FOR THE NOTES; ISSUANCE OF ADDITIONAL DEBT

Section 4.01. PLEDGE. (a) The Notes shall be payable solely from and equally and ratably secured by a first lien on and pledge of the JOA Payments and amounts on deposit in the Mine Reclamation Note Payment Fund created in this Resolution.

(b) Chapters 1208 and 1371, Texas Government Code, apply to the issuance of the Notes and the pledge of the JOA Payments granted by TMPA under Section 4.01(a), and such pledge is therefore valid, effective and perfected on the Original Issue Date. If Texas law is amended at any time while the Notes are Outstanding such that the pledge of JOA Payments granted by TMPA under Section 4.01(a) is or will become subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the Note Purchaser the perfection of the security interest in said pledge, TMPA agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

Section 4.02. NOTE PAYMENT FUND. (a) An Authorized Representative shall create and establish one or more separate and special funds to be designated according to the Series for which the fund is administered. Such fund or funds shall be designated as the "Texas Municipal Power Agency Mine Reclamation Notes, Taxable Series__ Note Payment Fund" (all such funds are collectively referred to herein as the "Mine Reclamation Note Payment Fund"). All JOA Payments received from the Cities shall be deposited by TMPA upon receipt into the appropriate Mine Reclamation Note Payment Fund. Moneys on deposit in the Mine Reclamation Note Payment Fund shall be used to pay principal of and interest on Notes and Authorized Installments hereafter issued at the respective interest payment, maturity or redemption dates (if any) of each Series of such Notes as provided herein and the payment of any other amounts owing (or required to be deposited as security) under a Note Purchase Agreement.

(b) Pending the expenditure of moneys in the Mine Reclamation Note Payment Fund for authorized purposes, moneys deposited in said fund may be invested by an Authorized Representative in those securities and obligations authorized by Section 5.03 hereof. Funds in the Note Payment Fund shall be held by a Depository.

Section 4.03. ISSUANCE OF ADDITIONAL DEBT. TMPA shall not, without the prior written consent of the Note Purchaser in its sole discretion, issue additional Mine Reclamation Bonds secured by all or a part of the JOA Payments for any purpose permitted by the JOA, including for the refunding of Mine Reclamation Bonds.

ARTICLE V

COVENANTS

Section 5.01. TAX EXEMPTION. TMPA does not intend to issue the Notes in a manner such that the Notes would constitute obligations described in section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable temporary, proposed, and final regulations and procedures promulgated thereunder (the "Regulations"). TMPA covenants that it will not file an Internal Revenue Form 8038 or an Internal Revenue Form 8038-G with respect to the Notes.

Section 5.02. FEDERAL TAX INFORMATION REPORTING. To the extent required by the Code and the Regulations it shall be the duty of the Paying Agent/Registrar to report to the owners of the Notes and the Internal Revenue Service (i) the amount of "reportable payments," if any, subject to back up withholding during each year and the amount of tax withheld, if any, with respect to the payments on the Notes and (ii) the amount of interest or amount treated as interest, such as original issue discount, on the Notes required to be included in the gross income of the owners thereof for federal income tax purposes.

Section 5.03. INVESTMENTS. Amounts on deposit in the Mine Reclamation Note Payment Fund shall be secured by the depository institution of TMPA (and, if the depository institution is not the Note Purchaser, subject to account control arrangements satisfactory to the Note Purchaser) in the manner and to the extent required by law to secure other public funds of TMPA and may be invested from time to time in any investment authorized in the Public Funds Investment Act (Chapter 2256, Texas Government Code) and in accordance with TMPA's investment policy; provided, however, that all such deposits and investments shall be made in such manner that the money required to be expended from the Mine Reclamation Note Payment Fund will be available at the proper time or times when expected to be needed. Interest and income derived from such deposits and investments shall be credited to the Mine Reclamation Note Payment Fund. Such investments shall be sold promptly when necessary to prevent any default in connection with the Notes.

Section 5.04. SECURITY FOR FUNDS. All amounts on deposit in the Mine Reclamation Note Payment Fund shall be secured in the manner and to the fullest extent permitted or required by State law, and such Funds shall be used only for the purposes and in the manner permitted or required by this Resolution.

Section 5.05. ACCOUNTS AND RECORDS. TMPA shall keep or cause to be kept proper books of records and accounts in which complete and correct entries shall be made of all transactions relating to the JOA Payments and the Mine Reclamation Note Payment Fund, and all books, documents and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of the Note Purchaser.

Section 5.06. AUDITS. After the close of each Fiscal Year while any of the Notes are Outstanding, an audit will be made of the books and accounts of TMPA by an independent certified public accountant. As soon as practicable after the close of each such Fiscal Year, and when said audit has been completed and made available to TMPA, a copy of such audit for the preceding year shall be mailed to the Paying Agent/Registrar and to the Note Purchaser upon request to TMPA in writing. The annual audit reports shall be open to the inspection of the Note Purchaser and their agents and representatives at all reasonable times.

Section 5.07. SPECIAL COVENANTS. TMPA further covenants and agrees that:

(a) Encumbrance of JOA Payments. Other than with respect to the Notes, and except as provided in Section 4.03 with respect to the issuance of additional Mine Reclamation Bonds with the prior written consent of the Note Purchaser, the JOA Payments have not been pledged in any manner to the payment of any Debt of TMPA, or otherwise, and while any of the Notes are Outstanding, TMPA will not incur additional Debt secured by the JOA Payments. For purposes of clarity, the authorization for the issuance of the 2020 Taxable Series G Notes and the 2020 Taxable Series H Notes pursuant to the Series 2020 MRB Resolution will expire concurrently with the activation of the authorization provided by this Resolution for the issuance of the Notes, with such activation to be effected by the occurrence of the effective date of the Letter of Credit, at which time the letters of credit relating to the 2020 Taxable Series G Notes and the 2020 Taxable Series H Notes shall be canceled.

(b) Performance. It will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Resolution or in the Note Purchase Agreement, and in each and every Note and pay from the JOA Payments the debt service on every Note on the dates and in the places and manner prescribed in this Resolution; and that it will, at the times and in the manner prescribed, deposit or cause to be deposited from the JOA Payments the amounts required to be deposited into the Mine Reclamation Note Payment Fund.

(c) Legal Authority. TMPA is duly authorized under the laws of the State to create and issue the Notes; that all action on its part for the creation and issuance of the Notes has been duly and effectively taken, and that the Notes in the hands of the owners thereof are and will be valid and enforceable special obligations of TMPA in accordance with their terms.

(d) Compliance with the JOA. TMPA will comply with the terms and conditions of the JOA and will cause the Cities, as parties to the JOA, their officials, and employees, to comply with all of their obligations under the JOA by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings in any court of competent jurisdiction; and the JOA will not be rescinded, modified, or amended in any way which would have an adverse effect on the rights of the Note Purchaser, either in its capacity as owner of the Notes or as provider of the Letter of Credit. In connection with any proposed modification or amendment of the JOA, the Board shall make a determination that such modification or amendment will not have an adverse effect on the rights of the Note Purchaser, either in its capacity as owner of the Notes or as provider of the Letter of Credit.

Section 5.08. RESOLUTION A CONTRACT; AMENDMENTS. (a) Resolution a Contract. This Resolution shall constitute a contract with the Note Purchaser, binding on TMPA and its successors and assigns, and shall not be amended or repealed by TMPA as long as any Note remains Outstanding except as permitted in this Section.

(b) Amendments With Notice to and Consent of Note Purchaser. TMPA may, with the written consent of the Note Purchaser, amend, change, modify, or rescind any provisions of this Resolution.

(d) Notice of Amendment. Whenever TMPA shall desire to make any amendment or addition to or rescission of this Resolution, TMPA shall cause notice of the amendment, addition, or rescission to be sent by first class mail, postage prepaid, to the Note Purchaser. Whenever at any time after the date of the giving of such notice, TMPA shall receive an instrument or instruments in writing executed by the Note Purchaser, which instrument or instruments shall refer to the proposed amendment, addition, or rescission described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, TMPA may adopt such amendment, addition, or rescission in substantially such form, except as herein provided.

(e) Effect of Amendment on Note Purchaser. Upon the amendment or modification of this Resolution in accordance with the provisions of this Section 5.08, the Note Purchaser may not thereafter object to the adoption of any such approved amendment, addition, or rescission which is accomplished pursuant to and in accordance with the provisions of this Section, or to any of the provisions thereof, and such amendment, addition, or rescission shall be fully effective for all purposes.

ARTICLE VI

DEFEASANCE OF NOTES

Section 6.01. DEFEASANCE OF NOTES. (a) Defeased Notes. Any Note and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Note") within the meaning of this Resolution, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Note, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by TMPA with the Paying Agent/Registrar for the payment of its services until all Defeased Notes shall have become due and payable. At such time as a Note shall be deemed to be a Defeased Note hereunder, as aforesaid, such Note and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the sources herein levied and pledged as provided in this Resolution, and such principal and interest shall be payable solely from such money or Defeasance Securities, and thereafter TMPA will have no further responsibility with respect to amounts available to the Paying Agent/Registrar (or other financial institution permitted by applicable law) for the payment of such Defeased Notes, including any insufficiency therein caused by the failure of the Paying Agent/Registrar (or other financial institution permitted by applicable law) to receive payment when due on the Defeasance Securities. Notwithstanding any other provision of this Resolution to the contrary, it is hereby provided that any determination not to redeem Defeased Notes that is made in conjunction with the payment arrangements specified in subsection 6.01(a)(i) or (ii) shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, TMPA expressly reserves the right to call the Defeased Notes for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Notes immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Investment of Funds in Defeasance Securities. Any moneys so deposited with the Paying Agent/Registrar may at the written direction of TMPA also be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Notes and interest thereon, with respect to which such money has been so deposited, shall be turned over to TMPA, or deposited as directed in writing by TMPA. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Notes may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection 6.01(a)(i) or (ii). All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Notes, with respect to which such money has been so deposited, shall be remitted to TMPA or deposited as directed in writing by TMPA.

(c) Duties of Paying Agent/Registrar. Until all Defeased Notes shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Notes the same as if they had not been defeased, and TMPA shall make proper arrangements to provide and pay for such services as required by this Resolution.

(d) Selection of Notes to be Defeased. In the event that TMPA elects to defease less than all of the principal amount of Notes of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Notes by such random method as it deems fair and appropriate.

ARTICLE VII

MISCELLANEOUS

Section 7.01. AUTHORITY FOR OFFICERS TO EXECUTE DOCUMENTS AND APPROVE CHANGES. The President, Vice President, Secretary and Assistant Secretary of the Board and the General Manager of TMPA, and all other officers, employees, and agents of TMPA, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to approve, execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of TMPA all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution, the Notes, the Note Purchase Agreement and the Paying Agent/Registrar Agreement.

Furthermore, at any time prior to the delivery of the Notes, the President or Vice President of the Board and the General Manager of TMPA each are hereby individually authorized and directed to approve any changes or corrections to this Resolution or to any of the instruments authorized and approved by this Resolution necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transaction contemplated and approved by this Resolution, (ii) obtain a rating from any of the Rating Agencies or (iii) obtain the approval of the Notes by the Texas Attorney General's office.

Section 7.02. REMEDIES FOR DEFAULT. (a) Upon the happening of any Event of Default, then and in every case, the Note Purchasers or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against TMPA for the purpose of protecting and enforcing the rights of the Note Purchaser under this Resolution, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Note Purchaser hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Note Purchasers of Notes then outstanding.

Section 7.03. REMEDIES NOT EXCLUSIVE. (a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Notes or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Resolution, the right to accelerate the debt evidenced by the Notes shall not be available as a remedy under this Resolution, unless TMPA has granted such a remedy with respect to any other Debt approved by the Attorney General of the State of Texas.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(c) By accepting the delivery of a Note authorized under this Resolution, the Note Purchaser agrees that the certifications required to effectuate any covenants or representations contained in this Resolution do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of TMPA or the Board.

Section 7.04. NO RULE 15c2-12 UNDERTAKING. (a) The Notes are sold by private placement, and are therefore not subject to SEC Rule 15c2-12.

Section 7.05. EFFECTIVE DATE. This Resolution shall become effective immediately after its adoption.

Section 7.06. GOVERNING LAW. This Resolution shall be governed by and construed in accordance with the laws of the State.

Section 7.07. PARTIAL INVALIDITY. If any one or more of the covenants or agreements, or portions thereof, provided in this Resolution on the part of TMPA to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Resolution or of the Notes but the Note Purchaser shall retain all rights and benefits accorded to them under the TMPA Act or any other applicable provisions of law.

Section 7.08. DISPOSITION OF NOTE PROCEEDS. Proceeds from the initial Authorized Installment of the Notes shall, as determined in the Pricing Certificate, promptly upon receipt thereof, be applied by the Authorized Representative to pay a portion of the costs of issuance of the Notes.

Proceeds relating to any other Authorized Installments of the Notes corresponding to a drawing upon the Letter of Credit by The RRC will be for the payment, on behalf or for the benefit of TMPA, of Project Costs of Eligible Projects.

Section 7.09. MAILED NOTICES. Except as otherwise required herein, all notices required or authorized to be given to TMPA, the Paying Agent/Registrar or the Note Purchaser pursuant to this Resolution shall be in writing and shall be sent by registered or certified mail, postage prepaid to such addresses as may from time to time be furnished by the parties, effective upon the receipt of notice thereof given as set forth above.

EXHIBIT A

[FORM OF NOTES]

UNITED STATES OF AMERICA
STATE OF TEXAS
TEXAS MUNICIPAL POWER AGENCY
MINE RECLAMATION NOTE, TAXABLE SERIES __

NO.: ___	Issue Date: ___
Principal Amount: $	Maturity Date:
	Dated Date:

Interest Rate or Interest Rate Formula (%):______ [1]

Texas Municipal Power Agency (hereinafter referred to as "TMPA"), a governmental agency, body politic and corporate of the State of Texas, for value received, hereby irrevocably promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the order of

WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Bank")

on the Maturity Date specified above [or date of prior redemption][2], the Principal Amount set forth above, and to pay interest on said Principal Amount, if any, at said Maturity Date [or date of prior redemption][2], from the above specified Issue Date to said Maturity Date [or date of prior redemption][2] at the rate of interest calculated as shown above (computed on the basis of actual days elapsed and a 360 day year) and as provided for in the Note Purchase Agreement (as defined herein); both principal and interest on this Note being payable in lawful money of the United States of America at the designated corporate office of the Paying Agent/Registrar executing the "Authentication Certificate of Paying Agent/Registrar" endorsed hereon and appearing below.

This Note is one of a duly authorized issue of notes of TMPA (the "Notes") issued in the aggregate principal amount of $________,000, pursuant to the laws of the State of Texas, including specifically the TMPA Act and Chapter 1371, Texas Government Code, as amended (the "Acts"), and under and pursuant to a resolution of TMPA adopted December 10, 2020 (the "Resolution") for the purpose of financing Project Costs of Eligible Projects. The Notes are secured by the Resolution. Terms used herein and not otherwise defined shall have the meanings given in the

[1] As provided for in the Pricing Certificate.

[2] If the Notes are subject to redemption as provided in the Pricing Certificate.

Resolution and in the Note Purchase Agreement dated _______ between TMPA and the Bank relating to the Notes (the "Note Purchase Agreement").

The initial Authorized Installment of the Notes issued on the Original Issue Date is in the principal amount of $____,000. Thereafter, additional Authorized Installments of the Notes in a principal amount not to exceed $______,000 may be issued on any date so long as the total aggregate principal amount of Notes issued does not exceed $________,000, as reflected in the Schedule of Authorized Installment Deliveries attached to the Initial Note. The foregoing notwithstanding, in no event shall an Authorized Installment of the Notes be issued after the end of the Authorized Installment Draw Period, and in no event shall an Authorized Installment be issued and delivered in an amount that exceeds the Maximum Available Amount in effect as of the date of the applicable draw on the Letter of Credit; provided that the aggregate principal amount of all Authorized Installments issued and delivered under the Resolution may at times exceed the then applicable Maximum Available Amount due to a reduction in such amount subsequent to the issuance of Authorized Installments pursuant to the terms of the Letter of Credit but in no case shall the aggregate principal amount of all Authorized Installments issued and delivered under the Resolution exceed $______,000.

Anything contained herein to the contrary notwithstanding, if the rate of interest payable under any Authorized Installment shall exceed the Maximum Rate (as defined in the Note Purchase Agreement) for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof without regard to the Maximum Rate and (B) the Maximum Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time TMPA shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank, not to exceed the Maturity Date.

The Notes are special obligations of TMPA and are payable solely from and equally and ratably secured by a first lien on and pledge of JOA Payments and all amounts on deposit in the Mine Reclamation Note Payment Fund, subject to the priorities set forth therein, and shall be obligations secured by payments received by TMPA from the Cities under the provisions of the JOA specified in the Resolution. THE OWNER HEREOF SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT OF THIS OBLIGATION FROM ANY OTHER REVENUES OR PROPERTIES OF TMPA, OR FROM ANY FUNDS RAISED OR TO BE RAISED FROM TAXATION BY TMPA, THE STATE OF TEXAS, OR ANY SUBDIVISION THEREOF.

TMPA reserves the right to issue additional Mine Reclamation Bonds and other lawful evidences of indebtedness secured by all or a part of the JOA Payments for any lawful purpose, including refunding bonds, but subject to the terms of the JOA, the Resolution and the terms of the Note Purchase Agreement, to which reference is made for more complete details.

[INSERT ADDITIONAL PROVISIONS, IF ANY, PROVIDED FOR IN THE PRICING CERTIFICATE AND THE NOTE PURCHASE AGREEMENT DEEMED NECESSARY BY THE AUTHORIZED REPRESENTATIVE, INCLUDING ANY PREPAYMENT AND/OR REDEMPTION PROVISIONS, ALL PURSUANT TO SECTIONS 2.02 AND 2.04 OF THE RESOLUTION.]

The pledge of the revenues under the Resolution may be discharged at or prior to the maturity of the Notes upon the making of provision for their payment on the terms and conditions set forth in the Resolution.

Reference is hereby made to the Resolution, copies of which may be obtained upon request to TMPA, and to all of the provisions of which any owner of this Note by its acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the Notes; the pledged revenues; the nature and extent and manner of enforcement of the pledge; the terms and conditions, if any, for the issuance of additional Debt; the conditions upon which the Resolution may be amended or supplemented with or without the consent of the owners of the Notes; the rights and remedies of the owner hereof with respect hereto and thereto; the rights, duties and obligations of TMPA; the terms and provisions upon which the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity or redemption of this Note and this Note thereafter no longer to be secured by the Resolution or be deemed to be outstanding thereunder; and for the other terms and provisions thereof.

It is hereby certified, recited, represented, and declared that TMPA is a duly organized and legally existing governmental agency and body politic and corporate, organized under and by virtue of the Constitution and laws of the State of Texas; that the issuance of this Note and the series of which it is a part are duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of this Note to render the same lawful and valid have been properly done, have happened and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas and the Resolution; that this series of Notes does not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on this Note and the series of which it is a part as aforestated. In case any provision in this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Note and the Resolution shall be construed in accordance with and shall be governed by the laws of the State of Texas.

This Note has been issued pursuant to proceedings approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Except as provided in Section 2.02(a) of the Resolution, this Note shall not be entitled to any benefit under the Resolution or be valid or become obligatory for any purpose until this Note shall have been authenticated by the execution by the Paying Agent/Registrar or the Comptroller of Public Accounts, as applicable, of the Authentication Certificate of Paying Agent/Registrar or Registration Certificate of Comptroller of Public Accounts hereon.

IN WITNESS WHEREOF, the Board of Directors of the Texas Municipal Power Agency has authorized and caused this Note to be executed on its behalf by the manual or facsimile signatures of the President and Assistant Secretary of the Board of Directors and its official seal impressed or a facsimile thereof to be printed hereon.

TEXAS MUNICIPAL POWER AGENCY

By: ___________________________________
President, Board of Directors

ATTEST:

____
Assistant Secretary, Board of Directors

(SEAL)

Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Note only.

REGISTRATION CERTIFICATE OF COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER	**§**	
OF PUBLIC ACCOUNTS	**§**	
THE STATE OF TEXAS	**§**	**REGISTER NO. _______**

I HEREBY CERTIFY that this Note has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this ________________.

____
Comptroller of Public Accounts
of the State of Texas

(SEAL)

Form of Assignment:

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto
____
____

Please insert Social Security or Taxpayer
Identification Number of Transferee

____

____
(Please print or typewrite name and address,
including zip code of Transferee)

____
the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints
____,
attorney, to register the transfer of the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: ___________________________

Signature Guaranteed:

____
NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program.

____
NOTICE: The signature above must correspond with the name of the registered owner as it appears upon the front of this Note in every particular, without alteration or enlargement or any change whatsoever.

Form of Authentication Certificate of Paying Agent/Registrar for Notes except the Initial Note.

AUTHENTICATION CERTIFICATE OF
PAYING AGENT/REGISTRAR

This Note has been duly issued and registered under the provisions of the within-mentioned Resolution; the note or notes of the above titled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Paying Agent/Registrar

Registered this date: _____________

By: __________________________
Authorized Signature

Form of Schedule of Authorized Installments Deliveries to appear on Initial Note only.

SCHEDULE OF AUTHORIZED INSTALLMENT DELIVERIES

Issue Date	No.	Principal Amount	Remaining Available Principal Balance	Date Paid	Principal and Interest Paid
___________	___	________	________	________	________
___________	___	________	________	________	________
___________	___	________	________	________	________
___________	___	________	________	________	________
___________	___	________	________	________	________
___________	___	________	________	________	________
___________	___	________	________	________	________

NOTE PURCHASE AGREEMENT

between

WELLS FARGO BANK, NATIONAL ASSOCIATION

and

TEXAS MUNICIPAL POWER AGENCY

relating to

$3,405,000
Texas Municipal Power Agency
Mine Reclamation Notes
Taxable Series I

and securing the

Letter of Credit to
Railroad Commission of Texas for
Surface Mining and Reclamation Permit No. 26D

dated as of

February 1, 2021

ARTICLE I
DEFINITIONS

ARTICLE II
AMOUNT AND TERMS OF THE LETTER OF CREDIT

ARTICLE III
CONDITIONS OF ISSUANCE

ARTICLE IV
REPRESENTATIONS, WARRANTIES AND COVENANTS

ARTICLE V
COVENANTS OF THE AGENCY

ARTICLE VI
EVENTS OF DEFAULT

ARTICLE VII
MISCELLANEOUS

NOTE PURCHASE AGREEMENT

NOTE PURCHASE AGREEMENT (this "Agreement"), dated as of February 1, 2021, between the **Texas Municipal Power Agency**, a municipal corporation and political subdivision of the State of Texas (the "Agency"), and **Wells Fargo Bank, National Association**, a national banking association (the "Bank").

PRELIMINARY STATEMENTS:

A. The Agency operates pursuant to the provisions of Subchapter C-1 of Chapter 163 of the Texas Utilities Code and its member cities are together with the City of Bryan, the City of Denton, the City of Garland, and the City of Greenville, Texas, each of which cities is a municipal corporation of the State of Texas and a home rule city (herein collectively "Cities" or individually "City").

B. As of the Agency Debt Discharge Date (as hereinafter defined), the Cities have no further obligations under the Power Sales Contract to make payment for System Debt, the Power Sales Contract has been terminated and no System Debt is outstanding.

C. The Agency and each City have entered into certain contractual agreements between and among the Agency and each City to provide for the mutual rights and responsibilities of the Agency and the Cities as to the operations of the Agency, including asset management, decommissioning, environmental remediation, indemnities, and the winding up of affairs of the Agency upon dissolution, and such contractual agreements have been included in a Joint Operating Agreement between the Agency and each City, which is effective as of September 1, 2016, as amended by Amendment No. 1 to the Joint Operating Agreement, which amendment subsequently became ineffective, and as amended by Amendment No. 2 to the Joint Operating Agreement, effective as of September 22, 2017 and by Amendment No. 3 to the Joint Operating Agreement, effective as of September 17, 2019 (as amended, such agreement is hereinafter referred to as the "JOA").

D. The Cities have certain payment obligations under the JOA, including the obligation to pay and reimburse to the Agency, as an operating expense of each City's electric system, the costs of the services undertaken by the Agency pursuant to the JOA, which services include the mine remediation work and related financing costs associated with the Agency's Collateral Bond (the "Collateral Bond") for Surface Mining and Reclamation Permit No. 26D (the "Permit").

E. The Agency is authorized by Subchapter C-1 of Chapter 163, Texas Utilities Code, as amended (the "TMPA Act"), Chapter 1371, Texas Government Code, as amended ("Chapter 1371") and other applicable laws of the State of Texas to issue obligations such as the notes authorized under the Resolution (as hereinafter defined), in one or more series, to fund costs of "eligible projects" (as such term is defined in Government Code Section 1371.001(2)(A)(i), as amended), which include capital costs associated with the environmental remediation of the TMPA lignite mine as set forth in the TMPA mine remediation plan, as required by the Texas Surface Coal Mining and Reclamation Act, Chapter 134, Natural Resources Code (the "Mining Act") and to secure such obligations with all or part its revenues after first providing for the payment of its operating and maintenance costs.

F. The Cities have agreed in the JOA to make payments under certain circumstances to the Agency to pay debt service coming due on Agency "Mine Reclamation Bonds" (as hereinafter defined) and the Notes (as hereinafter defined) constitute Mine Reclamation Bonds within the meaning of the JOA.

G. The Agency has requested the Bank to issue its Letter of Credit to the Railroad Commission of Texas (the “Beneficiary”), in substantially the form of Exhibit A (the “Letter of Credit”), in the amount of $3,400,000 (the available amount under the Letter of Credit, as adjusted pursuant to the Letter of Credit, being referred to herein as the “Commitment”) to serve as collateral to secure the Collateral Bond to the Beneficiary for the Permit. For purposes of clarity, the Commitment is calculated without reference to the initial Authorized Installment in the amount of $5,000, which is advanced as a loan on the Closing Date.

H. In consideration for the issuance of the Letter of Credit to the Beneficiary, and to induce the Bank to issue and deliver said Letter of Credit, the Agency and the Bank will enter into this Note Purchase Agreement to evidence and secure the payment and performance of all obligations and covenants of the Agency to the Bank in connection with the delivery of the Letter of Credit as provided herein. In furtherance thereof, the Agency has adopted, under and in accordance with Texas Government Code § 1371.056(c) and the TMPA Act, **[Resolution No. 2020-12-__]** (the “Resolution”), on December 10, 2020, Authorizing the Issuance of Texas Municipal Power Agency Mine Reclamation Notes Taxable Series I (the “Notes”) and Texas Municipal Power Agency Mine Reclamation Notes Taxable Series J (the “Series J Notes”). The Resolution authorizes the issuance of the Notes and the Series J Notes to finance Project Costs of Eligible Projects (as each such term is defined in the Resolution), in an aggregate principal amount not to exceed $11,000,000 and their installment delivery to the Bank in connection with advances by the Bank under the Letter of Credit.

I. The Resolution constitutes an "obligation authorization," as defined in Chapter 1371 and this Agreement constitutes a “credit agreement” as defined in Chapter 1371.

J. The Agency is authorized under the TMPA Act and Texas Government Code §§ 1371.103 through 1371.105 to pledge the JOA Payments (as hereinafter defined) required to be made by the Cities under the JOA and this pledge of the JOA payments is perfected when made in the form set forth in this Agreement.

K. The payment and other obligations of the Agency under the Notes and this Agreement will be secured by and be payable from the JOA Payments and the Note Payment Fund.

L. The Bank has agreed, subject to the terms of this Agreement, to issue the Letter of Credit.

M. To induce the Bank to issue the Letter of Credit, the parties have entered into this Agreement in order to evidence the covenants and obligations of the respective parties with respect to the Letter of Credit and to provide for the issuance of the Notes including the

Authorized Installments (as defined hereinafter) and the terms of repayment of the Notes including the Authorized Installments and any amounts drawn under the Letter of Credit and to secure the obligations of the Agency under the Notes, including the Authorized Installments and this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and in order to induce the Bank to issue the Letter of Credit, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"*Advance*" means any payment made by the Bank under the Letter of Credit.

"*Affiliate*" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"*Agency Debt Discharge Date*" means September 1, 2018.

"*Agreement*" means this instrument as originally executed or as it may from time to time be supplemented, modified or amended by one or more instruments entered into pursuant to the applicable provisions hereof.

"*Authorized Installment*" means an Authorized Installment, as defined in the Resolution, which shall be a principal portion of the Notes in an amount equal to (a) in the case of the Initial Authorized Installment, $5,000 and (b) in the case of every Authorized Installment after the Initial Authorized Installment, the principal amount of a particular related Advance under the Letter of Credit, reflecting payment by the Bank at par of the purchase price of such Authorized Installment to the Beneficiary on behalf of the Agency.

"*Authorized Representative*" means, one or more of the following officers and employees of the Agency, acting in concert or individually, to wit: the President, Vice President, Secretary, Assistant Secretary or General Manager, or any other officers or employees of the Agency duly appointed as such by resolution of the Agency.

"*Available Amount*" in effect at any time means the maximum amount available to be drawn at such time under the Letter of Credit.

"*Base Rate*" means, for any date of determination, the per annum rate equal to the highest of (i) the Prime Rate plus one percent (1.00%), (ii) the Fed Funds Rate plus two percent (2.00%) and (iii) seven percent (7.00%).

"*Beneficiary*" has the meaning assigned to that term in the Preliminary Statements.

"*BHC Act Affiliate*" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"*Business Day*" means any day of the year that the Bank is open for full banking business.

"*Cities*" means the cities of Bryan, Denton, Garland, and Greenville, Texas.

"*Closing Date*" means February 16, 2021.

"*Collateral Bond*" has the meaning assigned to that term in the Preliminary Statements.

"*Commitment*" has the meaning assigned to that term in the Preliminary Statements.

"*Control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"*Covered Entity*" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"*Debt*" means (i) indebtedness for borrowed money, (ii) obligations evidenced by bonds, notes or other similar instruments, (iii) obligations to pay the deferred purchase price of property or services, (iv) obligations as lessee under leases which shall have been or should be, in accordance with GAAP, recorded as capital leases, and (v) any other obligation considered to be debt under GAAP.

"*Default Rate*" means, for any date of determination, a fluctuating per annum rate of interest equal to the Base Rate plus three percent (3.00%).

"*Default Right*" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"*Effective Date*" means the date provided in Section 2.01 upon which the Letter of Credit is effective and may be drawn upon, on and subject to its terms, which date shall in any case not precede the expiry date of the Bank's Letter of Credit No. IS000117315U.

"*Electric System*" means, for each of the Cities, in the case of the City of Bryan, its Electric System; in the case of the City of Greenville, its Electric System; in the case of the City of Garland, its Electric Utility System; and in the case of the City of Denton, its Utility System.

"*Event of Default*" has the meaning assigned to that term in Section 6.01.

"*Failure to Replace Draw*" means a draw on the Letter of Credit by the Beneficiary under the circumstances described in 16 Texas Administrative Code §12.309(g).

"*Fed Funds Rate*" means, for any date of determination, a fluctuating rate of interest per annum equal to the weighted average (rounded to the next higher 1/100 of 1%) of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average (rounded to the next higher 1/100 of 1%) of the quotations for such day on such transactions received by Wells Fargo Bank, National Association from three federal funds brokers of recognized standing selected by Wells Fargo Bank, National Association. Each determination of the Fed Funds Rate by Wells Fargo Bank, National Association shall be conclusive and binding on the Agency.

"*Fitch*" means Fitch Ratings, Inc.

"*GAAP*" means, as of any date, the accounting principles, methods and terminology generally accepted in the United States for use by governmental entities owning and operating electric utilities, or such other systems as may be required by any regulatory agency.

"*Governmental Authority*" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority having jurisdiction or supervisory or regulatory authority over the Agency.

"*Initial Authorized Installment*" has the meaning assigned to such term in Section 2.04(b) hereof.

"*Initial Note*" means the non-interest bearing Note, Number T-1, delivered to and held by the Paying Agent/Registrar.

"*Insolvency Proceeding*" means a receivership, insolvency, liquidation, resolution, or similar proceeding.

"*JOA*" has the meaning assigned to such term in the Preliminary Statements.

"*JOA Payments*" means the payments unconditionally required to be made to the Agency by the Cities pursuant to all of the following sections of the JOA: 2.6.2.6, 2.7, 2.11.3 and 3.2.1, which payments are required to be made under the JOA without set off, recoupment or counterclaim, and without regard to whether a City has exited the Agency's mining (or generation or transmission) business category following the execution and delivery of this Agreement and any Notes.

"*Letter of Credit*" has the meaning assigned to that term in the Preliminary Statements.

"*Mandatory Redemption Date*" means, in the case of any Authorized Installment and Advance, the day that is the 91st day after the date of issuance of such Authorized Installment and the making of such Advance, but in no case later than the Maximum Maturity Date.

"*Maximum Interest Rate*" means the higher of (a) the maximum net effective interest rate permitted by applicable law at the time of issuance of the Letter of Credit, which is fifteen percent (15%) per annum, or (b) the maximum net effective interest rate permitted by law to be paid thereon as provided by Texas Government Code §1204.006, as amended.

"*Maximum Maturity Date*" means the 91st day after the earlier of (i) the Stated Termination Date and (ii) the last available draw on the Letter of Credit.

"*Mine Reclamation Bonds*" has the meaning assigned to that term in the Resolution.

"*Moody's*" means Moody's Investors Service, Inc.

"*Note Payment Fund*" has the meaning assigned to the term "Mine Reclamation Note Payment Fund" in the Resolution.

"*Notes*" has the meaning assigned to such term in the Preliminary Statements.

"*Paying Agent/Registrar*" means Wells Fargo Bank, National Association, and its successors and assigns.

"*Paying Agent/Registrar Agreement*" means that certain Paying Agent/Registrar Agreement dated as of February 1, 2021, between the Agency and the Paying Agent/Registrar.

"*Person*" means an individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated association or organization or any other judicial entity, or foreign, state or any agency or political subdivision thereof.

"*Potential Default*" means any condition, event or act which, with the giving of notice or the lapse of time, or both, will constitute an Event of Default hereunder.

"*Power Sales Contract*" means the Power Sales Contract, dated September 1, 1976, as amended, between the Agency and the Cities.

"*Preliminary Statements*" means the statements contained in paragraphs A. though M. that begin on page 1 of this Agreement.

"*Pricing Certificate*" has the meaning assigned to such term in the Resolution.

"*Prime Rate*" means, for any date of determination, the rate of interest per annum most recently established by Wells Fargo Bank, National Association in its sole discretion as its "prime rate." The parties hereto acknowledge that the rate announced by Wells Fargo Bank, National Association as its prime rate is an index or base rate and shall not necessarily be publically announced or be its lowest or best rate charged to its customers or other banks. If at any time (a) Wells Fargo Bank, National Association ceases to exist or (b) Wells Fargo Bank, National Association ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported). Each change in the Prime Rate shall be effective without notice as of the opening of business on the day such change in the prime rate occurs.

"*Pro Rata Share*" as used in Section 5.01(j), Pro-Rata Share means, in the case of each respective City, 21.7% for the City of Bryan; 21.3% for the City of Denton; 47.0% for the City of Garland; and 10.0% for the City of Greenville.

"*Related Documents*" has the meaning assigned to that term in Section 2.11.

"*Resolution*" has the meaning assigned to such term in the Preliminary Statements.

"*Security Register*" has the meaning assigned to such term in the Resolution.

"*Series G Mine Reclamation Notes*" means the $11,605,000 Texas Municipal Power Agency Mine Reclamation Notes Taxable Series G, issued by the Agency on February 19, 2020.

"*Series H Mine Reclamation Notes*" means the $6,505,000 Texas Municipal Power Agency Mine Reclamation Notes Taxable Series H, issued by the Agency on February 19, 2020.

"*Series J Notes*" has the meaning assigned to such term in the Preliminary Statements.

"*Standard & Poor's*" means Standard & Poor's Ratings Services, a division of Standard & Poor's Financial Services LLC., its successors and assigns.

"*Stated Termination Date*" means the expiration date of the Letter of Credit provided in Section 2.01.

"*Step-up Rate*" means, for any date of determination, a fluctuating per annum rate of interest equal to the Base Rate plus one percent (1.00%).

"*System Debt*" means all Debt of the Agency other than Transmission Debt and Mine Reclamation Bonds.

"*Term*" means the period of time beginning on and including the Effective Date and ending on and including the Stated Termination Date.

"*Transmission Debt*" has the meaning assigned to such term in the Resolution.

"*U.S. Special Resolution Regime*" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

Section 1.02. Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding".

Section 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistently applied, except as otherwise stated herein.

Section 1.04. Preliminary Statements. The Preliminary Statements are incorporated in the body of this Agreement by this reference and shall constitute a constituent part of the agreement between the parties set forth herein.

ARTICLE II

AMOUNT AND TERMS OF THE LETTER OF CREDIT

Section 2.01. Letter of Credit. The Bank agrees, subject to and on the terms and conditions hereinafter set forth, to issue the Letter of Credit to the Beneficiary in the amount of the Commitment, which Letter of Credit shall be effective on June 8, 2021, as stated therein (the "Effective Date") and shall expire on June 7, 2022, as set forth therein (the "Stated Termination Date" and, as referred to in the Letter of Credit, the "Expiry Date").

Section 2.02. Issuing the Letter of Credit. The Letter of Credit shall be issued on at least two (2) Business Days' notice from the Agency to the Bank specifying the Business Day of issuance thereof. On such Business Day specified by the Agency in such notice and upon fulfillment of the applicable conditions set forth in Article III, the Bank will issue the Letter of Credit to the Beneficiary. Notwithstanding the issuance by the Bank of the Letter of Credit on the Closing Date, it is expressly acknowledged and agreed by the Agency that drawings may be submitted under the Letter of Credit only during its Term.

The Letter of Credit will be subject to, and performance under the Letter of Credit by the Bank and the Beneficiary will be governed by, the "Uniform Customs and Practice for Documentary Credits (2007 revision in force as of July 1, 2007), International Chamber of Commerce, Publication No. 600," or by later Uniform Customs and Practice fixed by later Congresses of the International Chamber of Commerce as in effect on the date the Letter of Credit is issued.

Section 2.03. Commitment Fee. The Agency agrees to pay to the Bank in advance commencing upon the issuance of the Letter of Credit and thereafter on the first Business Day of each September, December, March and June (each, a "Quarterly Payment Date") a non-refundable commitment fee in accordance with the following terms: (i) at all times other than as described under subpart (ii) of this Section 2.03, a commitment fee equal to 100 basis points (1.00%) times the amount of the Commitment and (ii) at all times after and during the continuance of an Event of Default, a commitment fee equal to 400 basis points (4.00%) times the amount of the Commitment. The commitment fee shall be computed on the basis of a three hundred sixty (360) day year and actual days elapsed from and including the Quarterly Payment Date (or, in the case of the initial payment, the Effective Date) and to (but not including) the immediately succeeding Quarterly Payment Date (or the Stated Termination Date, if sooner). If at any time, prior to the Stated Termination Date, the Beneficiary takes action that would enable the Agency to lower the amount of its reclamation bond, then, upon the Agency's request, the Bank agrees to execute and submit an amended and restated letter of credit, a revised collateral bond, and such other certificates and documents as reasonably may be required to obtain the approval of the Beneficiary of the reclamation bonding in such lower amount. In such case, the commitment fee would remain at its applicable level of basis points, but the quarterly installment payment of the commitment fee will be adjusted prospectively to reflect the reduced Commitment.

Section 2.04. Notes.

(a) *Issuance of Initial Note*. On the Closing Date, the Agency shall issue to the Paying Agent/Registrar in accordance with the terms of the Resolution the Initial Note. The Initial Note shall (i) be dated February 1, 2021, (ii) be issued pursuant to the terms of the Resolution such that, among other things, Authorized Installments shall be issued by the Paying Agent/Registrar thereunder upon (A) a $5,000 loan to the Agency in the case of the Initial Authorized Installment and (B) in all other cases, a draw on the Letter of Credit (as set forth more fully below), (iii) bear no interest for the first 30 days and accrue interest at the Step-Up Rate for days 31-91 after issuance, (iv) be secured by the JOA Payments, as described in the Preliminary Statements and Section 2.13 hereof, and (v) be payable (only to the extent of Authorized Installments having been issued, purchased and delivered), as to principal, not later than the Mandatory Redemption Date of such Authorized Installment (or such earlier date as provided herein).

(b) *Issuance of Initial Authorized Installment and the Purchase thereof by the Bank*. On the Closing Date, (i) the Paying Agent/Registrar shall issue the initial Authorized Installment in a principal amount equal to $5,000 (the "Initial Authorized Installment"), (ii) the Bank shall purchase such Initial Authorized Installment in an amount equal to $5,000 by making a short-term loan in such amount to the Agency, (iii) the Paying Agent/Registrar shall register the Bank as the owner of such Authorized Installment in the Security Register and (iv) the Paying Agent/Registrar shall record on the Initial Note the principal amount of such Authorized Installment and the payments of the principal of and interest on such Authorized Installment; *provided, however*, that the failure of the Paying Agent/Registrar to register the Bank as owner of the Authorized Installment or to record any such amount shall not limit or otherwise affect the obligations of the Agency to repay all amounts owed on such Authorized Installment, together with all interest accrued thereon as provided in Section 2.05.

(c) *Further Issuances of the Authorized Installments and the Purchase thereof by the Bank*. On each day on which the Bank shall honor a demand for payment under the Letter of Credit (such payment by the Bank being herein referred to as an "Advance"), the Bank shall give notice to the Paying Agent/Registrar of such Advance and the Paying Agent/Registrar shall, automatically and without any notice to or consent by the Agency or any other Person, issue in the principal amount of such Advance an Authorized Installment. Each Authorized Installment shall (i) have a Mandatory Redemption Date of 91 days after its date of issuance, (ii) be subject to prior redemption as set forth herein and in the Resolution and (iii) bear interest in accordance with the Note and as set forth in this Agreement. On the date of an Advance under the Letter of Credit (each a "*Bank Purchase Date*") and concurrently upon payment of such Advance, (w) the Advance constitutes the purchase by the Bank of an Authorized Installment at par in a principal amount equal to the principal amount of the Advance, (x) the Paying Agent/Registrar shall immediately deliver to the Bank such Authorized Installment, (y) the Paying Agent/Registrar shall register the Bank as the owner of the Authorized Installment in the Security Register and (z) the Paying Agent/Registrar shall record on the Initial Note the principal amount of such Authorized Installment; *provided, however*, in consideration of the delivery of the Letter of Credit, a corresponding Authorized Installment is deemed issued, purchased and delivered to the Bank on the date of any Advance and the failure of the Paying Agent/Registrar to deliver such Authorized Installment or to register the Bank as the Owner of the Authorized Installment or record any such amount will not limit or otherwise affect the unconditional and irrevocable obligation of the Agency to repay all amounts owed on any such Authorized Installment, together with all interest accrued thereon as provided in the Note and this Agreement. If and to the extent that there has been an Advance and the related Authorized Installment has not been issued and delivered to the Bank pursuant to and in accordance with the terms of the Resolution and this Agreement, the Agency shall be unconditionally obligated to reimburse the Bank for such Advance as the corresponding Authorized Installment is deemed to be issued, purchased and delivered, such payment obligation to be payable on the date and to bear interest at the rate applicable to such Authorized Installment, assuming for such purpose that such Authorized Installment had been so issued and delivered as required by the Resolution and this Agreement.

Section 2.05. Payment of Interest on and Principal of Authorized Installments and Advances. Upon the making of any Advance by the Bank under the Letter of Credit, the Bank shall have purchased an Authorized Installment in the principal amount of such Advance which shall bear interest and be repaid as provided herein. Payments by the Agency of principal of and interest on an Authorized Installment shall be applied *pro tanto* to, and shall constitute, the payment of the principal of and interest on the corresponding Advance.

(a) The Agency hereby agrees to pay to the Bank interest on each Authorized Installment commencing with the Bank Purchase Date of each Advance, as follows: interest on the outstanding principal amount of such Authorized Installment until payment in full, at a fluctuating interest rate per annum equal to the Base Rate for the first thirty (30) days such Authorized Installment is outstanding and equal to the Step-up Rate for days 31-91 that such Authorized Installment is outstanding, with said rate to be adjusted to reflect any change in the Base Rate at the time of any such change, provided that after an Event of Default occurs, the outstanding unpaid balance of such Authorized Installment shall bear interest at the Default Rate until paid in full. Interest shall be payable monthly in arrears, on the first Business Day of each month, and on the Mandatory Redemption Date (or other date of payment of principal) of such Authorized Installment. Interest on each Authorized Installment shall be computed on the basis of a three hundred sixty (360) day year and actual days elapsed. All such calculations shall be performed by the Bank and, absent manifest error, shall be conclusive and binding on the parties to this Agreement. For the sake of clarity, the Initial Note has not been delivered to the Bank, but shall be delivered on the Closing Date and thereupon the Paying Agent/Registrar shall record on the Initial Note the principal amount of such Authorized Installment and the payments of the principal of and interest on such Authorized Installment in accordance with Section 2.04(b)(iv). The Initial Note shall bear no interest for the first 30 days it is outstanding and thereafter accrue interest at the Step-Up Rate for days 31-91 after issuance.

(b) The amount of interest accruing in respect of any Authorized Installment for any interest accrual period calculated in accordance with the provisions of the preceding paragraph shall not exceed the Maximum Interest Rate. If (i) for any interest accrual period the applicable rate of interest (calculated as a net effective interest rate) would exceed the Maximum Interest Rate, then (ii) the applicable rate of interest shall not exceed but shall be capped at such Maximum Interest Rate and (iii) in any interest accrual period thereafter that the applicable rate of interest (calculated as a net effective interest rate) is less than the Maximum Interest Rate, such Authorized Installment shall bear interest at the Maximum Interest Rate until the earlier of (x) payment to the Bank of an amount equal to the amount which would have accrued but for the limitation of the applicable rate of interest set forth under (i) hereinbefore and (y) its respective Mandatory Redemption Date. It is expressly agreed that the provisions of this Section and applicable Texas law (i) permit the Bank to charge interest, in accordance with the terms hereof, up to the Maximum Interest Rate, and such Maximum Interest Rate will not be less than a net effective interest rate of 15% per annum (as defined by Texas Government Code, Section 1204.006), and (ii) permit the recapture of interest by allowing the applicable interest rate to exceed a rate of 15% per annum so long as and provided that such interest rate does not at any time exceed the maximum net effective interest rate (as defined by Texas Government Code, Section 1204.006) permitted by applicable law at the time of issuance of the Notes.

(c) Upon the making of an Advance and the purchase of the related Authorized Installment, the Authorized Installment shall be subject to redemption and payment in full on the following terms:

(i) If (x) the representations and warranties of the Agency contained in Article IV of this Agreement (excluding the rating requirement of Section 4.01(h)(i)) are not true and correct in all material respects on the related Bank Purchase Date or (y) a Potential Default or Event of Default has occurred and is continuing on the related Bank Purchase Date, the principal amount of the related Authorized Installment will be due and payable by the Agency to the Bank and subject to redemption in full on such Bank Purchase Date.

(ii) If (x) the representations and warranties of the Agency contained in Article IV of this Agreement (excluding the rating requirement of Section 4.01(h)(i)) are true and correct in all material respects on the related Bank Purchase Date and (y) no Potential Default or Event of Default has occurred and is continuing on the related Bank Purchase Date, the principal amount of the related Authorized Installment, together with all accrued interest thereon, will be due and payable by the Agency to the Bank and subject to redemption in full on the earlier of: (A) in the case of an Authorized Installment arising from a Failure to Replace Draw on the Letter of Credit, not later than the first to occur of (1) thirty (30) days from the date of the related Advance and (2) the Stated Termination Date and (B) in all cases other than as described under (A), the Mandatory Redemption Date of such Authorized Installment. Each payment shall be applied first to accrued interest and the balance to the outstanding principal owed.

(iii) The Agency may prepay and optionally redeem or cause to be redeemed, without penalty, the amount of any Authorized Installment outstanding in whole or in part with accrued interest to the date of such redemption on the amount redeemed. Any redemption in part shall be applied by the Bank against each such Authorized Installment in the order in which each such Authorized Installment was issued (or deemed issued), with the Authorized Installment that has been outstanding the longest period of time being paid first.

(iv) Unless the Agency shall have otherwise previously advised the Bank in writing, payment by the Bank of an Advance under the Letter of Credit shall be deemed to constitute a representation and warranty by the Agency that as of such Bank Purchase Date (i) the representations and warranties of the Agency contained in Article IV are true and correct in all material respects and (ii) no Potential Default or Event of Default has occurred and is continuing.

(v) The Initial Authorized Installment shall be paid or redeemed in full on or before its Mandatory Redemption Date.

Section 2.06. Increased Costs and Tax Indemnity. Increases in cost to the Bank of issuing and maintaining the Letter of Credit and indemnity for taxes are governed by Exhibit C.

Section 2.07. Payments and Computations. The Agency shall make each payment hereunder not later than 2:00 P.M. (Texas time) on the day when due in lawful money of the United States of America to the Bank at its address referred to in Section 7.02 by wire transfer in same day funds. Any payment received by the Bank after 2:00 P.M. (Texas time) shall be deemed to have been received on the next Business Day and will accrue interest in accordance with Section 2.05. Subject to the subordination provisions of Section 2.12, the Agency hereby authorizes the Bank, if and to the extent payment is not made when due hereunder, to charge from time to time against any or all of the Agency's accounts with the Bank any amount so due.

Section 2.08. Payments on Non-Business Days. Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest.

Section 2.09. [Reserved.]

Section 2.10. [Reserved.]

Section 2.11. Obligations Absolute. The payment obligations of the Agency under the Notes, including the Authorized Installments and this Agreement and any other agreement or instrument relating to the Letter of Credit shall, to the extent allowed by law, be absolute, unconditional and irrevocable, and shall be paid and performed strictly in accordance with the terms of this Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances:

(i) any lack of validity or enforceability of this Agreement, the Letter of Credit, the Collateral Bond, the JOA, the Resolution, the Pricing Certificate, the Notes, the Paying Agent/Registrar Agreement or any other agreement or instrument relating to any of the foregoing (collectively the "Related Documents");

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of the Agency in respect of the Letter of Credit or any other amendment or waiver of or any consent to departure from all or any of the Related Documents;

(iii) the existence of any claim, set-off, defense or other right that the Agency may have at any time against the Beneficiary or any transferee of the Letter of Credit (or any persons or entities for whom such Beneficiary or any such transferee may be acting), the Bank, or any other person or entity, whether in connection with this Agreement, the transactions contemplated hereby or by the Related Documents or any unrelated transaction;

(iv) in the absence of willful malfeasance or negligence of the Bank, any statement or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by the Bank under the Letter of Credit against presentation of a draft, certificate, or document which does not comply with the terms of the Letter of Credit;

(vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any document, for all or any of the obligations of the Agency in respect of the Letter of Credit;

(vii) any amendment or waiver of or any consent to departure from the terms of this Agreement, the Letter of Credit or any other agreement or instrument related thereto that has not been agreed to in writing by the Bank; or

(viii) the failure of the Bank to provide any notice to the Agency pursuant to the terms of this Agreement.

Section 2.12. [Reserved.]

Section 2.13. Pledge of JOA Payments. The Resolution creates a valid and irrevocable first lien on, pledge of, and security interest in the JOA Payments, together with the Note Payment Fund (and all funds from time to time accruing thereto) (collectively, the "Pledged Revenues"), as security for the Initial Note and all Authorized Installments purchased by the Bank hereunder and all action necessary to perfect the lien on, pledge of, and security interest of the Bank in such Pledged Revenues has been duly and validly taken as of the Closing Date. The Agency hereby irrevocably pledges and grants to the Bank, on an equal and ratable basis with the purchaser of any other Notes issued under the Resolution, as security for the payment by the Agency, when due, of all obligations now or at any time hereafter owing to the Bank under this Agreement including payment of all Authorized Installments, the deposit of all sums and the payment of all fees and the payment and performance of all other obligations of the Agency hereunder, a lien on and security interest in the Pledged Revenues and the right to enforce certain remedies under the Resolution as described therein.

Section 2.14. Application of Chapter 346 of the Finance Code. The Agency and the Bank agree that Chapter 346 of the Finance Code shall not apply to this Agreement or the arrangements between the Agency and the Bank arising under this Agreement or the Letter of Credit.

ARTICLE III

CONDITIONS OF ISSUANCE

Section 3.01. Condition Precedent to Issuance of the Letter of Credit. The obligation of the Bank to issue the Letter of Credit on the Closing Date is subject to the condition precedent that the Bank shall have received on or before the date of the issuance of the Letter of Credit the following, each dated such date, in form and substance satisfactory to the Bank:

(a) Complete and correct copies of (i) the concurrent ordinances establishing the Agency, certified to be true and correct copies by the applicable Governmental Authorities, (ii) the Resolution and the Agency's Rules and Regulations and General Policy, each as amended to date, and each as certified to be in full force and effect as of a recent date by the applicable Governmental Authority and (iii) each of the other documents, certificates and instruments required to be delivered under the Resolution including without limitation the ratings letters delivered as a precondition to the issuance of the Notes.

(b) Originals (or copies certified to be true copies by an appropriate officer of the Agency) of all governmental and regulatory approvals necessary for the Agency with respect to this Agreement and the transactions contemplated hereby, including without limitation, approval by the Beneficiary of the Letter of Credit and Collateral Bond.

(c) A certificate of the Secretary or an Assistant Secretary or other authorized officer of the Agency certifying the names, offices held, and true signatures of the officers of the Agency authorized to sign this Agreement and the other documents to be delivered by it hereunder.

(d) An opinion of the Attorney General of the State of Texas approving the proceedings relating to the Notes and this Agreement.

(e) An opinion of McCall, Parkhurst & Horton L.L.P. as special counsel to the Agency covering the Resolution, the Notes, and the validity and perfection of the pledge of JOA Payments, and certain other matters, in form and substance satisfactory to the Bank.

(f) An opinion of general counsel for the Agency, in substantially the form of Exhibit B hereto and as to such other matters as the Bank may reasonably request.

(g) The original Initial Note delivered to the Paying Agent/Registrar; issuance of the initial Authorized Installment by the Paying Agent/Registrar.

(h) A true copy of the JOA certified by an officer of the Agency as being a true and complete copy of the original document.

(i) An executed copy of this Agreement, the Paying Agent/Registrar Agreement and the Collateral Bond.

(j) Written confirmation (e.g., Bloomberg screenshot) of the individual City Electric System's unenhanced, long-term debt Ratings as of the Closing Date.

(k) Such other evidence with respect to the Agency as the Bank may reasonably request to establish the consummation of the transactions contemplated under this Agreement, including such other approvals, opinions or documents as the Bank may reasonably request.

Section 3.02. Additional Conditions Precedent to Issuance of the Letter of Credit. The obligation of the Bank to issue the Letter of Credit shall be subject to the further conditions precedent that on the date of the issuance of the Letter of Credit the following statements shall be true and the Bank shall have received a certificate signed by a duly authorized officer of the Agency, dated the date of such issuance, stating that:

(i) The representations and warranties contained in Section 4.01 of this Agreement are correct on and as of the date of issuance of the Letter of Credit, before and after giving effect to such issuance, as though made on and as of such date; and

(ii) No petition by or against the Agency has at any time been filed under the United States Bankruptcy Code or under any similar act;

(iii) No default or event which with the passage of time or the giving of notice, or both, would constitute a default has occurred and is continuing under the Resolution or the JOA, respectively, except such as may be disclosed in the opinion given pursuant to Section 3.01(d); and

(iv) No event has occurred and is continuing, or would result from such issuance, which constitutes an Event of Default or a Potential Default.

Section 3.03. Fee. The obligation of the Bank to issue the Letter of Credit shall be subject to the further condition precedent that on the date of issuance of the Letter of Credit the Agency shall have paid to the Bank the commitment fee provided for in Section 2.03.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 4.01. Representations and Warranties of the Agency. In order to induce the Bank to issue the Letter of Credit, the Agency represents and warrants to the Bank, and covenants with the Bank, as follows:

(a) *Existence*. The Agency is a municipal corporation and political subdivision of the State of Texas which is duly organized and validly existing under the laws of the State of Texas.

(b) *Authorization and Non-Contravention*. The Agency is duly authorized under the laws of the State to create and issue the Notes; all action on its part for the creation and issuance of the Notes has been duly and effectively taken, and the Notes in the hands of the purchasers thereof are and will be valid and enforceable special obligations of the Agency payable in accordance with their terms. The execution, delivery and performance by the Agency of this Agreement, the Initial Note and the other Related Documents to which it is a party are within the Agency's corporate powers, have been duly authorized by all necessary corporate action, and do not contravene or violate (i) the Agency's by-laws, or any resolutions adopted by its Board of Directors or (ii) law (including, without limitation, any order, rule or regulation applicable to the Agency) or any contractual restriction binding on or affecting the Agency or its property (including without limitation any restriction in any documents relating to bonds or commercial paper issued by the Agency or in the JOA), and do not result in or require the creation of any lien, security interest or other charge or encumbrance (except as provided in or contemplated by this Agreement) upon or with respect to any of its properties. The individual signing this Agreement is an Authorized Representative, entitled and authorized to bind the Agency to each of the provisions herein set forth.

(c) *Approvals and Filings*. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Agency of this Agreement or any other Related Document which has not been duly obtained or made.

(d) *Enforceable Obligations*. This Agreement is, and the other Related Documents to which it is a party when delivered, are or will be, legal, valid and binding obligations of the Agency enforceable against the Agency in accordance with their respective terms, assuming due authorization and delivery by the other parties to such agreements.

(e) *Financial Information*. The balance sheet of the Agency as at September 30, 2020 and the related statements of income and retained earnings of the Agency for the fiscal year then ended, copies of which have been furnished to the Bank, fairly present the financial condition of the Agency as at such date and the results of the operations of the Agency for the period ended on such date, all in accordance with GAAP consistently applied, and since September 30, 2020, there has been no material adverse change in such financial condition or operations.

(f) *Litigation*. There is no pending or threatened action or proceeding affecting the Agency or, to the knowledge of the Agency based solely on the certificates of each of the Cities, any of the Cities before any Governmental Authority which may materially adversely affect the financial condition or operations of the Agency or any of the electric systems of the Cities, or which purports to affect the legality, validity or enforceability of this Agreement or any other Related Document, except any such action or suit described in the opinion of counsel provided pursuant to Section 3.01(d).

(g) *JOA*. The JOA has been duly authorized, executed and delivered by each of the parties thereto and is a valid and enforceable agreement on the date hereof and, subject to the matters described in the opinion of counsel provided pursuant to Section 3.01(d), no default or event which with the passage of time or the giving of notice, or both, would constitute a default exists with respect to any party under said contract and to the knowledge of the Agency all parties are in full compliance with said contract.

(h) *Ratings*. (i) The Agency's Transmission Debt carries a long-term rating of A+ by Standard & Poor's, A+ by Fitch and A1 by Moody's. Such ratings have been unchanged since November 2, 2018.

(ii) The City Electric System debt long-term ratings are as follows: (A) the City of Bryan: AA- by Fitch and A+ by Standard & Poor's; the City of Denton: A+ by Fitch and AA- by Standard & Poor's; the City of Garland: senior lien debt: AA by Fitch and A+ by Standard & Poor's and subordinate lien debt: AA- by Fitch and A+ by Standard & Poor's; the City of Greenville: A2 by Moody's and A+ by Standard & Poor's (collectively, the "City Electric System Ratings").

(i) *JOA Payments Pledge*. Pursuant to the Resolution and this Agreement there shall exist a valid first lien on, pledge of, and security interest in the Pledged Revenues as security for the Initial Note and all Authorized Installments purchased by the Bank hereunder, and as security for the payment by the Agency, when due, of all obligations now or at any time hereafter owing to the Bank under this Agreement including payment of all Authorized Installments, deposit of all sums, payment of all fees and payment and performance of all other obligations of the Agency hereunder.

(j) *Effectiveness of Pledge*. Chapter 1208, Texas Government Code, applies to the issuance of the Notes and the pledge of the JOA Payments by the Agency, and such pledge is therefore valid, effective, and perfected as of the Closing Date.

(k) *Reclamation Obligations*. The Agency is in full compliance with its reclamation obligations with respect to Permit No. 26D, except as may be described in the certificate issued by the Agency pursuant to Section 3.02 of this Agreement.

(l) *Construction Contracts*. All of the construction contracts, for which performance and payment bonds are required by law, entered into by the Agency with respect to its reclamation operations are secured by performance and payment bonds. Such contracts are presently in full force and effect, and there are no existing defaults or events which, with the passage of time or the giving of notice or both, would constitute a default under such contracts.

(m) *Permit*. In relation to Permit 26D, there exists no liability of the Agency under the Texas Coal Mining and Reclamation Act, the regulations promulgated pursuant to said Act, or Permit No. 26D, as originally issued, amended, revised, renewed, or replaced, other than completion of the reclamation plans required under Permit No. 26D. As of the date hereof, the Agency's completion of the reclamation plans is on schedule and all reclamation work is expected to be completed on schedule and within budget.

(n) *No Default*. No Potential Default or Event of Default has occurred and is continuing.

(o) *Sovereign Immunity; Mandamus; Etc,*. (i) The duties and obligations of the Agency under the Notes, this Agreement, the Resolution, and the JOA that are clearly defined and non-discretionary and for which there is no other remedy available at law shall be enforceable by mandamus in any court of competent jurisdiction. Without limiting any other remedies set forth herein or in the other Related Documents, in the case of a breach or default by the Agency under this Agreement or the other Related Documents, the Bank (provided that the Bank has not wrongfully dishonored a draw on the Letter of Credit presented in strict compliance with the terms thereof) shall be entitled to file a mandamus action in any court of competent jurisdiction in Brazos County, Texas, or other court of competent jurisdiction, against the Agency, its officers or employees.

> (ii) To the fullest extent permitted by applicable Texas law and pursuant to Section 1371.059(c) of the Texas Government Code, as amended, with respect to its obligations arising under this Agreement, the Agency agrees that it will not claim any immunity on the grounds of sovereignty or other similar grounds from any action, suit or proceeding arising under or relating to this Agreement or any of the other Related Documents, whether to enforce the provisions hereof or thereof or to recover damages for the breach hereof or thereof.

(p) *Agency Payment Obligations*. The payment obligations of the Agency under the Notes, including the Authorized Installments and this Agreement constitute costs properly assessed by the Agency for recovery of the cost of services undertaken by the Agency pursuant to the JOA, as contemplated under Section 2.7 of the JOA.

(q) *Cities' Payment Obligations*. The payment obligations of the Cities under sections 2.6.2.6, 2.7, 2.11.3 and 3.2.1 of the JOA constitute operating expenses of the respective Cities' electric systems as provided in Section 2.7 of the JOA and, in accordance with Texas Government Code § 1502.056(c), the pledge of the JOA Payments constitutes a first lien on the revenues of the respective Cities' electric systems.

(r) *Rate Covenant*. In the JOA, each City has irrevocably covenanted to establish, maintain and collect rates and charges for the electric service of its electric system which shall produce revenues at least sufficient, together with other revenues available to such electric system and available electric system reserves, to enable it to pay to the Agency, when due, all amounts payable by each City under the JOA.

(s) *Anti-Terrorism Representation*.

(i) Neither the Agency nor any of its Affiliates is in violation of any laws relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the USA Patriot Act, Title III of Pub.L.107-56, 115 Stat. 272 (the "Patriot Act");

(ii) Neither the Agency nor any of its Affiliates is any of the following:

(A) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(B) a Person owned or controlled by, or acting for or on behalf of, any Person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(C) a Person with which the Bank is prohibited from dealing or otherwise engaging in any transaction by an Anti-Terrorism Law;

(D) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(E) a Person that is named as a "specially designated national and blocked person" on the most current list published by the Office of Foreign Asset Control ("OFAC") or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list (collectively, the "OFAC Lists");

(iii) Neither the Agency nor any of its Affiliates (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (ii)(B) above, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

ARTICLE V

COVENANTS OF THE AGENCY

Section 5.01. Affirmative Covenants. So long as a drawing is available under the Letter of Credit or the Bank shall have any Commitment hereunder or the Agency shall have any obligation to pay any Authorized Installment or other amount to the Bank under the Notes or hereunder, the Agency will, unless the Bank shall otherwise consent in writing:

(a) *Maintenance of Insurance*. Maintain insurance with responsible and reputable insurance companies or associations, or shall self-insure, in such amounts and covering such risks as is usually carried by governmental entities engaged in similar businesses and owning similar properties in the same general areas in which the Agency operates.

(b) *Preservation of Corporate Existence, Etc*. Preserve and maintain its existence as a municipal corporation and political subdivision of the State of Texas, and all of its statutory rights.

(c) *Compliance with Laws, Etc*. Comply in all material respects with the requirements of all applicable laws, rules, regulations and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith.

(d) *Visitation Rights*. At any reasonable time and from time to time, permit the Bank or any agents or representatives thereof to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Agency, and to discuss the affairs, finances and accounts of the Agency with any of their respective officers or directors and with their independent certified public accountants.

(e) *Keeping of Books*. Keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Agency in accordance with GAAP consistently applied.

(f) *Maintenance of Properties, Rates and Charges, Etc*. Maintain and preserve all of its properties which are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted and to at all times maintain rates and charges for all services furnished, provided and supplied by the Agency, to enable the Agency to timely pay all obligations to the Bank hereunder.

(g) *Pledges*. The Agency shall promptly take all actions and measures necessary to ensure the continuing validity, perfection and priority of the pledge described in the Preliminary Statements and Section 2.13 of this Agreement, and in

Section 4.01 of the Resolution including, without limitation, all actions and measures described in Section 4.01(b) of the Resolution.

(h) *Covenants Relating to Annual Budget and Collections*. the Agency covenants and agrees with the Bank as follows:

(i) The JOA Payments are available to pay the Agency's services, including the Agency's mining business category, in accordance with the JOA.

(ii) Annually, in accordance with Section 3.2.1 of the JOA, the Board of the Agency shall adopt annual budgets by business category, and, specifically, the Board shall adopt the mining business category Annual Budget, and in connection therewith, the Board shall adopt charges to be invoiced monthly to the Cities for the recovery of the amounts due and owing under the Resolution and the Notes to the note purchaser or under this Agreement to the Bank, including all fees and other amounts scheduled hereunder.

(iii) Upon each occurrence of an Advance and the purchase of a related Authorized Installment, the Agency will within ten (10) Business Days acting in accordance with Section 2.6.2.3 of the JOA, submit an amendment to the Annual Budget adding an amount sufficient to raise and produce the money required to pay all principal of and interest on the Authorized Installments as such amounts come due in each Fiscal Year ("Debt Service Payments") and to pay any other fees or amounts in relation thereto. Such an amendment to the Annual Budget shall include a payment schedule for each City setting forth the monthly Debt Service Payments required to be made by each City to the Agency for the respective Fiscal Year covered by the Annual Budget in accordance with the contract percentages for each City, as set forth in the JOA. In the case of any required deposit under Section 5.01(j) hereof, the Agency will proceed, *mutatis mutandis*, to submit an amendment to the Annual Budget, including a requisite payment schedule for the relevant City or Cities.

(iv) The Agency will timely invoice the Cities each month for their respective portions of the Debt Service Payments (and any other required deposits or fees under the Resolution or this Agreement including, without limitation, in the case of any deposit required under Section 5.01(j) hereof, the percentage of the Pro-Rata Share of a City of the Available Amount of the Letter of Credit required to be deposited with the Bank) as set forth in the amended Annual Budget and will use all available means (including taking action in accordance with Section 5.07(d) of the Resolution) to collect the Debt Service Payments (and such other amounts and deposits) for deposit into the Note Payment Fund (or special account, in the case of deposits under Section 5.01(j)) according to the requirements of this Agreement and the Resolution.

(i) *Performance and Compliance with Other Covenants*. Perform and comply with each of the covenants and agreements set forth in the Resolution and the JOA, respectively, without giving effect to any subsequent amendment, modification or termination thereof. In particular and not in limitation of the foregoing, the Agency will comply with the terms and conditions of the JOA and will cause the Cities, as parties to such agreement, their officials, and employees, to comply with all of their obligations under the JOA, by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings in any court of competent jurisdiction and the employment of any other remedy available at law or in equity to enforce the Cities' obligations.

(j) *Deposits Upon Decline of Ratings*. In the event that the long-term senior debt ratings of any City's Electric System by Standard & Poor's, Fitch or Moody's, respectively, shall fall to BBB/BBB/Baa2 or BBB-/BBB-/Baa3, respectively, the Agency shall establish an interest bearing account with the Bank which will be dedicated to reimburse the Bank for the repayment of any drawing made under the Letter of Credit, such account to be funded not later than 15 calendar days after the reduction in ratings in an amount equal to 50% of that City's Pro-Rata Share of the Available Amount of the Letter of Credit and if any such rating shall fall below BBB-/BBB-/Baa3, respectively, or be withdrawn or suspended, the Agency shall deposit in such account (not later than 15 calendar days after such reduction in ratings) an amount which (together with all prior deposits therein) is equal to 100% of that City's Pro-Rata Share of the Available Amount of the Letter of Credit.

Any balance in such an account remaining after the Stated Termination Date and after payment of the principal of and interest on all Authorized Installments and payment of all other amounts payable to the Bank under this Agreement shall be paid to the Agency upon expiration of the Letter of Credit, as the Agency may direct.

(k) *Reporting Requirements*. Furnish to the Bank the following:

(i) as soon as possible, and in any event within five days after the occurrence of each Event of Default or each Potential Default, continuing on the date of such statement, a statement of the general manager of the Agency setting forth details of such Event of Default or Potential Default and the action which the Agency has taken and proposes to take with respect thereto;

(ii) a copy of each quarterly financial report (unaudited) that it supplies to its Board of Directors and annual audited financial statements (with a consolidation statement) within 90 and 120 days, respectively, from the close of the period; copies of the annual audited financial statements for each of the Cities at the earlier of (A) promptly after the date first available and (B) 210 days after the end of the fiscal year of such City;

(iii) as soon as possible, and in any event within five days after receipt, of any inspection report from the Beneficiary or any other state or federal agency relating to the reclamation operations of the Agency under Permit No. 26D or any correspondence or other notice from any such agency which relates to any sanction against or notice of non-compliance by the Agency with respect to its reclamation obligations;

(iv) promptly, (A) copies of any reports prepared by or for the manager of the reclamation operations which show that the operations are not on schedule or within budget in any material adverse respect and (B) written notice of any change in, or any announced or published withdrawal or suspension of one or more of the City Electric System Ratings;

(v) at least thirty (30) days prior written notice before the finalization and funding of any debt incurred by the Agency, whether subordinate or senior to the Agency's obligations hereunder, which exceeds ten percent (10%) of the net worth of the Agency;

(vi) at least thirty (30) days prior written notice of any sale of assets by the Agency for an aggregate price in excess of $10,000,000;

(vii) on the date of issuance of the Letter of Credit, but no later than March 1, 2021, an updated bond reduction schedule, dated no earlier than December 31, 2020, to be further updated in August during the term of this Agreement, containing the estimated amounts by which the Collateral Bond is anticipated to be reduced and the estimated schedules for such reductions; and

(viii) such other information respecting the business, properties, operations, or condition, financial or otherwise, of the Agency as the Bank may from time to time reasonably request.

(l) *Further Assurances*. Execute and deliver, or cause to be executed and delivered from time to time, such further instruments, supplements, amendments, modifications, consents, certifications, assignments, financing statements and other such documents and instruments as the Bank may, in its reasonable discretion, deem necessary or advisable in order to preserve and protect the rights of the Bank under this Agreement or to facilitate the performance of the covenants and obligations created pursuant to this Agreement.

Section 5.02. Negative Covenants. So long as a drawing is available under the Letter of Credit or the Bank shall have any Commitment hereunder or the Agency shall have any obligation to pay any Authorized Installment or other amount to the Bank under the Notes or hereunder, the Agency will not, without the written consent of the Bank, do or suffer to occur any of the following:

(a) *Modification of JOA.* The Agency will not consent to the modification, amendment or waiver of any covenant or provision of the JOA, which in the reasonable judgment of the Bank could reasonably be expected to adversely affect the ability of the Agency to perform its obligations under the Resolution or hereunder or the ability of the Bank to receive payment for all amounts due under the Notes including each Authorized Installment and this Agreement. The Agency will provide the Bank notice as promptly as practicable of any proposed amendments to or modifications or waivers of any provisions of the JOA, and of the meeting of the Board of Directors of the Agency when such proposed amendments, modifications or waivers are to be considered. In connection with any proposed modification, amendment or waiver of any such agreement, the Board shall make a determination that such modification, amendment or waiver, as the case may be, will not have an adverse effect as described in the preceding sentence and submit such determination to the Bank for its review, but the Bank shall make such determination acting in its sole reasonable discretion; provided, however, that an amendment to the JOA solely for the purpose of (and only including amendments directly related to) allowing the sale of power or energy to a City under the generation business segment shall not be subject to the approval right of the Bank as set forth in the first sentence of this Section 5.02(a).

(b) *Resolution a Contract*. The Resolution shall constitute a contract with the Bank and its successors and assigns, binding on the Agency and its successors and assigns, and shall not be amended, modified or repealed, nor shall any provision thereof be waived, by the Agency.

(c) *No Issuance of Additional Mine Reclamation Bonds, etc.*.

(i) Except as provided in subpart (ii)(C) of this Section 5.02(c), the Agency shall not issue or incur or suffer to exist any Mine Reclamation Bonds, other than the Notes and the Series J Notes authorized in connection with the Bank's letter of credit issued for the Agency's Surface Mining and Reclamation Permit No. 38D, nor shall the Agency issue or incur or have outstanding any other Debt or obligations relating to the Agency's Mining Business assets (as described in the JOA), which are secured by or payable from the JOA Payments.

(ii) The Agency shall not issue, incur or have outstanding any Debt other than (A) Mine Reclamation Bonds, if such Debt is secured in whole or in part by revenues derived from payments received by the Agency from the Cities pursuant to the JOA, other than payments securing Mine Reclamation Bonds, (B) Transmission Debt and (C) Series G Mine Reclamation Notes and Series H Mine Reclamation Notes (collectively, the "2020 Series Notes"), provided that the authority to issue 2020 Series Notes shall cease and terminate on the Effective Date.

(d) *2020 Series Notes*. The Agency will not permit any 2020 Series Notes to be outstanding at any time on or after the Effective Date and, prior to the Effective Date, shall pay or redeem or cause the payment or redemption of all 2020 Series Notes and the payment of all principal and interest due thereunder and all other amounts owing to the Bank in connection therewith.

(e) *Paying Agent/Registrar*. The Agency will not, without the prior written consent of the Bank (such consent not to be unreasonably withheld), appoint or permit the appointment of a successor Paying Agent/Registrar.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.01. Events of Default. The occurrence of any of the following events shall be an "Event of Default" hereunder:

(a) The Agency shall fail to pay any amount payable hereunder when the same becomes due and payable; or

(b) Any representation or warranty made, or deemed made, by the Agency herein or by the Agency (or any of its officers) in connection with this Agreement shall prove to have been incorrect in any material respect when made or deemed made; or

(c) (i) The Agency shall fail to perform or observe any term, covenant or agreement set forth in Sections 5.01(b), 5.01(g), 5.01(h), 5.01(i), 5.01(j) or 5.01(k)(i) or in Section 5.02 hereof; or (ii) the Agency shall fail to perform or observe any term, covenant or agreement contained in this Agreement or in any Related Document on its part to be performed or observed other than those specified in clause (i) immediately preceding (and other than those described in any other subsection of this Section 6.01), and any such failure shall remain unremedied for 10 days after written notice thereof shall have been given to the Agency by the Bank; or

(d) The Agency shall fail to pay (i) any Series G Mine Reclamation Notes or any Series H Mine Reclamation Notes in accordance with the terms thereof or (ii) any Debt which is outstanding in a principal amount of at least $50,000 in the aggregate (excluding Debt under this Agreement) of the Agency when the same becomes due and payable (whether by scheduled maturity, required prepayment, redemption, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or

(e) Any event shall occur or condition shall exist under any agreement or instrument relating to any Debt of the Agency and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(f) The Agency shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Agency seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Agency shall take any corporate action to authorize any of the actions set forth above in this subsection (f); or

(g) A judgment or order for the payment of money in excess of $250,000 shall be rendered against the Agency by a Governmental Authority and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(h) Any provision of the Resolution or this Agreement shall at any time for any reason cease to be valid and binding on the Agency, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Agency, or a proceeding shall be commenced by any Governmental Authority seeking to establish the invalidity or unenforceability thereof, or the Agency shall deny that it has any or further liability or obligation under the Resolution or this Agreement; or

(i) Any "Event of Default" under and as defined in the Resolution shall have occurred and be continuing; or any breach of a provision of the JOA shall have occurred and be continuing; or

(j) (i) any pledge or lien created by the Resolution or this Agreement in favor of the note purchaser or the Bank, at any time and for any reason (except as expressly permitted to be released by the terms of such governing document) shall not constitute a valid and perfected pledge and lien or shall fail to have the priority required by the Resolution and this Agreement or, except as permitted under the Resolution, the Agency shall so assert in writing, (ii) any legislation is enacted, repealed, reenacted, amended or otherwise modified, and such repeal, enactment, reenactment, amendment or modification, in the opinion of the Bank, has or could reasonably be expected to have a material adverse effect on the validity, enforceability or priority of the pledge and lien on the JOA Payments, in favor of the note purchaser or the Bank or (iii) any rescission of or amendment to or any other action under or in connection with any legislation, law or regulation relating to the JOA Payments, which would (A) materially reduce the amount of the JOA Payments or the allocation of the JOA Payments to the payment of the Notes, including the Authorized Installments or any other amounts due under this Agreement or (B) impair or adversely affect (x) the rights of the Agency to any or all of the JOA Payments, or (y) the rights or security of the note purchaser or the Bank under the Resolution or this Agreement; or

(k) An Event of Default occurs under the Note Purchase Agreement of even date herewith between the parties relating to the letter of credit to be issued by the Bank for the Agency's Surface Mining and Reclamation Permit No. 38D.

Section 6.02. Upon an Event of Default. (a) If any Event of Default shall have occurred and be continuing, all Advances not yet reimbursed hereunder, all interest thereon and all other amounts payable and all Authorized Installments under the Notes and this Agreement shall accrue interest at the Default Rate and the Bank shall be entitled to enforce its claims and causes of action against the Agency for all amounts that are due and payable and for payment and performance of each of the Agency's other obligations hereunder and under the other Related Documents. If any other Debt of the Agency is accelerated or required to be prepaid, purchased or redeemed prior to its stated maturity, the Bank may declare the principal amount of all outstanding Authorized Installments, all interest thereon and all other amounts payable hereunder to be immediately due and payable, whereupon the principal amount of all outstanding Authorized Installments, all such interest and all such other amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by the Agency.

(b) If at the time that any such Event of Default occurs, any portion of the Letter of Credit is still undisbursed (that is, if the Letter of Credit is still in effect and has not been completely drawn against), the Agency will, after at least ten (10) days advance written notice, pay the Bank for application to drawings under the Letter of Credit an amount equal to the Available Amount of the Letter of Credit. Such funds shall be used to fund any future drawings thereafter on the Letter of Credit. Any amount so paid to the Bank that has not been drawn on or before the Stated Termination Date (as the same may have been extended pursuant to Section 2.09) of the Letter of Credit will be repaid to the Agency without interest upon expiration of the Letter of Credit.

(c) To the maximum extent allowed by Texas law, the Agency hereby (i) waives any immunity from suit that it may have in connection with this Agreement, and (ii) agrees that in the event of litigation between the Bank and the Agency relating to this Agreement, the Agency will not raise immunity from suit as a defense.

(d) Without limiting any other remedy available hereunder or at law or in equity, to the maximum extent permitted by law, the Bank may by mandamus (as described in Section 4.01(o) hereof) or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction, enforce and compel performance of the Notes, the Resolution, this Agreement, and the JOA and every provision and covenant thereof, including without limiting the generality of the foregoing, the enforcement of the performance of all obligations and duties required to be done or performed by the Agency by the Resolution and the applicable laws of the State.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Amendments, Etc. No amendment or waiver of any provision of this Agreement, nor consent to any departure by the Agency therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 7.02. Notices, Wire Transfer Instructions. All notices under this Agreement shall be in writing and either (x) hand delivered by messenger against receipt therefore, (y) mailed by registered or certified mail, postage prepaid and return receipt requested or sent prepaid by nationally recognized overnight courier service, or (z) sent by telecopier (facsimile) with a printed record of transmission, in each case addressed as follows:

(a) If to the Agency by mail, to:

Texas Municipal Power Agency
P.O. Box 7000
Bryan, Texas 77805
Attention: General Manager

If to the Agency by other means:

Texas Municipal Power Agency
12824 FM 244
Anderson, Texas 77830
Attention: General Manager
Telephone No. 936.873.2013
Telecopy No. 936.873.1183

(b) If to the Bank, to:

Wells Fargo Bank, N.A.
360 Interstate N. Pkwy SE, 5th Floor
Atlanta, GA 30339-2204
Attention: Patrick Hennessey
Telephone No. (678) 589-4341
Telecopy No. (678) 589-4315

(c) If to the Paying Agent/Registrar, to:

Wells Fargo Bank, N.A.
600 S 4th St., Floor O6
Minneapolis, MN 55415-1526
Attention: Jim Hood, Vice President
Telephone No. 612-667-1256

and if money is to be transmitted to the Bank the wire transfer instruction are:

ABA:	121000248
Name:	Wells Fargo Bank, N.A.
Account No.	00698314050720
Account Name:	Texas Municipal Power Authority
Address:	Roanoke, VA
Customer Name:	Texas Municipal Power Agency
OBGR:	8862819507
OBLN:	**NEW – assigned at booking
REF:	Short Term NOTE payoff's

or to such other address as a party may designate. Notices shall be deemed to have been given when delivered (or, if mailed, on the second Business Day).

Section 7.03. No Waiver; Remedies. No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or in equity.

Section 7.04. Right of Set-Off. Upon the occurrence and during the continuance of any Event of Default, the Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Bank to or for the credit or the account of the Agency against any and all of the obligations of the Agency now or hereafter existing under this Agreement, whether or not the Bank shall have made any demand hereunder and although such obligations may be contingent or unmatured.

Section 7.05. Indemnification. To the maximum extent allowed by Texas law, the Agency hereby covenants to defend, indemnify and hold the Bank, its Affiliates and each of the officers, directors, employees and agents of the Bank or any Affiliate (each, an "Indemnified Party") harmless from and against any and all claims, causes of action, damages, losses, liabilities, obligations, costs or expenses (including without limitation reasonable attorneys' fees whether incurred by an Indemnified Party in a dispute or litigation involving the Agency or involving a third party) that an Indemnified Party may incur or which may be claimed or asserted against such Indemnified Party by any person or entity:

(a) by reason of or in connection with the execution, delivery or performance of the Resolution or the JOA, respectively, or any transaction contemplated by the Resolution or the JOA, respectively;

(b) by reason of or in connection with the execution and delivery of the Notes by the Agency, or the purchase and holding of the Notes by the Bank as note purchaser under the Resolution;

(c) in the form of any demand, lawsuit, proceeding, claim or cause of action filed or alleged against the Bank by any Person and relating to this Agreement or the Notes;

(d) by reason of or in connection with the execution and delivery or transfer of, or payment or failure to make payment under, the Letter of Credit; provided, however, that the Agency shall not be required to indemnify the Bank pursuant to this Section 7.05 for any claims, damages, losses, liabilities, costs or expenses to the extent caused by the Bank's willful failure to make lawful payment under the Letter of Credit after the presentation to it by the Beneficiary of documents strictly complying with the terms and conditions of the Letter of Credit; and

(e) relative to and/or as a consequence of (a) any failure by the Agency to perform any of its agreements or obligations hereunder or under any of the other Related Documents, (b) the Letter of Credit and any Advances and acceptances being made under or purported to be made thereunder, or (c) any action taken or admitted by the Bank and/or its branches, affiliates and/or correspondents at the request of the Agency or in the administration or enforcement of this Agreement;

provided, in each case, that the Agency shall not be required to indemnify the Bank for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, directly caused by (1) the willful misconduct or negligence of the Bank or (2) the Bank's willful failure to pay under the Letter of Credit after the presentation to it by the Beneficiary of a draft and certificate strictly complying with the terms and conditions of the Letter of Credit, to the extent that there has been a final and nonappealable judgment of a court of competent jurisdiction that such claims, damages, losses, liabilities, costs and expenses were directly caused by the willful misconduct or negligence of the Bank. If any proceeding shall be brought or threatened against an Indemnified Party by reason of or in connection with the events described in this Section, such Indemnified Party shall promptly notify the Agency in writing and the Agency shall assume the defense thereof, including the employment of counsel and the payment of all costs of litigation. The Agency will not settle or compromise any such action or claim without the prior written consent of the relevant Indemnified Party if the settlement or compromise would require any act or admission by such Indemnified Party or any of its Affiliates, or impose any cost or expense on the Indemnified Party or its Affiliates or impose any limitation on the business or future actions of the Indemnified Party or its Affiliates. Notwithstanding the preceding sentence, an Indemnified Party shall have the right to employ its own counsel and to determine its own defense of such action in any such case, but the fees and expenses of such counsel shall be at the expense of an Indemnified Party unless (x) the employment of such counsel has been authorized in writing by the Agency or (y) the Agency, after due notice of the action, shall not have promptly employed counsel to have charge of such defense, in either of which events the reasonable fees and expenses of counsel for such Indemnified Party shall be borne by the Agency. The Agency shall not be liable for any settlement of any such action effected without its consent.

Nothing in this Section 7.05 is intended to limit or impair the Agency's obligations contained or described in Article II. Without prejudice to the survival of any other obligation of the Agency hereunder, to the maximum extent permitted by law, the indemnities and obligations of the Agency contained in this Section 7.05 shall survive the payment in full of amounts payable pursuant to Article II and the termination of the Letter of Credit.

Section 7.06. No Liability of the Bank. The Agency assumes all risks of the acts or omissions of the Beneficiary of the Letter of Credit with respect to its use of the Letter of Credit. To the maximum extent permitted by law, neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit, or the proceeds of any Advance or of any Note or Authorized Installment, or any acts or omissions of the Beneficiary in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentation of documents that do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit or any action or omission of the Bank or its Affiliates with respect to the purchase and holding by the Bank of the Notes or any Authorized Installment, except that the Agency shall have a claim against the Bank, and the Bank shall be liable to the Agency, to the extent, but only to the extent, of any direct, actual damages, as opposed to any lost profits, consequential, special, indirect or punitive (or exemplary) damages (the right to receive or recover lost profits, consequential, special, indirect or punitive (or exemplary) damages being hereby irrevocably waived by the Agency), suffered or incurred by the Agency, and not required to be mitigated by the Agency which are determined by a final and nonappealable judgment of a court of competent jurisdiction or a duly constituted arbitration panel pursuant to Section 7.20, as the case may be, to be directly caused by the Bank's willful failure to make lawful payment under the Letter of Credit after the presentation to it by the Beneficiary pursuant to documents delivered to the Bank strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, to the maximum extent permitted by law, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

Section 7.07. Costs, Expenses and Taxes. The Agency agrees to pay on demand all costs and expenses (including reasonable counsel fees and expenses) in connection with (i) the breach by the Agency of any covenant herein or in any other Related Document, (ii) the Bank's protection of its lien and security interest created hereunder, (iii) any consent, waiver or approval requested by the Agency hereunder, (iv) the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement and such other documents which may be delivered in connection with this Agreement, including, without limitation, reasonable counsel fees and expenses in connection with the enforcement of rights under this Section 7.07, (v) any action or proceeding relating to a court order, injunction, or other process or decree restraining or seeking to restrain the Bank from paying any amount under the Letter of Credit or (vi) the termination or amendment of this Agreement or the Letter of Credit. In addition, the Agency shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement or the Letter of Credit or any such other documents, and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

Section 7.08. Payment Under the Letter of Credit. The Agency authorizes the Bank to pay any Advance upon presentation to the Bank of documentation substantially complying with the terms of the Letter of Credit. The Agency hereby authorizes the Bank to receive, accept and/or pay as complying with the terms of the Letter of Credit any Advances and/or other documents under the Letter of Credit that are otherwise in order but are signed by, or issued to, any administrator, executor, assignee for the benefit of creditors, trustee in bankruptcy or receiver for any property of the Beneficiary or any other party in whose name it is provided in the Letter of Credit that any Advances, acceptances and/or other documents thereunder should be drawn. The Bank and its branches, affiliates and/or correspondents shall not be responsible for costs (including reasonable attorneys' fees) arising from the events described in Section 7.05(c) hereof. Any and all of the following provisions may be waived by the Bank in its sole discretion, and the Bank and its branches, affiliates and/or correspondents shall not be liable or responsible in any respect for any noncompliance therewith or waiver thereof: (a) any requirement that Advances or acceptances under or purported to be under the Letter of Credit bearing reference to or otherwise identify the Letter of Credit, (b) any requirement that the amount of any Advances or acceptances under or purported to be under the Letter of Credit be noted thereon, and/or (c) any requirement that any party send or forward documents physically apart from any Advances or acceptance.

Section 7.09. Binding Effect; Successors and Assigns; Certain Pledges. (a) This Agreement shall become effective when it shall have been executed by the Agency and the Bank and thereafter shall be binding upon and inure to the benefit of the Agency and the Bank and their respective successors and assigns, except that the Agency shall not sell, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank (and any attempted assignment or transfer without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby), any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Bank may at any time and without the consent of or notice to the Agency sell, transfer, and assign to one or more Persons as purchasers, transferees and assignees its entire right, title and interest in and to the Notes, including the Authorized Installments and this Agreement, or any lesser portion thereof, in accordance with the following terms; provided that if the Bank makes a Full Assignment (as defined below), the Bank shall deliver written notice to the Agency identifying the assignee, who shall thereupon replace the Bank for all purposes as a party to this Agreement:

(i) The Bank may sell, transfer and assign its interests in the Notes, including the Authorized Installments and this Agreement, or any portion thereof, to (A) any Affiliate or other related Person or (B) a tax-exempt trust or special purpose entity which issues certificates representing beneficial interests therein to any Person that is a Qualified Institutional Buyer as defined under Rule 144A of the Securities Act of 1933, as amended (the "Securities Act"), or (C) any other Person in a transaction that is exempt from registration under the Securities Act and applicable state law (any such Person under (A), (B) or (C) being referred to as an "Assignee");

(ii) The right, title and interest of the Bank in the Notes, including the Authorized Installments and this Agreement shall be referred as its "Loan Portion"; any sale, transfer and assignment of the entire Loan Portion is referred to as a "Full Assignment";

(iii) To the extent that there is at any time more than one owner of Notes, the Agency shall prepare and execute and the Paying Agent/Registrar shall authenticate and deliver multiple Notes payable to each owner in an amount equal to the principal amount of such owner's Loan Portion and in an aggregate amount equal to the sum of the Commitment plus the principal amount, if any, drawn on the Letter of Credit. Upon delivery by the Bank to the Paying Agent/Registrar of the Note being transferred in whole or in part, together with the assignment attached thereto duly completed, the Agency shall prepare and execute and the Paying Agent/Registrar shall authenticate and deliver to the Assignee (or Assignees) a Note payable to the order of Assignee in an amount equal to its Loan Portion and to the retaining owner, if any, a Note payable to the order of such owner in an amount equal to its retained Loan Portion. Each such Note shall be further transferable and assignable along with such Loan Portion as provided in this Section.

(c) The Bank may, without the consent of or notice to the Agency sell participations to one or more Participants in all or a portion of the Bank's rights and obligations under the Notes, including the Authorized Installments and this Agreement; provided that (i) the Bank's obligations under this Agreement shall remain unchanged, (ii) the Bank shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Agency and the Paying Agent/Registrar shall continue to deal with the Bank in connection with the Notes, including the Authorized Installments and this Agreement. Each Participant shall be entitled to the benefits of Article II, and Sections 7.05 and 7.06 hereof to the same extent as if it were the Bank and had acquired its interest by assignment pursuant to paragraph (b) of this Section. The Agency agrees to provide to the Bank, promptly upon request, a copy of the most recent financial information concerning the Agency and to assist the Bank in the preparation of any offering or disclosure document reasonably necessary or required in connection with any such assignment or participation or prospective assignment or participation.

(d) The Bank may at any time pledge or grant a security interest in all or any portion of its rights under the Notes, including the Authorized Installments and this Agreement (including, without limitation, rights to payment under the Notes, including the Authorized Installments and this Agreement) to secure obligations of the Bank, including any pledge or grant of a security interest to secure obligations to a Federal Reserve Bank; provided that no such pledge or grant of a security interest shall release the Bank from any of its obligations hereunder or thereunder or substitute any such pledgee or holder of a security interest for the Bank as a party hereto.

(e) Notwithstanding anything in this Agreement to the contrary, a Participant shall not be entitled to receive any greater payment under Section 2.06 than the Bank would have been entitled to receive with respect to the participation sold to such Participant.

Section 7.10. Usury Laws. It is the intent of the parties in the execution and performance of this Agreement to contract in strict compliance with the usury laws of the State of Texas from time to time in effect. In furtherance thereof, the Bank and the Agency stipulate and agree that none of the terms and provisions contained in this Agreement shall ever be construed to create a contract to pay for the use, forbearance or detention of the money loaned with interest at a rate in excess of the Maximum Interest Rate and that for purposes hereof, interest shall include the aggregate of all charges which constitute interest under such laws that are contracted for, charged or received under this Agreement. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the Maximum Interest Rate, the Agency and the Bank shall, to the maximum extent permitted under applicable law, (a) characterize any non-principal payment as an expense, fee or premium rather than as interest, (b) exclude voluntary prepayment or redemption and the effects thereof, (c) apply such amounts to the reduction of the principal amount owing hereunder and not to the payment of interest, and (d) allocate, prorate and spread the total amount of interest throughout the entire contemplated term of the loan. If, notwithstanding the provisions of Section 2.05 hereof pertaining to the calculation and payment of interest and the preceding provisions of this Section, the Bank shall collect moneys which are deemed to constitute interest at a rate in excess of the highest lawful rate, all such sums deemed to constitute interest in excess of the highest lawful rate shall be immediately returned to the payor thereof. The provisions of this Section shall control over all other provisions of this Agreement.

Section 7.11. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 7.12. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.13. Notice of Certain Events. The Agency agrees to provide immediate notice to the Bank by telephone, promptly confirmed in writing, of the occurrence of any Potential Default.

Section 7.14. Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and shall be performable in whole or in part in Brazos County, Texas.

(b) Jurisdiction. In the event that a dispute is not submitted to arbitration as provided in Section 7.20 for any reason, but becomes the subject of a judicial action, the parties agree that any state or federal court in Brazos County, Texas shall have (subject, however, to the right of either party to require arbitration of the matter as set forth in Section 7.20) exclusive jurisdiction and venue for any suit brought under or arising out of this Agreement.

(c) Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN THE EVENT THAT A DISPUTE IS NOT SUBMITTED TO ARBITRATION AS PROVIDED FOR IN SECTION 7.20 FOR ANY REASON, BUT BECOMES THE SUBJECT OF A JUDICIAL ACTION, EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATED DOCUMENTS. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE BANK TO ISSUE THE LETTER OF CREDIT AND THAT THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY THE AGENCY AND THE BANK 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 7.15. No Israel Boycott. Pursuant to Section 2271.002, Texas Government Code, to the extent this Agreement is a contract for goods or services, the Bank hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any (collectively, the "Bank Entities"), do not Boycott Israel and, subject to or as otherwise required by applicable Federal law, including, without limitation, 50 U.S.C. Section 4607, the Bank Entities agree not to Boycott Israel during the term of this Agreement. For purposes of this Section, "Boycott Israel" shall have the meaning given such term in Section 808.001, Texas Government Code. The Bank understands "affiliate" for this Section and Section 7.16 hereof to mean an entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

Section 7.16. Chapter 2252. The person or persons executing this Agreement on behalf of the Bank, or representing themselves as executing this Agreement on behalf of the Bank, hereby acknowledge that (a) the Bank Entities do not engage in business with Iran, Sudan or any foreign terrorist organization and (b) the Bank Entities are not named on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
ttps://comptroller.texas.gov/purchasing/docs/iran-list.pdf or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf

Section 7.17. US QFC Stay Rules.

(a) Recognition of U.S. Resolution Regimes. In the event that any party that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this

Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this paragraph (a) apply notwithstanding the provisions of paragraph (b).

(b) Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings. Notwithstanding anything to the contrary in this Agreement or any Related Documents, but subject to the requirements of paragraph (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

Section 7.18. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 7.19. No Other Agreements. THIS AGREEMENT AND RELATED WRITTEN AGREEMENTS EXECUTED IN CONNECTION HEREWITH REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 7.20. Arbitration.

(a) Arbitration. To the maximum extent permitted by law, the parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to (i) any credit subject hereto, or any of the Related Documents, and their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination; or (ii) requests for additional credit.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location in Texas selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least $1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) <u>No Waiver of Provisional Remedies, Self-Help and Foreclosure</u>. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) <u>Arbitrator Qualifications and Powers</u>. Any arbitration proceeding in which the amount in controversy is $5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than $5,000,000.00. Any dispute in which the amount in controversy exceeds $5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of Texas with a minimum of ten years' experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of Texas and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed any Loan Document, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) Payment Of Arbitration Costs And Fees**.** The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the Related Documents or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the Related Documents or any relationship between the parties.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

TEXAS MUNICIPAL POWER AGENCY

By:__________________________________
General Manager

[Signatures continue on next page]

WELLS FARGO BANK, N.A.

By:________________________________
Authorized Signatory

EXHIBIT A

Wells Fargo Bank, N.A.
U. S. Trade Services
Standby Letters of Credit
MAC A0283-023
794 Davis Street, 2nd Floor
San Leandro, CA. 94577-6922
Phone: 1(800) 798-2815 Option 1
E-Mail: sftrade@wellsfargo.com

Irrevocable Standby Letter Of Credit

Number: **[__________]**

Issue Date: **[_________]**, 2021

BENEFICIARY:
RAILROAD COMMISSION OF TEXAS
Attention: Surface Mining and Reclamation Division
1701 North Congress Avenue, 11th Floor
Austin, Texas 78701

APPLICANT:
TEXAS MUNICIPAL POWER AGENCY
12824 FM 244
Anderson, Texas 77830
Attention: General Manager

LETTER OF CREDIT ISSUE AMOUNT: $3,400,000
EXPIRY DATE: June 7, 2022

LADIES AND GENTLEMEN:

We have been informed by the Texas Municipal Power Agency ("Permittee"), but do not independently verify that this Letter of Credit is issued in connection with surface mining and reclamation operations conducted by the Permittee in the area covered by the Surface Mining and reclamation Permit No. 26D, as now or hereafter amended, revised or replaced (the "Permit") and that this Letter of Credit is to secure Permittee's Collateral Bond to the Railroad Commission of Texas for the Permit. The preceding sentence is inserted in this Letter of Credit for informational purposes only and will not affect, or become a part of, the terms and conditions of this Letter of Credit.

We hereby represent to the Railroad Commission of Texas that we are a bank (we may be hereinafter referred to as the "Bank") authorized to do business in the United States of America.

We hereby issue in favor of the Railroad Commission of Texas, Austin, Texas our Irrevocable Standby Letter of Credit for an amount (the "Available Amount") not to exceed in the aggregate Three Million Four Hundred Thousand and No/100 United States Dollars ($3,400,000 U.S.), with such Available Amount to be available with us at our above office by payment of your draft(s) drawn at sight on Bank mentioning thereon this Letter of Credit No. **[__________]**. The Bank agrees that the Letter of Credit shall be irrevocable during its term.

DRAFTS(S) MAY NOT BE DATED OR PRESENTED TO US FOR PAYMENT PRIOR TO JUNE 8, 2021, AND This Letter of Credit expires at our above office on June 7, 2022 (the "Expiry Date"). Amount(s) drawn hereunder will permanently reduce the Available Amount under this Letter of Credit and such amount(s) shall not be subject to reinstatement.

ALL DRAFTS, DEMANDS, OR DOCUMENTS PRESENTED UNDER THIS L/C AND ALL NOTICES AND COMMUNICATIONS MADE WITH RESPECT TO THIS L/C MUST BE PRESENTED OR DELIVERED TO WELLS FARGO BANK, N.A., STANDBY LETTER OF CREDIT PROCESSING, 794 DAVIS STREET, 2ND FLOOR, SAN LEANDRO, CALIFORNIA 94577-6922.

Draft(s) must be presented to us on or on or before the Expiry Date and must be accompanied by:

A. This Irrevocable Standby Letter of Credit or a copy thereof; and

B. Your signed and dated statement reading as follows:

> "The undersigned, an authorized representative of the Railroad Commission of Texas hereby certifies that the amount drawn is due to us pursuant to the terms of 16 TAC Sec. 12.314."

We engage with you that drafts drawn under and in conformity with the terms of this Letter of Credit will be duly honored on presentation to us at our office at the address shown above on or before the Expiry Date.

This Letter of Credit is subject to the Uniform Customs and Practice For Documentary Credits (2007 revision in force as of July 1, 2007), International Chamber of Commerce Publication No. 600.

Documentation from the Bank establishing the authority of the signatory to this Letter of Credit to bind the Bank is attached. Also attached is a copy of the Bank's charter or other evidence of the Bank's authority to do business in the United States.

Very truly yours

WELLS FARGO BANK, N.A.

BY: ____________________________
(AUTHORIZED SIGNATURE)

EXHIBIT B

OPINION OF COUNSEL TO THE AGENCY

[__________], 2021

Wells Fargo Bank, N.A.
Attention: President Business District Manager

Re: Texas Municipal Power Agency

Gentlemen:

We are general counsel to Texas Municipal Power Agency, a Texas municipal power agency (the "Agency"). In that capacity we are familiar with the matters relating to the preparation, execution, and delivery of a Note Purchase Agreement relating to the Letter of Credit to Railroad Commission of Texas for Surface Mining and Reclamation Permit No. 26D (the "Agreement"), dated as of February 1, 2021. Terms defined in the Agreement are used herein as therein defined. Among other things, we have examined:

(1) fully executed counterparts of the Agreement;

(2) the Letter of Credit;

(3) a fully executed counterpart of the Joint Operating Agreement, as amended to date;

(4) the Collateral Bond (the "Collateral Bond") executed and delivered in connection with the Agreement; and

(5) the documents delivered by or on behalf of the Agency pursuant to the Agreement.

We have also examined the originals, or copies certified to our satisfaction, of (i) such other corporate records of the Agency, certificates of public officials and of officers of the Agency, (ii) the agreements, instruments and documents which affect or purport to affect the obligations of the Agency under the Agreement, and (iii) such other agreements, instruments and documents as we have deemed necessary as a basis for the opinions hereinafter expressed. As to questions of fact material to such opinions, we have, when relevant facts were not independently established by us, relied upon certificates of the Agency or its officers or of public officials. We have assumed the due execution and delivery of the Agreement and all amendments thereto by the Bank.

Based upon the foregoing and upon such investigation as we have deemed necessary we are of the opinion that:

1. The Agency is a municipal power agency, municipal corporation, and political subdivision of the State of Texas that is duly organized and validly existing under the laws of the State of Texas. The Agency has not been disincorporated (or dissolved) and no proceedings are pending to disincorporate (or dissolve) the Agency.

2. The execution, delivery, and performance by the Agency of the Agreement, the Joint Operating Agreement and the Collateral Bond are within the Agency's corporate powers, have been duly authorized by all necessary corporate action, do not contravene (i) the Rules and Regulations of the Agency, (ii) law, or (iii) any contractual restriction binding on or affecting the Agency, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (except as provided in or contemplated by the Agreement) upon or with respect to any of its properties.

3. Subject to the authority of the Railroad Commission of Texas to approve the form and the amount of the Collateral Bond, no authorization, approval or other action by, and no notice to, or filing or registration with, any Governmental Authority or other person is required for the due execution, delivery, and performance by the Agency of the Agreement, the Joint Operating Agreement or any Collateral Bond.

4. The Agreement, the Joint Operating Agreement and the Collateral Bond to which the Agency is a party have been duly executed and delivered by the Agency and are the legal, valid, and binding obligations of the Agency enforceable against the Agency in accordance with their respective terms.

5. To the best of our knowledge, there is no pending or threatened action or proceeding against or affecting the Agency before any Governmental Authority which may materially adversely affect the financial condition or operations of the Agency or which purports to affect the legality, validity or enforceability of the Agreement, the Joint Operating Agreement or the Collateral Bond.

The opinions set forth above are subject to the following qualifications:

(a) The enforceability of the Agency's obligations under the Agreement, the Joint Operating Agreement and the Collateral Bond is subject to the effect of any applicable bankruptcy, insolvency, reorganization moratorium or similar laws affecting creditors' rights generally.

(b) The enforceability of the Agency's obligations under the Agreement, the Joint Operating Agreement and the Collateral Bond may be subject to general principles of equity, including (without limitation) concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) No opinion is expressed herein in relation to (i) whether the Agency enjoys immunity from suit and (ii) the enforceability of the waiver of immunity to suit in Section 6.02(c) of the Agreement.

This opinion letter (i) is being delivered solely to the addressee hereof and may not be relied on by any other person or entity without our prior written consent and (ii) is rendered solely for information and assistance in connection with the Agreement and may not be relied on for any other purpose.

Very truly yours,

Tiemann, Shahady & Hamala, P.C.

By:____________________________
Carl J. Shahady

EXHIBIT C

INCREASED COSTS AND TAX INDEMNITY

"Applicable Law" means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

"Change in Law" means the occurrence, after the Date of Issuance, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Excluded Taxes" means, with respect to the Bank or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank or such Participant is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Agency is located.

"Governmental Approvals" means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

"Governmental Authority" means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

"Law" means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Related Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Related Document.

"Related Documents" means the Paying Agent/Registrar Agreement, dated as of February 1, 2021, the Letter of Credit, and any exhibits, schedules, instruments or agreements relating thereto, as the same may be amended, modified or supplemented in accordance with their terms and the terms hereof.

"Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the Effective Date, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Effective Date.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

Section 1. *Increased Costs*.

(a) ***Increased Costs Generally***. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank or any Participant;

(ii) subject the Bank to any Tax of any kind whatsoever with respect to this Agreement or the Letter of Credit, or change the basis of taxation of payments to the Bank in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 2 and the imposition of, or any change in the rate of any Excluded Tax payable by the Bank); or

(iii) impose on the Bank any other condition, cost or expense affecting this Agreement or the Letter of Credit;

and the result of any of the foregoing shall be to increase the cost to the Bank related to issuing or maintaining the Letter of Credit, or to reduce the amount of any sum received or receivable by the Bank hereunder (whether of principal, interest or any other amount) then, upon written request of the Bank and to the maximum extent permitted by law, the Agency shall promptly pay to the Bank such additional amount or amounts as will compensate the Bank for such additional costs incurred or reduction suffered.

(b) ***Capital Requirements***. If the Bank determines that any Change in Law affecting the Bank or the Bank's parent or holding company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return on the Bank's or the Bank's parent or holding company holding, if any, as a consequence of this Agreement, or for maintaining the Letter of Credit, to a level below that which the Bank or the Bank's parent or holding company could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Bank and to the maximum extent permitted by law, the Agency shall promptly pay to the Bank such additional amount or amounts as will compensate the Bank or the Bank's parent or holding company for any such reduction suffered.

(c) ***Certificates for Reimbursement***. A certificate of the Bank setting forth the amount or amounts necessary to compensate the Bank or the Bank's parent or holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Agency, shall be conclusive absent manifest error. The Agency shall pay the Bank the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) ***Delay in Requests***. Failure or delay on the part of the Bank to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's right to demand such compensation.

Section 2. Taxes.

(a) ***Payments Free of Taxes***. Any and all payments by or on account of any obligation of the Agency hereunder shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; provided that if the Agency shall be required by

Applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Agency shall make such deductions and (iii) the Agency shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) ***Payment of Other Taxes by the Agency***. Without limiting the provisions of paragraph (a) above, the Agency shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) ***Indemnification by the Agency***. To the maximum extent permitted by law, the Agency shall indemnify the Bank within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Bank and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate stating in reasonable detail the amount of such payment or liability delivered to the Agency by the Bank shall be conclusive absent manifest error. In addition, to the maximum extent permitted by law, the Agency shall indemnify the Bank, within thirty (30) days after demand therefor, for any incremental Taxes that may become payable by the Bank as a result of any failure of the Agency to pay any Taxes when due to the appropriate Governmental Authority or to deliver to the Bank, pursuant to clause (d), documentation evidencing the payment of Taxes.

(d) ***Evidence of Payments***. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Agency to a Governmental Authority, the Agency shall deliver to the Bank the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank.

(e) ***Treatment of Certain Refunds***. If the Bank determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified pursuant to this Section (including additional amounts paid by the Agency pursuant to this Section), it shall pay to the applicable indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Bank, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the applicable indemnifying party, upon the request of the Bank, agrees to repay the amount paid over pursuant to this Section (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Bank in the event the Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Bank be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the Bank in a less favorable net after-Tax position than the Bank would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require the Bank or to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Agency or any other Person.

(f) **Survival**. Without prejudice to the survival of any other agreement of the Agency hereunder, the agreements and obligations of the Agency contained in this Section shall survive the termination of this Agreement and the Letter of Credit and the payment in full of the obligations of the Agency thereunder and hereunder.

Section 3. Termination

In the event TMPA determines that costs incurred or to be incurred under this Exhibit render the Note Purchase Agreement uneconomical to TMPA, TMPA may terminate the Letter of Credit upon at least forty five (45) days written notice to the Bank. Notwithstanding said notice period, no termination under this Section shall be effective until the date on which (i) the Railroad Commission of Texas, by order, accepts a replacement of the Letter of Credit, and (ii) delivers to the Bank the original Letter of Credit together with written, irrevocable instruction from the Railroad Commission of Texas to cancel the Letter of Credit as such date (the "Early Letter of Credit Termination Date"). Termination will be effective on the later to occur of the (i) the Early Letter of Credit Termination Date and the (ii) the date specified in the notice of termination. All compensation due under the Agreement, including costs incurred under this Exhibit, shall be paid to the Bank through the date of termination. Notwithstanding termination of the Letter of Credit, provisions in the Note Purchase Agreement, that expressly survive termination of the Letter of Credit, including this Exhibit, shall survive such termination.

NOTE PURCHASE AGREEMENT

between

WELLS FARGO BANK, NATIONAL ASSOCIATION

and

TEXAS MUNICIPAL POWER AGENCY

relating to

$6,505,000
Texas Municipal Power Agency
Mine Reclamation Notes
Taxable Series J

and securing the

Letter of Credit to
Railroad Commission of Texas for
Surface Mining and Reclamation Permit No. 38D

dated as of

February 1, 2021

ARTICLE I
DEFINITIONS

ARTICLE II
AMOUNT AND TERMS OF THE LETTER OF CREDIT

ARTICLE III
CONDITIONS OF ISSUANCE

ARTICLE IV
REPRESENTATIONS, WARRANTIES AND COVENANTS

ARTICLE V
COVENANTS OF THE AGENCY

ARTICLE VI
EVENTS OF DEFAULT

ARTICLE VII
MISCELLANEOUS

NOTE PURCHASE AGREEMENT

NOTE PURCHASE AGREEMENT (this “Agreement”), dated as of February 1, 2021, between the **Texas Municipal Power Agency**, a municipal corporation and political subdivision of the State of Texas (the “Agency”), and **Wells Fargo Bank, National Association**, a national banking association (the “Bank”).

PRELIMINARY STATEMENTS:

A. The Agency operates pursuant to the provisions of Subchapter C-1 of Chapter 163 of the Texas Utilities Code and its member cities are together with the City of Bryan, the City of Denton, the City of Garland, and the City of Greenville, Texas, each of which cities is a municipal corporation of the State of Texas and a home rule city (herein collectively "Cities" or individually "City").

B. As of the Agency Debt Discharge Date (as hereinafter defined), the Cities have no further obligations under the Power Sales Contract to make payment for System Debt, the Power Sales Contract has been terminated and no System Debt is outstanding.

C. The Agency and each City have entered into certain contractual agreements between and among the Agency and each City to provide for the mutual rights and responsibilities of the Agency and the Cities as to the operations of the Agency, including asset management, decommissioning, environmental remediation, indemnities, and the winding up of affairs of the Agency upon dissolution, and such contractual agreements have been included in a Joint Operating Agreement between the Agency and each City, which is effective as of September 1, 2016, as amended by Amendment No. 1 to the Joint Operating Agreement, which amendment subsequently became ineffective, and as amended by Amendment No. 2 to the Joint Operating Agreement, effective as of September 22, 2017 and by Amendment No. 3 to the Joint Operating Agreement, effective as of September 17, 2019 (as amended, such agreement is hereinafter referred to as the "JOA").

D. The Cities have certain payment obligations under the JOA, including the obligation to pay and reimburse to the Agency, as an operating expense of each City’s electric system, the costs of the services undertaken by the Agency pursuant to the JOA, which services include the mine remediation work and related financing costs associated with the Agency’s Collateral Bond (the “Collateral Bond”) for Surface Mining and Reclamation Permit No. 38D (the “Permit”).

E. The Agency is authorized by Subchapter C-1 of Chapter 163, Texas Utilities Code, as amended (the “TMPA Act”), Chapter 1371, Texas Government Code, as amended ("Chapter 1371") and other applicable laws of the State of Texas to issue obligations such as the notes authorized under the Resolution (as hereinafter defined), in one or more series, to fund costs of "eligible projects" (as such term is defined in Government Code Section 1371.001(2)(A)(i), as amended), which include capital costs associated with the environmental remediation of the TMPA lignite mine as set forth in the TMPA mine remediation plan, as required by the Texas Surface Coal Mining and Reclamation Act, Chapter 134, Natural Resources Code (the "Mining Act") and to secure such obligations with all or part its revenues after first providing for the payment of its operating and maintenance costs.

F. The Cities have agreed in the JOA to make payments under certain circumstances to the Agency to pay debt service coming due on Agency "Mine Reclamation Bonds" (as hereinafter defined) and the Notes (as hereinafter defined) constitute Mine Reclamation Bonds within the meaning of the JOA.

G. The Agency has requested the Bank to issue its Letter of Credit to the Railroad Commission of Texas (the "Beneficiary"), in substantially the form of Exhibit A (the "Letter of Credit"), in the amount of 6,500,000 (the available amount under the Letter of Credit, as adjusted pursuant to the Letter of Credit, being referred to herein as the "Commitment") to serve as collateral to secure the Collateral Bond to the Beneficiary for the Permit. For purposes of clarity, the Commitment is calculated without reference to the initial Authorized Installment in the amount of $5,000, which is advanced as a loan on the Closing Date.

H. In consideration for the issuance of the Letter of Credit to the Beneficiary, and to induce the Bank to issue and deliver said Letter of Credit, the Agency and the Bank will enter into this Note Purchase Agreement to evidence and secure the payment and performance of all obligations and covenants of the Agency to the Bank in connection with the delivery of the Letter of Credit as provided herein. In furtherance thereof, the Agency has adopted, under and in accordance with Texas Government Code § 1371.056(c) and the TMPA Act, **[Resolution No. 2020-12-__]** (the "Resolution"), on December 10, 2020, Authorizing the Issuance of Texas Municipal Power Agency Mine Reclamation Notes Taxable Series J (the "Notes") and Texas Municipal Power Agency Mine Reclamation Notes Taxable Series I (the "Series I Notes"). The Resolution authorizes the issuance of the Notes and the Series I Notes to finance Project Costs of Eligible Projects (as each such term is defined in the Resolution), in an aggregate principal amount not to exceed $11,000,000 and their installment delivery to the Bank in connection with advances by the Bank under the Letter of Credit.

I. The Resolution constitutes an "obligation authorization," as defined in Chapter 1371 and this Agreement constitutes a "credit agreement" as defined in Chapter 1371.

J. The Agency is authorized under the TMPA Act and Texas Government Code §§ 1371.103 through 1371.105 to pledge the JOA Payments (as hereinafter defined) required to be made by the Cities under the JOA and this pledge of the JOA payments is perfected when made in the form set forth in this Agreement.

K. The payment and other obligations of the Agency under the Notes and this Agreement will be secured by and be payable from the JOA Payments and the Note Payment Fund.

L. The Bank has agreed, subject to the terms of this Agreement, to issue the Letter of Credit.

M. To induce the Bank to issue the Letter of Credit, the parties have entered into this Agreement in order to evidence the covenants and obligations of the respective parties with respect to the Letter of Credit and to provide for the issuance of the Notes including the

Authorized Installments (as defined hereinafter) and the terms of repayment of the Notes including the Authorized Installments and any amounts drawn under the Letter of Credit and to secure the obligations of the Agency under the Notes, including the Authorized Installments and this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and in order to induce the Bank to issue the Letter of Credit, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"*Advance*" means any payment made by the Bank under the Letter of Credit.

"*Affiliate*" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"*Agency Debt Discharge Date*" means September 1, 2018.

"*Agreement*" means this instrument as originally executed or as it may from time to time be supplemented, modified or amended by one or more instruments entered into pursuant to the applicable provisions hereof.

"*Authorized Installment*" means an Authorized Installment, as defined in the Resolution, which shall be a principal portion of the Notes in an amount equal to (a) in the case of the Initial Authorized Installment, $5,000 and (b) in the case of every Authorized Installment after the Initial Authorized Installment, the principal amount of a particular related Advance under the Letter of Credit, reflecting payment by the Bank at par of the purchase price of such Authorized Installment to the Beneficiary on behalf of the Agency.

"*Authorized Representative*" means, one or more of the following officers and employees of the Agency, acting in concert or individually, to wit: the President, Vice President, Secretary, Assistant Secretary or General Manager, or any other officers or employees of the Agency duly appointed as such by resolution of the Agency.

"*Available Amount*" in effect at any time means the maximum amount available to be drawn at such time under the Letter of Credit.

"*Base Rate*" means, for any date of determination, the per annum rate equal to the highest of (i) the Prime Rate plus one percent (1.00%), (ii) the Fed Funds Rate plus two percent (2.00%) and (iii) seven percent (7.00%).

"*Beneficiary*" has the meaning assigned to that term in the Preliminary Statements.

"*BHC Act Affiliate*" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"*Business Day*" means any day of the year that the Bank is open for full banking business.

"*Cities*" means the cities of Bryan, Denton, Garland, and Greenville, Texas.

"*Closing Date*" means February 16, 2021.

"*Collateral Bond*" has the meaning assigned to that term in the Preliminary Statements.

"*Commitment*" has the meaning assigned to that term in the Preliminary Statements.

"*Control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"*Covered Entity*" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"*Debt*" means (i) indebtedness for borrowed money, (ii) obligations evidenced by bonds, notes or other similar instruments, (iii) obligations to pay the deferred purchase price of property or services, (iv) obligations as lessee under leases which shall have been or should be, in accordance with GAAP, recorded as capital leases, and (v) any other obligation considered to be debt under GAAP.

"*Default Rate*" means, for any date of determination, a fluctuating per annum rate of interest equal to the Base Rate plus three percent (3.00%).

"*Default Right*" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"*Effective Date*" means the date provided in Section 2.01 upon which the Letter of Credit is effective and may be drawn upon, on and subject to its terms, which date shall in any case not precede the expiry date of the Bank's Letter of Credit No. IS000117313U.

"*Electric System*" means, for each of the Cities, in the case of the City of Bryan, its Electric System; in the case of the City of Greenville, its Electric System; in the case of the City of Garland, its Electric Utility System; and in the case of the City of Denton, its Utility System.

"*Event of Default*" has the meaning assigned to that term in Section 6.01.

"*Failure to Replace Draw*" means a draw on the Letter of Credit by the Beneficiary under the circumstances described in 16 Texas Administrative Code §12.309(g).

"*Fed Funds Rate*" means, for any date of determination, a fluctuating rate of interest per annum equal to the weighted average (rounded to the next higher 1/100 of 1%) of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average (rounded to the next higher 1/100 of 1%) of the quotations for such day on such transactions received by Wells Fargo Bank, National Association from three federal funds brokers of recognized standing selected by Wells Fargo Bank, National Association. Each determination of the Fed Funds Rate by Wells Fargo Bank, National Association shall be conclusive and binding on the Agency.

"*Fitch*" means Fitch Ratings, Inc.

"*GAAP*" means, as of any date, the accounting principles, methods and terminology generally accepted in the United States for use by governmental entities owning and operating electric utilities, or such other systems as may be required by any regulatory agency.

"*Governmental Authority*" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority having jurisdiction or supervisory or regulatory authority over the Agency.

"*Initial Authorized Installment*" has the meaning assigned to such term in Section 2.04(b) hereof.

"*Initial Note*" means the non-interest bearing Note, Number T-1, delivered to and held by the Paying Agent/Registrar.

"*Insolvency Proceeding*" means a receivership, insolvency, liquidation, resolution, or similar proceeding.

"*JOA*" has the meaning assigned to such term in the Preliminary Statements.

"*JOA Payments*" means the payments unconditionally required to be made to the Agency by the Cities pursuant to all of the following sections of the JOA: 2.6.2.6, 2.7, 2.11.3 and 3.2.1, which payments are required to be made under the JOA without set off, recoupment or counterclaim, and without regard to whether a City has exited the Agency's mining (or generation or transmission) business category following the execution and delivery of this Agreement and any Notes.

"*Letter of Credit*" has the meaning assigned to that term in the Preliminary Statements.

"*Mandatory Redemption Date*" means, in the case of any Authorized Installment and Advance, the day that is the 91st day after the date of issuance of such Authorized Installment and the making of such Advance, but in no case later than the Maximum Maturity Date.

"*Maximum Interest Rate*" means the higher of (a) the maximum net effective interest rate permitted by applicable law at the time of issuance of the Letter of Credit, which is fifteen percent (15%) per annum, or (b) the maximum net effective interest rate permitted by law to be paid thereon as provided by Texas Government Code §1204.006, as amended.

"*Maximum Maturity Date*" means the 91st day after the earlier of (i) the Stated Termination Date and (ii) the last available draw on the Letter of Credit.

"*Mine Reclamation Bonds*" has the meaning assigned to that term in the Resolution.

"*Moody's*" means Moody's Investors Service, Inc.

"*Note Payment Fund*" has the meaning assigned to the term "Mine Reclamation Note Payment Fund" in the Resolution.

"*Notes*" has the meaning assigned to such term in the Preliminary Statements.

"*Paying Agent/Registrar*" means Wells Fargo Bank, National Association, and its successors and assigns.

"*Paying Agent/Registrar Agreement*" means that certain Paying Agent/Registrar Agreement dated as of February 1, 2021, between the Agency and the Paying Agent/Registrar.

"*Person*" means an individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated association or organization or any other judicial entity, or foreign, state or any agency or political subdivision thereof.

"*Potential Default*" means any condition, event or act which, with the giving of notice or the lapse of time, or both, will constitute an Event of Default hereunder.

"*Power Sales Contract*" means the Power Sales Contract, dated September 1, 1976, as amended, between the Agency and the Cities.

"*Preliminary Statements*" means the statements contained in paragraphs A. though M. that begin on page 1 of this Agreement.

"*Pricing Certificate*" has the meaning assigned to such term in the Resolution.

"*Prime Rate*" means, for any date of determination, the rate of interest per annum most recently established by Wells Fargo Bank, National Association in its sole discretion as its "prime rate." The parties hereto acknowledge that the rate announced by Wells Fargo Bank, National Association as its prime rate is an index or base rate and shall not necessarily be publically announced or be its lowest or best rate charged to its customers or other banks. If at any time (a) Wells Fargo Bank, National Association ceases to exist or (b) Wells Fargo Bank, National Association ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported). Each change in the Prime Rate shall be effective without notice as of the opening of business on the day such change in the prime rate occurs.

"*Pro Rata Share*" as used in Section 5.01(j), Pro-Rata Share means, in the case of each respective City, 21.7% for the City of Bryan; 21.3% for the City of Denton; 47.0% for the City of Garland; and 10.0% for the City of Greenville.

"*Related Documents*" has the meaning assigned to that term in Section 2.11.

"*Resolution*" has the meaning assigned to such term in the Preliminary Statements.

"*Security Register*" has the meaning assigned to such term in the Resolution.

"*Series G Mine Reclamation Notes*" means the $11,605,000 Texas Municipal Power Agency Mine Reclamation Notes Taxable Series G, issued by the Agency on February 19, 2020.

"*Series H Mine Reclamation Notes*" means the $6,505,000 Texas Municipal Power Agency Mine Reclamation Notes Taxable Series H, issued by the Agency on February 19, 2020.

"*Series I Notes*" has the meaning assigned to such term in the Preliminary Statements.

"*Standard & Poor's*" means Standard & Poor's Ratings Services, a division of Standard & Poor's Financial Services LLC., its successors and assigns.

"*Stated Termination Date*" means the expiration date of the Letter of Credit provided in Section 2.01.

"*Step-up Rate*" means, for any date of determination, a fluctuating per annum rate of interest equal to the Base Rate plus one percent (1.00%).

"*System Debt*" means all Debt of the Agency other than Transmission Debt and Mine Reclamation Bonds.

"*Term*" means the period of time beginning on and including the Effective Date and ending on and including the Stated Termination Date.

"*Transmission Debt*" has the meaning assigned to such term in the Resolution.

"*U.S. Special Resolution Regime*" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

Section 1.02. Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding".

Section 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistently applied, except as otherwise stated herein.

Section 1.04. Preliminary Statements. The Preliminary Statements are incorporated in the body of this Agreement by this reference and shall constitute a constituent part of the agreement between the parties set forth herein.

ARTICLE II

AMOUNT AND TERMS OF THE LETTER OF CREDIT

Section 2.01. Letter of Credit. The Bank agrees, subject to and on the terms and conditions hereinafter set forth, to issue the Letter of Credit to the Beneficiary in the amount of the Commitment, which Letter of Credit shall be effective on June 8, 2021, as stated therein (the "Effective Date") and shall expire on June 7, 2022, as set forth therein (the "Stated Termination Date" and, as referred to in the Letter of Credit, the "Expiry Date").

Section 2.02. Issuing the Letter of Credit. The Letter of Credit shall be issued on at least two (2) Business Days' notice from the Agency to the Bank specifying the Business Day of issuance thereof. On such Business Day specified by the Agency in such notice and upon fulfillment of the applicable conditions set forth in Article III, the Bank will issue the Letter of Credit to the Beneficiary. Notwithstanding the issuance by the Bank of the Letter of Credit on the Closing Date, it is expressly acknowledged and agreed by the Agency that drawings may be submitted under the Letter of Credit only during its Term.

The Letter of Credit will be subject to, and performance under the Letter of Credit by the Bank and the Beneficiary will be governed by, the "Uniform Customs and Practice for Documentary Credits (2007 revision in force as of July 1, 2007), International Chamber of Commerce, Publication No. 600," or by later Uniform Customs and Practice fixed by later Congresses of the International Chamber of Commerce as in effect on the date the Letter of Credit is issued.

Section 2.03. Commitment Fee. The Agency agrees to pay to the Bank in advance commencing upon the issuance of the Letter of Credit and thereafter on the first Business Day of each September, December, March and June (each, a "Quarterly Payment Date") a non-refundable commitment fee in accordance with the following terms: (i) at all times other than as described under subpart (ii) of this Section 2.03, a commitment fee equal to 100 basis points (1.00%) times the amount of the Commitment and (ii) at all times after and during the continuance of an Event of Default, a commitment fee equal to 400 basis points (4.00%) times the amount of the Commitment. The commitment fee shall be computed on the basis of a three hundred sixty (360) day year and actual days elapsed from and including the Quarterly Payment Date (or, in the case of the initial payment, the Effective Date) and to (but not including) the immediately succeeding Quarterly Payment Date (or the Stated Termination Date, if sooner). If at any time, prior to the Stated Termination Date, the Beneficiary takes action that would enable the Agency to lower the amount of its reclamation bond, then, upon the Agency's request, the Bank agrees to execute and submit an amended and restated letter of credit, a revised collateral bond, and such other certificates and documents as reasonably may be required to obtain the approval of the Beneficiary of the reclamation bonding in such lower amount. In such case, the commitment fee would remain at its applicable level of basis points, but the quarterly installment payment of the commitment fee will be adjusted prospectively to reflect the reduced Commitment.

Section 2.04. Notes.

(a) *Issuance of Initial Note*. On the Closing Date, the Agency shall issue to the Paying Agent/Registrar in accordance with the terms of the Resolution the Initial Note. The Initial Note shall (i) be dated February 1, 2021, (ii) be issued pursuant to the terms of the Resolution such that, among other things, Authorized Installments shall be issued by the Paying Agent/Registrar thereunder upon (A) a $5,000 loan to the Agency in the case of the Initial Authorized Installment and (B) in all other cases, a draw on the Letter of Credit (as set forth more fully below), (iii) bear no interest for the first 30 days and accrue interest at the Step-Up Rate for days 31-91 after issuance, (iv) be secured by the JOA Payments, as described in the Preliminary Statements and Section 2.13 hereof, and (v) be payable (only to the extent of Authorized Installments having been issued, purchased and delivered), as to principal, not later than the Mandatory Redemption Date of such Authorized Installment (or such earlier date as provided herein).

(b) *Issuance of Initial Authorized Installment and the Purchase thereof by the Bank*. On the Closing Date, (i) the Paying Agent/Registrar shall issue the initial Authorized Installment in a principal amount equal to $5,000 (the "Initial Authorized Installment"), (ii) the Bank shall purchase such Initial Authorized Installment in an amount equal to $5,000 by making a short-term loan in such amount to the Agency, (iii) the Paying Agent/Registrar shall register the Bank as the owner of such Authorized Installment in the Security Register and (iv) the Paying Agent/Registrar shall record on the Initial Note the principal amount of such Authorized Installment and the payments of the principal of and interest on such Authorized Installment; *provided, however*, that the failure of the Paying Agent/Registrar to register the Bank as owner of the Authorized Installment or to record any such amount shall not limit or otherwise affect the obligations of the Agency to repay all amounts owed on such Authorized Installment, together with all interest accrued thereon as provided in Section 2.05.

(c) *Further Issuances of the Authorized Installments and the Purchase thereof by the Bank*. On each day on which the Bank shall honor a demand for payment under the Letter of Credit (such payment by the Bank being herein referred to as an "Advance"), the Bank shall give notice to the Paying Agent/Registrar of such Advance and the Paying Agent/Registrar shall, automatically and without any notice to or consent by the Agency or any other Person, issue in the principal amount of such Advance an Authorized Installment. Each Authorized Installment shall (i) have a Mandatory Redemption Date of 91 days after its date of issuance, (ii) be subject to prior redemption as set forth herein and in the Resolution and (iii) bear interest in accordance with the Note and as set forth in this Agreement. On the date of an Advance under the Letter of Credit (each a "*Bank Purchase Date*") and concurrently upon payment of such Advance, (w) the Advance constitutes the purchase by the Bank of an Authorized Installment at par in a principal amount equal to the principal amount of the Advance, (x) the Paying Agent/Registrar shall immediately deliver to the Bank such Authorized Installment, (y) the Paying Agent/Registrar shall register the Bank as the owner of the Authorized Installment in the Security Register and (z) the Paying Agent/Registrar shall record on the Initial Note the principal amount of such Authorized Installment; *provided, however*, in consideration of the delivery of the Letter of Credit, a corresponding Authorized Installment is deemed issued, purchased and delivered to the Bank on the date of any Advance and the failure of the Paying Agent/Registrar to deliver such Authorized Installment or to register the Bank as the Owner of the Authorized Installment or record any such amount will not limit or otherwise affect the unconditional and irrevocable obligation of the Agency to repay all amounts owed on any such Authorized Installment, together with all interest accrued thereon as provided in the Note and this Agreement. If and to the extent that there has been an Advance and the related Authorized Installment has not been issued and delivered to the Bank pursuant to and in accordance with the terms of the Resolution and this Agreement, the Agency shall be unconditionally obligated to reimburse the Bank for such Advance as the corresponding Authorized Installment is deemed to be issued, purchased and delivered, such payment obligation to be payable on the date and to bear interest at the rate applicable to such Authorized Installment, assuming for such purpose that such Authorized Installment had been so issued and delivered as required by the Resolution and this Agreement.

Section 2.05. Payment of Interest on and Principal of Authorized Installments and Advances. Upon the making of any Advance by the Bank under the Letter of Credit, the Bank shall have purchased an Authorized Installment in the principal amount of such Advance which shall bear interest and be repaid as provided herein. Payments by the Agency of principal of and interest on an Authorized Installment shall be applied *pro tanto* to, and shall constitute, the payment of the principal of and interest on the corresponding Advance.

(a) The Agency hereby agrees to pay to the Bank interest on each Authorized Installment commencing with the Bank Purchase Date of each Advance, as follows: interest on the outstanding principal amount of such Authorized Installment until payment in full, at a fluctuating interest rate per annum equal to the Base Rate for the first thirty (30) days such Authorized Installment is outstanding and equal to the Step-up Rate for days 31-91 that such Authorized Installment is outstanding, with said rate to be adjusted to reflect any change in the Base Rate at the time of any such change, provided that after an Event of Default occurs, the outstanding unpaid balance of such Authorized Installment shall bear interest at the Default Rate until paid in full. Interest shall be payable monthly in arrears, on the first Business Day of each month, and on the Mandatory Redemption Date (or other date of payment of principal) of such Authorized Installment. Interest on each Authorized Installment shall be computed on the basis of a three hundred sixty (360) day year and actual days elapsed. All such calculations shall be performed by the Bank and, absent manifest error, shall be conclusive and binding on the parties to this Agreement. For the sake of clarity, the Initial Note has not been delivered to the Bank, but shall be delivered on the Closing Date and thereupon the Paying Agent/Registrar shall record on the Initial Note the principal amount of such Authorized Installment and the payments of the principal of and interest on such Authorized Installment in accordance with Section 2.04(b)(iv). The Initial Note shall bear no interest for the first 30 days it is outstanding and thereafter accrue interest at the Step-Up Rate for days 31-91 after issuance.

(b) The amount of interest accruing in respect of any Authorized Installment for any interest accrual period calculated in accordance with the provisions of the preceding paragraph shall not exceed the Maximum Interest Rate. If (i) for any interest accrual period the applicable rate of interest (calculated as a net effective interest rate) would exceed the Maximum Interest Rate, then (ii) the applicable rate of interest shall not exceed but shall be capped at such Maximum Interest Rate and (iii) in any interest accrual period thereafter that the applicable rate of interest (calculated as a net effective interest rate) is less than the Maximum Interest Rate, such Authorized Installment shall bear interest at the Maximum Interest Rate until the earlier of (x) payment to the Bank of an amount equal to the amount which would have accrued but for the limitation of the applicable rate of interest set forth under (i) hereinbefore and (y) its respective Mandatory Redemption Date. It is expressly agreed that the provisions of this Section and applicable Texas law (i) permit the Bank to charge interest, in accordance with the terms hereof, up to the Maximum Interest Rate, and such Maximum Interest Rate will not be less than a net effective interest rate of 15% per annum (as defined by Texas Government Code, Section 1204.006), and (ii) permit the recapture of interest by allowing the applicable interest rate to exceed a rate of 15% per annum so long as and provided that such interest rate does not at any time exceed the maximum net effective interest rate (as defined by Texas Government Code, Section 1204.006) permitted by applicable law at the time of issuance of the Notes.

(c) Upon the making of an Advance and the purchase of the related Authorized Installment, the Authorized Installment shall be subject to redemption and payment in full on the following terms:

(i) If (x) the representations and warranties of the Agency contained in Article IV of this Agreement (excluding the rating requirement of Section 4.01(h)(i)) are not true and correct in all material respects on the related Bank Purchase Date or (y) a Potential Default or Event of Default has occurred and is continuing on the related Bank Purchase Date, the principal amount of the related Authorized Installment will be due and payable by the Agency to the Bank and subject to redemption in full on such Bank Purchase Date.

(ii) If (x) the representations and warranties of the Agency contained in Article IV of this Agreement (excluding the rating requirement of Section 4.01(h)(i)) are true and correct in all material respects on the related Bank Purchase Date and (y) no Potential Default or Event of Default has occurred and is continuing on the related Bank Purchase Date, the principal amount of the related Authorized Installment, together with all accrued interest thereon, will be due and payable by the Agency to the Bank and subject to redemption in full on the earlier of: (A) in the case of an Authorized Installment arising from a Failure to Replace Draw on the Letter of Credit, not later than the first to occur of (1) thirty (30) days from the date of the related Advance and (2) the Stated Termination Date and (B) in all cases other than as described under (A), the Mandatory Redemption Date of such Authorized Installment. Each payment shall be applied first to accrued interest and the balance to the outstanding principal owed.

(iii) The Agency may prepay and optionally redeem or cause to be redeemed, without penalty, the amount of any Authorized Installment outstanding in whole or in part with accrued interest to the date of such redemption on the amount redeemed. Any redemption in part shall be applied by the Bank against each such Authorized Installment in the order in which each such Authorized Installment was issued (or deemed issued), with the Authorized Installment that has been outstanding the longest period of time being paid first.

(iv) Unless the Agency shall have otherwise previously advised the Bank in writing, payment by the Bank of an Advance under the Letter of Credit shall be deemed to constitute a representation and warranty by the Agency that as of such Bank Purchase Date (i) the representations and warranties of the Agency contained in Article IV are true and correct in all material respects and (ii) no Potential Default or Event of Default has occurred and is continuing.

(v) The Initial Authorized Installment shall be paid or redeemed in full on or before its Mandatory Redemption Date.

Section 2.06. Increased Costs and Tax Indemnity. Increases in cost to the Bank of issuing and maintaining the Letter of Credit and indemnity for taxes are governed by Exhibit C.

Section 2.07. Payments and Computations. The Agency shall make each payment hereunder not later than 2:00 P.M. (Texas time) on the day when due in lawful money of the United States of America to the Bank at its address referred to in Section 7.02 by wire transfer in same day funds. Any payment received by the Bank after 2:00 P.M. (Texas time) shall be deemed to have been received on the next Business Day and will accrue interest in accordance with Section 2.05. Subject to the subordination provisions of Section 2.12, the Agency hereby authorizes the Bank, if and to the extent payment is not made when due hereunder, to charge from time to time against any or all of the Agency's accounts with the Bank any amount so due.

Section 2.08. Payments on Non-Business Days. Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest.

Section 2.09. [Reserved.]

Section 2.10. [Reserved.]

Section 2.11. Obligations Absolute. The payment obligations of the Agency under the Notes, including the Authorized Installments and this Agreement and any other agreement or instrument relating to the Letter of Credit shall, to the extent allowed by law, be absolute, unconditional and irrevocable, and shall be paid and performed strictly in accordance with the terms of this Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances:

(i) any lack of validity or enforceability of this Agreement, the Letter of Credit, the Collateral Bond, the JOA, the Resolution, the Pricing Certificate, the Notes, the Paying Agent/Registrar Agreement or any other agreement or instrument relating to any of the foregoing (collectively the "Related Documents");

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of the Agency in respect of the Letter of Credit or any other amendment or waiver of or any consent to departure from all or any of the Related Documents;

(iii) the existence of any claim, set-off, defense or other right that the Agency may have at any time against the Beneficiary or any transferee of the Letter of Credit (or any persons or entities for whom such Beneficiary or any such transferee may be acting), the Bank, or any other person or entity, whether in connection with this Agreement, the transactions contemplated hereby or by the Related Documents or any unrelated transaction;

(iv) in the absence of willful malfeasance or negligence of the Bank, any statement or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by the Bank under the Letter of Credit against presentation of a draft, certificate, or document which does not comply with the terms of the Letter of Credit;

(vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any document, for all or any of the obligations of the Agency in respect of the Letter of Credit;

(vii) any amendment or waiver of or any consent to departure from the terms of this Agreement, the Letter of Credit or any other agreement or instrument related thereto that has not been agreed to in writing by the Bank; or

(viii) the failure of the Bank to provide any notice to the Agency pursuant to the terms of this Agreement.

Section 2.12. [Reserved.]

Section 2.13. Pledge of JOA Payments. The Resolution creates a valid and irrevocable first lien on, pledge of, and security interest in the JOA Payments, together with the Note Payment Fund (and all funds from time to time accruing thereto) (collectively, the "Pledged Revenues"), as security for the Initial Note and all Authorized Installments purchased by the Bank hereunder and all action necessary to perfect the lien on, pledge of, and security interest of the Bank in such Pledged Revenues has been duly and validly taken as of the Closing Date. The Agency hereby irrevocably pledges and grants to the Bank, on an equal and ratable basis with the purchaser of any other Notes issued under the Resolution, as security for the payment by the Agency, when due, of all obligations now or at any time hereafter owing to the Bank under this Agreement including payment of all Authorized Installments, the deposit of all sums and the payment of all fees and the payment and performance of all other obligations of the Agency hereunder, a lien on and security interest in the Pledged Revenues and the right to enforce certain remedies under the Resolution as described therein.

Section 2.14. Application of Chapter 346 of the Finance Code. The Agency and the Bank agree that Chapter 346 of the Finance Code shall not apply to this Agreement or the arrangements between the Agency and the Bank arising under this Agreement or the Letter of Credit.

ARTICLE III

CONDITIONS OF ISSUANCE

Section 3.01. Condition Precedent to Issuance of the Letter of Credit. The obligation of the Bank to issue the Letter of Credit on the Closing Date is subject to the condition precedent that the Bank shall have received on or before the date of the issuance of the Letter of Credit the following, each dated such date, in form and substance satisfactory to the Bank:

(a) Complete and correct copies of (i) the concurrent ordinances establishing the Agency, certified to be true and correct copies by the applicable Governmental Authorities, (ii) the Resolution and the Agency's Rules and Regulations and General Policy, each as amended to date, and each as certified to be in full force and effect as of a recent date by the applicable Governmental Authority and (iii) each of the other documents, certificates and instruments required to be delivered under the Resolution including without limitation the ratings letters delivered as a precondition to the issuance of the Notes.

(b) Originals (or copies certified to be true copies by an appropriate officer of the Agency) of all governmental and regulatory approvals necessary for the Agency with respect to this Agreement and the transactions contemplated hereby, including without limitation, approval by the Beneficiary of the Letter of Credit and Collateral Bond.

(c) A certificate of the Secretary or an Assistant Secretary or other authorized officer of the Agency certifying the names, offices held, and true signatures of the officers of the Agency authorized to sign this Agreement and the other documents to be delivered by it hereunder.

(d) An opinion of the Attorney General of the State of Texas approving the proceedings relating to the Notes and this Agreement.

(e) An opinion of McCall, Parkhurst & Horton L.L.P. as special counsel to the Agency covering the Resolution, the Notes, and the validity and perfection of the pledge of JOA Payments, and certain other matters, in form and substance satisfactory to the Bank.

(f) An opinion of general counsel for the Agency, in substantially the form of Exhibit B hereto and as to such other matters as the Bank may reasonably request.

(g) The original Initial Note delivered to the Paying Agent/Registrar; issuance of the initial Authorized Installment by the Paying Agent/Registrar.

(h) A true copy of the JOA certified by an officer of the Agency as being a true and complete copy of the original document.

(i) An executed copy of this Agreement, the Paying Agent/Registrar Agreement and the Collateral Bond.

(j) Written confirmation (e.g., Bloomberg screenshot) of the individual City Electric System's unenhanced, long-term debt Ratings as of the Closing Date.

(k) Such other evidence with respect to the Agency as the Bank may reasonably request to establish the consummation of the transactions contemplated under this Agreement, including such other approvals, opinions or documents as the Bank may reasonably request.

Section 3.02. Additional Conditions Precedent to Issuance of the Letter of Credit. The obligation of the Bank to issue the Letter of Credit shall be subject to the further conditions precedent that on the date of the issuance of the Letter of Credit the following statements shall be true and the Bank shall have received a certificate signed by a duly authorized officer of the Agency, dated the date of such issuance, stating that:

(i) The representations and warranties contained in Section 4.01 of this Agreement are correct on and as of the date of issuance of the Letter of Credit, before and after giving effect to such issuance, as though made on and as of such date; and

(ii) No petition by or against the Agency has at any time been filed under the United States Bankruptcy Code or under any similar act;

(iii) No default or event which with the passage of time or the giving of notice, or both, would constitute a default has occurred and is continuing under the Resolution or the JOA, respectively, except such as may be disclosed in the opinion given pursuant to Section 3.01(d); and

(iv) No event has occurred and is continuing, or would result from such issuance, which constitutes an Event of Default or a Potential Default.

Section 3.03. Fee. The obligation of the Bank to issue the Letter of Credit shall be subject to the further condition precedent that on the date of issuance of the Letter of Credit the Agency shall have paid to the Bank the commitment fee provided for in Section 2.03.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 4.01. Representations and Warranties of the Agency. In order to induce the Bank to issue the Letter of Credit, the Agency represents and warrants to the Bank, and covenants with the Bank, as follows:

(a) *Existence*. The Agency is a municipal corporation and political subdivision of the State of Texas which is duly organized and validly existing under the laws of the State of Texas.

(b) *Authorization and Non-Contravention*. The Agency is duly authorized under the laws of the State to create and issue the Notes; all action on its part for the creation and issuance of the Notes has been duly and effectively taken, and the Notes in the hands of the purchasers thereof are and will be valid and enforceable special obligations of the Agency payable in accordance with their terms. The execution, delivery and performance by the Agency of this Agreement, the Initial Note and the other Related Documents to which it is a party are within the Agency's corporate powers, have been duly authorized by all necessary corporate action, and do not contravene or violate (i) the Agency's by-laws, or any resolutions adopted by its Board of Directors or (ii) law (including, without limitation, any order, rule or regulation applicable to the Agency) or any contractual restriction binding on or affecting the Agency or its property (including without limitation any restriction in any documents relating to bonds or commercial paper issued by the Agency or in the JOA), and do not result in or require the creation of any lien, security interest or other charge or encumbrance (except as provided in or contemplated by this Agreement) upon or with respect to any of its properties. The individual signing this Agreement is an Authorized Representative, entitled and authorized to bind the Agency to each of the provisions herein set forth.

(c) *Approvals and Filings*. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Agency of this Agreement or any other Related Document which has not been duly obtained or made.

(d) *Enforceable Obligations*. This Agreement is, and the other Related Documents to which it is a party when delivered, are or will be, legal, valid and binding obligations of the Agency enforceable against the Agency in accordance with their respective terms, assuming due authorization and delivery by the other parties to such agreements.

(e) *Financial Information*. The balance sheet of the Agency as at September 30, 2020 and the related statements of income and retained earnings of the Agency for the fiscal year then ended, copies of which have been furnished to the Bank, fairly present the financial condition of the Agency as at such date and the results of the operations of the Agency for the period ended on such date, all in accordance with GAAP consistently applied, and since September 30, 2020, there has been no material adverse change in such financial condition or operations.

(f) *Litigation*. There is no pending or threatened action or proceeding affecting the Agency or, to the knowledge of the Agency based solely on the certificates of each of the Cities, any of the Cities before any Governmental Authority which may materially adversely affect the financial condition or operations of the Agency or any of the electric systems of the Cities, or which purports to affect the legality, validity or enforceability of this Agreement or any other Related Document, except any such action or suit described in the opinion of counsel provided pursuant to Section 3.01(d).

(g) *JOA*. The JOA has been duly authorized, executed and delivered by each of the parties thereto and is a valid and enforceable agreement on the date hereof and, subject to the matters described in the opinion of counsel provided pursuant to Section 3.01(d), no default or event which with the passage of time or the giving of notice, or both, would constitute a default exists with respect to any party under said contract and to the knowledge of the Agency all parties are in full compliance with said contract.

(h) *Ratings*. (i) The Agency's Transmission Debt carries a long-term rating of A+ by Standard & Poor's, A+ by Fitch and A1 by Moody's. Such ratings have been unchanged since November 2, 2018.

(ii) The City Electric System debt long-term ratings are as follows: (A) the City of Bryan: AA- by Fitch and A+ by Standard & Poor's; the City of Denton: A+ by Fitch and AA- by Standard & Poor's; the City of Garland: senior lien debt: AA by Fitch and A+ by Standard & Poor's and subordinate lien debt: AA- by Fitch and A+ by Standard & Poor's; the City of Greenville: A2 by Moody's and A+ by Standard & Poor's (collectively, the "City Electric System Ratings").

(i) *JOA Payments Pledge*. Pursuant to the Resolution and this Agreement there shall exist a valid first lien on, pledge of, and security interest in the Pledged Revenues as security for the Initial Note and all Authorized Installments purchased by the Bank hereunder, and as security for the payment by the Agency, when due, of all obligations now or at any time hereafter owing to the Bank under this Agreement including payment of all Authorized Installments, deposit of all sums, payment of all fees and payment and performance of all other obligations of the Agency hereunder.

(j) *Effectiveness of Pledge*. Chapter 1208, Texas Government Code, applies to the issuance of the Notes and the pledge of the JOA Payments by the Agency, and such pledge is therefore valid, effective, and perfected as of the Closing Date.

(k) *Reclamation Obligations*. The Agency is in full compliance with its reclamation obligations with respect to Permit No. 38D, except as may be described in the certificate issued by the Agency pursuant to Section 3.02 of this Agreement.

(l) *Construction Contracts*. All of the construction contracts, for which performance and payment bonds are required by law, entered into by the Agency with respect to its reclamation operations are secured by performance and payment bonds. Such contracts are presently in full force and effect, and there are no existing defaults or events which, with the passage of time or the giving of notice or both, would constitute a default under such contracts.

(m) *Permit*. In relation to Permit 38D, there exists no liability of the Agency under the Texas Coal Mining and Reclamation Act, the regulations promulgated pursuant to said Act, or Permit No. 38D, as originally issued, amended, revised, renewed, or replaced, other than completion of the reclamation plans required under Permit No. 38D. As of the date hereof, the Agency's completion of the reclamation plans is on schedule and all reclamation work is expected to be completed on schedule and within budget.

(n) *No Default*. No Potential Default or Event of Default has occurred and is continuing.

(o) *Sovereign Immunity; Mandamus; Etc,*. (i) The duties and obligations of the Agency under the Notes, this Agreement, the Resolution, and the JOA that are clearly defined and non-discretionary and for which there is no other remedy available at law shall be enforceable by mandamus in any court of competent jurisdiction. Without limiting any other remedies set forth herein or in the other Related Documents, in the case of a breach or default by the Agency under this Agreement or the other Related Documents, the Bank (provided that the Bank has not wrongfully dishonored a draw on the Letter of Credit presented in strict compliance with the terms thereof) shall be entitled to file a mandamus action in any court of competent jurisdiction in Brazos County, Texas, or other court of competent jurisdiction, against the Agency, its officers or employees.

> (ii) To the fullest extent permitted by applicable Texas law and pursuant to Section 1371.059(c) of the Texas Government Code, as amended, with respect to its obligations arising under this Agreement, the Agency agrees that it will not claim any immunity on the grounds of sovereignty or other similar grounds from any action, suit or proceeding arising under or relating to this Agreement or any of the other Related Documents, whether to enforce the provisions hereof or thereof or to recover damages for the breach hereof or thereof.

(p) *Agency Payment Obligations*. The payment obligations of the Agency under the Notes, including the Authorized Installments and this Agreement constitute costs properly assessed by the Agency for recovery of the cost of services undertaken by the Agency pursuant to the JOA, as contemplated under Section 2.7 of the JOA.

(q) *Cities' Payment Obligations*. The payment obligations of the Cities under sections 2.6.2.6, 2.7, 2.11.3 and 3.2.1 of the JOA constitute operating expenses of the respective Cities' electric systems as provided in Section 2.7 of the JOA and, in accordance with Texas Government Code § 1502.056(c), the pledge of the JOA Payments constitutes a first lien on the revenues of the respective Cities' electric systems.

(r) *Rate Covenant*. In the JOA, each City has irrevocably covenanted to establish, maintain and collect rates and charges for the electric service of its electric system which shall produce revenues at least sufficient, together with other revenues available to such electric system and available electric system reserves, to enable it to pay to the Agency, when due, all amounts payable by each City under the JOA.

(s) *Anti-Terrorism Representation*.

(i) Neither the Agency nor any of its Affiliates is in violation of any laws relating to terrorism or money laundering ("Anti-Terrorism Laws"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the USA Patriot Act, Title III of Pub.L.107-56, 115 Stat. 272 (the "Patriot Act");

(ii) Neither the Agency nor any of its Affiliates is any of the following:

(A) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(B) a Person owned or controlled by, or acting for or on behalf of, any Person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(C) a Person with which the Bank is prohibited from dealing or otherwise engaging in any transaction by an Anti-Terrorism Law;

(D) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(E) a Person that is named as a "specially designated national and blocked person" on the most current list published by the Office of Foreign Asset Control ("OFAC") or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list (collectively, the "OFAC Lists");

(iii) Neither the Agency nor any of its Affiliates (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (ii)(B) above, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

ARTICLE V

COVENANTS OF THE AGENCY

Section 5.01. Affirmative Covenants. So long as a drawing is available under the Letter of Credit or the Bank shall have any Commitment hereunder or the Agency shall have any obligation to pay any Authorized Installment or other amount to the Bank under the Notes or hereunder, the Agency will, unless the Bank shall otherwise consent in writing:

(a) *Maintenance of Insurance*. Maintain insurance with responsible and reputable insurance companies or associations, or shall self-insure, in such amounts and covering such risks as is usually carried by governmental entities engaged in similar businesses and owning similar properties in the same general areas in which the Agency operates.

(b) *Preservation of Corporate Existence, Etc*. Preserve and maintain its existence as a municipal corporation and political subdivision of the State of Texas, and all of its statutory rights.

(c) *Compliance with Laws, Etc*. Comply in all material respects with the requirements of all applicable laws, rules, regulations and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith.

(d) *Visitation Rights*. At any reasonable time and from time to time, permit the Bank or any agents or representatives thereof to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Agency, and to discuss the affairs, finances and accounts of the Agency with any of their respective officers or directors and with their independent certified public accountants.

(e) *Keeping of Books*. Keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Agency in accordance with GAAP consistently applied.

(f) *Maintenance of Properties, Rates and Charges, Etc*. Maintain and preserve all of its properties which are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted and to at all times maintain rates and charges for all services furnished, provided and supplied by the Agency, to enable the Agency to timely pay all obligations to the Bank hereunder.

(g) *Pledges*. The Agency shall promptly take all actions and measures necessary to ensure the continuing validity, perfection and priority of the pledge described in the Preliminary Statements and Section 2.13 of this Agreement, and in

Section 4.01 of the Resolution including, without limitation, all actions and measures described in Section 4.01(b) of the Resolution.

(h) *Covenants Relating to Annual Budget and Collections*. the Agency covenants and agrees with the Bank as follows:

(i) The JOA Payments are available to pay the Agency's services, including the Agency's mining business category, in accordance with the JOA.

(ii) Annually, in accordance with Section 3.2.1 of the JOA, the Board of the Agency shall adopt annual budgets by business category, and, specifically, the Board shall adopt the mining business category Annual Budget, and in connection therewith, the Board shall adopt charges to be invoiced monthly to the Cities for the recovery of the amounts due and owing under the Resolution and the Notes to the note purchaser or under this Agreement to the Bank, including all fees and other amounts scheduled hereunder.

(iii) Upon each occurrence of an Advance and the purchase of a related Authorized Installment, the Agency will within ten (10) Business Days acting in accordance with Section 2.6.2.3 of the JOA, submit an amendment to the Annual Budget adding an amount sufficient to raise and produce the money required to pay all principal of and interest on the Authorized Installments as such amounts come due in each Fiscal Year ("Debt Service Payments") and to pay any other fees or amounts in relation thereto. Such an amendment to the Annual Budget shall include a payment schedule for each City setting forth the monthly Debt Service Payments required to be made by each City to the Agency for the respective Fiscal Year covered by the Annual Budget in accordance with the contract percentages for each City, as set forth in the JOA. In the case of any required deposit under Section 5.01(j) hereof, the Agency will proceed, *mutatis mutandis*, to submit an amendment to the Annual Budget, including a requisite payment schedule for the relevant City or Cities.

(iv) The Agency will timely invoice the Cities each month for their respective portions of the Debt Service Payments (and any other required deposits or fees under the Resolution or this Agreement including, without limitation, in the case of any deposit required under Section 5.01(j) hereof, the percentage of the Pro-Rata Share of a City of the Available Amount of the Letter of Credit required to be deposited with the Bank) as set forth in the amended Annual Budget and will use all available means (including taking action in accordance with Section 5.07(d) of the Resolution) to collect the Debt Service Payments (and such other amounts and deposits) for deposit into the Note Payment Fund (or special account, in the case of deposits under Section 5.01(j)) according to the requirements of this Agreement and the Resolution.

(i) *Performance and Compliance with Other Covenants*. Perform and comply with each of the covenants and agreements set forth in the Resolution and the JOA, respectively, without giving effect to any subsequent amendment, modification or termination thereof. In particular and not in limitation of the foregoing, the Agency will comply with the terms and conditions of the JOA and will cause the Cities, as parties to such agreement, their officials, and employees, to comply with all of their obligations under the JOA, by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings in any court of competent jurisdiction and the employment of any other remedy available at law or in equity to enforce the Cities' obligations.

(j) *Deposits Upon Decline of Ratings*. In the event that the long-term senior debt ratings of any City's Electric System by Standard & Poor's, Fitch or Moody's, respectively, shall fall to BBB/BBB/Baa2 or BBB-/BBB-/Baa3, respectively, the Agency shall establish an interest bearing account with the Bank which will be dedicated to reimburse the Bank for the repayment of any drawing made under the Letter of Credit, such account to be funded not later than 15 calendar days after the reduction in ratings in an amount equal to 50% of that City's Pro-Rata Share of the Available Amount of the Letter of Credit and if any such rating shall fall below BBB-/BBB-/Baa3, respectively, or be withdrawn or suspended, the Agency shall deposit in such account (not later than 15 calendar days after such reduction in ratings) an amount which (together with all prior deposits therein) is equal to 100% of that City's Pro-Rata Share of the Available Amount of the Letter of Credit.

Any balance in such an account remaining after the Stated Termination Date and after payment of the principal of and interest on all Authorized Installments and payment of all other amounts payable to the Bank under this Agreement shall be paid to the Agency upon expiration of the Letter of Credit, as the Agency may direct.

(k) *Reporting Requirements*. Furnish to the Bank the following:

(i) as soon as possible, and in any event within five days after the occurrence of each Event of Default or each Potential Default, continuing on the date of such statement, a statement of the general manager of the Agency setting forth details of such Event of Default or Potential Default and the action which the Agency has taken and proposes to take with respect thereto;

(ii) a copy of each quarterly financial report (unaudited) that it supplies to its Board of Directors and annual audited financial statements (with a consolidation statement) within 90 and 120 days, respectively, from the close of the period; copies of the annual audited financial statements for each of the Cities at the earlier of (A) promptly after the date first available and (B) 210 days after the end of the fiscal year of such City;

(iii) as soon as possible, and in any event within five days after receipt, of any inspection report from the Beneficiary or any other state or federal agency relating to the reclamation operations of the Agency under Permit No. 38D or any correspondence or other notice from any such agency which relates to any sanction against or notice of non-compliance by the Agency with respect to its reclamation obligations;

(iv) promptly, (A) copies of any reports prepared by or for the manager of the reclamation operations which show that the operations are not on schedule or within budget in any material adverse respect and (B) written notice of any change in, or any announced or published withdrawal or suspension of one or more of the City Electric System Ratings;

(v) at least thirty (30) days prior written notice before the finalization and funding of any debt incurred by the Agency, whether subordinate or senior to the Agency's obligations hereunder, which exceeds ten percent (10%) of the net worth of the Agency;

(vi) at least thirty (30) days prior written notice of any sale of assets by the Agency for an aggregate price in excess of $10,000,000;

(vii) on the date of issuance of the Letter of Credit, but no later than March 1, 2021, an updated bond reduction schedule, dated no earlier than December 31, 2020, to be further updated in August during the term of this Agreement, containing the estimated amounts by which the Collateral Bond is anticipated to be reduced and the estimated schedules for such reductions; and

(viii) such other information respecting the business, properties, operations, or condition, financial or otherwise, of the Agency as the Bank may from time to time reasonably request.

(l) *Further Assurances*. Execute and deliver, or cause to be executed and delivered from time to time, such further instruments, supplements, amendments, modifications, consents, certifications, assignments, financing statements and other such documents and instruments as the Bank may, in its reasonable discretion, deem necessary or advisable in order to preserve and protect the rights of the Bank under this Agreement or to facilitate the performance of the covenants and obligations created pursuant to this Agreement.

Section 5.02. Negative Covenants. So long as a drawing is available under the Letter of Credit or the Bank shall have any Commitment hereunder or the Agency shall have any obligation to pay any Authorized Installment or other amount to the Bank under the Notes or hereunder, the Agency will not, without the written consent of the Bank, do or suffer to occur any of the following:

(a) *Modification of JOA.* The Agency will not consent to the modification, amendment or waiver of any covenant or provision of the JOA, which in the reasonable judgment of the Bank could reasonably be expected to adversely affect the ability of the Agency to perform its obligations under the Resolution or hereunder or the ability of the Bank to receive payment for all amounts due under the Notes including each Authorized Installment and this Agreement. The Agency will provide the Bank notice as promptly as practicable of any proposed amendments to or modifications or waivers of any provisions of the JOA, and of the meeting of the Board of Directors of the Agency when such proposed amendments, modifications or waivers are to be considered. In connection with any proposed modification, amendment or waiver of any such agreement, the Board shall make a determination that such modification, amendment or waiver, as the case may be, will not have an adverse effect as described in the preceding sentence and submit such determination to the Bank for its review, but the Bank shall make such determination acting in its sole reasonable discretion; provided, however, that an amendment to the JOA solely for the purpose of (and only including amendments directly related to) allowing the sale of power or energy to a City under the generation business segment shall not be subject to the approval right of the Bank as set forth in the first sentence of this Section 5.02(a).

(b) *Resolution a Contract*. The Resolution shall constitute a contract with the Bank and its successors and assigns, binding on the Agency and its successors and assigns, and shall not be amended, modified or repealed, nor shall any provision thereof be waived, by the Agency.

(c) *No Issuance of Additional Mine Reclamation Bonds, etc.*.

(i) Except as provided in subpart (ii)(C) of this Section 5.02(c), the Agency shall not issue or incur or suffer to exist any Mine Reclamation Bonds, other than the Notes and the Series I Notes authorized in connection with the Bank's letter of credit issued for the Agency's Surface Mining and Reclamation Permit No. 26D, nor shall the Agency issue or incur or have outstanding any other Debt or obligations relating to the Agency's Mining Business assets (as described in the JOA), which are secured by or payable from the JOA Payments.

(ii) The Agency shall not issue, incur or have outstanding any Debt other than (A) Mine Reclamation Bonds, if such Debt is secured in whole or in part by revenues derived from payments received by the Agency from the Cities pursuant to the JOA, other than payments securing Mine Reclamation Bonds, (B) Transmission Debt and (C) Series G Mine Reclamation Notes and Series H Mine Reclamation Notes (collectively, the "2020 Series Notes"), provided that the authority to issue 2020 Series Notes shall cease and terminate on the Effective Date.

(d) *2020 Series Notes*. The Agency will not permit any 2020 Series Notes to be outstanding at any time on or after the Effective Date and, prior to the Effective Date, shall pay or redeem or cause the payment or redemption of all 2020 Series Notes and the payment of all principal and interest due thereunder and all other amounts owing to the Bank in connection therewith.

(e) *Paying Agent/Registrar*. The Agency will not, without the prior written consent of the Bank (such consent not to be unreasonably withheld), appoint or permit the appointment of a successor Paying Agent/Registrar.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.01. Events of Default. The occurrence of any of the following events shall be an "Event of Default" hereunder:

(a) The Agency shall fail to pay any amount payable hereunder when the same becomes due and payable; or

(b) Any representation or warranty made, or deemed made, by the Agency herein or by the Agency (or any of its officers) in connection with this Agreement shall prove to have been incorrect in any material respect when made or deemed made; or

(c) (i) The Agency shall fail to perform or observe any term, covenant or agreement set forth in Sections 5.01(b), 5.01(g), 5.01(h), 5.01(i), 5.01(j) or 5.01(k)(i) or in Section 5.02 hereof; or (ii) the Agency shall fail to perform or observe any term, covenant or agreement contained in this Agreement or in any Related Document on its part to be performed or observed other than those specified in clause (i) immediately preceding (and other than those described in any other subsection of this Section 6.01), and any such failure shall remain unremedied for 10 days after written notice thereof shall have been given to the Agency by the Bank; or

(d) The Agency shall fail to pay (i) any Series G Mine Reclamation Notes or any Series H Mine Reclamation Notes in accordance with the terms thereof or (ii) any Debt which is outstanding in a principal amount of at least $50,000 in the aggregate (excluding Debt under this Agreement) of the Agency when the same becomes due and payable (whether by scheduled maturity, required prepayment, redemption, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or

(e) Any event shall occur or condition shall exist under any agreement or instrument relating to any Debt of the Agency and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(f) The Agency shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Agency seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Agency shall take any corporate action to authorize any of the actions set forth above in this subsection (f); or

(g) A judgment or order for the payment of money in excess of $250,000 shall be rendered against the Agency by a Governmental Authority and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(h) Any provision of the Resolution or this Agreement shall at any time for any reason cease to be valid and binding on the Agency, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Agency, or a proceeding shall be commenced by any Governmental Authority seeking to establish the invalidity or unenforceability thereof, or the Agency shall deny that it has any or further liability or obligation under the Resolution or this Agreement; or

(i) Any "Event of Default" under and as defined in the Resolution shall have occurred and be continuing; or any breach of a provision of the JOA shall have occurred and be continuing; or

(j) (i) any pledge or lien created by the Resolution or this Agreement in favor of the note purchaser or the Bank, at any time and for any reason (except as expressly permitted to be released by the terms of such governing document) shall not constitute a valid and perfected pledge and lien or shall fail to have the priority required by the Resolution and this Agreement or, except as permitted under the Resolution, the Agency shall so assert in writing, (ii) any legislation is enacted, repealed, reenacted, amended or otherwise modified, and such repeal, enactment, reenactment, amendment or modification, in the opinion of the Bank, has or could reasonably be expected to have a material adverse effect on the validity, enforceability or priority of the pledge and lien on the JOA Payments, in favor of the note purchaser or the Bank or (iii) any rescission of or amendment to or any other action under or in connection with any legislation, law or regulation relating to the JOA Payments, which would (A) materially reduce the amount of the JOA Payments or the allocation of the JOA Payments to the payment of the Notes, including the Authorized Installments or any other amounts due under this Agreement or (B) impair or adversely affect (x) the rights of the Agency to any or all of the JOA Payments, or (y) the rights or security of the note purchaser or the Bank under the Resolution or this Agreement; or

(k) An Event of Default occurs under the Note Purchase Agreement of even date herewith between the parties relating to the letter of credit to be issued by the Bank for the Agency's Surface Mining and Reclamation Permit No. 26D.

Section 6.02. Upon an Event of Default. (a) If any Event of Default shall have occurred and be continuing, all Advances not yet reimbursed hereunder, all interest thereon and all other amounts payable and all Authorized Installments under the Notes and this Agreement shall accrue interest at the Default Rate and the Bank shall be entitled to enforce its claims and causes of action against the Agency for all amounts that are due and payable and for payment and performance of each of the Agency's other obligations hereunder and under the other Related Documents. If any other Debt of the Agency is accelerated or required to be prepaid, purchased or redeemed prior to its stated maturity, the Bank may declare the principal amount of all outstanding Authorized Installments, all interest thereon and all other amounts payable hereunder to be immediately due and payable, whereupon the principal amount of all outstanding Authorized Installments, all such interest and all such other amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by the Agency.

(b) If at the time that any such Event of Default occurs, any portion of the Letter of Credit is still undisbursed (that is, if the Letter of Credit is still in effect and has not been completely drawn against), the Agency will, after at least ten (10) days advance written notice, pay the Bank for application to drawings under the Letter of Credit an amount equal to the Available Amount of the Letter of Credit. Such funds shall be used to fund any future drawings thereafter on the Letter of Credit. Any amount so paid to the Bank that has not been drawn on or before the Stated Termination Date (as the same may have been extended pursuant to Section 2.09) of the Letter of Credit will be repaid to the Agency without interest upon expiration of the Letter of Credit.

(c) To the maximum extent allowed by Texas law, the Agency hereby (i) waives any immunity from suit that it may have in connection with this Agreement, and (ii) agrees that in the event of litigation between the Bank and the Agency relating to this Agreement, the Agency will not raise immunity from suit as a defense.

(d) Without limiting any other remedy available hereunder or at law or in equity, to the maximum extent permitted by law, the Bank may by mandamus (as described in Section 4.01(o) hereof) or other appropriate action or proceeding at law or in equity in any court of competent jurisdiction, enforce and compel performance of the Notes, the Resolution, this Agreement, and the JOA and every provision and covenant thereof, including without limiting the generality of the foregoing, the enforcement of the performance of all obligations and duties required to be done or performed by the Agency by the Resolution and the applicable laws of the State.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Amendments, Etc. No amendment or waiver of any provision of this Agreement, nor consent to any departure by the Agency therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 7.02. Notices, Wire Transfer Instructions. All notices under this Agreement shall be in writing and either (x) hand delivered by messenger against receipt therefore, (y) mailed by registered or certified mail, postage prepaid and return receipt requested or sent prepaid by nationally recognized overnight courier service, or (z) sent by telecopier (facsimile) with a printed record of transmission, in each case addressed as follows:

(a) If to the Agency by mail, to:

Texas Municipal Power Agency
P.O. Box 7000
Bryan, Texas 77805
Attention: General Manager

If to the Agency by other means:

Texas Municipal Power Agency
12824 FM 244
Anderson, Texas 77830
Attention: General Manager
Telephone No. 936.873.2013
Telecopy No. 936.873.1183

(b) If to the Bank, to:

Wells Fargo Bank, N.A.
360 Interstate N. Pkwy SE, 5th Floor
Atlanta, GA 30339-2204
Attention: Patrick Hennessey
Telephone No. (678) 589-4341
Telecopy No. (678) 589-4315

(c) If to the Paying Agent/Registrar, to:

Wells Fargo Bank, N.A.
600 S 4th St., Floor O6
Minneapolis, MN 55415-1526
Attention: Jim Hood, Vice President
Telephone No. 612-667-1256

and if money is to be transmitted to the Bank the wire transfer instruction are:

ABA:	121000248
Name:	Wells Fargo Bank, N.A.
Account No.	00698314050720
Account Name:	Texas Municipal Power Authority
Address:	Roanoke, VA
Customer Name:	Texas Municipal Power Agency
OBGR:	8862819507
OBLN:	**NEW – assigned at booking
REF:	Short Term NOTE payoff's

or to such other address as a party may designate. Notices shall be deemed to have been given when delivered (or, if mailed, on the second Business Day).

Section 7.03. No Waiver; Remedies. No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or in equity.

Section 7.04. Right of Set-Off. Upon the occurrence and during the continuance of any Event of Default, the Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Bank to or for the credit or the account of the Agency against any and all of the obligations of the Agency now or hereafter existing under this Agreement, whether or not the Bank shall have made any demand hereunder and although such obligations may be contingent or unmatured.

Section 7.05. Indemnification. To the maximum extent allowed by Texas law, the Agency hereby covenants to defend, indemnify and hold the Bank, its Affiliates and each of the officers, directors, employees and agents of the Bank or any Affiliate (each, an "Indemnified Party") harmless from and against any and all claims, causes of action, damages, losses, liabilities, obligations, costs or expenses (including without limitation reasonable attorneys' fees whether incurred by an Indemnified Party in a dispute or litigation involving the Agency or involving a third party) that an Indemnified Party may incur or which may be claimed or asserted against such Indemnified Party by any person or entity:

(a) by reason of or in connection with the execution, delivery or performance of the Resolution or the JOA, respectively, or any transaction contemplated by the Resolution or the JOA, respectively;

(b) by reason of or in connection with the execution and delivery of the Notes by the Agency, or the purchase and holding of the Notes by the Bank as note purchaser under the Resolution;

(c) in the form of any demand, lawsuit, proceeding, claim or cause of action filed or alleged against the Bank by any Person and relating to this Agreement or the Notes;

(d) by reason of or in connection with the execution and delivery or transfer of, or payment or failure to make payment under, the Letter of Credit; provided, however, that the Agency shall not be required to indemnify the Bank pursuant to this Section 7.05 for any claims, damages, losses, liabilities, costs or expenses to the extent caused by the Bank's willful failure to make lawful payment under the Letter of Credit after the presentation to it by the Beneficiary of documents strictly complying with the terms and conditions of the Letter of Credit; and

(e) relative to and/or as a consequence of (a) any failure by the Agency to perform any of its agreements or obligations hereunder or under any of the other Related Documents, (b) the Letter of Credit and any Advances and acceptances being made under or purported to be made thereunder, or (c) any action taken or admitted by the Bank and/or its branches, affiliates and/or correspondents at the request of the Agency or in the administration or enforcement of this Agreement;

provided, in each case, that the Agency shall not be required to indemnify the Bank for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, directly caused by (1) the willful misconduct or negligence of the Bank or (2) the Bank's willful failure to pay under the Letter of Credit after the presentation to it by the Beneficiary of a draft and certificate strictly complying with the terms and conditions of the Letter of Credit, to the extent that there has been a final and nonappealable judgment of a court of competent jurisdiction that such claims, damages, losses, liabilities, costs and expenses were directly caused by the willful misconduct or negligence of the Bank. If any proceeding shall be brought or threatened against an Indemnified Party by reason of or in connection with the events described in this Section, such Indemnified Party shall promptly notify the Agency in writing and the Agency shall assume the defense thereof, including the employment of counsel and the payment of all costs of litigation. The Agency will not settle or compromise any such action or claim without the prior written consent of the relevant Indemnified Party if the settlement or compromise would require any act or admission by such Indemnified Party or any of its Affiliates, or impose any cost or expense on the Indemnified Party or its Affiliates or impose any limitation on the business or future actions of the Indemnified Party or its Affiliates. Notwithstanding the preceding sentence, an Indemnified Party shall have the right to employ its own counsel and to determine its own defense of such action in any such case, but the fees and expenses of such counsel shall be at the expense of an Indemnified Party unless (x) the employment of such counsel has been authorized in writing by the Agency or (y) the Agency, after due notice of the action, shall not have promptly employed counsel to have charge of such defense, in either of which events the reasonable fees and expenses of counsel for such Indemnified Party shall be borne by the Agency. The Agency shall not be liable for any settlement of any such action effected without its consent.

Nothing in this Section 7.05 is intended to limit or impair the Agency's obligations contained or described in Article II. Without prejudice to the survival of any other obligation of the Agency hereunder, to the maximum extent permitted by law, the indemnities and obligations of the Agency contained in this Section 7.05 shall survive the payment in full of amounts payable pursuant to Article II and the termination of the Letter of Credit.

Section 7.06. No Liability of the Bank. The Agency assumes all risks of the acts or omissions of the Beneficiary of the Letter of Credit with respect to its use of the Letter of Credit. To the maximum extent permitted by law, neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit, or the proceeds of any Advance or of any Note or Authorized Installment, or any acts or omissions of the Beneficiary in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentation of documents that do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit or any action or omission of the Bank or its Affiliates with respect to the purchase and holding by the Bank of the Notes or any Authorized Installment, except that the Agency shall have a claim against the Bank, and the Bank shall be liable to the Agency, to the extent, but only to the extent, of any direct, actual damages, as opposed to any lost profits, consequential, special, indirect or punitive (or exemplary) damages (the right to receive or recover lost profits, consequential, special, indirect or punitive (or exemplary) damages being hereby irrevocably waived by the Agency), suffered or incurred by the Agency, and not required to be mitigated by the Agency which are determined by a final and nonappealable judgment of a court of competent jurisdiction or a duly constituted arbitration panel pursuant to Section 7.20, as the case may be, to be directly caused by the Bank's willful failure to make lawful payment under the Letter of Credit after the presentation to it by the Beneficiary pursuant to documents delivered to the Bank strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, to the maximum extent permitted by law, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

Section 7.07. Costs, Expenses and Taxes. The Agency agrees to pay on demand all costs and expenses (including reasonable counsel fees and expenses) in connection with (i) the breach by the Agency of any covenant herein or in any other Related Document, (ii) the Bank's protection of its lien and security interest created hereunder, (iii) any consent, waiver or approval requested by the Agency hereunder, (iv) the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement and such other documents which may be delivered in connection with this Agreement, including, without limitation, reasonable counsel fees and expenses in connection with the enforcement of rights under this Section 7.07, (v) any action or proceeding relating to a court order, injunction, or other process or decree restraining or seeking to restrain the Bank from paying any amount under the Letter of Credit or (vi) the termination or amendment of this Agreement or the Letter of Credit. In addition, the Agency shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement or the Letter of Credit or any such other documents, and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

Section 7.08. Payment Under the Letter of Credit. The Agency authorizes the Bank to pay any Advance upon presentation to the Bank of documentation substantially complying with the terms of the Letter of Credit. The Agency hereby authorizes the Bank to receive, accept and/or pay as complying with the terms of the Letter of Credit any Advances and/or other documents under the Letter of Credit that are otherwise in order but are signed by, or issued to, any administrator, executor, assignee for the benefit of creditors, trustee in bankruptcy or receiver for any property of the Beneficiary or any other party in whose name it is provided in the Letter of Credit that any Advances, acceptances and/or other documents thereunder should be drawn. The Bank and its branches, affiliates and/or correspondents shall not be responsible for costs (including reasonable attorneys' fees) arising from the events described in Section 7.05(c) hereof. Any and all of the following provisions may be waived by the Bank in its sole discretion, and the Bank and its branches, affiliates and/or correspondents shall not be liable or responsible in any respect for any noncompliance therewith or waiver thereof: (a) any requirement that Advances or acceptances under or purported to be under the Letter of Credit bearing reference to or otherwise identify the Letter of Credit, (b) any requirement that the amount of any Advances or acceptances under or purported to be under the Letter of Credit be noted thereon, and/or (c) any requirement that any party send or forward documents physically apart from any Advances or acceptance.

Section 7.09. Binding Effect; Successors and Assigns; Certain Pledges. (a) This Agreement shall become effective when it shall have been executed by the Agency and the Bank and thereafter shall be binding upon and inure to the benefit of the Agency and the Bank and their respective successors and assigns, except that the Agency shall not sell, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank (and any attempted assignment or transfer without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby), any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Bank may at any time and without the consent of or notice to the Agency sell, transfer, and assign to one or more Persons as purchasers, transferees and assignees its entire right, title and interest in and to the Notes, including the Authorized Installments and this Agreement, or any lesser portion thereof, in accordance with the following terms; provided that if the Bank makes a Full Assignment (as defined below), the Bank shall deliver written notice to the Agency identifying the assignee, who shall thereupon replace the Bank for all purposes as a party to this Agreement:

(i) The Bank may sell, transfer and assign its interests in the Notes, including the Authorized Installments and this Agreement, or any portion thereof, to (A) any Affiliate or other related Person or (B) a tax-exempt trust or special purpose entity which issues certificates representing beneficial interests therein to any Person that is a Qualified Institutional Buyer as defined under Rule 144A of the Securities Act of 1933, as amended (the "Securities Act"), or (C) any other Person in a transaction that is exempt from registration under the Securities Act and applicable state law (any such Person under (A), (B) or (C) being referred to as an "Assignee");

(ii) The right, title and interest of the Bank in the Notes, including the Authorized Installments and this Agreement shall be referred as its "Loan Portion"; any sale, transfer and assignment of the entire Loan Portion is referred to as a "Full Assignment";

(iii) To the extent that there is at any time more than one owner of Notes, the Agency shall prepare and execute and the Paying Agent/Registrar shall authenticate and deliver multiple Notes payable to each owner in an amount equal to the principal amount of such owner's Loan Portion and in an aggregate amount equal to the sum of the Commitment plus the principal amount, if any, drawn on the Letter of Credit. Upon delivery by the Bank to the Paying Agent/Registrar of the Note being transferred in whole or in part, together with the assignment attached thereto duly completed, the Agency shall prepare and execute and the Paying Agent/Registrar shall authenticate and deliver to the Assignee (or Assignees) a Note payable to the order of Assignee in an amount equal to its Loan Portion and to the retaining owner, if any, a Note payable to the order of such owner in an amount equal to its retained Loan Portion. Each such Note shall be further transferable and assignable along with such Loan Portion as provided in this Section.

(c) The Bank may, without the consent of or notice to the Agency sell participations to one or more Participants in all or a portion of the Bank's rights and obligations under the Notes, including the Authorized Installments and this Agreement; provided that (i) the Bank's obligations under this Agreement shall remain unchanged, (ii) the Bank shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Agency and the Paying Agent/Registrar shall continue to deal with the Bank in connection with the Notes, including the Authorized Installments and this Agreement. Each Participant shall be entitled to the benefits of Article II, and Sections 7.05 and 7.06 hereof to the same extent as if it were the Bank and had acquired its interest by assignment pursuant to paragraph (b) of this Section. The Agency agrees to provide to the Bank, promptly upon request, a copy of the most recent financial information concerning the Agency and to assist the Bank in the preparation of any offering or disclosure document reasonably necessary or required in connection with any such assignment or participation or prospective assignment or participation.

(d) The Bank may at any time pledge or grant a security interest in all or any portion of its rights under the Notes, including the Authorized Installments and this Agreement (including, without limitation, rights to payment under the Notes, including the Authorized Installments and this Agreement) to secure obligations of the Bank, including any pledge or grant of a security interest to secure obligations to a Federal Reserve Bank; provided that no such pledge or grant of a security interest shall release the Bank from any of its obligations hereunder or thereunder or substitute any such pledgee or holder of a security interest for the Bank as a party hereto.

(e) Notwithstanding anything in this Agreement to the contrary, a Participant shall not be entitled to receive any greater payment under Section 2.06 than the Bank would have been entitled to receive with respect to the participation sold to such Participant.

Section 7.10. Usury Laws. It is the intent of the parties in the execution and performance of this Agreement to contract in strict compliance with the usury laws of the State of Texas from time to time in effect. In furtherance thereof, the Bank and the Agency stipulate and agree that none of the terms and provisions contained in this Agreement shall ever be construed to create a contract to pay for the use, forbearance or detention of the money loaned with interest at a rate in excess of the Maximum Interest Rate and that for purposes hereof, interest shall include the aggregate of all charges which constitute interest under such laws that are contracted for, charged or received under this Agreement. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the Maximum Interest Rate, the Agency and the Bank shall, to the maximum extent permitted under applicable law, (a) characterize any non-principal payment as an expense, fee or premium rather than as interest, (b) exclude voluntary prepayment or redemption and the effects thereof, (c) apply such amounts to the reduction of the principal amount owing hereunder and not to the payment of interest, and (d) allocate, prorate and spread the total amount of interest throughout the entire contemplated term of the loan. If, notwithstanding the provisions of Section 2.05 hereof pertaining to the calculation and payment of interest and the preceding provisions of this Section, the Bank shall collect moneys which are deemed to constitute interest at a rate in excess of the highest lawful rate, all such sums deemed to constitute interest in excess of the highest lawful rate shall be immediately returned to the payor thereof. The provisions of this Section shall control over all other provisions of this Agreement.

Section 7.11. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 7.12. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.13. Notice of Certain Events. The Agency agrees to provide immediate notice to the Bank by telephone, promptly confirmed in writing, of the occurrence of any Potential Default.

Section 7.14. Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and shall be performable in whole or in part in Brazos County, Texas.

(b) Jurisdiction. In the event that a dispute is not submitted to arbitration as provided in Section 7.20 for any reason, but becomes the subject of a judicial action, the parties agree that any state or federal court in Brazos County, Texas shall have (subject, however, to the right of either party to require arbitration of the matter as set forth in Section 7.20) exclusive jurisdiction and venue for any suit brought under or arising out of this Agreement.

(c) Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN THE EVENT THAT A DISPUTE IS NOT SUBMITTED TO ARBITRATION AS PROVIDED FOR IN SECTION 7.20 FOR ANY REASON, BUT BECOMES THE SUBJECT OF A JUDICIAL ACTION, EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATED DOCUMENTS. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE BANK TO ISSUE THE LETTER OF CREDIT AND THAT THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY THE AGENCY AND THE BANK 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 7.15. No Israel Boycott. Pursuant to Section 2271.002, Texas Government Code, to the extent this Agreement is a contract for goods or services, the Bank hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any (collectively, the “Bank Entities”), do not Boycott Israel and, subject to or as otherwise required by applicable Federal law, including, without limitation, 50 U.S.C. Section 4607, the Bank Entities agree not to Boycott Israel during the term of this Agreement. For purposes of this Section, "Boycott Israel" shall have the meaning given such term in Section 808.001, Texas Government Code. The Bank understands "affiliate" for this Section and Section 7.16 hereof to mean an entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

Section 7.16. Chapter 2252. The person or persons executing this Agreement on behalf of the Bank, or representing themselves as executing this Agreement on behalf of the Bank, hereby acknowledge that (a) the Bank Entities do not engage in business with Iran, Sudan or any foreign terrorist organization and (b) the Bank Entities are not named on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
ttps://comptroller.texas.gov/purchasing/docs/iran-list.pdf or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf

Section 7.17. US QFC Stay Rules.

(a) Recognition of U.S. Resolution Regimes. In the event that any party that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this

Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this paragraph (a) apply notwithstanding the provisions of paragraph (b).

(b) Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings. Notwithstanding anything to the contrary in this Agreement or any Related Documents, but subject to the requirements of paragraph (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

Section 7.18. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 7.19. No Other Agreements. THIS AGREEMENT AND RELATED WRITTEN AGREEMENTS EXECUTED IN CONNECTION HEREWITH REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 7.20. Arbitration.

(a) Arbitration. To the maximum extent permitted by law, the parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to (i) any credit subject hereto, or any of the Related Documents, and their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination; or (ii) requests for additional credit.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location in Texas selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least $1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is $5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than $5,000,000.00. Any dispute in which the amount in controversy exceeds $5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of Texas with a minimum of ten years' experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of Texas and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed any Loan Document, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) Payment Of Arbitration Costs And Fees**.** The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the Related Documents or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the Related Documents or any relationship between the parties.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

TEXAS MUNICIPAL POWER AGENCY

By:__________________________________
General Manager

[Signatures continue on next page]

WELLS FARGO BANK, N.A.

By:________________________________
Authorized Signatory

EXHIBIT A

Wells Fargo Bank, N.A.
U. S. Trade Services
Standby Letters of Credit
MAC A0283-023
794 Davis Street, 2nd Floor
San Leandro, CA. 94577-6922
Phone: 1(800) 798-2815 Option 1
E-Mail: sftrade@wellsfargo.com

Irrevocable Standby Letter Of Credit

Number: **[__________]**

Issue Date: **[_________]**, 2021

BENEFICIARY:
RAILROAD COMMISSION OF TEXAS
Attention: Surface Mining and Reclamation Division
1701 North Congress Avenue, 11th Floor
Austin, Texas 78701

APPLICANT:
TEXAS MUNICIPAL POWER AGENCY
12824 FM 244
Anderson, Texas 77830
Attention: General Manager

LETTER OF CREDIT ISSUE AMOUNT: $6,500,000
EXPIRY DATE: June 7, 2022

LADIES AND GENTLEMEN:

We have been informed by the Texas Municipal Power Agency ("Permittee"), but do not independently verify that this Letter of Credit is issued in connection with surface mining and reclamation operations conducted by the Permittee in the area covered by the Surface Mining and reclamation Permit No. 38D, as now or hereafter amended, revised or replaced (the "Permit") and that this Letter of Credit is to secure Permittee's Collateral Bond to the Railroad Commission of Texas for the Permit. The preceding sentence is inserted in this Letter of Credit for informational purposes only and will not affect, or become a part of, the terms and conditions of this Letter of Credit.

We hereby represent to the Railroad Commission of Texas that we are a bank (we may be hereinafter referred to as the "Bank") authorized to do business in the United States of America.

We hereby issue in favor of the Railroad Commission of Texas, Austin, Texas our Irrevocable Standby Letter of Credit for an amount (the "Available Amount") not to exceed in the aggregate Six Million Five Hundred Thousand and No/100 United States Dollars ($6,500,000 U.S.), with such Available Amount to be available with us at our above office by payment of your draft(s) drawn at sight on Bank mentioning thereon this Letter of Credit No. **[__________]**. The Bank agrees that the Letter of Credit shall be irrevocable during its term.

DRAFTS(S) MAY NOT BE DATED OR PRESENTED TO US FOR PAYMENT PRIOR TO JUNE 8, 2021, AND This Letter of Credit expires at our above office on June 7, 2022 (the "Expiry Date"). Amount(s) drawn hereunder will permanently reduce the Available Amount under this Letter of Credit and such amount(s) shall not be subject to reinstatement.

ALL DRAFTS, DEMANDS, OR DOCUMENTS PRESENTED UNDER THIS L/C AND ALL NOTICES AND COMMUNICATIONS MADE WITH RESPECT TO THIS L/C MUST BE PRESENTED OR DELIVERED TO WELLS FARGO BANK, N.A., STANDBY LETTER OF CREDIT PROCESSING, 794 DAVIS STREET, 2ND FLOOR, SAN LEANDRO, CALIFORNIA 94577-6922.

Draft(s) must be presented to us on or on or before the Expiry Date and must be accompanied by:

A. This Irrevocable Standby Letter of Credit or a copy thereof; and

B. Your signed and dated statement reading as follows:

> "The undersigned, an authorized representative of the Railroad Commission of Texas hereby certifies that the amount drawn is due to us pursuant to the terms of 16 TAC Sec. 12.314."

We engage with you that drafts drawn under and in conformity with the terms of this Letter of Credit will be duly honored on presentation to us at our office at the address shown above on or before the Expiry Date.

This Letter of Credit is subject to the Uniform Customs and Practice For Documentary Credits (2007 revision in force as of July 1, 2007), International Chamber of Commerce Publication No. 600.

Documentation from the Bank establishing the authority of the signatory to this Letter of Credit to bind the Bank is attached. Also attached is a copy of the Bank's charter or other evidence of the Bank's authority to do business in the United States.

Very truly yours

WELLS FARGO BANK, N.A.

BY: ____________________________
(AUTHORIZED SIGNATURE)

EXHIBIT B

OPINION OF COUNSEL TO THE AGENCY

[__________], 2021

Wells Fargo Bank, N.A.
Attention: President Business District Manager

Re: Texas Municipal Power Agency

Gentlemen:

We are general counsel to Texas Municipal Power Agency, a Texas municipal power agency (the "Agency"). In that capacity we are familiar with the matters relating to the preparation, execution, and delivery of a Note Purchase Agreement relating to the Letter of Credit to Railroad Commission of Texas for Surface Mining and Reclamation Permit No. 38D (the "Agreement"), dated as of February 1, 2021. Terms defined in the Agreement are used herein as therein defined. Among other things, we have examined:

(1) fully executed counterparts of the Agreement;

(2) the Letter of Credit;

(3) a fully executed counterpart of the Joint Operating Agreement, as amended to date;

(4) the Collateral Bond (the "Collateral Bond") executed and delivered in connection with the Agreement; and

(5) the documents delivered by or on behalf of the Agency pursuant to the Agreement.

We have also examined the originals, or copies certified to our satisfaction, of (i) such other corporate records of the Agency, certificates of public officials and of officers of the Agency, (ii) the agreements, instruments and documents which affect or purport to affect the obligations of the Agency under the Agreement, and (iii) such other agreements, instruments and documents as we have deemed necessary as a basis for the opinions hereinafter expressed. As to questions of fact material to such opinions, we have, when relevant facts were not independently established by us, relied upon certificates of the Agency or its officers or of public officials. We have assumed the due execution and delivery of the Agreement and all amendments thereto by the Bank.

Based upon the foregoing and upon such investigation as we have deemed necessary we are of the opinion that:

1. The Agency is a municipal power agency, municipal corporation, and political subdivision of the State of Texas that is duly organized and validly existing under the laws of the State of Texas. The Agency has not been disincorporated (or dissolved) and no proceedings are pending to disincorporate (or dissolve) the Agency.

2. The execution, delivery, and performance by the Agency of the Agreement, the Joint Operating Agreement and the Collateral Bond are within the Agency's corporate powers, have been duly authorized by all necessary corporate action, do not contravene (i) the Rules and Regulations of the Agency, (ii) law, or (iii) any contractual restriction binding on or affecting the Agency, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (except as provided in or contemplated by the Agreement) upon or with respect to any of its properties.

3. Subject to the authority of the Railroad Commission of Texas to approve the form and the amount of the Collateral Bond, no authorization, approval or other action by, and no notice to, or filing or registration with, any Governmental Authority or other person is required for the due execution, delivery, and performance by the Agency of the Agreement, the Joint Operating Agreement or any Collateral Bond.

4. The Agreement, the Joint Operating Agreement and the Collateral Bond to which the Agency is a party have been duly executed and delivered by the Agency and are the legal, valid, and binding obligations of the Agency enforceable against the Agency in accordance with their respective terms.

5. To the best of our knowledge, there is no pending or threatened action or proceeding against or affecting the Agency before any Governmental Authority which may materially adversely affect the financial condition or operations of the Agency or which purports to affect the legality, validity or enforceability of the Agreement, the Joint Operating Agreement or the Collateral Bond.

The opinions set forth above are subject to the following qualifications:

(a) The enforceability of the Agency's obligations under the Agreement, the Joint Operating Agreement and the Collateral Bond is subject to the effect of any applicable bankruptcy, insolvency, reorganization moratorium or similar laws affecting creditors' rights generally.

(b) The enforceability of the Agency's obligations under the Agreement, the Joint Operating Agreement and the Collateral Bond may be subject to general principles of equity, including (without limitation) concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) No opinion is expressed herein in relation to (i) whether the Agency enjoys immunity from suit and (ii) the enforceability of the waiver of immunity to suit in Section 6.02(c) of the Agreement.

This opinion letter (i) is being delivered solely to the addressee hereof and may not be relied on by any other person or entity without our prior written consent and (ii) is rendered solely for information and assistance in connection with the Agreement and may not be relied on for any other purpose.

Very truly yours,

Tiemann, Shahady & Hamala, P.C.

By:____________________________
Carl J. Shahady

EXHIBIT C

INCREASED COSTS AND TAX INDEMNITY

"Applicable Law" means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

"Change in Law" means the occurrence, after the Date of Issuance, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Excluded Taxes" means, with respect to the Bank or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank or such Participant is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Agency is located.

"Governmental Approvals" means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

"Governmental Authority" means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

"Law" means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Related Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Related Document.

"Related Documents" means the Paying Agent/Registrar Agreement, dated as of February 1, 2021, the Letter of Credit, and any exhibits, schedules, instruments or agreements relating thereto, as the same may be amended, modified or supplemented in accordance with their terms and the terms hereof.

"Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the Effective Date, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Effective Date.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

Section 1. ***Increased Costs***.

(a) ***Increased Costs Generally***. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank or any Participant;

(ii) subject the Bank to any Tax of any kind whatsoever with respect to this Agreement or the Letter of Credit, or change the basis of taxation of payments to the Bank in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 2 and the imposition of, or any change in the rate of any Excluded Tax payable by the Bank); or

(iii) impose on the Bank any other condition, cost or expense affecting this Agreement or the Letter of Credit;

and the result of any of the foregoing shall be to increase the cost to the Bank related to issuing or maintaining the Letter of Credit, or to reduce the amount of any sum received or receivable by the Bank hereunder (whether of principal, interest or any other amount) then, upon written request of the Bank and to the maximum extent permitted by law, the Agency shall promptly pay to the Bank such additional amount or amounts as will compensate the Bank for such additional costs incurred or reduction suffered.

(b) ***Capital Requirements***. If the Bank determines that any Change in Law affecting the Bank or the Bank's parent or holding company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return on the Bank's or the Bank's parent or holding company holding, if any, as a consequence of this Agreement, or for maintaining the Letter of Credit, to a level below that which the Bank or the Bank's parent or holding company could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Bank and to the maximum extent permitted by law, the Agency shall promptly pay to the Bank such additional amount or amounts as will compensate the Bank or the Bank's parent or holding company for any such reduction suffered.

(c) ***Certificates for Reimbursement***. A certificate of the Bank setting forth the amount or amounts necessary to compensate the Bank or the Bank's parent or holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Agency, shall be conclusive absent manifest error. The Agency shall pay the Bank the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) ***Delay in Requests***. Failure or delay on the part of the Bank to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's right to demand such compensation.

Section 2. Taxes.

(a) ***Payments Free of Taxes***. Any and all payments by or on account of any obligation of the Agency hereunder shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; provided that if the Agency shall be required by

Applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Agency shall make such deductions and (iii) the Agency shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) ***Payment of Other Taxes by the Agency***. Without limiting the provisions of paragraph (a) above, the Agency shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) ***Indemnification by the Agency***. To the maximum extent permitted by law, the Agency shall indemnify the Bank within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Bank and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate stating in reasonable detail the amount of such payment or liability delivered to the Agency by the Bank shall be conclusive absent manifest error. In addition, to the maximum extent permitted by law, the Agency shall indemnify the Bank, within thirty (30) days after demand therefor, for any incremental Taxes that may become payable by the Bank as a result of any failure of the Agency to pay any Taxes when due to the appropriate Governmental Authority or to deliver to the Bank, pursuant to clause (d), documentation evidencing the payment of Taxes.

(d) ***Evidence of Payments***. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Agency to a Governmental Authority, the Agency shall deliver to the Bank the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank.

(e) ***Treatment of Certain Refunds***. If the Bank determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified pursuant to this Section (including additional amounts paid by the Agency pursuant to this Section), it shall pay to the applicable indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Bank, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the applicable indemnifying party, upon the request of the Bank, agrees to repay the amount paid over pursuant to this Section (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Bank in the event the Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Bank be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the Bank in a less favorable net after-Tax position than the Bank would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require the Bank or to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Agency or any other Person.

(f) **Survival**. Without prejudice to the survival of any other agreement of the Agency hereunder, the agreements and obligations of the Agency contained in this Section shall survive the termination of this Agreement and the Letter of Credit and the payment in full of the obligations of the Agency thereunder and hereunder.

Section 3. Termination

In the event TMPA determines that costs incurred or to be incurred under this Exhibit render the Note Purchase Agreement uneconomical to TMPA, TMPA may terminate the Letter of Credit upon at least forty five (45) days written notice to the Bank. Notwithstanding said notice period, no termination under this Section shall be effective until the date on which (i) the Railroad Commission of Texas, by order, accepts a replacement of the Letter of Credit, and (ii) delivers to the Bank the original Letter of Credit together with written, irrevocable instruction from the Railroad Commission of Texas to cancel the Letter of Credit as such date (the "Early Letter of Credit Termination Date"). Termination will be effective on the later to occur of the (i) the Early Letter of Credit Termination Date and the (ii) the date specified in the notice of termination. All compensation due under the Agreement, including costs incurred under this Exhibit, shall be paid to the Bank through the date of termination. Notwithstanding termination of the Letter of Credit, provisions in the Note Purchase Agreement, that expressly survive termination of the Letter of Credit, including this Exhibit, shall survive such termination.

December 10, 2020

AGENDA ITEM NO. 6

SUBJECT: Status report relating to Power Production environmental and regulatory compliance matters.

DISCUSSION:

Compliance Staffing:

As the plant sale is finalized, members of TMPA Staff are working with Daniel to develop his knowledge and skills as a back-up to a wide variety of environmental, mine, and land functions which are imperative for TMPA business continuity purposes. As discussed at the September Board Meeting, it is believed that at least 1 technical employee needs to remain at the Agency to address issues that arise post sale of the Gibbons Creek Plant and TMPA's Lignite Mine property. TMPA will continue to have technical issues and land matters arise after the release of Power Production staffing and the retirement of the Mine Department employees.

Generation Compliance:

On 11/18/20 Staff held a training session to review updated Gibbons Creek Reservoir Dam (GCRD) procedures and conduct a short exercise of emergency dam gate operation. The plant buyer representative (Mike Dunn, Melt Solutions) was present for this course as preparation for their roles in future ownership of a reservoir, operational activities and compliance matters.

The week of 10/5/20 Staff held meetings to review dam procedure updates associated with TCEQ's Dam Safety requirements for large high hazard dams. Both, the plant's GCRD and the mine's SP-50 Dam are categorized as high hazard dams. Staff is completing the annual inspections of dams, review of procedures, training, and records in preparation for plant sale and a potential TCEQ inspection early next year. In 2019 House Bill 26 was passed amending requirements for dam flood release notifications and emergency action planning, which is now embedded in TMPA's operational procedures and practices for GCRD.

On 9/16/20, TCEQ conducted an on-site inspection of the Gibbons Creek Steam Electric Station (GCSES) Coal Combustion Residuals (CCR) units. This TCEQ inspector also investigated an anonymous complaint of dumping of paints and oils which allegedly occurred during construction of the plant in 1983. At time of the exit interview, TCEQ's inspector concluded there were no violations which was followed up with written confirmation on 10/2/2020. *(see attachment; TCEQ-CCR Evaluation Investigation and Complaint Investigation on 9-16-2020*)

Other compliance activities over the past few months include: update to internal CCR and stormwater inspection program, annual Comprehensive Site Compliance Evaluation for stormwater, update to the Stormwater Pollution Prevention Plan, update to the plant and substation SPCCs (in progress), regulatory filings, and reconciliation of Greenhouse Gas reporting issues.

Title V Permit Status:

On 9/15/20, the potential plant buyer informed TMPA to not spend any more money to maintain the open status of the air permit until further notice stating, "we feel that it is likely that we will forfeit the Title 5 permit, but would like to have a couple of weeks to review our other options regarding the power plant itself."

TMPA has received no further guidance pertaining to this issue. At this time, there are no immediate action items related to air permits. On 10/8/20 Daniel had a brief conversation with TCEQ (Lindley Anderson) informing them of our decision to not submit the ACE survey and TMPA's plan to sell the generation station and the buyers press release stating the unit would not run again. On 10/30/20, TMPA Staff informed TCEQ that neither TMPA nor the plant buyer would partake in completing the Information Collection Request for the ACE Rule *(see Attachments; Buyer email Summary and Recommendations - TCEQ ACE Rule Information Request, 9-15-2020 and Letter to TCEQ - Response to Information Request for ACE Rule State Plan - GCSES Unit 1, 10-30-2020)*

<u>TPDES Permit Status:</u>

As TMPA approaches the 4/11/2021 deadline to cease use of the ash ponds and scrubber sludge pond and initiate closure, as addressed below, Staff will need to provide TCEQ 45-days notice of anticipated discharges of treated leachate to new Outfall 005 (by 2/4/2021), characterize all waste streams for Notice of Registration update, notify TCEQ of plans to cease use of ash ponds & SSP by 4/11/2021, notify TCEQ & EPA of intent to Close the CCR impoundments and update closure plans to include design of final cover. Depending on plant sale close date these activities will need to be coordinated with the plant buyer responsible officials.

On 7/10/20, the TCEQ executive director issued TMPA's plant wastewater and stormwater permit application (TPDES Permit No. WQ0002120000) which was filed on 7/9/2019.

The new TPDES Permit provides limits for wastewater discharge for leachate from Site "A" Landfill with pH only adjustments for discharges at the new leachate treatment Outfall 005. However, TCEQ will likely apply new limits (e.g. Sulfate, Selenium, Arsenic, TDS, etc.) to this outfall through a permit modification following sampling results at this discharge following activation.

The permit requires "An existing wastewater pond must be maintained to meet or exceed the original approved design and liner requirements; or, in the absence of original approved requirements, must be maintained to prevent unauthorized discharges of wastewater into or adjacent to water in the state. The permittee shall maintain copies of all liner construction and testing documents at the facility or in a reasonably accessible location and make the information available to the executive director upon request." The permit includes new language that requires a five-year Texas-licensed Professional Engineer inspection of ponds, monthly pond inspections by plant personnel, and follow-up by a Texas-licensed Professional Engineer if damage is identified.

The permit retained 511 MGD discharge through Outfall 004, for condenser and auxiliary cooling water discharge back to the reservoir and a condition for the new owner to submit applicable requirements related to cooling water intake structures at least 180 days prior to planned commencement of cooling water withdrawals.

<u>Coal Combustion Residuals (CCR) Rule:</u>

On 10/5/20, TMPA submitted a letter to TCEQ seeking authorization to continue the use of the Ash Ponds and Scrubber Sludge Pond for the placement of non-CCR wastewater, until the federal deadline of 4/11/21, the deadline afforded pursuant to the federal regulations. As recently announced, TMPA is negotiating the sale of the GCSES to Charah Solutions who plans to remediate and redevelop the plant site. The plant buyer's current project schedule milestones to clean close both the Ash Ponds and the Scrubber Sludge Pond was included. The State CCR rule adopted in May 2020, has a deadline of 10/31/20 as State rules adopted EPA regulations prior to the new Part A revision of August 2020. *(see attachments; Letter to TCEQ RE Extension use of Ash Ponds per EPA CCR Rule deadline 10-5-2020 and TCEQ response, RE TMPA Extension use of Ash Ponds, 10-27-2020)*

On 8/28/20, the Environmental Protection Agency (EPA) published a final CCR rule titled, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure. The final rule became effective 9/28/2020, 30 days after publication in the Federal Register. *(Reference 40 CFR Part 257)*

- The revised deadline for all unlined CCR surface impoundments (i.e. the Ash Ponds and Scrubber Sludge Pond) to cease receipt of CCR or Non-CCR waste streams and initiate closure or retrofit is April 11, 2021; this date replaces the existing October 31, 2020 date;

- The rule expressly defined clay lined impoundments as unlined;

Texas State CCR Rule development and implementation:

On 5/6/2020, TCEQ Commissioners adopted the Texas State CCR Rule which became effective 5/28/2020. The State CCR Rule requires the registration of CCR units. While some notification provisions of the rule are applicable upon the effective date of the rule, the substantive requirements of the rule become applicable upon unit registration. TCEQ plans to send EPA the application for the State CCR Rule, the state's program, in September to obtain EPA approval. TMPA's plan is to let the State CCR Rule develop further prior to registration with the state program as Part A & B of EPA proposed rules (above) are not included in the current State CCR rule.

- The State CCR rules still contains the October 30, 2020 deadline. TMPA lawyers have been in discussions with TCEQ on potential approaches for obtaining an extension. Discussions are ongoing, but one approach that has been discussed is the submittal of a closure plan with specific deadlines to TCEQ for approval. The approval documentation can then be used for compliance purposes.
- The deadline for submitting registration applications is 365 days after the effective date, or 180 days after EPA approval, whichever is later. The later date will likely be around September 2021.
- Generally, these rules do not apply until the units are registered. However, there are some independent requirements that take effect without a registration, and generally relate to notice to the Executive Director (ED). The notification requirements in 352.941 and .951 are of note because they require submittal of an ASD (Alternative Source Demonstration) to the ED for review when the standard has been exceeded. These are newly generated ASDs as a result of new exceedances, and not already generated ASDs. The ASD in the detection monitoring phase does not run concurrently with the 90-day time frame to initiate the assessment monitoring program.

Effluent Limits Guideline rule for Leachate:

On 8/31/20, the Environmental Protection Agency (EPA) issued its final rule to reconsider parts of the agency's 2015 Effluent Limitations Guidelines (ELG) rule. EPA is revising certain best available technology economically achievable (BAT) limits and pretreatment standards for existing sources (PSES) in the Steam Electric Power Generating point source category that applies to flue gas desulfurization (FGD) wastewater and bottom ash (BA) transport water. These new rules are not applicable to GCSES because no bottom ash transport or FGD wastewater are utilized since the plant shutdown in September 2018.

The next phase of ELG rules will likely address discharges of leachate and ash contact waste waters which are still of concern at GCSES.

Leachate Treatment and Wastewater Disposal Strategies:

On 11/18/20, Plant Management, working with process engineers from Wood, issued an RFP for pH adjustment and arsenic removal equipment necessary to treat leachate produced at Site "A" Landfill and discharge that waste stream to new Outfall 005 at the Gibbons Creek Reservoir Hot Pond.

Communication with the Plant Buyer indicates they didn't want to move forward with rental of $BaCl_2$ process either because they still favor a short-term solution such as forced evaporation on Site "F" Landfill (SFL) Pond 3. TMPA staff believes this approach may work during the summertime because of low precipitation and higher evaporation but will fall short during the wet season.

A new Leachate Treatment System at Site "A" Landfill (LTS) was approved in December 2018 and amended June 2019 (Resolution No. 2018-12-1 and No. 2019-6-7, $5,627,265), however due to the requirements in the TPDES Permit, this capital project is no longer the preferred option to treat the leachate products.

Leachate is currently generated at Site "A" Landfill and is collected in a series of 12 holding ponds before it is transferred to the Ash Ponds for settlement and neutralization, along with other plant waste streams (i.e. Plant Collection Pond (PCP) storm water & coal pile run-off, plant sumps and contact water from Scrubber Sludge Pond (SSP) and Site "F" Landfill Pond 3) prior to being discharged through Outfall 001 into the Gibbons Creek Reservoir.

Staff has outlined concepts for further discussion in the Plant Decommissioning Update to follow. (Agenda Item 7)

BACKUP MATERIAL:

- TCEQ-CCR Evaluation Investigation and Complaint Investigation on 9-16-2020
- Buyer email Summary and Recommendations - TCEQ ACE Rule Information Request, 9-15-2020
- Letter to TCEQ - Response to Information Request for ACE Rule State Plan - GCSES Unit 1, 10-30-2020
- Letter to TCEQ RE Extension use of Ash Ponds per EPA CCR Rule deadline 10-5-2020
- TCEQ response, RE TMPA Extension use of Ash Ponds, 10-27-2020

ACTION REQUESTED:

- Review, discuss and provide guidance, as necessary.

Craig York, Daniel Meadows
11/30/2020

Craig D. York

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 2, 2020

Mr. Daniel Meadows, Compliance Specialist
Gibbons Creek Steam Electric Station
PO Box 7000
Bryan, Texas 77805

Re: IHW Coal Combustion Residual Compliance Evaluation Investigation and Complaint Investigation: Gibbons Creek Steam Electric Station, 12824 FM 244, Carlos (Grimes County), Texas
RN No.: 100214550, TCEQ Inv. No.: 1672784

Dear Mr. Meadows:

On September 16, 2020, Mr. Jacob Williams of the Texas Commission on Environmental Quality (TCEQ) Waco Region Office conducted an investigation of the above-referenced facility to evaluate compliance with applicable requirements for Coal Combustion Residuals. No violations are being alleged as a result of the investigation.

The TCEQ appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment. If you or members of your staff have any questions regarding these matters, please feel free to contact Mr. Jacob Williams in the Waco Region Office at (254)751-0335.

Sincerely,

David Mann

David Mann
Waste Section Manager
Waco Region Office

DM/JW/tm

RECEIVED
OCT 06 2020

From:	Mike Dunn
To:	Craig York
Cc:	Scott Reschly; Norman Divers
Subject:	Re: Summary and Recommendations - TCEQ ACE Rule Information Request
Date:	Tuesday, September 15, 2020 8:52:58 AM

Craig,

We would like to follow Daniel's recommendation, and table this until Sept 25th. We would also request that TMPA not spend any more money for the air permit until further notice from us. Presently, we feel that it is likely that we will forfeit the Title 5 permit, but would like to have a couple of weeks to review our other options regarding the power plant itself.

Please keep us informed should something arise regarding the permit in the next two weeks.

Thank you, Craig
Mike

From: Craig York <CYork@texasmpa.org>
Date: Tuesday, September 15, 2020 at 7:41 AM
To: "Norman Divers (ndivers@charah.com)" <ndivers@charah.com>, "joe.witherspoon@frontieras.com" <joe.witherspoon@frontieras.com>
Cc: Jeff Schroeter <jeff.schroeter@genovapower.com>, "matthew.mckean@frontieras.com" <matthew.mckean@frontieras.com>, Mike Dunn <mike.dunn@meltsolutions.com>, Scott Reschly <sreschly@charah.com>, Bob Kahn <bkahn@austin.rr.com>, Carl Shahady <cshahady@tiemannlaw.com>, Daniel Meadows <DMeadows@texasmpa.org>
Subject: FW: Summary and Recommendations - TCEQ ACE Rule Information Request

TMPA recently learned of a TCEQ Information Request for the ACE Rule. (see attached)

TCEQ is interested in the projected generation and emissions under the Gibbons Creek air permit. TMPA Staff agrees this information request should be completed by the future plant operator with your projects as recommended by TCEQ Staff. TMPA is willing to assist in completing these calculations based on past fuel type and generation emissions results. It is important to remember that this regulatory requirement support by TMPA falls under the Reimbursement Agreement between the parties. *(see Air Permit Cost Reimbursement Agreement dated February 21, 2020)*

It is also envisioned that TMPA, as permit owner, will file this completed ACE Rule Information Collection Request or file for an extension prior to the deadline. This filing needs to state it's contingency on plant sale.

I recommend we schedule a conference call within the next few weeks to firm-up tactics to respond to this request.

Craig York

Plant Manager - Gibbons Creek
Texas Municipal Power Agency
936-873-1129 Office
979-255-8603 Cellular
cyork@texasmpa.org

From: Daniel Meadows <DMeadows@texasmpa.org>
Sent: Monday, September 14, 2020 2:21 PM
To: Craig York <CYork@texasmpa.org>
Subject: Summary and Recommendations - TCEQ ACE Rule Information Request

Craig,

I am providing the following summary and recommended actions related to TCEQ's Information Collection Request for the Affordable Clean Energy (ACE) Rule.

Brief Background

On September 11, I spoke with TCEQ's coordinator for the state ACE rule, Lindley Anderson, regarding TMPA's participation in the ACE Rule Information Collection Request. The call was prompted by the upcoming deadline (October 30, 2020) on TCEQ's Information Collection Request and a concern that Gibbons Creek SES non-participation in this exercise could have a negative consequence to the potential buyer. On August 28, 2020 and in advance of contacting TCEQ, TMPA (Craig York and Daniel Meadows) contacted Mr. Norman Divers regarding the state ACE rule and the plan to contact TCEQ to explain the situation with Gibbons Creek and the potential sale. Mr. Divers agreed with this plan.

Summary of 9/11/2020 Phone Call

- I explained to Lindley that I wanted to understand what was needed or expected from Gibbons Creek SES in light of the current status with a potential sale.
- Lindley explained that they expect a response from each entity with an open air permit. I explained why our air permit is still open although we are not operating.
- Lindley stated that TCEQ has been unsure of the status of Gibbons Creek. Since our air permit is still open and with the potential that the plant will run again, she stated that TCEQ does need a response to the Information Request.
- Lindley said that she would send the original letter that went to utilities in February 2020.
    Note: She emailed the letter which was dated February 25, 2020 (attached). To my knowledge and based on my search with Doc Control, we did not receive this letter in February. It is my current assumption that she generated this letter after our call using the original form letter format or that this letter was originally generated but not submitted in light of TCEQ's view of Gibbons Creek SES.
- I explained the uncertainty of future operation of Gibbons Creek and that I could not speak for the potential buyer. She understood our situation and asked for updates as we proceed forward. I stated that I would likely need to come back to her for guidance on the submittal.
- There has been and will continue to be meetings held by TCEQ to discuss the development

of the ACE Rule. Lindley will inform me of these meetings in the event we want to participate. I will make you aware as these materialize.

Required Actions

- The deadline for the response is **October 30, 2020**. Lindley stated that we could request an extension to this date. Note: The information request is quite extensive mainly pertaining to heat rate, CO2 emission rate, heat rate improvement measures, and future operations up to 2035.

It is unknown what the penalty would be for failing to submit the information as requested by TCEQ. There is language in the letter stating that "This information must be submitted for each regulated entity…" It is my opinion that TCEQ would, at a minimum, not look favorably upon Gibbons Creek for failing to submit data as requested. At worst case, I suspect that there could be regulatory actions taken for failure to submit information as requested.

Recommendation

I recommend to share this report to the potential buyer for response. A conference call with the buyer would be prudent to discuss and develop a strategy to present to TCEQ on how we should proceed. I believe there are currently two plausible avenues to pursue:

A. (Recommended) The potential buyer prepares a response to the Information Request to the best of their ability. We would seek collective guidance from TCEQ on how and with what qualifiers this should be submitted.
B. TMPA submits a letter (no later than October 30, 2020) stating that TMPA will not operate GCSES in the future and thus reports "zeros" to the Information Request. It would be prudent to inform the TCEQ that we continue to entertain the sale of the plant.

I would like to contact Lindley within 2 weeks (by September 25) with an update or to request guidance on a response to the Information Request. I believe maintaining an open dialogue will benefit us (TMPA and the potential buyer) as we navigate this unique situation.

Daniel Meadows
Compliance Specialist
Texas Municipal Power Agency
936-873-1105 Office
dmeadows@texasmpa.org

Serving the cities of Bryan, Denton, Garland and Greenville

October 30, 2020

Samuel Short
Director, Air Permits Division
Texas Commission on Environmental Quality
PO Box 13087
Austin, TX 78711-3087
via email

Re: Response to TCEQ Information Collection Request for the Affordable Clean Energy Rule State Plan from Gibbons Creek Steam Electric Station Unit 1

Dear Director Short,

This letter provides a response to the TCEQ Information Collection Request, dated February 25, 2020, for the Affordable Clean Energy Rule State Plan for Texas Municipal Power Agency's (TMPA) Gibbons Creek Steam Electric Station (GCSES) Unit 1.

TMPA projects no electric power generation or related air emissions from GCSES Unit 1 in the future.

GCSES Unit 1 last operated on September 19, 2018 and was Retired/Decommissioned from the ERCOT system as of October 30, 2019. TMPA's Board of Directors has decided that TMPA will not operate GCSES in the future.

At the time of this letter, TMPA's air permits are currently open and internal discussions regarding the voidance of these permits are ongoing.

TMPA is in the process of selling the power plant assets associated with GCSES Unit 1. The potential buyer has publicly stated that their redevelopment options do not include a restart of this coal plant. Therefore, both parties agree to not partake in completing the TCEQ Information Collection Request for the ACE Rule at this time.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Daniel Meadows

Daniel Meadows
Compliance Specialist
936-873-1105 (office)
dmeadows@texasmpa.org

Serving the cities of Bryan, Denton, Garland and Greenville

Ms. Charlyne Fritz, Director
Waste Permits Division (Mail Code 126)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

October 5, 2020

Subject: Texas Municipal Power Agency (TMPA) Gibbons Creek Steam Electric Station - Request for use of CCR Impoundments in accordance with EPA's CCR Rule deadline

Dear Ms. Fritz:

TMPA ceased generation of electric power at the Gibbons Creek S.E.S. on September 18, 2018. The power plant is currently in indefinite mothball status after being permanently retired from the ERCOT system on October 30, 2019, and TMPA has no plans to generate power in the future. While no ash transport water or FGD wastewater has been generated since the cessation of the generation of electric power, TMPA continues to use the clay lined Ash Ponds for settling and neutralization of plant stormwater and leachate generated at the site. The purpose of this letter is to request continued use of the Ash Ponds as well as the Scrubber Sludge Pond, both of which are CCR surface impoundments, until April 11, 2021, the deadline afforded pursuant to the federal regulations. *See* 40 CFR 257.101(a)(1).

As recently announced, TMPA is negotiating the sale of the Gibbons Creek Station to Charah Solutions who plans to remediate and redevelop the plant site. As part of this agreement, Charah Solutions, through its subsidiary Gibbons Creek Environmental Redevelopment Group, LLC (GCERG), will take ownership of the closed power station, and will assume all environmental responsibilities.

Under the current plan, both the Ash Ponds and the Scrubber Sludge Pond will be clean closed. The current project schedule is provided below:

Closure Activities	Ash Ponds		Scrubber Sludge Pond	
	Start Date	Completion Date	Start Date	Completion Date
Remove Free Water	03-18-21	09-21-21	12-01-20	01-28-21
Excavate – haul solids to SFL	03-18-21	04-22-22	02-18-21	08-09-21
Clean close pond bottom	04-22-22	06-06-22	08-09-21	08-23-21
Regrade & Vegetation Stabilization	06-06-22	07-19-22	08-23-21	09-21-21

While the project schedule contemplates the cessation of the use of the surface impoundments prior to the April 11, 2021 deadline, out of an abundance of caution, TMPA seeks authorization to continue the use of the Ash Ponds and Scrubber Sludge Pond for the placement of non-CCR wastewater, until the federal deadline.

Please reply to this request with confirmation that TCEQ authorizes continued use of the referenced CCR surface impoundments until April 11, 2021.

Sincerely,

Bob Kahn
General Manager

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 27, 2020

Mr. Bob Kahn
General Manager
Texas Municipal Power Agency
P.O. Box 7000
Bryan, Texas 77805

Re: New Cease Receipt of Waste and Initiation of Closure Deadline for Coal Combustion Residual Unit(s)
Texas Municipal Power Agency – Carlos, Grimes County
Industrial Solid Waste Registration No. 32271
Gibbons Creek Steam Electric Station
RN100214550/CN600127567

Dear Mr. Kahn:

The Industrial and Hazardous Waste (I&HW) Permits Section of the Texas Commission on Environmental Quality (TCEQ) received your request for an extension to cease receipt of Coal Combustion Residuals (CCR) waste and initiate of closure activities. The request was dated October 5, 2020 and received on October 12, 2020.

The TCEQ acknowledges your request to extend the receipt of CCR waste and the initiation of closure activities until April 11, 2021, in compliance with the U.S. Environmental Protection Agency's (EPA) new Title 40 Code of Federal Regulations (40 CFR) §257.101(a)(1) or new 40 CFR §257.101(b)(1)(i). Please maintain records adequate to document your compliance with the new April 11, 2021 deadline. This extension applies to the following units:

- TCEQ Waste Management Unit No. 004 - Scrubber Sludge Pond - Surface Impoundment
- TCEQ Waste Management Unit No. 006 - Ash Ponds (A, B, C) - Surface Impoundment

Please continue to keep the TCEQ updated as conditions change. You may contact me at (512) 239-2331 or via email at charly.fritz@tceq.texas.gov.

Sincerely,

Charly Fritz

Charly Fritz, Director
Waste Permits Division

CF/DO/gg

December 10, 2020

AGENDA ITEM NO. 7

SUBJECT: Status report relating to the Decommissioning Plan

The attached documents support issues important to the Member Cities consideration in following plans and activities for the Gibbons Creek Steam Electric Station regarding current operations activities and decommissioning plans.

Plant Staff will update the Board on any new events since this package was published, review important aspects of the operation and maintenance activities, and address any questions pertaining to the information provided.

BACKUP MATERIAL: Decommissioning Plan Update

ACTION REQUESTED: None

Craig York
11/20/20

Decommissioning Plan
December 2020

- Gibbons Creek Steam Electric Station (GCSES or GC) status:

  On 10/30/19, GCSES transitioned into Retired/Decommissioned status in the ERCOT system.

- Staffing

  Al Gonzalez, a long time GCR RV Park resident, was brought on-board 11/2/20, under a Professional Services Agreement (PSA), to assume duties for RV Park operations and associated maintenance. TMPA GCR Lead Park Ranger (Torrey Bonham) resigned effective 10/23/20 to accept a more stable career in Florida. This position will remain open pending sale of the plant.

  Over the next few months, the park will maintain similar operation to the past few years. GCR Park is open to the public from 6 am to 6 pm, Friday thru Sunday. Plant management is pursuing an option to convert public access to a self-pay (honor system) similar to that used in many Texas State Parks.

- Decommissioning Projects Update:

  Wood Group staff continues support for the leachate treatment system for Site "A" Landfill. With the likelihood of a plant sale, TMPA staff has completed several active projects and deferred decommissioning project activities, where possible. TMPA staff plans to rebid several critical projects, including CCR Compliance and Plant Decommissioning Project activities, if the plant sale does not close in early 2021.

  - Regulatory schedule drivers:

    On 7/10/20, the TCEQ executive director issued TMPA's plant wastewater permit application (TPDES Permit No. WQ0002120000) which was filed on 7/9/2019.

    The new TPDES Permit provides limits for wastewater discharge for leachate from Site "A" Landfill with pH adjustment for discharge at the new leachate treatment Outfall 005. However, TCEQ will likely apply new limits (e.g. Sulfate, Selenium, Arsenic, TDS, etc.) to this outfall through a permit modification following sampling results at this discharge following activation.

    This permit amendment states:

    - Texas Municipal Power Agency (TMPA) has determined that the Gibbons Creek Steam Electric Station will no longer conduct power generating operations. TMPA is requesting a two-phased permit to cover future operations:
      - Phase 1, to cover operation of the plant through closure and decommissioning activities, and
      - Phase 2, to cover post-closure operations.
    - TMPA would transition from Phase 1 to Phase 2 permitting limits to be initiated by notification from TMPA to TCEQ, as no firm timetable has been established for closure activities.

    On 7/30/2020, the Environmental Protection Agency (EPA) issued the final CCR rule revising the deadline to April 11, 2021 for all unlined CCR surface impoundments (i.e. the Ash Ponds and Scrubber Sludge Pond) to cease receipt of CCR or non-CCR waste streams and initiate closure or retrofit; The April 11, 2021 date replaces the existing October 31, 2020 date.

    - The rule expressly defines clay lined impoundments as unlined;

    Retirement of GCSES on 10/30/19 had begun a 1-year clock for removal of hazardous materials, that are no longer needed, from the plant site. Unused chemicals and operation supplies were being retained as the buyer has indicated plans to run the unit for summer season operations. Plant staff does not plan to address these chemicals in the next few months as the plant sale moves to closure.

- Leachate Treatment System Project:

  Leachate has been generated at Site "A" Landfill (SAL) since 1987 when a leachate collection header was installed to collect this low pH wastewater in 12 ponds located around the perimeter of the landfill. Leachate was historically used for irrigation around the landfills or transferred to the ash ponds for settlement and neutralization in the boiler ash transport system. The ash ponds received bottom ash transport water, coal pile runoff & storm water from the Plant Collection Pond, contact water from Site "F" Landfill (internal SFL pond 3) and Scrubber Sludge Pond (SSP). In addition, plant low volume waste streams (e.g. boiler blowdown, water treatment plant reject, floor drain sumps, chemical cleaning wastewater, metal cleaning wastewater) were routed to Ash Ponds.

  During Ash Pond and SSP closure any waters flowing into these CCR impoundments will be discharged to their existing Outfalls in accordance with those discharge limits or may need to be processed in the LTS when the quality exceeds discharge limits. Ultimately after closure of Ash Ponds, SSP, SFL and SAL a reduced amount of leachate could continue to be generated for many years. Current CCR regulations require a 30-year post closure plan for landfills to ensure the closure is adequately performed and contamination to soils, surface water or groundwater quality is identified. Impoundments which are clean closed will likely not have post closure obligations unless a corrective action is identified associated with any groundwater quality concerns.

  A new Leachate Treatment System (LTS) at Site "A" Landfill was approved in December 2018 and amended June 2019 (Resolution No. 2018-12-1 and No. 2019-6-7, $5,627,265)

  Following staff's recommendation to the P&O at their 4/29/2020 meeting, staff suspended work on the capital Leachate Treatment System and transitioned to rental equipment options under O&M funding. The rental options were preferable to reduce risks and expenses associated with compliance of the draft TPDES permit limits and continued regulatory uncertainty around CCR deadlines to cease use of the Ash Ponds.

  At the June 2020 Board Meeting, staff recommended a rental equipment option be pursued to reduce risks of compliance with current draft permit limits and continued regulatory uncertainty around CCR deadlines to cease use of ash ponds, potentially by 8/31/2020, the deadline in an EPA proposed rule for unlined impoundments to cease receipt of CCR waste (this deadline has since moved to April 11, 2021 in the adopted rule).

  Since TMPA put the capital leachate treatment system and rental system on-hold, staff has revised scope and estimate for pursuing a pH adjustment and arsenic adsorption process. Wood was issued a purchase order for this temporary project engineering on 10/16/20, following discussion at the September P&O Committee and Board Meetings.

  - The potential requirement to treat to the arsenic level in 30 TAC 319.22 is still a concern to be resolved. Wood will review the applicability of the arsenic limits, as referenced in TPDES permit Operational Requirements No. 2 in an email from Ali.
    - If absorption media is not found to be technologically or economically feasible for the leachate water chemistry, other proven technologies such as chemical precipitation and/or filtration will be considered.
  - Along with equipment fabrication, another long lead item for Outfall 005 is laying the pipeline because of a considerable amount of ground to clear and cover as well as getting contractors engaged and permitting completed.

  On 11/18/20, Plant Staff issued an RFP for pH adjustment and arsenic treatment equipment necessary for leachate treatment at Site "A" Landfill. Plant Management deems it necessary to continue forward with detailed design and prepare for installation of a pH adjustment and arsenic treatment system to be installed with discharge to Outfall 005. This

LTS equipment will need to be procured by early January in order to be set-up and commissioned in time to meet an 4/11/2021 deadline. This option requires a 45-day notification to TCEQ prior to discharge and will require staff to aggressively move forward with engineering design to be prepared to procure equipment, retain contractors for civil, electrical, and mechanical installation and commence construction of Outfall 005 and associated piping since the plant sale, if approved, may not close until February 2021.

The plant buyers' interest in a final recommendation to procure equipment will be sought, however they have indicated their preference for a forced evaporation system on Site "F" Landfill Pond 3. If TMPA enters into an equipment procurement agreement it will need to be transferrable to the plant buyer at time of close or cancelled prior to installation.

- Plant Decommissioning Project:

No expenditures to the Plant Decommissioning Projects have been incurred since August 2020.

On 4/16/20, Wood completed an on-site inventory and sampling of plant buildings and structures. This effort was to conduct a comprehensive Regulated Materials Survey (RMS) to identify and inventory hazardous building materials at the GCSES site which will require special attention in the plant decontamination and demolition process. It is projected that TMPA will need to move forward in the fall of 2020 with removal of hazardous chemicals no longer needed for plant operations or maintenance if a final determination is made to cease power operations at the plant. However, the potential plant sale and restart of power generation may delay the removal of hazardous materials from the site.

Objective: The asbestos and regulated materials survey was performed to inventory regulated materials including asbestos-containing materials (ACMs), petroleum products and oil, heavy metals (including lead-based paint and mercury-containing equipment), polychlorinated biphenyls (PCBs), refrigerants, fire suppressants, and other universal wastes to facilitate planning for future plant demolition. Asbestos: Through suspect asbestos-containing materials sampling and laboratory analysis, Wood has identified 39 homogeneous sampling areas (of total 1,212 bulk asbestos samples) that are asbestos-containing. There is a minor amount of old non-Friable material (mainly in mastic, window glazing, HVAC duct wrap, floor tiles, fire proofing, lab countertops, etc.)

Owner or operator of the facility must comply with the procedures for notification requirements, and removal, when the facility is to be demolished. Prior to removing RACMs, an asbestos abatement design must be prepared under the direction of a Texas Licensed Asbestos Consultant.

Lead-Containing Paint: Based on the representative testing of paint and primers, it is recommended to assume all painted surfaces in the project area contain at least detectable levels of lead. Most of the paint coatings were found to be in fair to good condition. Wood recommends that the contractor use precautions and follow applicable requirements described under the OSHA Lead-in-Construction standard (29 CFR 1926.62) when removing materials during asbestos abatement activities, ferrous and non-ferrous metals salvage, and building demolition.

Regulated Materials and Universal Wastes: identified regulated materials or universal waste materials should be properly removed and handled before demolition activities begin in the buildings. A removal plan should be developed that includes worker training and protection, identification and removal procedures, storage, transport and disposal procedures. Disposal options need to be defined for the identified materials (e.g. light ballasts, mercury, radioactive sources, batteries, chlorofluorocarbons, fire extinguishers, petroleums, electronics, hazardous chemicals, household chemicals, paints, and solvents).

Since approval of the Plant Decommissioning Project at the June 2019 Board meeting (Resolution 2019-6-6), staff has worked with Wood on a scope to begin execution of more activities associated with plant decommissioning and decontamination prior to the date when the ash ponds can no longer receive CCR or non-CCR waste products. This work scope began with hazardous material assessment surveys and will soon involve decontamination planning necessary for TMPA to meet regulatory requirements associated with closure of the Gibbons Creek plant and CCR impoundments.

With on-going negotiations on the RFP to sell GCSES, staff is working to align tasks to ensure regulatory requirements are met while minimizing activities for which a new owner will be responsible and may not fully value work products completed by TMPA and Wood.

Hog Creek substation feeds should remain unchanged as long as TMPA owns the GCSES. Hog Creek substation is being sold with the plant due to the remote plant facilities fed by these 12.5kV circuits.

- Plant Status:

  Plant staff has continued to function well throughout the COVID-19 pandemic using social distancing, deploying one-man work routines, and using mobile communications.

  Systems that remain in-service in the current retired state are potable water, sewage treatment, fire water, an air compressor & dryer, some plant sumps, plant inverters/DCS servers remain powered, along with dam gate operations.

- Gibbons Creek Reservoir (GCR) level is about 2.35 feet below normal level at 244.65' (feet above MSL) due to only receiving about 5.82 inches of rain over the last 5 months. Once rain recovery begins, GCR level will be maintained near 246.0 pool level (247' MSL, less 1 foot) to allow operational headroom for large rain events during the upcoming wet months.

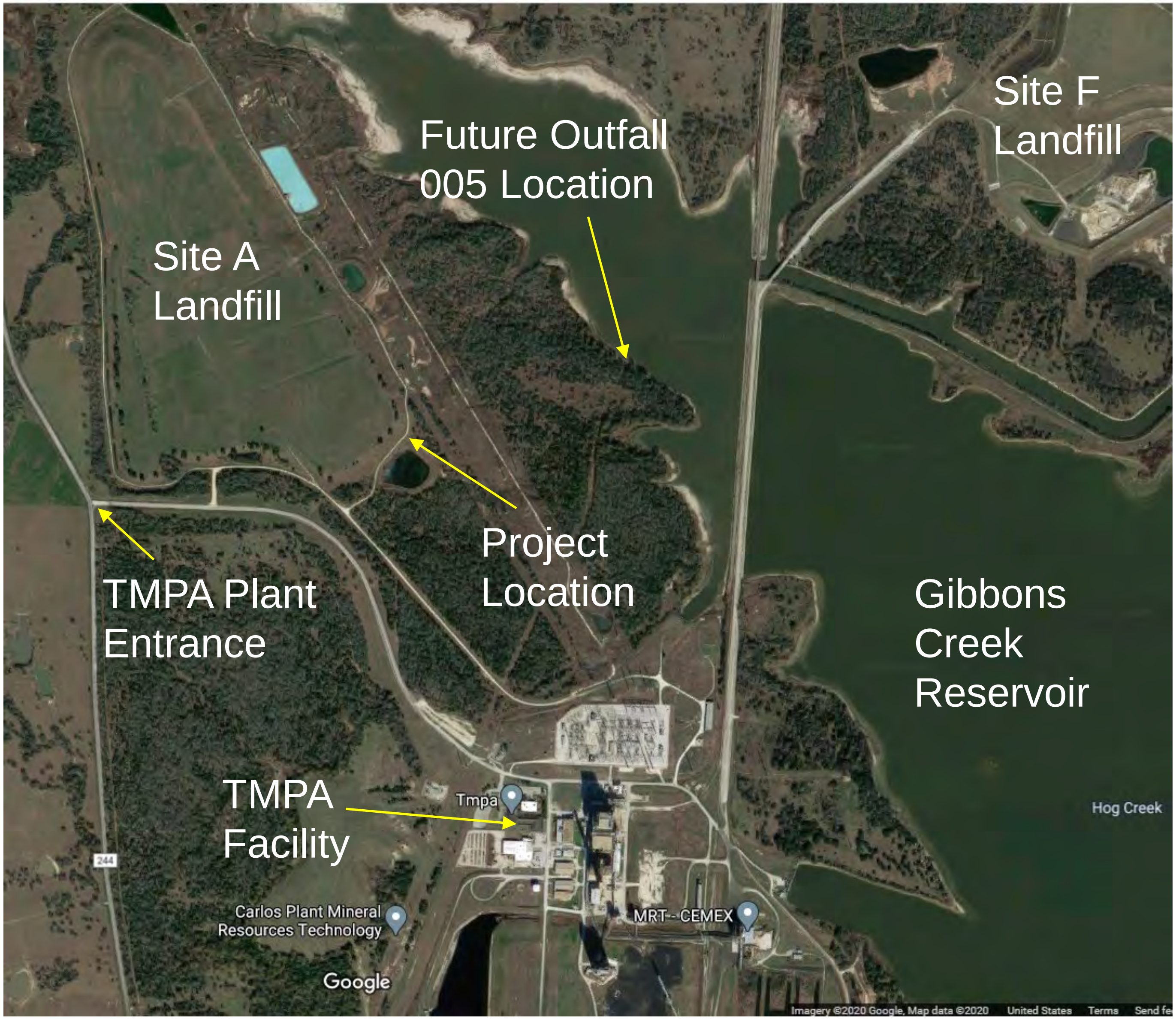
- BACK-UP MATERIALS:
  - Leachate Treatment System, Location Maps

- ACTIONS REQUIRED:
  - Review, discuss and provide guidance, as necessary.

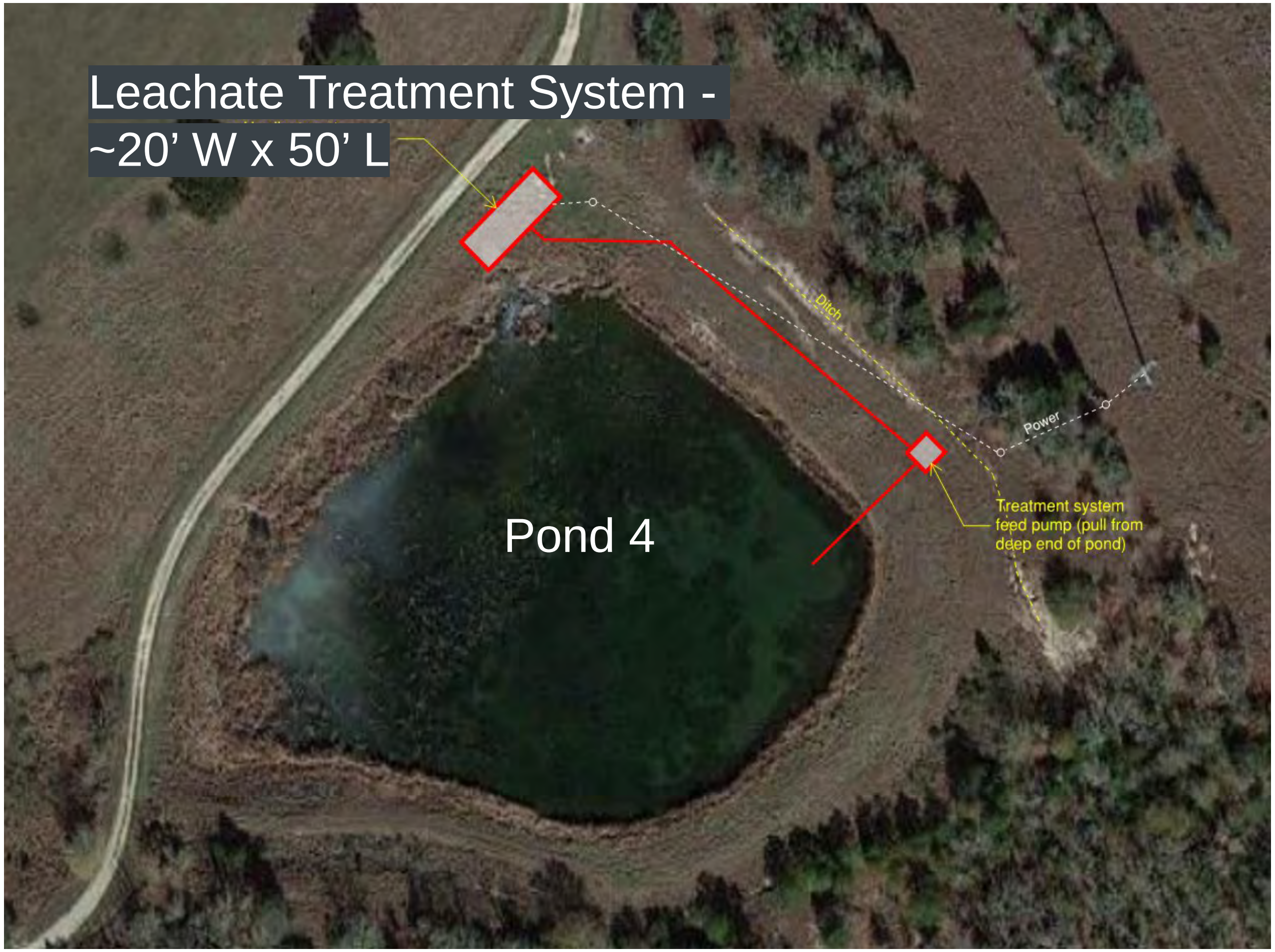
Craig York & Daniel Meadows
12/1/20

Craig D. York

TMPA Facility Location



Leachate Treatment System Location



December 10, 2020

AGENDA ITEM NO. 8

SUBJECT: FY20 Year-end Budget Status Report

DISCUSSION: This report, along with the attachments, provides a comparison of actual cost performance to budget for each business unit of TMPA as of FY20 year-end. The year-end results are summarized as follows:

DECOMMISSIONING – Year-end Results				
Cost Type	**Budget**	**Actual**	**(Under) / Over**	**Percentage Change**
Fixed Costs - Non-Debt	$4,258	$3,065	($1,192)	(28.0%)
Decommissioning Project	$8,778	$525	($8,254)	(94.0%)
Other Revenues Excluding City Billings	($140)	($428)	($288)	(206.0%)
Total Budget Variance			**($9,735)**	**(75.5%)**

MINE – Year-end Results				
Cost Type	**Budget**	**Actual**	**(Under) / Over**	**Percentage Change**
Fixed Costs - Non-Debt	$3,138	$3,381	$243	7.7%
Other Revenues Excluding City Billings	($48)	($146)	($98)	(204.3%)
Total Budget Variance			**$145**	**4.7%**

TRANSMISSION – Year-end Results				
Cost Type	**Budget**	**Actual**	**(Under) / Over**	**Percentage Change**
Fixed Costs - Non-Debt	$5,488	$4,926	($562)	(10.2%)
Fixed Costs - Debt	$18,518	$17,548	($971)	(5.2%)
Other Revenues	($47,109)	($47,182)	($73)	(0.2%)
Total Budget Variance			**($1,606)**	**(6.9%)**
Debt Service Coverage	1.25X	3.14X		Exceeds requirement

A&G costs were slightly under budget ($187K) in FY20. **Allocation of A&G** is lower for the Decommissioning and Transmission divisions and higher for the Mine division. The allocation of A&G is based on the actual O&M expenditures for each division (i.e. Decommissioning O&M was under budget in FY20 (see below).

Decommissioning Division - Total Costs were under budget by $9.7M in FY20. The larger variances are as follows (allocation of A&G explained above):

1. Labor & Benefits were $142K lower primarily due to removing severance pay for the two Production Techs who will transfer to the Decommissioning Project budget in FY21 (severance should be budgeted in FY24 at the end of the Project for no sale projections). Also, a portion of the Plant Manager's time is being coded to A&G for work not specifically related to Decommissioning/Generation.
2. Payments to Other Agencies were $172K lower because Luminant took over the Brazos River Authority water supply contract effective January 2020.
3. Contractor Maintenance was $439K lower due to no groundwater monitoring well repair needs, emissions testing, dam repairs, vegetation management, and electric fire pump maintenance.
4. Consulting Services were $436K lower primarily due to various budgeted compliance costs being handled as part of the Decommissioning Project and CCR program monitoring and reporting being expensed to Legal Services.
5. Legal Services were $426K higher due to the reason above. Also, legal work related to the sale of the plant is now being directly expensed to this division.
6. Other Fixed Costs were $171K lower primarily due to the Master QSE Agreement being cancelled effective 10/31/19 due to the retirement of Gibbons Creek and minimal equipment repairs/maintenance on large rolling stock items at the plant.
7. The Decommissioning Project was $8.3M lower because activity has been delayed as a result of the possible sale of the plant.
8. Interest Income was $122K higher because all interest income for the Agency's operating account was budgeted in Transmission, however that income is allocated to each division.
9. Other Revenue was $166K higher due to the sale of Cross-State Air Pollution Rule (CSAPR) credits and Discrete Emission Reduction Credits (DERCs).

Mine Division - Total Costs were over budget by $145K in FY20. The larger variances are as follows (allocation of A&G explained above):

1. Mine Maintenance was $209K higher due to the effort to expedite bond release by addressing bond release inspection items.
2. Bank Charges were $175K higher due to the banking fees for the Mine letters of credit being higher than budgeted (both the amount of bonding and the rate).
3. Consulting Services were $247K lower primarily due to the "Big" bond release that TMPA obtained in January 2020, which halved the bonded acreage and dramatically reduced the need for consulting support.
4. Interest Income was $84K higher because all interest income for the Agency's operating account was budgeted in Transmission, however that income is allocated to each division.

Transmission Division - Total Costs were under budget by $1.6M in FY20. The larger variances are as follows (allocation of A&G explained above):

1. Contractor Maintenance was $346K lower because substations experienced fewer equipment failures requiring less than anticipated O&M repair. Due to efforts over the past

four and a half years to get maintenance schedules caught up, transformer and breaker issues are beginning to minimize.

2. Legal Services were $136K higher primarily due to the Dudley right of way case.
3. Other Fixed Costs were $259K lower primarily due to Protection and Control (PRC) standard testing being postponed due to capital schedules and minimal direct materials needed as repairs were fewer than anticipated.
4. Revolving Notes Interest was $971K lower due to interest rates being lower than budgeted, as well as the amount of Notes outstanding being less than anticipated.
5. Transmission System Revenue was higher ($802K) due to the 2020 Average 4CP being higher than projected.
6. Interest Income was $781K lower primarily because all interest income for the Agency's operating account was budgeted in Transmission, however that income is allocated to each division. Interest rates have also been lower than budgeted.

NOTE: There was no FY20 charge to the Member Cities for the Transmission division since budgeted revenues exceeded budgeted expenses.

TMPA will be distributing transmission revenues to the Member Cities as of the end of FY20. This was discussed at the September 10, 2020 Board meeting and will be reviewed in further detail in Agenda Item No. 11.

There will be no other outflow of funds to the Cities at the end of FY20. The Cities opted to allow TMPA to retain the remaining FY20 Decommissioning Project funds for use in FY21.

BACKUP MATERIAL: **Attachment A:** Decommissioning FY20 Year-end Key Budget Driver Rate Sheet
Attachment B: Mine FY20 Year-end Key Budget Driver Rate Sheet
Attachment C: Transmission FY20 Year-end Key Budget Driver Rate Sheet

ACTION REQUESTED: None. This item is presented for the Board's information.

Lyndi Birkhead
12/2/20

Decommissioning

ATTACHMENT A

FY20 Year-end Key Budget Driver Rate Sheet
FY20 Budget Compared to Year-end Actual

	FY20 Budget Approved 6-6-19	FY20 Actual	(Under) Over Budget	Percentage Change
Fixed Costs				
L01 Labor & Benefits	954,823	813,138	(141,686)	-14.8%
M02 Direct Purchases	62,906	12,585	(50,321)	-80.0%
R27 Maintenance Agreements	10,000	-	(10,000)	-100.0%
R38 Payments to Other Agencies	266,400	94,800	(171,600)	-64.4%
R41 Property Insurance	-	96,720	96,720	-100.0%
R51 Contractor Maintenance	620,363	181,293	(439,070)	-70.8%
S02 Consulting Services	470,000	34,272	(435,728)	-92.7%
S04 Legal Services	305,000	731,075	426,075	139.7%
Other Fixed Costs - Non-Debt	261,120	90,191	(170,929)	-65.5%
Allocation of A&G	1,307,098	1,011,143	(295,955)	-22.6%
Subtotal Fixed Costs	**$ 4,257,710**	**$ 3,065,216**	**$ (1,192,495)**	**-28.0%**
C02 Decommissioning Project	8,778,280	524,518	(8,253,762)	-94.0%
Subtotal Decommissioning Project	**$ 8,778,280**	**$ 524,518**	**$ (8,253,762)**	**-94.0%**
TOTAL FIXED COSTS	**$ 13,035,990**	**$ 3,589,734**	**$ (9,446,257)**	**-72.5%**
Other Revenues				
I73 Interest Income	-	(122,411)	(122,411)	-100.0%
Other Revenue	(140,000)	(306,051)	(166,051)	-118.6%
TOTAL OTHER REVENUES	**$ (140,000)**	**$ (428,462)**	**$ (288,462)**	**-206.0%**
TOTAL COSTS	**$ 12,895,990**	**$ 3,161,272**	**$ (9,734,718)**	**-75.5%**

Mine

FY20 Year-end Key Budget Driver Rate Sheet
FY20 Budget Compared to Year-end Actual

	FY20 Budget Approved 6-6-19	FY20 Actual	(Under) Over Budget	Percentage Change
Fixed Costs				
L01 Labor & Benefits	463,475	385,534	(77,940)	-16.8%
M02 Direct Purchases	1,500	269	(1,231)	-82.1%
M44 Mine Maintenance	520,000	728,568	208,568	40.1%
R06 Bank Charges	120,000	294,738	174,738	145.6%
R51 Contractor Maintenance	80,000	28,708	(51,292)	-64.1%
S02 Consulting Services	675,000	427,708	(247,292)	-36.6%
S04 Legal Services	182,000	196,788	14,788	8.1%
Other Fixed Costs - Non-Debt	106,150	162,918	56,768	53.5%
Allocation of A&G	990,336	1,155,949	165,613	16.7%
Subtotal Fixed Costs - Non-Debt	**$ 3,138,461**	**$ 3,381,179**	**$ 242,718**	**7.7%**
TOTAL FIXED COSTS	**$ 3,138,461**	**$ 3,381,179**	**$ 242,718**	**7.7%**
Other Revenues				
I76 Interest Income	-	(84,422)	(84,422)	-100.0%
Other Revenue	(48,000)	(61,636)	(13,636)	-28.4%
TOTAL OTHER REVENUES	**$ (48,000)**	**$ (146,058)**	**$ (98,058)**	**-204.3%**
TOTAL COSTS	**$ 3,090,461**	**$ 3,235,121**	**$ 144,660**	**4.7%**

Transmission

ATTACHMENT C

FY20 Year-end Key Budget Driver Rate Sheet
FY20 Budget Compared to Year-end Actual

	FY20 Budget Approved 6-6-19	FY20 Actual	(Under) Over Budget	Percentage Change
Fixed Costs				
L01 Labor & Benefits	589,324	554,400	(34,924)	-5.9%
R06 Bank Charges	357,350	286,242	(71,108)	-19.9%
R41 Property Insurance	-	48,531	48,531	-100.0%
R51 Contractor Maintenance	1,548,417	1,202,346	(346,071)	-22.3%
S02 Consulting Services	-	21,293	21,293	-100.0%
S04 Legal Services	28,000	163,596	135,595	484.3%
Other Fixed Costs - Non-Debt	1,196,712	937,618	(259,094)	-21.7%
Allocation of A&G	1,767,835	1,711,630	(56,205)	-3.2%
Subtotal Fixed Costs - Non-Debt	**$ 5,487,638**	**$ 4,925,655**	**$ (561,983)**	**-10.2%**
R57-R58 Debt Service - Bonds	13,620,892	13,620,892	(0)	0.0%
R55 Revolving Notes Interest	1,356,035	385,475	(970,560)	-71.6%
R62 Debt Coverage Payment	3,541,432	3,541,432	-	0.0%
Subtotal Fixed Costs - Debt	**$ 18,518,359**	**$ 17,547,798**	**$ (970,560)**	**-5.2%**
TOTAL FIXED COSTS	**$ 24,005,997**	**$ 22,473,454**	**$ (1,532,543)**	**-6.4%**
Other Revenues				
I50 Transmission System Revenue	(46,010,144)	(46,811,989)	(801,845)	-1.7%
I70-I75 Interest Income	(995,076)	(214,059)	781,017	78.5%
Other Revenue	(104,000)	(156,269)	(52,269)	-50.3%
TOTAL OTHER REVENUES	**$ (47,109,220)**	**$ (47,182,317)**	**$ (73,098)**	**-0.2%**
TOTAL COSTS / (REVENUES)	**$ (23,103,223)**	**$ (24,708,864)**	**$ (1,605,641)**	**6.9%**

December 10, 2020

AGENDA ITEM NO. 9

SUBJECT: Resolution No. 2020-12-2, approving the annual proportional share calculation of Member City ownership interests in Agency assets; and resolving matters incidental and related thereto.

DISCUSSION: Section 2.5 of the Joint Operating Agreement requires the Staff to prepare, and the Board to approve, on an annual basis, the Member City ownership shares in Agency assets by business category. Staff has prepared the recalculation as of September 30, 2020. The recalculation did not result in any changes to the ownership shares. The Resolution approves the recalculation, which is attached as an exhibit to the Resolution.

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-2.

RESOLUTION NO. 2020-12-2

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") APPROVING THE ANNUAL PROPORTIONAL SHARE CALCULATION OF MEMBER CITY OWNERSHIP INTERESTS IN AGENCY ASSETS; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, Agency Staff has prepared its annual calculation of Member City ownership interests in Agency assets by business category, as required by Section 2.5 of the Joint Operating Agreement;

WHEREAS, the Board has reviewed the calculation and desires to approve the calculation as required by the Joint Operating Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the Board approves the annual calculation of Member City ownership interests in Agency assets by business category, as shown in Exhibit "A";

3. That, as required by Section 2.5 of the Joint Operating Agreement, the Board directs the Agency Staff, following the end of Fiscal Year 2021, to prepare the annual calculation of Member City ownership interests in Agency assets by business category, and to bring the calculation to the Board for approval;

4. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

____
Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ______________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

Texas Municipal Power Agency Schedule E

Amount Paid to the Agency by Member Cities

Fiscal Year	Power Sales	Amounts Paid to Agency by Member Cities			
		Bryan	Denton	Garland	Greenville
1984	85,191,000	17,191,554	17,924,151	41,794,703	8,280,592
1985	187,737,000	37,885,348	39,499,787	92,103,769	18,248,096
1986	191,180,000	38,580,146	40,224,193	93,792,904	18,582,757
1987	188,454,000	36,842,848	40,743,630	92,530,880	18,336,642
1988	190,654,000	36,586,438	41,486,357	93,096,337	19,484,868
1989	175,652,000	34,392,712	38,327,234	84,488,553	18,443,500
1990	168,889,000	33,456,809	37,155,622	79,901,366	18,375,202
1991	168,096,000	33,102,531	36,632,258	79,753,773	18,607,437
1992	167,464,000	33,241,574	36,138,761	79,511,963	18,571,702
1993	171,910,000	35,568,069	36,049,571	81,313,510	18,978,850
1994	174,147,000	38,312,365	38,312,365	81,849,115	15,673,155
1995	171,898,000	37,817,507	37,817,507	80,792,055	15,470,931
1996	163,661,000	35,899,681	35,758,679	76,920,733	15,081,907
1997	158,202,000	34,329,834	33,697,026	74,354,940	15,820,200
1998	168,103,000	36,478,351	35,805,939	79,008,410	16,810,300
1999	168,886,000	36,648,262	35,972,718	79,376,420	16,888,600
2000	165,097,000	35,826,049	35,165,661	77,595,590	16,509,700
2001	179,943,000	39,047,631	38,327,859	84,573,210	17,994,300
2002	185,758,000	40,230,765	39,651,078	87,302,902	18,573,255
2003	194,790,000	42,404,888	41,689,440	91,286,470	19,409,203
2004	200,208,000	43,420,423	42,845,792	93,962,319	19,979,465
2005	209,439,000	45,453,431	44,733,031	98,344,467	20,908,072
2006	217,762,000	47,334,078	46,472,327	102,223,519	21,732,076
2007	221,824,000	48,155,447	47,417,590	104,068,163	22,182,800
2008	236,311,000	51,245,680	50,565,371	110,901,555	23,598,394
2009	197,392,000	42,591,301	42,859,565	92,115,984	19,825,150
2010	211,684,000	45,721,786	45,649,213	99,040,992	21,272,009
2011	138,069,000	29,974,786	29,580,070	64,673,450	13,840,694
2012	112,265,000	24,371,669	23,942,382	52,722,458	11,228,491
2013	219,311,000	47,665,306	46,871,131	103,107,975	21,666,588
2014	225,769,032	49,120,056	48,184,087	106,285,320	22,179,569
2015	230,094,555	50,001,738	49,075,365	108,084,122	22,933,330
2016	228,896,963	49,553,715	48,639,634	107,912,078	22,791,536
2017	230,754,586	50,342,790	49,402,413	107,888,879	23,120,505
2018 *(bundled*)*	125,977,894	27,346,953	26,836,017	59,228,237	12,566,687
	6,431,470,030	1,366,142,522	1,379,453,824	3,041,907,122	643,966,563
2018 *(unbundled*)* :					
Sept-18 Energy		730,874	718,743	1,583,054	-
Sept-18 Gen (Prod)		210,125	206,637	455,124	-
Total Sept-18 Generation	3,904,557	940,998	925,380	2,038,179	-
Sept-18 Transmission	18,843	4,089	4,014	8,856	1,884
Sept-18 Mine	170,762	37,055	36,372	80,258	17,076
2019 Generation**	4,042,164	858,556	867,044	1,911,944	404,621
2019 Mine	3,203,604	695,182	682,368	1,505,694	320,360
2020 Generation**	12,895,992	2,739,109	2,766,190	6,099,804	1,290,889
2020 Mine	3,090,456	670,629	658,267	1,452,514	309,046

** Prior to 9/1/18, all charges to the Cities were bundled for the Agency as a whole. Beginning 9/1/18, the JOA required that the Agency bill the Cities by business category (Generation, Transmission, & Mine).*
***These are non-production costs as the plant did not operate after FY18.*

Generation		
Total:	**Sales**	**PPE Interest**
Bryan	1,370,681,185	21.24%
Denton	1,384,012,438	21.45%
Garland	3,051,957,048	47.30%
Greenville	645,662,072	10.01%
Total	6,452,312,743	100.00%
	(0)	

Transmission		
Total:	**Sales**	**PPE Interest**
Bryan	1,366,146,611	21.24%
Denton	1,379,457,837	21.45%
Garland	3,041,915,978	47.30%
Greenville	643,968,447	10.01%
Total	6,431,488,873	100.00%
	(0)	

Mine		
Total:	**Sales**	**PPE Interest**
Bryan	1,367,545,388	21.24%
Denton	1,380,830,831	21.45%
Garland	3,044,945,588	47.30%
Greenville	644,613,045	10.01%
Total	6,437,934,852	100.00%
	(0)	

December 10, 2020

AGENDA ITEM NO. 10

SUBJECT: Resolution No. 2020-12-3, receiving the audited financial statements of the Agency for the fiscal year ended September 30, 2020; and resolving matters incidental and related thereto.

DISCUSSION: The Joint Operating Agreement requires that an audit of the Agency's financial statements be performed within 120 days of the close of each fiscal year. The audit for fiscal year 2020 has been completed, and the results will be presented to the Audit & Budget Committee in the meeting scheduled prior to the Board meeting on December 10, 2020. The attached resolution receives the audited financial statements of the Agency for fiscal year 2020 and directs that a copy of the audited financial statements be sent to each Member City.

BACKUP MATERIAL: Texas Municipal Power Agency Financial Statements for the Years Ended September 30, 2020 and 2019 (available on Board's secure website).

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-3.

Lyndi Birkhead
12/2/20

Lyndi Birkhead

RESOLUTION NO. 2020-12-3

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") RECEIVING THE AUDITED FINANCIAL STATEMENTS OF THE AGENCY FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2020; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, the Agency is required by the Joint Operating Agreement with the cities of Bryan, Denton, Garland, and Greenville, to cause the records and accounts and all transactions of the Agency relating to each business category to be subject to an annual audit by an independent certified public accountant within 120 days of the close of each Fiscal Year;

WHEREAS, the firm of BKD, LLP has completed the audit as required for the fiscal year ended September 30, 2020;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the audited financial statements of the Agency for the fiscal year ended September 30, 2020 are received;

3. That a copy of the audited financial statements shall be sent to each Member City;

4. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

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Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ______________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

December 10, 2020

AGENDA ITEM NO. 11

SUBJECT: Resolution No. 2020-12-4, authorizing a refund of transmission revenues to the Member Cities; and resolving matters incidental and related thereto.

DISCUSSION: Section 4.2 of the JOA provides in pertinent part:

> Effective September 2, 2018, all net proceeds from the annual operations of the Transmission Business category (after payment of the annual costs of the Transmission System and debt service on Transmission Debt) shall be used: (i) first, to fund the Decommissioning Reserve Account up to the cap for that account as stated in Section 5.5, and (ii) then, to the Indemnity Reserve Account up to the cap for that account as stated in Section 6.5. Any net proceeds remaining after the obligations described in (i)-(ii) shall be apportioned to each Participating Public Entity based on the following percentages: Bryan - 21.7%; Denton - 21.3%; Garland - 47%; Greenville - 10%.

Since the Decommissioning Reserve has been funded (i.e. the appraised value of the Mine property exceeds the $30M requirement) and the Indemnity Reserve has been funded (escrow account established at UMB), there are available for refund to the Member Cities (after deduction of a 120-day cash reserve for FY21 operating expenses) net transmission revenues in the amount of $26,350,296. The Resolution authorizes the refund of these transmission revenues to the Cities.

Approved FY20 Transmission Budget - Net Revenue	23,103,223
Debt Service Coverage	3,541,432
Year-end Under Budget Variance	1,605,641
Subtotal	28,250,296
Cash Reserve (120 days FY21 operating expenses)	(1,900,000)
FY20 “Distribution of Transmission Revenues”	26,350,296

BACKUP MATERIAL: None

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-4.

RESOLUTION NO. 2020-12-4

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") AUTHORIZING A REFUND OF TRANSMISSION REVENUES TO THE MEMBER CITIES; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, as of the end of Fiscal Year 2020, $26,350,296 in net transmission revenues are available for refund to the Member Cities as contemplated by Section 4.2 of the Joint Operating Agreement (the "Transmission Net Proceeds");

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the General Manager, or a person acting at his direction, is authorized to refund to the Member Cities the Transmission Net Proceeds;

3. That the Transmission Net Proceeds shall be allocated to the Cities as follows:

Bryan	21.7%	$ 5,718,014
Denton	21.3%	$ 5,612,613
Garland	47.0%	$12,384,639
Greenville	10.0%	$ 2,635,030

4. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

____
Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ______________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

December 10, 2020

AGENDA ITEM NO. 12

SUBJECT: Status report relating to the TMPA transmission operations and five-year transmission capital project plan.

DISCUSSION: The purpose of this agenda item is to provide two routine reports to the Board.

BACKUP MATERIAL:
1) Transmission Operations Status Reports
2) Transmission Capital Project Status Report

ACTION REQUESTED: None.

TRANSMISSION OPERATIONS STATUS REPORT
NOVEMBER 17, 2020

Outage Summary:

During the months of August, September and October 2020, TMPA had six planned outages on the 345kV system, three planned outages on the 138kV system and one planned outage on the 69kV system. There were no forced extensions on the 345kV, one on the 138kV and none on the 69kV system. There was one unplanned outage on the 345kV system, none on the 138kV system or the 69kV system.

Unplanned Outage Details: The unplanned outage was on the Gibbons Creek to Zenith Line. It locked out on 8/2/20 @ 15:22 and was restored on 8/3/20 @ 02:52. The cause was a failed Lightning Arrestor.

Personnel Summary:

Every TMPA operator is NERC-certified and current with all continuing education requirements.

Steve Martin
Matt Carter
11/17/20

TMPA Transmission Operations Report
2020

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2020 Total
Planned Outages													
345 Kv	1	1	1	1	1	0	0	0	4	2			**11**
138 Kv	2	2	2	4	1	0	0	0	1	2			**14**
69 Kv	0	0	0	0	0	1	0	0	0	1			**2**
Devices requested													**0**
Un-Planned Outages													
345 Kv	0	0	0	0	0	0	0	1	0	0			**1**
138 Kv	1	0	0	0	0	0	0	0	0	0			**1**
69 Kv	0	0	0	0	0	0	0	0	0	0			**0**
Forced Extension Outages													
345 Kv	1	1	1	1	0	0	0	0	0	0			**4**
138 Kv	1	1	1	1	1	0	0	0	0	1			**6**
69 Kv	0	0	0	0	0	0	0	0	0	0			**0**

Note: Outages are counted by the number of entries in the ERCOT Outage Scheduler.

TRANSMISSION FIVE-YEAR PROJECTS PLAN STATUS REPORT
November 2020

SUBJECT: Status report relating to the TMPA five-year transmission capital project plan.

DISCUSSION: The attached five-year Transmission Project Status Report incorporates the five-year period of Fiscal Year 2020 through Fiscal Year 2024. Projects reported as "Completed" in a previous report have been removed from this report.

Additional capital projects are being reviewed and discussed within the Transmission Engineering Working Group (TEWG) that could potentially affect the number of projects and capital investment on the Transmission Project Status Report.

Staff will update the Transmission Project Status Report and present to the P&O and Board as future capital projects are vetted and direction given.

Steve Martin
11/18/2020

Transmission Project Status Report
November 2020

Projects	Priority	Original Proposed Completion Date	Projected or Actual Completion Date	Original Approved Budget/Cost Estimate	Current Approved Budget/Cost Estimate	FY 2021	FY2022	FY2023	FY2024	FY2025	Total Estimated Expenditures FY21-FY25	Comments
T11009 CIP Substation Security	H	Dec-11	Sep-21	$1,250,700	$1,250,700	$225,494					$225,494	Cameras are active at Gibbons Creek.
T13001 Breaker Replacements	H	Sep-17	Dec-20	$12,201,239	$12,201,239	$446,525					$446,525	Constuction to be completed by December 2020. Project on Budget Set to be closed out in January 2021.
T13002 Relay and SCADA Upgrade	M	Sep-17	Dec-20	$7,552,776	$7,552,776	$250,000					$250,000	Relay panels at Dansby to be installed in conjunction with BTU Dansby upgrade. Relay enhancement at Gibbons Creek, Denton West and Jack Creek are replacing obsolete equipment.
T17007 Brand Rd. Pole Reroute	L	Sep-17	Dec-23	$192,000	$192,000				$159,039		$159,039	Project required for street improvements and cost will be reimbursed by City of Garland. Project on Hold.
T17009 Steep Hollow to Keith Switch fiber installation	H	May-18	Dec-21	$715,000	$715,000	$444,546					$444,546	Fiber installation delayed pending pole replacement project. See T20002.
T18003 McCree to Centerville TXDOT Project	H	Feb-18	Dec-19	$1,875,500	$3,908,122						$0	Project in closeout. TMPA obtaining reimbursement.
T18004 Pauwells Transformer Power Upgrades	H	Sep-19	Dec-20	$300,000	$300,000	$55,000					$55,000	Design Complete. Bill of Materialordered. Construction to be completed in Fall 2020.
T18005 JKCK-TWIN OAK Tower 8/2 Rust Project	H	Dec-19	Dec-20	$990,000	$2,190,000	$590,000					$590,000	Construction to begin in the Fall 2020.
T19003 Black Start Path Generator Installation	M	May-20	May-21	$300,000	$300,000	$150,000					$150,000	Project is to install back up generators at Pruitt, Shelby, and Greenville Interchange. Shelby in Service. Greenville will be in Service Fall 2020. Pruitt will be coordinated with ONCOR project
T19004 McCree Equipment Installation	M	Jun-21	Jun-21	$1,644,500	$1,644,500	$1,419,321					$1,419,321	Project construction is in conjunction with GP&L ERCOT requested project. Construction and material bids have been received.
T19006 Gibbons Creek TRV Capacitors	H	Dec-20	Dec-20	$768,211	$768,211	$613,195					$613,195	Design is complete. Material is on order. Construction to be complete Fall 2020 construction.
T20001 Pruitt ONCOR Transmission Separation	H	May-20	May-21	$300,000	$300,000	$286,652					$286,652	Construction commenced.
T20002 Steep Hollow to Keith Switch T-line Rebuild	H	Mar-20	Mar-22	$12,800,000	$12,800,000	$6,000,000	$6,800,000				$12,800,000	Engineering and Soil Borings are proceeding. Poles out for bid.
T20003 Gibbons Creek Decommission Transmission Project	H	May-20	Apr-21	$1,265,000	$1,265,000	$1,265,000					$1,265,000	Project on hold pending TMPA approval.
T20004 Ben Davis Breaker Replacement Project	H	Dec-21	Dec-21	$4,290,000	$4,290,000	$1,000,000	$2,790,000				$3,790,000	Design has started. In service date pushed back due to delays at McCree.
Greenville to Olinger Airport Marker Ball	H	Dec-21	Dec-21	$150,000	$150,000	$150,000					$150,000	Design has started.
				Totals	**$49,827,548**	**$12,895,733**	**$9,590,000**	**$0**	**$159,039**	**$0**	**$22,644,772**	

December 10, 2020

AGENDA ITEM NO. 13

SUBJECT: Resolution No. 2020-12-5, amending the FY2021 Annual Transmission System Capital Budget by appropriating funds for the Denton West to Jim Christal Transmission Line Pole Replacement Project; and resolving matters incidental and related thereto.

DISCUSSION: A pole in the West Denton to Jim Christal 138 kV transmission line is eroding at the base due to a creek that is encroaching into the easement. The pole is already leaning and the erosion is expected to worsen. This project would involve replacing the pole with a large bridge-type pier foundation and new pole.

This Resolution would appropriate $615,000 for this Project.

BACKUP MATERIAL: Denton West to Jim Christal TML Pole Erosion Capital Proposal

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-5.

RESOLUTION NO. 2020-12-5

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") AMENDING THE FY2021 ANNUAL TRANSMISSION SYSTEM CAPITAL BUDGET BY APPROPRIATING FUNDS FOR THE WEST DENTON TO JIM CHRISTAL TRANSMISSION LINE POLE REPLACEMENT PROJECT; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, in order to maintain the reliability of the West Denton to Jim Christal 138 kV transmission line, it is necessary to replace a pole (the "West Denton to Jim Christal Transmission Line Pole Replacement Project");

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the FY2021 Annual Transmission System Capital Budget is amended by appropriating $615,000 for the West Denton to Jim Christal Transmission Line Pole Replacement Project;

3. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

____
Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ______________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

TEXAS MUNICIPAL POWER AGENCY
CAPITAL PROPOSAL

PROJECT TITLE: Denton West to Jim Christal TML Pole Erosion			**PROJECT MANAGER:** Mark Zimmerer		**DATE:** August 31, 2020	
PROJECT NO.	**RISK LEVEL:**	**RISK TYPE:**		**FERC ACCOUNT:**	**FUNDING:** ☐ **Rate** ☑ **Debt**	
SCHEDULE DATES						
START DATE: September 2021			**ESTIMATED IN-SERVICE DATE:** November 2021			
☑ **Capital**			☐ **Annual Need** ☑ **One Time Need** ☐ **Cyclical Need**		Capital Plan Year: 2020	
Total Cost: $615,000	FY20:	FY21: $ 190,000	FY22: $ 425,000		FY23:	FY24:

DESCRIPTION OF PROJECT:

The scope of this project is to correct an erosion problem around existing structure 2/8 in the Denton West to Jim Christal 138kV transmission line. Hickory Creek is continuing to erode the soil around pole 2/8 causing the pole to lean slightly. The erosion is expected to worsen as large rain events happen.

The proposed solution replaces the existing pole and foundation with a large bridge-type pier foundation and new pole. The existing transmission conductor and OPGW will be reattached to the pole with new hardware. The existing pole will be scraped and the value credited to TMPA.

PROJECT BENEFITS & JUSTIFICATION (OUTCOME):

This will stabilize the transmission line in the area around the encroaching stream.

TEXAS MUNICIPAL POWER AGENCY
CAPITAL PROPOSAL

BACKGROUND:

The location of the pole is adjacent to an expanding stream that is eroding the soil around the existing embedded pole. The site has been surveyed and it has been determined that the erosion will continue as the stream grows ultimately causing the opportunity of loss of service to the TM line if the pole becomes unstable and gives away.

Three options were discussed:
1) Reroute the TM line to the East to avoid the stream bed. 6 new poles and easement acquisition required.
2) Reroute the TM line to the West to avoid the stream bed. 5 new poles and easement acquisition required.
3) Constructing a bridge-type pier to hold a new structure in the existing ROW.

The east option involves rerouting the adjacent ONCOR transmission line. ONCOR was not interested in participating.
The west option involves a parcel of land owned by a large land developer. They requested that we stay in the existing ROW and was not interested in selling new easement.
This only leaves option 3.

ALTERNATIVES:

1. East Option - estimated cost $2.0M

2. West Option - estimated cost $1.7M

3.

COST/BENEFIT WORKSHEET

ECONOMIC ASSESSMENT:

Costs: Current Year Only

			Benefits:$/Year
TMPA Labor Hours =			
TMPA Labor	**$**		**Reliability -**
Materials	**$**	80,000	**Capability -**
Contract Services	**$**	470,000	**Labor Savings -**
Engineering Consultant	**$**	45,000	**Heat Rate Improvement -**
Misc. Expenses	**$**	20,000	**Non Labor O&M Savings -**
Labor Loadings (50%)	**$**		**Total Benefit $**
TOTAL	**$**	615,000	**Cost / Benefit =**

Estimation Levels:
P1 = Budget/Preliminary
P2 = Conceptual
P3 = Detail Design

Estimated life of asset: 40

Staff will measure improvement of completed project: ☐ **Yes** ☐ **No**

Level of Estimate: P1 ☐ **P2** ☑ **P3** ☐

Over $100K in professional services: ☐ **Yes** ☑ **No**

Is land acquisition or right of ways procurement required: ☐ **Yes** ☑ **No**

TEXAS MUNICIPAL POWER AGENCY
CAPITAL PROPOSAL

ASSUMPTIONS:

Estimated breakdown of cost:

Material:
- Foundation Pole (1) - $60,000
- Insulators and Hardware - $10,000
- No Anchor Bolt Cages - $10,000
- No Conductor - $0

Total Material - $80,000

DME Labor - $20,000

Contracting Service(Construction):
- Pole installation/TM tie-in - $105,000
- Concrete pier - $280,000
- Temp upgrade to existing access - $40,000
- Pad for pole installation - $15,000
- Site restoration - $30,000

Total Construction - $470,000

Engineering Consultant - $45,000

Project Total - $615,000

SIGNATURES			
Project Manager:		**Date:**	11-11-2020
Supervisor:		**Date:**	11-11-2020
Division Manager:		**Date:**	11/30/2020
General Manager:		**Date:**	

December 10, 2020

AGENDA ITEM NO. 14

SUBJECT: Resolution No. 2020-12-6, amending the FY2021 Annual Transmission System Capital Budget by appropriating funds for the Shelby to Nevada Transmission Line Tower Replacement Project; and resolving matters incidental and related thereto.

DISCUSSION: TXDOT plans to construct roadway lighting improvements at the intersection of State Highway 66 and State Spur 1570. Construction of the lighting improvements will require Oncor to increase the elevation of its existing line at this intersection.

The increase in elevation of the Oncor line will require TMPA's Shelby to Nevada 138 kV line to also be elevated, because it crosses over the Oncor line. In order to elevate the Shelby to Nevada line, it will be necessary to replace three towers with taller structures.

Application will be made to TXDOT for reimbursement of the costs resulting from this State roadway lighting project.

This Resolution would appropriate $600,000 for this Project.

BACKUP MATERIAL: Shelby-Nevada Elevation for SS1570 Capital Proposal.

ACTION
REQUESTED: Consideration and action on Resolution No. 2020-12-6.

RESOLUTION NO. 2020-12-6

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") AMENDING THE FY2021 ANNUAL TRANSMISSION SYSTEM CAPITAL BUDGET BY APPROPRIATING FUNDS FOR THE SHELBY TO NEVADA TRANSMISSION LINE TOWER REPLACEMENT PROJECT; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, in order to accommodate a TXDOT roadway lighting project at the intersection of State Highway 66 and State Spur 1570, it is necessary to replace three towers in the Shelby to Nevada 138 kV transmission line (the "Shelby to Nevada Transmission Line Tower Replacement Project");

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the FY2021 Annual Transmission System Capital Budget is amended by appropriating $600,000 for the Shelby to Nevada Transmission Line Tower Replacement Project;

3. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

____
Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ______________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

TEXAS MUNICIPAL POWER AGENCY
CAPITAL PROPOSAL

PROJECT TITLE:		PROJECT MANAGER:	DATE:
Shelby-Nevada Elevation for SS1570		Paul Ricciardi	October 14, 2020

PROJECT NO.	RISK LEVEL:	RISK TYPE:	FERC ACCOUNT:	FUNDING: ☐ Rate ☑ Debt

SCHEDULE DATES

START DATE: December 2020	ESTIMATED IN-SERVICE DATE: June 2021	
☑ Capital	☐ Annual Need ☑ One Time Need ☐ Cyclical Need	Capital Plan Year: 2020

Total Cost: $600,000	FY21: $ 600,000	FY22:	FY23:	FY24:	FY25:

DESCRIPTION OF PROJECT:

The Texas Department of Transportation (TxDOT) proposes roadway illumination improvements at the intersection of State Highway 66 and State Spur 1570. The proposed lighting improvements require Oncor to raise their existing transmission line situated along the southeasterly side of SH66 including the line section crossed by the recently reconstructed TMPA Shelby-Nevada 138kV transmission line.

The Oncor line will be raised approximately twenty-five (25) feet to provide clearance over the new roadway illumination facilities.

Based on this information and preliminary analysis of the existing TMPA Shelby to Nevada transmission line, it appears that existing structures 18/6, 18/7 and 18/8 must be replaced with taller structures to clear the Oncor line adjustment and grade back to the existing conductor profile.

PROJECT BENEFITS & JUSTIFICATION (OUTCOME):

Reorientation of the line will allow TxDOT to install the proposed roadway illumination. Reimbursement of the project by TxDOT is to be determined by the Utility Adjustment process.

TEXAS MUNICIPAL POWER AGENCY
CAPITAL PROPOSAL

BACKGROUND:

In 1982-83, the Royse - Greenville line was constructed by TMPA to provide service from TP&L (now Oncor) system. In subsequent years the Nevada and Shelby substation were constructed along this line. Structures 18/4, 18/5, 18/6, 18/7, 18/8, 18/9, were installed in 2017 for a different TXDOT project for the extension of FM 1570.

ALTERNATIVES:

1. Do nothing and risk condemnation by TxDOT.

2.

3.

COST/BENEFIT WORKSHEET

ECONOMIC ASSESSMENT:

Costs: Current Year Only

Costs			Benefits:$/Year
TMPA Labor Hours =			
TMPA Labor	$		Reliability -
Materials	$	150,000	Capability -
Contract Services	$	300,000	Labor Savings -
Engineering Consultant	$	75,000	Heat Rate Improvement -
Misc. Expenses	$	75,000	Non Labor O&M Savings -
Labor Loadings (50%)	$		Total Benefit $
TOTAL	$	600,000	Cost / Benefit =

Estimation Levels:
P1 = Budget/Preliminary
P2 = Conceptual
P3 = Detail Design

Staff will measure improvement of completed project: ☐ Yes ☑ No

Level of Estimate: P1 ☑ P2 ☐ P3 ☐

Over $100K in professional services: ☑ Yes ☐ No

Estimated life of asset: 30

Is land acquisition or right of ways procurement required: ☐ Yes ☑ No

TEXAS MUNICIPAL POWER AGENCY
CAPITAL PROPOSAL

ASSUMPTIONS:

Engineering:	$75,000
Material:	$150,000
Construction:	$300,000
GP&L Engineering:	$75,000
TOTAL	$600,000

We are assuming that TXDOT will approve the project with enough time to complete the project by June 1, 2021.
Design start to be December 15, 2020.
Outages will be easy to obtain.
No additional easements are needed.

SIGNATURES			
Project Manager:	[signature]	**Date:**	11/10/20
Supervisor:	Steve Martin	**Date:**	11-16-2020
Division Manager:	[signature]	**Date:**	11/30/2020
General Manager:		**Date:**	

December 10, 2020

AGENDA ITEM NO. 15

SUBJECT: Resolution No. 2020-12-7, amending the FY2021 Annual Transmission System Capital Budget by appropriating funds for the Ben Davis to Royse Transmission Line Tower Replacement Project; and resolving matters incidental and related thereto.

DISCUSSION: A lattice tower in the Ben Davis to Royse 345 kV transmission line contains an eroded leg foundation. The erosion was caused by stormwater runoff, resulting from property development in the vicinity of the line. The line is a component of a critical transmission corridor, making replacement of the lattice tower necessary for reliability purposes.

This Resolution would appropriate $2.2 million for this Project.

BACKUP MATERIAL: 345 kV Ben Davis to Royse Replace 2/5 Capital Proposal.

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-7.

RESOLUTION NO. 2020-12-7

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") AMENDING THE FY2021 ANNUAL TRANSMISSION SYSTEM CAPITAL BUDGET BY APPROPRIATING FUNDS FOR THE BEN DAVIS TO ROYSE TRANSMISSION LINE TOWER REPLACEMENT PROJECT; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, in order to maintain the reliability of the Ben Davis to Royse 345 kV transmission line, it is necessary to replace a lattice tower (the "Ben Davis to Royse Transmission Line Tower Replacement Project");

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the FY2021 Annual Transmission System Capital Budget is amended by appropriating $2.2 million for the Ben Davis to Royse Transmission Line Tower Replacement Project;

3. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

____
Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ______________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

TEXAS MUNICIPAL POWER AGENCY
CAPITAL PROPOSAL

PROJECT TITLE: 345 kV Ben Davis to Royse Replace 2/5		PROJECT MANAGER: Paul Ricciardi		DATE: October 21, 2020	
PROJECT NO.	RISK LEVEL:	RISK TYPE:		FERC ACCOUNT:	FUNDING: ☐ Rate ☑ Debt
SCHEDULE DATES					
START DATE: December 2020			ESTIMATED IN-SERVICE DATE: June 2021		
☑ Capital			☐ Annual Need ☑ One Time Need ☐ Cyclical Need		Capital Plan Year: 2020
Total Cost: $2,200,000	FY21: $ 1,800,000	FY22: $ 400,000	FY23:	FY24:	FY25:

DESCRIPTION OF PROJECT:

This is a project to replace a lattice structure 2/5 on the 345kV Royse to Ben Davis Transmission Line structure. The existing tower structures contains a 3/8" EHS shield-wire and a bundled 1590 kcmil 54/19 ACSR "Falcon" conductor. The existing shield wire and phase conductors will be transferred to the new structures. New line hardware and insulators will be utilized.

PROJECT BENEFITS & JUSTIFICATION (OUTCOME):

This double circuit line is a critical transmission corridor, which must be maintained for reliability purposes.

TEXAS MUNICIPAL POWER AGENCY
CAPITAL PROPOSAL

BACKGROUND:

The eroded tower leg foundation was discovered during normal maintenance. In the last forty years there has been much property development which has resulted in much more storm water run off than the original design of Transmission line right of way.

ALTERNATIVES:

1. Do nothing and risk structure failure.

2.

3.

COST/BENEFIT WORKSHEET

ECONOMIC ASSESSMENT:

Costs: Current Year Only

TMPA Labor Hours =

Costs			Benefits:$/Year
TMPA Labor	$		Reliability -
Materials	$	250,000	Capability -
Contract Services	$	1,500,000	Labor Savings -
Engineering Consultant	$	250,000	Heat Rate Improvement -
Misc. Expenses	$	200,000	Non Labor O&M Savings -
Labor Loadings (50%)	$		Total Benefit $
TOTAL	$	2,200,000	Cost / Benefit =

Estimation Levels:
P1 = Budget/Preliminary
P2 = Conceptual
P3 = Detail Design

Staff will measure improvement of completed project: ☐ Yes ☑ No

Level of Estimate: P1 ☑ P2 ☐ P3 ☐

Over $100K in professional services: ☑ Yes ☐ No

Estimated life of asset: 40

Is land acquisition or right of ways procurement required: ☐ Yes ☑ No

TEXAS MUNICIPAL POWER AGENCY
CAPITAL PROPOSAL

ASSUMPTIONS:

TMPA will not have to purchase any new right of way.

Assumptions that existing lattice structure will be replaced with a monopole structure.

No additional structures will need remediation.

Engineering and surveying-	$200,000
Material	$250,000
Misc	$ 50,000
Construction	$1,500,000
Contingency (10%)	$ 200,000
TOTAL	$2,200,000

SIGNATURES			
Project Manager:	[signature]	**Date:**	11/16/20
Supervisor:	Steve Martin	**Date:**	11-16-2020
Division Manager:	[signature]	**Date:**	11/30/2020
General Manager:		**Date:**	

December 10, 2020

AGENDA ITEM NO. 16

SUBJECT: Executive Session

Executive session will be held pursuant to the Open Meetings Act (Chapter 551, Government Code) for the following items:

A. General Manager Annual Performance Review (personnel matter under Section 551.074, Government Code).

B. Sale of the Gibbons Creek Steam Electric Station. (legal advice under Section 551.071, Government Code, value of real property, under Section 551.072, Government Code, and competitive matters under Section 551.086, Government Code.)

C. Real property matters – Liquidation Strategy for Mine Property (value of real property under Section 551.072, Government Code, and legal advice under Section 551.071, Government Code).

In the Board's discretion, the Board may discuss and/or take action on one or more of the above executive session items in open meeting. In regard to items scheduled on this Agenda for discussion and/or action in the open portion of the meeting, the Board may, in its discretion, address one or more of such items in executive session if and to the extent permitted by the Texas Open Meetings Act.

December 10, 2020

AGENDA ITEM NO. 16A

SUBJECT: General Manager Annual Performance Review

DISCUSSION: The purpose of this item is to conduct the General Manager's annual performance review.

BACKUP MATERIAL: Mr. Kahn's Self Performance Review and accomplishments will be distributed at the Board Meeting. A copy was also emailed on November 25, 2020.

ACTION REQUESTED: 1) Annual Performance Review to be presented to Mr. Kahn
2) Recommendation for any salary adjustment to be presented in open session**.**

December 10, 2020

AGENDA ITEM NO. 16B

SUBJECT: Sale of the Gibbons Creek Steam Electric Station.

DISCUSSION: A Resolution to authorize execution of an Asset Purchase Agreement ("APA") for the sale of the Gibbons Creek Steam Electric Station is posted for the open session portion of this meeting, following the executive session. The purpose of this executive session item is to describe the legal structure of the APA.

CONSIDERATION FLOWING TO GCERG

Gibbons Creek Environmental Redevelopment Group ("GCERG") will receive at closing:

-Title to approximately 6200 acres, including the administration buildings and warehouses, power plant, cooling reservoir, Hog Creek Substation, gas pipelines, two gas metering stations, a water pipeline and pumping station, the northern rail spur, the ash ponds, scrubber sludge pond, plant collection pond, Site A Landfill, and Site F Landfill. [TMPA will reserve all transmission facilities and all mineral rights.]

-Permits associated with the operation of the power plant and ponds.

-Personal property relating to the generation business (e.g. equipment, dozers, tools, spare parts).

-A payment of $6,354,000.

-A payment of $28,546,000 into an environmental escrow fund.

-A payment of 50% of the cost of the initial performance bond (TMPA's estimated 50% share, $1.1M).

CONSIDERATION FLOWING TO TMPA

-GCERG will assume all environmental liabilities relating to the plant site, whether arising before, on, or after the closing.

-GCERG will release and indemnify TMPA and the Member Cities with respect to all environmental liabilities relating to the plant site, whether arising before, on, or after the closing.

-GCERG will remediate and close the ash ponds, scrubber sludge pond, plant collection pond, the Site A Landfill, and Site F Landfill (the "Remediation Projects") and will decommission the plant.

-Performance of the Remediation Projects will be secured by an initial performance bond in the amount of $36.5M. Upon closure of the Remediation Projects, the initial performance bond will be replaced by post-closure bonds, to cover monitoring and other regulatory requirements that apply during the post-closure period.

-The conveyance will be effected through the execution of ten special warranty deeds, each conveying one of ten parcels. With respect to the tracts that contain recognized environmental conditions, the indemnities and other protections relating to environmental matters in Article IX will be included in the deeds to GCERG and will “run with the land”, i.e. be included in deeds to subsequent purchasers. TMPA will release future owners from these restrictions provided that certain conditions set out in the APA are met (e.g. satisfactory environmental survey).

-GCERG will provide a $25 million pollution legal liability insurance policy which includes TMPA and the Member Cities as additional insureds.

-GCERG has reimbursed TMPA for some of the costs of maintaining its air permit in active status pending this sale. To the extent any such costs are not reimbursed at closing, TMPA will be reimbursed, through a credit, at closing.

-As a result of this transaction, TMPA and the Member Cities will realize cash savings of approximately $48.3 million compared to the cash outlays TMPA would incur if it were itself performing the Remediation Projects.

ENVIRONMENTAL ESCROW

-The purpose of the environmental escrow is to provide funding for the Remediation Projects.

-GCERG will draw down from the escrow uniform monthly payments over a 34-month period during which the Remediation Projects are to be completed.

-As remediation projects are substantially completed, the $36.5M performance bond will be reduced in accordance with a schedule in the APA. The APA contains provisions ensuring that the sum of the bonding capacity and amounts held in escrow will be sufficient to cover the costs of remediation for the duration of the project.

$2,854,600 of the escrow fund will be retained until GCERG provides post-closure bonding for the remediation projects.

ENVIRONMENTAL DESIGNEE

-TMPA will appoint an individual or environmental consultant as TMPA’s “Environmental Designee” to audit GCERG’s performance of the Remediation Projects, as well as GCERG’s performance of any post-closure regulatory requirements during the post-closure period.

-The Environmental Designee will confirm in writing that certain closure activities have been performed.

-The Environmental Designee may suspend environmental escrow payments if the Environmental Designee determines that work has fallen behind schedule. Payments from escrow will be resumed once the schedule is restored. A schedule for the Remediation Projects is attached as an Exhibit to the APA.

-Potential violations of environmental laws identified by the Environmental Designee in writing must be corrected at GCERG's expense.

MEMBER CITIES

-The Member Cities are express third party beneficiaries of all GCERG obligations to TMPA under the APA, including the indemnification obligations of GCERG.

BACKUP MATERIAL: The APA is attached to the Resolution to be considered in open session.

ACTION REQUESTED: In open session, consideration and approval of the Resolution.

December 10, 2020

AGENDA ITEM NO. 16C

SUBJECT: Real property matters – Liquidation Strategy for Mine Property

DISCUSSION:

Liquidation Strategy for Mine Property

Due to the uncertainty created by the COVID-19 pandemic, we recommend delaying considering selling the mine property until February 2021.

BACKUP MATERIAL: None

ACTION REQUESTED: None

Bob Kahn
Jan K. Horbaczewski
11/20/2020

Jan K. Horbaczewski

Bob Kahn

December 10, 2020

AGENDA ITEM NO. 17

SUBJECT: Resolution No. 2020-12-8, authorizing the sale of the Gibbons Creek Steam Electric Station; describing the conditions and circumstances for the sale, and the public purposes that will be achieved; and resolving matters incidental and related thereto.

DISCUSSION: This Resolution authorizes the sale of the Gibbons Creek Steam Electric Station ("Gibbons Creek").

In January 2016, the Board authorized requests for proposals ("RFP's") for the sale of Gibbons Creek. Between 2016 and 2019, the Agency issued three RFP's. Negotiations with the selected responders to the first two RFP's were not successful. Negotiations with the selected responder to the third RFP has resulted in the Asset Purchase Agreement, attached to the Resolution.

In 2015, the Agency obtained legislation that, among other things, clarified the authority of the Agency to sell its electric facilities. The legislation provides that a sale of an asset (other than Mine property) having a value in excess of $10 million will require the approval of the Member Cities. This requirement is also mirrored in the Joint Operating Agreement. Accordingly, the Resolution authorizes execution of the APA by the General Manager, but only after approval of all four Member Cities.

The attached Resolution describes the conditions and circumstances of the sale of these assets, and the public purposes that will be achieved, as required by law.

BACKUP MATERIAL: The Asset Purchase Agreement is attached to the Resolution.

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-8.

RESOLUTION NO. 2020-12-8

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") AUTHORIZING THE SALE OF THE GIBBONS CREEK STEAM ELECTRIC STATION; DESCRIBING THE CONDITIONS AND CIRCUMSTANCES FOR THE SALE, AND THE PUBLIC PURPOSES THAT WILL BE ACHIEVED; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, as authorized by Section 163.073, Utilities Code, the Member Cities have, by the adoption of concurrent ordinances, elected for the Agency to be governed by Subchapter C-1, Utilities Code, effective April 30, 2016;

WHEREAS, Section 163.080 of Subchapter C-1 authorizes the Agency to "sell, lease, convey, or otherwise dispose of any right, interest, or property of the agency, including its electric facilities"; and,

WHEREAS, the Board desires to authorize the sale of the Gibbons Creek Steam Electric Station;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the Board authorizes the General Manager, or a person acting at his direction, following approval of the sale by the Member Cities, to execute an Asset Purchase Agreement for the sale of the Gibbons Creek Steam Electric Station;

3. That the Asset Purchase Agreement shall be in substantially the same form as Exhibit "A", attached to this Resolution;

4. That, subject to paragraph 3, the General Manager, or a person acting at his direction, may agree on changes and supplements to the Agreement, exhibits, and schedules, for purposes, among others, of completeness and accuracy;

5. That, for purposes of Section 272.001(k), Local Government Code: (i) the conditions for the sale are as set forth in the Asset Purchase Agreement; (ii) the circumstances for the sale are that Gibbons Creek is retired and that, unless it is sold, the Agency and the Member Cities will incur substantial decommissioning costs; and (iii) the public purposes that will be achieved include the avoidance by the Agency of substantial decommissioning costs, the resulting opportunity of the Member Cities to lower the costs to be incurred by them for their electric systems, the transfer of environmental liabilities to the purchaser, and the decommissioning and remediation of the plant site in accordance with all environmental laws;

6. That the General Manager, or his designee, may take such actions as are necessary, desirable, or required to consummate and complete the transactions contemplated by the Asset Purchase Agreement; and

7. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER, 2020.

____
Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ______________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

EXHIBIT “A”

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

by and between

TEXAS MUNICIPAL POWER AGENCY,

as Seller,

and

GIBBONS CREEK ENVIRONMENTAL REDEVELOPMENT GROUP, LLC,

as Purchaser

dated as of [•], 2021

TABLE OF CONTENTS

Page

EXHIBITS

Exhibit A	Form of Bill of Sale
Exhibit B	Form of Assignment and Assumption Agreement - Purchaser
Exhibit C-1	Form of Warranty Deed for Parcels with Recognized Environmental Conditions
Exhibit C-2	Form of Warranty Deed for Parcels with no Recognized Environmental Conditions
Exhibit D	Form of Escrow Agreement
Exhibit E	Project Schedule
Exhibit F	Regulatory Closure Bond
Exhibit G	Form of Assignment and Assumption Agreement - Transferees

SCHEDULES

Schedule 1.01(a)	Purchased Personal Property
Schedule 1.01(b)	Excluded Assets
Schedule 1.01(c)	Closing Permitted Encumbrances
Schedule 1.01(d)	Seller's Knowledge
Schedule 1.01(e)	Real Property
Schedule 2.07	Assumed Liabilities
Schedule 3.02	Seller Internal Approvals
Schedule 3.03(b)	Seller Approvals
Schedule 3.04	Litigation
Schedule 3.05(a)	Compliance with Laws
Schedule 3.05(b)	Permits
Schedule 3.07(a)	Insurance
Schedule 3.07(b)	Insurance Claims
Schedule 4.03(c)	Purchaser Approvals
Schedule 5.02(a)	Conduct of Business Pending Closing
Schedule 9.06(a)	Estimated Remediation Costs per Project

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") dated as of [●], 2021, is made and entered into by and between TEXAS MUNICIPAL POWER AGENCY, a municipal corporation and municipal power agency created under the laws of the State of Texas ("Seller"), and GIBBONS CREEK ENVIRONMENTAL REDEVELOPMENT GROUP, LLC, a limited liability company organized under the laws of the State of Texas ("Purchaser").

RECITALS

WHEREAS, Seller is the owner of 6,170 acres of land located in Grimes County, State of Texas, which includes the Gibbons Creek Reservoir and associated water rights and the Gibbons Creek Steam Electric Station, and a coal-fired electric generating facility (as hereinafter more particularly defined, the "Purchased Assets"); and

WHEREAS, Purchaser and Seller desire to enter into this Agreement under which Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Seller, the Purchased Assets (as defined herein).

NOW, THEREFORE, in consideration of the foregoing and the mutual promises made in this Agreement and of the mutual benefits to be derived from such promises, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties to this Agreement, intending to be legally bound, agree as follows:

ARTICLE I.
DEFINITIONS AND CONSTRUCTION

Section 1.01 Definitions. For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

"Affiliate" means any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by contract or otherwise, and specifically with respect to a corporation, partnership, trust or limited liability company, means direct or indirect ownership of more than fifty percent (50%) of the voting securities in such corporation or of the voting interest in a partnership or limited liability company or of the beneficial interests in a trust.

"Agency Action" means any notice of violation, complaint, order, consent order, consent agreement, assessment of a fine or penalty or other similar demand for action brought by a Governmental Authority having the requisite authority and jurisdiction to bring such action.

"Agreement" has the meaning set forth in the introductory paragraph to this Agreement, including all Exhibits and Schedules attached hereto and any amendments or supplements executed and delivered in accordance with the terms hereof.

"Annual Estimate" has the meaning set forth in Section 9.06(d).

"Assigned Permits" means any Permits that Purchaser desires to assume at Closing (i) that are freely assignable by Seller to Purchaser at Closing or (ii) with respect to which Purchaser has made all applications or filings, paid all fees or other amounts, and obtained all consents or approvals necessary for Purchaser to assume such Permits at Closing.

"Assignment Agreement" has the meaning set forth in Section 2.04(b).

"Assumed Liabilities" has the meaning set forth in Section 2.07.

"Bill of Sale" has the meaning set forth in Section 2.04(a).

"Books and Records" means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, ledgers, journals, title policies, supplier lists, regulatory filings, data and plans, technical documentation (as-built drawings, design specifications or diagrams, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, original equipment manufacturer maintenance documents and technical information letters, user manuals, training materials, release notes, working papers, etc.), operating records and reports, internal and external correspondence and other documents relating to the Purchased Assets, and other similar materials.

"Business Day" means a day other than Saturday, Sunday or any day that is declared to be an official holiday in the State of Texas.

"CERCLA" means the federal Comprehensive Environmental Response, Compensation and Liability Act.

"Claim" means any demand, claim, action, legal proceeding (whether at law or in equity) or arbitration.

"Closing" has the meaning set forth in Section 2.03.

"Closing Date" means the date on which the Closing occurs.

"Closing Permitted Encumbrances" means any Existing Encumbrances other than Liens relating to any Indebtedness or which otherwise secure any Liability under any Contract on the Purchased Assets.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidentiality Agreement" means (i) that certain Confidentiality Agreement dated April 10, 2019, between Melt Solutions, LLC (an Affiliate of Purchaser) and Seller, and (ii) any confidentiality agreement between Seller and Purchaser (or any of Purchaser's Affiliates), or their respective successors or assigns.

"Contract" means any enforceable written or oral agreement, understanding, lease, license, option, guaranty, warranty, evidence of indebtedness, mortgage, indenture, security agreement, purchase order, binding bid, letter of credit, loan agreement or other enforceable contract, commitment or undertaking of any kind.

"Dispute" has the meaning set forth in Section 10.05(a).

"Dispute Notice" has the meaning set forth in Section 10.05(a).

"Environment" means soil, land, surface and subsurface strata, surface waters (including navigable and non-navigable inland and ocean waters), groundwaters, drinking water supply, stream sediments, indoor or outdoor air, plant and animal life, and any other environmental medium or natural resource.

"Environmental Compliance" means any permitting, registering, closure, remediation, mitigation, investigation, monitoring, posting of financial assurance, reporting, filing, maintaining, inspecting, recording or other actions, obligations or requirements under Environmental Laws in connection with the Purchased Assets, irrespective of whether the Liability, Release, acts, omissions, Claims or violations giving rise to such requirements are alleged to have occurred, or the facts and conditions giving rise or related to such Liability, obligations or requirements existed prior to or subsequent to Closing or were known or unknown as of Closing.

"Environmental Conditions" means the presence of Hazardous Substances which have been Released into the Environment or the presence of Hazardous Substances that would reasonably be expected to pose a threat of Release of Hazardous Substances into the Environment in violation of Environmental Laws.

"Environmental Designee" means an individual or consulting firm selected by Seller to perform the environmental review and audit activities set forth in Section 9.01(b).

"Environmental Insurance Policy" means a pollution legal liability insurance policy covering the Real Property, in form and substance acceptable to Seller, for the benefit of the Seller Indemnitees and issued by an insurer rated no less than A- or equivalent by Moody's, S&P or A.M. Best, with: (i) a 100% earned premium on the Closing Date, (ii) $25,000,000 coverage limits for all on-site and off-site Response Actions, third-party bodily injury and property claims, unknown environmental conditions at, on, under or migrating from the Real Property, diminution in value, off-site disposal and transportation, and Purchaser's Indemnification Obligations, (iii) a minimum 10-year primary term commencing on the Closing Date, and (iv) the option for Seller Indemnitees, at their own expense, to renew the policy at the conclusion of the primary term.

"Environmental Laws" means any and all Laws or permits relating to pollution or occupational health or safety or protection of human health or the Environment, including those relating to emissions, Release or threatened Release into or impacting the Environment, or otherwise relating to the management, generation, manufacture, processing, distribution, use, treatment, storage, disposal, emission, discharge, transport or handling of Hazardous Substances. "Environmental Laws" includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Emergency Planning and Community Right-to-Know Act, as amended, the Resource Conservation and Recovery Act, as amended, the Occupational Safety and Health Act, as amended, the Clean Air Act, as amended, the Clean Water Act, as amended, the Oil Pollution Act, as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, and any other federal, state and local Laws related to same, and their implementing regulations, policies and agency guidance, whether any of the foregoing are in effect or otherwise applicable prior to, as of, or subsequent to Closing.

"Environmental Liabilities" mean any and all Losses, Liabilities, costs (including investigative, monitoring, containment, disposal and remediation costs and court costs and other costs of administrative or judicial proceedings), asset retirement obligations, fines and penalties, judgments, awards or damages (including personal injury and property damages based on or arising out of exposure to Hazardous Substances), natural resource damage and assessments, third party Claims, injunctive relief and fees (including reasonable attorney, expert, engineering and consultant fees) related to, caused by, or resulting from (i) the presence, creation, storage, impoundment, handling, or Release of any Hazardous Substances on the Real Property or arising under or with respect to any Environmental Laws, irrespective of whether the Release, act, omissions, Claims or violations are alleged to have occurred or the facts and conditions giving rise or related to the Losses, Liabilities or costs existed prior to or subsequent to Closing or were known or unknown as of Closing, (ii) Plant Shutdown and Decommissioning and Regulatory Closure of the Purchased Assets, including any Environmental Compliance and Response Actions, and (iii) Environmental Post-Closure Requirements.

"Environmental Post-Closure Requirements" means any monitoring, investigation, maintenance, inspection, corrective action or other Response Actions required to be performed as a condition of Regulatory Closure by the EPA, the TCEQ, and each other environmental regulatory agency having jurisdiction over the Real Property, including all obligations to obtain, maintain, renew and reissue any Post-Closure Bond and other Performance Bonds through Regulatory Closure of the Purchased Assets as required by this Agreement.

"EPA" means the United States Environmental Protection Agency.

"ERCOT" means The Electric Reliability Council of Texas and any successor.

"Escrow Agent" means any independent, commercial escrow agent acceptable to both of the Parties.

"Escrow Agreement" has the meaning set forth in Section 2.04(d).

"Escrowed Amount" means Twenty-Eight Million Five Hundred Forty-Six Thousand ($28,546,000).

"Excluded Assets" means, notwithstanding any other provision of this Agreement, all assets of Seller other than the Purchased Assets, including the following:

(a) cash, certificates of deposit and other bank deposits, treasury bills and other cash equivalents or other investments, on hand or in bank accounts, and all of Seller's bank accounts, intercompany accounts, accounts receivable, and notes receivable;

(b) all refunds or credits, if any, of Taxes due to or from Seller and (i) accrued prior to the Closing or that are otherwise applicable to a Pre-Closing Tax Period or (ii) which otherwise cannot be assigned by Law;

(c) all Books and Records and other corporate, financial and Tax records of Seller;

(d) Seller's insurance policies; and

(e) the assets identified as "Excluded Assets" in Schedule 1.01(b).

"Excluded Liabilities" has the meaning set forth in Section 2.08.

"Execution Date" means the date of this Agreement.

"Existing Encumbrances" means (a) mechanic's, materialmen's, workmen's, repairmen's and similar Liens arising in the Ordinary Course with respect to any amounts not yet due and payable or which (i) are being contested in good faith through appropriate proceedings or (ii) have been bonded; provided, that in either case, none of the Purchased Assets are reasonably likely to become subject to forfeiture or sale during the pendency of any such proceeding; (b) Liens for Taxes not yet due and payable or which are being contested in good faith through appropriate proceedings; provided, that no portion of the Purchased Assets is reasonably likely to result in sale or forfeiture during the pendency of such proceedings; (c) in the case of Real Property, all such items and matters as are disclosed on the Existing Survey; (d) Liens, encumbrances, easements, retained rights and other matters disclosed on Schedule 1.01(b) or Schedule 1.01(c) hereto; (e) zoning, entitlement, conservation restriction and other land use and environmental regulations by any Governmental Authority; (f) Liens caused by, created by, or existing as a result of, or pursuant to, this Agreement, or otherwise approved or consented to by Purchaser in writing; (g) Liens relating to any Indebtedness; and (h) any other Lien or encumbrance of record.

"Existing Survey" means the Survey Plat of Texas Municipal Power Agency (TMPA Power Plant & Gibbons Creek Reservoir) dated November 21, 2016, last revised August 8, 2018, prepared by S.M. Kling, R.P.L.S. No. 2003, of Civil Engineering Consultants, a copy of which has been delivered to Purchaser.

"Fixtures and Improvements" means the improvements located on the Real Property and the fixtures attached to such improvements, including the coal-fired boiler, steam turbine, air handling equipment, circulating water pumps, transformers, storage tanks, generator interconnection facilities, air conditioning, ventilation and heating equipment, control stations, and cranes owned by Seller.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or any state, county, city or other political subdivision or similar governing entity, and including any governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over water, gas, electricity, power or other markets, including NERC, PUCT and ERCOT, but excluding Seller and any of its Member Cities.

"Guaranteed Obligations" has the meaning set forth in Section 9.06(c)(ii).

"Hazardous Substance" means any chemical, element, substance, compound, mixture, material or waste presently listed, defined or classified as a pollutant, toxic pollutant, contaminant, hazardous substance, toxic substance, solid waste, hazardous waste, hazardous material, hazardous air pollutant, extremely hazardous waste, extremely hazardous substance, restricted hazardous waste, toxic waste under any applicable Environmental Laws, including asbestos, presumed asbestos-containing material, asbestos-containing material, petroleum, petroleum products, natural gas or synthetic gas usable for fuel, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, flammables and explosives.

"Indebtedness" means any of the following: (a) any indebtedness for borrowed money; (b) any obligations evidenced by bonds, debentures, notes or other similar instruments; (c) any obligations to pay the deferred purchase price of property or services, except trade accounts payable and other liabilities arising in the Ordinary Course; (d) any obligations as lessee under capitalized leases; (e) any obligations, contingent or otherwise, under acceptance, letters of credit or similar facilities; and (f) any guaranty of any of the foregoing.

"Indemnification Obligations" means all of Purchaser's indemnification obligations arising under this Agreement, including those set forth in Sections 8.02 and 9.02.

"Insufficiency" means the amount, at any given time, by which (i) the estimate of the cost required to complete the Guaranteed Obligations covered by a Performance Bond exceeds (ii) the penal sum of such Performance Bond plus the portion, if any, of the Escrowed Amount that is allocated specifically to the completion of such Guaranteed Obligations.

"Insufficiency Notice" has the meaning set forth in Section 9.06(d).

"Interim Period" means the period of time from the Execution Date until the earlier to occur of (x) the Closing Date and (y) termination of this Agreement.

"Joint Operating Agreement" means the Joint Operating Agreement, dated September 1, 2016, among Seller and Member Cities, as amended to date.

"Knowledge" means, in the case of Seller, the actual, present recollection (as opposed to any constructive or imputed knowledge) of the individuals listed on Schedule 1.01(d); provided that lack of Knowledge by an individual listed in Schedule 1.01(d) shall only be claimed to the extent such individual has reviewed the provisions contained in this Agreement to which Seller's Knowledge is applicable and the corresponding Schedules hereto.

"Laws" means all laws, statutes, rules, regulations, ordinances, Orders, and other pronouncements having the effect of law of any Governmental Authority.

"Liabilities" or "Liability" means any and all direct or indirect liability, obligation, commitment, expense, Claims, loss, damage, indebtedness, principal, interest, penalty, guaranty or endorsement of any type, absolute or contingent, known or unknown, accrued or unaccrued, due or to become due, liquidated or unliquidated.

"Lien" means any security interest, pledge, mortgage, lien, charge, encumbrance, conditional sale agreement, title retention contract, right of first refusal, option to purchase, proxy, voting trust or voting agreement or any similar interest.

"Loss" or "Losses" means any and all judgments, Liabilities, amounts paid in settlement, awards, damages, fines, penalties, deficiencies, losses, Claims, demands, assessments, costs, and expenses (including interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any Claim, default, assessment, Order, decree, action, cause of action, litigation, suit, investigation, notice of violations, or other proceedings).

"Material Adverse Effect" means any results, occurrences, facts, changes, events or effects occurring on or after the Execution Date and prior to Closing that, individually or in the aggregate, could reasonably be expected to have, or has had a material adverse effect on (a) the Purchased Assets or the Assumed Liabilities, or (b) the ability of Seller to consummate the transaction hereunder or perform its obligations hereunder, each on a timely basis.

"Member Cities" means the City of Bryan, Texas, City of Denton, Texas, City of Garland, Texas, and City of Greenville, Texas. "Member City" shall refer to any of the Member Cities individually.

"Moody's" means Moody's Investor Services, Inc., and its successors.

"NERC" means North American Electric Reliability Corporation and any successor.

"Notifying Party" has the meaning set forth in Section 10.05(a).

"Order" means any final, non-appealable award, decree, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority, or by any arbitrator.

"Ordinary Course" means the ordinary course of business, consistent with Seller's prior operations, except as may be affected by the performance of Seller's obligations under this Agreement.

"Parcel" or "Parcels" means one or more, as applicable, of the ten (10) parcels of the Real Property described on Schedule 1.01(e).

"Parcels with Recognized Environmental Conditions" means all Parcels other than Parcels with No Recognized Environmental Conditions.

"Parcels with No Recognized Environmental Conditions" means any Parcel or Parcels for which Seller has received from Purchaser or any Transferee written evidence, acceptable to Seller or the Environmental Designee, that any of the following conditions has been met with respect to such Parcel or Parcels:

(i) An ASTM Phase I Environmental Site Assessment (ESA) and, if necessary, an ASTM Phase 2 ESA, performed by a third party "Environmental

Professional" (as defined in 40 CFR § 312.10) determines such Parcel is free from "Recognized Environmental Conditions" (as defined in ASTM International *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* (ASTM Standard E 1527-05, as may be revised or updated from time to time)); or

(ii) Purchaser obtains a Certificate under the Innocent Owner/Operator Program (IOP) for any Recognized Environmental Condition on such Parcel which is contaminated as a result of a release or migration of contaminants from a source or sources not located on such Parcel and neither Purchaser nor Seller caused or contributed to the source or sources of the contamination on such Parcel; or

(iii) Purchaser enrolls such Parcel in the TCEQ's Voluntary Cleanup Program (VCP) and obtains a Certificate of Completion and Final Certificate from the TCEQ meeting the requirements as established by the Texas Health and Safety Code, Title 5, Subtitle B, Chapter 361, Subchapter S, Voluntary Cleanup Program §361.601.

"Party" or "Parties" means Purchaser, on the one hand, and Seller, on the other hand.

"Performance Bond" or "Performance Bonds" mean one or more, as applicable, of the Regulatory Closure Bond, the Post-Closure Bond(s), and all other payment and performance bonds or other forms of financial assurance issued for the benefit of Seller or TCEQ pursuant to this Agreement.

"Permits" means all permits, licenses, franchises, concessions, consents, authorizations, approvals, registrations, filings or similar acts of, with, or by any Governmental Authority that are currently held by Seller in connection with the Purchased Assets.

"Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority, Seller, and the Member Cities.

"Plant Shutdown and Decommissioning" means, without limitation, removal of residual coal and ash from handling systems, emptying chemical storage tanks and associated piping, emptying oil and fuel-containing equipment and associated piping, removing excess chemical and waste containers, venting and purging compressed gas tanks and lines, closing and draining water intake and discharge structures and systems, removal of excess above grade coal, removal of Hazardous Substances from buildings and structures.

"Post-Closing Tax Period" means any Tax period ending on or after the Closing Date.

"Post-Closure Bond" means one or more payment and performance bonds, or other forms of financial assurance, to guarantee the performance of the Environmental Post-Closure Requirements through Regulatory Closure of the Purchased Assets, either (i) in the penal sum and form prescribed by TCEQ or (ii) in a penal sum sufficient to guarantee the Parties' mutually-agreeable estimated costs of completing the guaranteed Environmental Post-Closure Requirements and in a form reasonably acceptable to Seller.

"Pre-Closing Tax Period" means any Tax period ending before the Closing Date.

"Preliminary Regulatory Closure" means written confirmation from the EPA, the TCEQ, and each other environmental regulatory agency having jurisdiction over the Real Property, as applicable under Environmental Laws, that (i) all Required Remediation Actions have been performed and completed in compliance with all applicable Environmental Laws or other applicable governmental regulations, including a closure plan or response action plan approved by an applicable Governmental Authority, and no further action is required for the Required Remediation Actions other than the performance of any Environmental Post-Closure Requirements and (ii) Plant Shutdown and Decommissioning and all other Response Actions or Environmental Compliance required pursuant to applicable Environmental Law have been performed and completed in compliance with all applicable Environmental Laws or other applicable governmental regulations and no further action is required for the Purchased Assets other than the performance of any Environmental Post-Closure Requirements.

"Project Schedule" means the 34-month remediation project schedule attached hereto as Exhibit E.

"PUCT" means Public Utility Commission of Texas and any successor.

"Purchased Assets" means the Real Property (excluding any mineral interests related thereto), Fixtures and Improvements, Warranties, Assigned Permits, and the personal property listed on Schedule 1.01(a), in each instance excluding the Excluded Assets.

"Purchaser" has the meaning set forth in the introductory paragraph to this Agreement.

"Purchaser Approvals" has the meaning set forth in Section 4.03(c).

"Purchaser's Determination" has the meaning set forth in Section 2.06(c).

"Real Property" means all of the real property interests described on Schedule 1.01(e).

"Recipient Party" has the meaning set forth in Section 10.05(a).

"Regulatory Closure" means written confirmation from the EPA, the TCEQ, and each other environmental regulatory agency having jurisdiction over the Real Property, as applicable under Environmental Laws, that (i) all Required Remediation Actions have been performed and completed in compliance with all applicable Environmental Laws or other applicable governmental regulations and no further action is required for the Required Remediation Actions, and (ii) Plant Shutdown and Decommissioning and all other Response Actions or Environmental Compliance required pursuant to applicable Environmental Law have been performed and completed in compliance with all applicable Environmental Laws or other applicable governmental regulations and no further action is required for the Purchased Assets.

"Regulatory Closure Bond" means a payment and performance bond, or other form of financial assurance, in the penal sum of Thirty Six Million Five Hundred Thousand Dollars ($36,500,000.00) to guarantee all Guaranteed Obligations with the exception of Environmental Post-Closure Requirements, in the form attached hereto as Exhibit F.

"Reimbursement Agreement" means that certain Air Permit Cost Reimbursement Agreement dated February 21, 2020, among Seller, Charah, LLC, and Melt Solutions, LLC.

"Release" or "Released" means any release, spill, emission, overflow, leaking, pumping, pouring, dumping, emptying, discharge, disposing, deposit, injection, escaping, leaching, seepage, infiltration, introduction, or migration, whether intentional or accidental, authorized or unauthorized, of any substance into the Environment, into or out of any property, into or out of any building or other improvements, or the threat of any of the foregoing.

"Required Remediation Actions" means all actions necessary to (i) remove coal combustion residuals from, and decontaminate or otherwise close, the scrubber sludge pond and all ash ponds located on the Real Property in accordance with 40 CFR §257.102(c) of EPA's rules, as may be amended, and all associated TCEQ rules, as may be amended, (ii) close in place the Site F landfill located on the Real Property in accordance with 40 CFR §257.102(d) of EPA's rules, as may be amended, and associated TCEQ rules, as may be amended, (iii) close the Site A landfill and the plant collection pond located on the Real Property in accordance with the TCEQ's rules, as may be amended, and (iv) diligently pursue all of the foregoing actions to Regulatory Closure in accordance with the Project Schedule.

"Response Actions" means any investigation, assessment, sampling, analysis, data or information collection, document drafting, agency submittals and correspondence, monitoring, abatement, removal, decontamination, remediation, cleanup, mitigation, management, treatment, storage, transportation or disposal related to the presence or Release of Hazardous Substances required under Environmental Laws relating to the Purchased Assets or any property contaminated or impacted by such Release and required in order to obtain Regulatory Closure.

"Representatives" means the officers, directors, managers, employees, limited liability company members, limited and general partners, counsel, accountants, financial advisers or consultants and other agents of a Person and its Affiliates.

"S&P" means Standard & Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc., and its successors.

"Schedule" or "Schedules" means one or more of the disclosure schedules attached hereto.

"Seller" has the meaning set forth in the introductory paragraph to this Agreement.

"Seller Approvals" has the meaning set forth in Section 3.03(b).

"Seller Indemnitees" has the meaning set forth in Section 8.02(a).

"Seller Internal Approvals" has the meaning set forth in Section 3.02.

"Tax" or "Taxes" means any foreign, United States federal, state or local net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, personal property (tangible and intangible), real property (including general and special assessments), value added, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, environmental or windfall profit tax, custom, duty or other tax, or other governmental fee, assessment or charge of any kind whatsoever, together with any interest, penalty or addition thereto.

"Tax Returns" means any return, report or similar statement required to be filed with respect to any Taxes, including any information return, claim for refund, amended return and declaration of estimated Tax.

"TCEQ" means the Texas Commission on Environmental Quality.

"Termination Date" has the meaning set forth in Section 7.01(b)(i).

"Transferee" means any transferee, grantee, assignee or owner of all or any portion of the Real Property as a result of any transfer, sale, grant, assignment or other disposition of all or any portion of the Real Property by Purchaser after, or contemporaneously with, Closing, including the successors and assigns of each of such transferees, grantees, assignees or owners.

"Warranties" means all transferable rights of Seller under or pursuant to all third-party warranties, representations and guarantees made by manufacturers and suppliers in connection with the Purchased Assets or services furnished to Seller pertaining to the Purchased Assets.

"Warranty Deeds" has the meaning set forth in Section 2.04(c).

Section 1.02 Construction.

(a) All Article, Section, Subsection, Schedule and Exhibit references used in this Agreement are to Articles, Sections, Subsections, Schedules and Exhibits to this Agreement unless otherwise specified. The Exhibits and Schedules attached to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes.

(b) If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words "includes" or "including" shall mean "includes without limitation," "including without limitation," or "including, but not limited to" and the words "hereof," "hereby," "herein," "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Section or Article in which such words appear. The words "shall" and "will" shall have the same meaning and be of equal force and effect. Any reference to a Law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. Currency amounts referenced herein are in U.S. Dollars.

(c) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(d) Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that in the event an ambiguity of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption shall arise favoring either Party by virtue of the authorship of any provisions of this Agreement.

ARTICLE II.
PURCHASE AND SALE; CLOSING

Section 2.01 Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, at Closing (i) Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, the Purchased Assets, (ii) Seller shall assign to Purchaser, and Purchaser shall assume, the Assumed Liabilities, and (iii) Purchaser shall incur the Indemnification Obligations for the benefit of the Seller Indemnitees, all pursuant to the terms of this Agreement. Notwithstanding anything to the contrary, Purchaser will not acquire any of the Excluded Assets or assume any of the Excluded Liabilities.

Section 2.02 Acquisition Consideration. The aggregate acquisition consideration for the Purchased Assets is comprised of (i) Ten Dollars ($10.00); (ii) the assumption by Purchaser of the Assumed Liabilities; (iii) the Performance Bonds; and (iv) Purchaser's Environmental Insurance Policy and Indemnification Obligations in favor of the Seller Indemnitees as set forth in this Agreement.

Section 2.03 Closing. Unless this Agreement has been terminated pursuant to Article VII, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place through the electronic exchange of documents, immediately following the satisfaction or waiver by the applicable Party of all of the conditions to the Closing set forth in Sections 6.01 and 6.02. At Closing, the Parties shall (i) record the Warranty Deeds, (ii) circulate to the Parties fully-executed copies of all documents listed in Sections 2.04 and 2.05, (iii) deliver to Seller the issued Regulatory Closure Bond and the issued Environmental Insurance Policy, and (iv) Seller shall make the payments set forth in Section 2.04. Each Party shall notify the other Party in writing promptly after all of the requirements set forth in Sections 6.01 and 6.02 within such Party's control have been satisfied or are susceptible of being satisfied upon the delivery of the certificates set forth in such sections.

Section 2.04 Deliveries by Seller. On or before the Closing Date, Seller shall deliver, or cause to be delivered, the following items to Purchaser:

(a) an executed original of a Bill of Sale substantially in the form attached hereto as Exhibit A (the "Bill of Sale");

(b) an executed original of an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit B (the "Assignment Agreement");

(c) executed originals of the Special Warranty Deeds for Parcels with Recognized Environmental Conditions substantially in the form attached hereto as Exhibit C-1 and for Parcels with No Recognized Environmental Conditions substantially in the form attached hereto as Exhibit C-2 (collectively, the "Warranty Deeds");

(d) an executed original of the Escrow Agreement substantially in the form attached hereto as Exhibit D (the "Escrow Agreement");

(e) delivery of the Escrowed Amount to the Escrow Agent;

(f) delivery of Six Million Three Hundred Fifty-Four Thousand Dollars ($6,354,000) to Purchaser;

(g) delivery of fifty (50%) of the premium for the Regulatory Closure Bond to Purchaser; and

(h) an affidavit dated as of the Closing Date, in the form required by Treasury Regulations Section 1.1445-2(b)(2) and signed under penalties of perjury, stating that Seller (or, in the case of a Seller that is a disregarded entity, its owner for federal income Tax purposes) is not a foreign person (within the meaning of Section 1445 of the Code).

Section 2.05 Deliveries by Purchaser. On or before the Closing Date, Purchaser shall deliver, or cause to be delivered, the following items to Seller:

(a) an executed original of the Assignment Agreement;

(b) an executed original of the Escrow Agreement;

(c) an issued original of the Regulatory Closure Bond;

(d) evidence that the Environmental Insurance Policy will be bound at Closing as required by this Agreement; and

(e) executed originals of the Warranty Deeds.

Section 2.06 Prorations. No amounts receivable or payable under any Contracts will be prorated between Seller and Purchaser as of the Closing Date. No Taxes will be prorated since Seller is not subject to any sales, ad valorem, or income taxes.

Section 2.07 Assumed Liabilities. At the Closing, Purchaser shall assume the Liabilities and obligations relating to the Purchased Assets set forth in Schedule 2.07 (collectively, the "Assumed Liabilities") and the pre-Closing Liabilities included in the Indemnification Obligations.

Section 2.08 Excluded Liabilities. Except for the Assumed Liabilities and the pre-Closing Liabilities included in the Indemnification Obligations, Purchaser shall not assume, and shall not be deemed to have assumed, any Liabilities or obligations related to the Purchased Assets for the period prior to the Closing (such pre-Closing Liabilities of Seller, other than the Assumed Liabilities and the pre-Closing Liabilities included in the Indemnification Obligations, collectively, the "Excluded Liabilities"). For the avoidance of doubt, "Excluded Liabilities" specifically includes: (i) Seller's labor, employment, benefits and ERISA liabilities; (ii) liabilities and obligations (other than Environmental Liabilities) under Permits, Warranties or Contracts not assigned to Purchaser; (iii) liabilities (other than Environmental Liabilities) related to the Excluded

Assets; (iv) Seller's Indebtedness; (v) Seller's Tax liabilities, and (vi) Seller's transaction expenses.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser as of the Execution Date and as of the Closing Date that:

Section 3.01 Organization and Qualification. Seller is a municipal corporation and municipal power agency created under the laws of the State of Texas, and is duly formed, validly existing and in good standing under the laws of the state of Texas. Seller is duly qualified or licensed to do business in each other jurisdiction where the actions required to be performed by it under this Agreement makes such qualification or licensing necessary.

Section 3.02 Authority. Seller has all corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations hereunder, have been duly and validly authorized by all necessary corporate action on the part of Seller except as set forth on Schedule 3.02 (collectively, "Seller Internal Approvals"). This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as the same may be limited by governmental immunity, bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles, regardless of whether considered in a proceeding at law or in equity.

Section 3.03 No Conflicts; Consents and Approvals. The execution and delivery by Seller of this Agreement does not, and the performance by Seller of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a) subject to obtaining Seller Internal Approvals, conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Joint Operating Agreement or any other organizational, governing, formation, or charter documents of Seller;

(b) subject to obtaining all required filings, approvals, consents, authorizations and notices set forth on Schedule 3.03(b) (collectively, with the Seller Internal Approvals, "Seller Approvals"), result in the imposition of any Lien (other than a Closing Permitted Encumbrance) upon any of the Purchased Assets; or

(c) subject to obtaining the Seller Approvals, (i) materially violate or materially breach any Law or writ, judgment, Order or decree applicable to Seller, (ii) require any consent or approval of any Governmental Authority under any Law applicable to Seller, or (iii) require the consent or approval of any other third party.

Section 3.04 Litigation. Except as disclosed on Schedule 3.04, there are no material Claims pending or, to the Knowledge of Seller, threatened in writing against Seller before any Governmental Authority or any arbitrator. Seller is not subject to any judgment, decree, injunction, rule or Order of any Governmental Authority or any arbitrator that prohibits the consummation of the transactions contemplated by this Agreement or that would, if determined adversely to Seller, encumber the Purchased Assets or all or any portion thereof. Seller has not filed, nor is subject to, any bankruptcy, receivership, or insolvency proceedings as a debtor.

Section 3.05 Compliance with Laws; Permits.

(a) Except (i) as disclosed on Schedule 3.05(a) and (ii) with respect to Environmental Laws and laws relating to Taxes (as to which no representations or warranties are made by Seller), the Purchased Assets materially comply with applicable Laws.

(b) Schedule 3.05(b) sets forth a list of the Permits. To the extent requested by Purchaser, Seller has delivered to Purchaser true and complete copies of each requested Permit, together with all amendments thereto.

Section 3.06 Real Property.

(a) Except for Existing Encumbrances set forth on Schedule 1.01(c), Seller has good and indefeasible title to the Real Property and, subject to the Existing Encumbrances, to Seller's Knowledge there is no unrecorded Lien, easement, right-of-way agreement, license, lease (including leases of minerals, geothermal resources, and/or oil and gas), sublease, occupancy agreement, or like instrument burdening the Real Property. Seller has not received any written condemnation notice from any Governmental Agency or entity with the private right of eminent domain with respect to the Real Property that remains unresolved as to which Seller has not given notice to Purchaser and there is no pending or, to the Knowledge of Seller, threatened condemnation of any portion of the Real Property. Seller is in compliance in all material respects with all applicable easements, covenants and similar restrictions affecting the Real Property.

(b) No offer has been made by Seller to any Person that is binding on Seller or the Real Property to dedicate any of the Real Property.

(c) To Seller's Knowledge, there are no tenants or other occupants in possession of the Real Property except pursuant to the Closing Permitted Encumbrances.

(d) Since Seller's acquisition of the Real Property, no Person has initiated any lawsuit or filed any legal action challenging Seller's ownership of, or right of possession to, the Real Property.

(e) Except for this Agreement and the Closing Permitted Encumbrances, Seller is not a party to any executory agreement to sell or lease the Real Property and has not granted any options or rights with respect to the sale or lease of the Real Property in the future.

(f) To Seller's Knowledge, no Person has filed or intends to file a mechanic's, materialmen's, workmen's, repairmen's or similar lien on the Real Property.

(g) Seller has not been notified by any Person that money is past due and owing for construction, alteration or repair work on the Real Property.

(h) Except for this Agreement and the Closing Permitted Encumbrances, Seller has not granted any enforceable legal rights that affect the ownership or use of the Real Property.

(i) Except for this Agreement and the Closing Permitted Encumbrances, to Seller's Knowledge, no Person has any enforceable legal rights to own or possess the Real Property.

(j) Seller has no Knowledge of any unresolved boundary line disputes affecting the Real Property.

Section 3.07 Insurance.

(a) Seller has delivered to Purchaser a true and complete list of the primary or excess policies of insurance covering the Purchased Assets and their ownership, use and operations as of the date hereof, all of which are set forth on Schedule 3.07(a).

(b) From March 9, 2020, through the date hereof, other than as set forth in Schedule 3.07(b), no Claim under any of the insurance policies listed in Schedule 3.07(a) has been made, nor have any Losses been suffered, including first-party property damage Claims or Claims "incurred but not reported," that have not been filed or settled under Seller's property insurance policies. Neither Seller, nor to Seller's Knowledge, any Affiliate or agent of Seller, has failed to give, in a timely manner, any notice required under any of the insurance policies listed in Schedule 3.07(a) to preserve its rights thereunder with respect to the Purchased Assets following any Claims occurring on or following March 9, 2020.

Section 3.08 Taxes.

(a) Seller is a municipal corporation and, as such, is exempt from property taxes, sales taxes, and income taxes. Seller has not received any notice from any Governmental Authority of any outstanding Claims or assessments with respect to any Tax relating to the Purchased Assets and no such Claim is pending or is presently being asserted in writing against the Seller or with respect to any of the Purchased Assets. Seller knows of no Tax assessment against the Purchased Assets.

(b) Seller has not received written notice of any Claim by any Governmental Authority that it is or may be subject to any Tax.

Section 3.09 Brokers. None of Seller or any of its Affiliates has incurred any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Purchaser or any of its Affiliates could become liable or obligated.

Section 3.10 Title to Purchased Assets. Seller has good title to the Purchased Assets, free and clear of all Liens, except for Existing Encumbrances.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as of the Execution Date and as of the Closing Date that:

Section 4.01 Organization and Qualification. Purchaser is a limited liability company, and is duly formed, validly existing and in good standing under the laws of the state of Texas. Purchaser is duly qualified or licensed to do business in Texas and in each other jurisdiction where the actions required to be performed by it under this Agreement makes such qualification or licensing necessary.

Section 4.02 Authority. Purchaser has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Purchaser of this Agreement and the performance by Purchaser of its obligations hereunder have been duly and validly authorized by all necessary limited liability company action on the part of Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles, regardless of whether considered in a proceeding at law or in equity.

Section 4.03 No Conflicts; Consents and Approvals. The execution and delivery by Purchaser of this Agreement does not, and the performance by Purchaser of its obligations under this Agreement and the consummation by Purchaser of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of any organizational, governing, formation, or charter documents of Purchaser;

(b) violate or result in a default (or give rise to any right of termination, cancellation or acceleration) under any Contract to which Purchaser is a party, or require any notice be given (which has not been given) under any Contract to which Purchaser is a party or by which it is bound; or

(c) subject to obtaining the filings, approvals, consents, authorizations and notices set forth on Schedule 4.03(c) (the "Purchaser Approvals"), will not (i) violate or breach any Law or writ, judgment, Order or decree applicable to Purchaser, (ii) require the consent or approval of any other Governmental Authority under any applicable Law, or (iii) require the consent or approval of any third party.

Section 4.04 Litigation. There are no Claims pending or, to Purchaser's knowledge, threatened in writing against Purchaser. Purchaser is not subject to any judgment, decree, injunction, rule or Order of any Governmental Authority or any arbitrator that prohibits the consummation of the transactions contemplated by this Agreement or would, in the aggregate, reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereunder.

Section 4.05 Compliance with Laws. Purchaser is not in violation of any Law, except for violations that would not, in the aggregate, have a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereunder.

Section 4.06 Brokers. None of Purchaser or any of its Affiliates has incurred any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller or any of its Affiliates could become liable or obligated.

Section 4.07 Anti-Boycott Verification. Pursuant to Section 2271.002, Texas Government Code, to the extent this Agreement is a contract for goods or services, Purchaser hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not Boycott Israel and, subject to or as otherwise required by applicable Federal law, Purchaser agrees not to Boycott Israel during the term of this Agreement. For purposes of this Section, "Boycott Israel" shall have the meaning given such term in Section 808.001, Texas Government Code. Purchaser understands "affiliate" for this Section 4.07 to mean an entity that controls, is controlled by, or is under common control with Purchaser and exists to make a profit.

Section 4.08 Prohibition on Contracts with Certain Companies. Purchaser and the person or persons executing this Agreement on behalf of Purchaser, or representing themselves as executing this Agreement on behalf of Purchaser (collectively, the "Signing Entities"), hereby acknowledge that (a) the Signing Entities do not engage in business with Iran, Sudan or any foreign terrorist organization and (b) the Signing Entities are not named on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf

Section 4.09 Contracting Information. If this Agreement is executed on or after January 1, 2020, and the Agreement is a contract within the scope of Section 552.371, Government Code, then the following shall apply: (a) the requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and Purchaser agrees that this Agreement may be terminated if Purchaser knowingly or intentionally fails to comply with a requirement of that subchapter and (b) without limiting the foregoing, Purchaser agrees to comply with the requirements of Section 552.372, Government Code, including Section 552.372(a)(3)(B), Government Code.

Section 4.10 Purchaser's Due Diligence Procedures. Purchaser acknowledges and agrees that (i) Purchaser and its Representatives have had ample opportunity to conduct Purchaser's own due diligence with respect to the Purchased Assets, have been given adequate access to the Real Property to inspect the Purchased Assets and their physical and operational condition, and have been given adequate opportunity to ask questions of, and have received satisfactory responses from, Seller and its Representatives, (ii) Purchaser and its Representatives have had adequate opportunity to, but Purchaser has voluntarily elected not to, obtain a title report or examine title with respect to the Real Property or obtain an owner's policy of title insurance covering its ownership interest in the Real Property, (iii) Seller has not obtained a title report or examined title to the Real Property with respect to any of Seller's representations set forth in Article III of this Agreement, and (iv) Purchaser and its Representatives have created Purchaser's own economic projections for the Purchased Assets and Purchaser has not relied on any financial or economic projections, forecasts, conditions, assumptions or information received from Seller or its Representatives.

ARTICLE V.
COVENANTS

Section 5.01 Access of Purchaser. During the Interim Period, Seller shall provide Purchaser and its Representatives with reasonable access to the Purchased Assets and the officers and management employees of Seller in such a manner so as not to unreasonably interfere with the business or operations of Seller, provided that Seller shall have the right to (i) have a Representative present for any communication with employees or officers or its contractors and (ii) impose reasonable restrictions and requirements for safety or operational purposes.

Section 5.02 Conduct of Business Pending the Closing.

(a) During the Interim Period, Seller shall maintain the Purchased Assets in the Ordinary Course. Without limiting the foregoing, except as otherwise contemplated by this Agreement or set forth in Schedule 5.02(a) or as consented to by Purchaser (not to be unreasonably withheld, conditioned or delayed), Seller will not, and will not permit any Person to, during the Interim Period:

(i) sell, transfer, convey, encumber or otherwise dispose of any portion of, or interest in, any of the Purchased Assets, or grant any easement, right-of-way agreement, license, lease, sublease, occupancy agreement, or like instrument burdening any portion of, or interest in, the Real Property that will survive the Closing, other than Existing Encumbrances;

(ii) fail to maintain its existence;

(iii) liquidate, dissolve, reorganize or otherwise wind up its business;

(iv) enter into, modify or terminate (partially or completely), grant any waiver under, or give any consent with respect to, any Assigned Permit, except in the Ordinary Course, which action shall be promptly disclosed in writing to Purchaser by Seller;

(v) enter into any agreement or settlement with any Governmental Authority that would affect Purchaser after the Closing;

(vi) terminate any material policy of insurance, unless such policy is replaced with a policy of insurance from financially responsible insurers covering substantially the same risks, including substantially the same coverage amounts, and including substantially the same or lower deductibles; or

(vii) agree or commit to do any of the foregoing.

(b) Seller may take commercially reasonable actions with respect to emergency situations or to comply with applicable Laws.

Section 5.03 Press Releases. For the period between the signing of this Agreement and the Closing Date, Seller and Purchaser will consult with each other before issuing, and provide each other a reasonable opportunity to review and make reasonable comment upon any press release relating to this Agreement; provided, however, the Parties acknowledge that this Agreement will become a public record on the earlier of the date when it is posted for consideration of approval by Seller or by a Member City and that all correspondence with Seller and/or the Member Cities may be subject to the Texas Public Information Act (Texas Government Code Chapter 552).

Section 5.04 Expenses and Fees. Except as expressly provided otherwise in this Agreement or in the Reimbursement Agreement, all costs and expenses incurred by a Party in performing its express obligations under this Agreement shall be paid by the Party incurring such costs and expenses; provided, however, that, to the extent that either Party requests the other Party (pursuant to Section 5.05, Section 5.06, or otherwise) to take any action, do any thing, cooperate in any manner, execute any documents, or provide any material or information, in each case that is not an express obligation of the other Party under this Agreement and the resulting costs are expected to be in excess of $1,000, then the Parties must mutually agree in advance in writing as to which Party will bear the resulting costs and expenses prior to the other Party having any obligation with respect to such request, which agreement will be in each Party's sole discretion. Seller shall be responsible for all compensation to be paid to the Environmental Designee.

Section 5.05 Agreement to Cooperate; Governmental Approvals. Subject to the terms and conditions of this Agreement and applicable Law, each Party shall use its commercially reasonable efforts to take, or cause to be taken, all action and do, or cause to be done, all things necessary, proper or advisable to obtain as promptly as reasonably practicable all necessary or appropriate waivers, consents, approvals or authorizations of Governmental Authorities, and to satisfy all other conditions required in order to consummate the transactions contemplated by this Agreement (and, in such case, to proceed with the consummation of the transactions contemplated by this Agreement as expeditiously as possible).

Section 5.06 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at either Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions and execute and deliver such other documents as such Party may reasonably request in order to consummate the transactions contemplated by this Agreement.

Section 5.07 Regulatory Filings. Each Party agrees to make all filings or notices required to be made by such Party pursuant to Section 2252.908, Texas Government Code, and Chapter 46 of the Texas Ethics Commission's Rules.

Section 5.08 Insurance. Purchaser shall be solely responsible for providing insurance for the Purchased Assets as of the Closing. Purchaser acknowledges that no insurance coverage or policy maintained for Seller or the Purchased Assets will extend beyond the Closing for the benefit of Purchaser.

Section 5.09 Escrow Agreement. Seller and Purchaser shall enter into the Escrow Agreement with Escrow Agent at Closing to secure Purchaser's performance of all Guaranteed Obligations with the exception of Environmental Post-Closure Requirements. Purchaser shall use the Escrowed Amount solely for such Guaranteed Obligations. Monthly releases to Purchaser under the Escrow Agreement are tied to Purchaser's performance of such Guaranteed Obligations in accordance with the Project Schedule, as set forth in the Escrow Agreement. If progress completing such Guaranteed Obligations is slower or faster than the timing set forth in the Project Schedule, then monthly payments from the Escrowed Amount may be suspended or accelerated in accordance with the terms of the Escrow Agreement. Seller and Purchaser shall promptly on request prior to Closing provide or deliver to Escrow Agent all documentation and other written information required under applicable "know your customer" and anti-money laundering rules, regulations and requirements.

Section 5.10 Environmental Closure and Compliance. After Closing, Purchaser covenants that it will (i) immediately begin and diligently pursue, in a commercially-reasonable manner and in accordance with the Project Schedule, until completion the preparation of closure or response action plans for the Required Remediation Actions, the approval of such plans by the TCEQ, and the implementation of such plans in compliance with all applicable Laws, regardless of whether any of such actions or the Required Remediation Actions are then required to be performed under any applicable laws, (ii) diligently pursue, in a commercially-reasonable manner and in accordance with the Project Schedule, until completion all Required Remediation Actions in accordance with such closure or response action plans regardless of whether any of the Required Remediation Actions are then required to be performed under any applicable laws, (iii) begin and diligently pursue in a commercially-reasonable manner until completion the Plant Shutdown and Decommissioning of the Purchased Assets in compliance with all applicable Laws regardless of whether any such Plant Shutdown and Decommissioning of the Purchased Assets is then required to be performed under any applicable Laws, and (iv) conduct all operations and other activities on the Real Property according to all Environmental Compliance requirements and the regulatory compliance requirements of local, state and federal governments, including Environmental Post-Closure Requirements and the maintenance of associated financial assurance requirements. Purchaser will use standard industry practice in managing environmental risks and liabilities associated with these environmental requirements, subject to review and audit by Seller per Section 9.01(b) herein. "Standard industry practice" shall not be used as a defense to Purchaser's obligation to operate in compliance with Environmental Laws.

Section 5.11 Closing Cash Payment. Purchaser shall use the cash paid to Purchaser pursuant to Section 2.04(f) solely to fund Purchaser's obligations arising under this Agreement with respect to the Required Remediation Actions, Plant Shutdown and Decommissioning, and other actions necessary to achieve Regulatory Closure of the Purchased Assets, including any Environmental Compliance and Response Actions.

ARTICLE VI.
CONDITIONS TO PERFORMANCE

Section 6.01 Conditions to the Obligation of Purchaser to Closing. The obligation of Purchaser to proceed with the Closing is subject to the satisfaction upon the Closing Date of the following conditions, any one or more of which may be waived in writing, in whole or in part by Purchaser:

(a) the representations and warranties made by Seller in this Agreement and qualified by materiality shall be true and correct as so qualified on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case as of such earlier date). Each of the representations and warranties made by Seller in this Agreement and not qualified by materiality shall be true and correct in all material respects on and as of the Closing Date as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case as of such earlier date);

(b) no permanent judgment, injunction, order or decree of a court or other Governmental Authority of competent jurisdiction shall be in effect which has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting the consummation of the transactions contemplated by this Agreement (each Party agreeing to use its reasonable commercial efforts, including appeals to higher courts, to have any judgment, injunction, order or decree lifted);

(c) Seller has delivered a certificate of an authorized representative of Seller dated as of the Closing Date that each of the items in Section 6.01(a), (b), (d), and (e) are true and correct;

(d) No Material Adverse Effect has occurred and is continuing; and

(e) The filings required to be made by Seller pursuant to Section 5.07 have been completed.

Section 6.02 Conditions to the Obligation of Seller to Closing. The obligation of Seller to proceed with the Closing is subject to the satisfaction upon the Closing Date of the following conditions, any one or more of which may be waived in writing, in whole or in part by Seller:

(a) the representations and warranties made by Purchaser in this Agreement and qualified by materiality shall be true and correct as so qualified on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case as of such earlier date). Each of the representations and warranties made by Purchaser in this Agreement and not qualified by materiality shall be true and correct in all material respects on and as of the Closing Date as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case as of such earlier date);

(b) no permanent judgment, injunction, order or decree of a court or other Governmental Authority of competent jurisdiction shall be in effect which has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting the consummation of the transactions contemplated by this Agreement (each Party agreeing to use its reasonable commercial efforts, including appeals to higher courts, to have any judgment, injunction, order or decree lifted);

(c) receipt of Seller Internal Approvals;

(d) Purchaser has delivered a certificate of an authorized representative of Purchaser dated as of the Closing Date that each of the items in Section 6.02(a), (b), (c), and (e) are true and correct;

(e) All filings required to be made by Purchaser pursuant to Section 5.07 have been completed; and

(f) Any Member City has defeased or refunded all Indebtedness assumed by the Member City related to the Purchased Assets if determined by the Member City to be necessary or advisable in connection with the sale of the Purchased Assets to Purchaser pursuant to this Agreement.

Section 6.03 Removal of Excluded Personal Property. At any time or from time to time after Closing, any and all of the personal property included in the Excluded Assets may be removed from the Real Property by Seller (at no expense to Purchaser, but without charge by Purchaser for temporary storage), provided that Seller shall do so (i) in a manner that does not unduly or unnecessarily disrupt normal business and/or remediation activities at the Real Property, (ii) after coordinating reasonably in advance the dates and times of removal with Purchaser, and (iii) after providing an insurance certificate from the party removing the Excluded Assets naming Purchaser as an additional insured under such policy.

ARTICLE VII.
TERMINATION

Section 7.01 Termination. This Agreement may be terminated and the consummation of the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Purchaser and Seller;

(b) by either Purchaser or Seller,

(i) if the Closing has not occurred on or before March 1, 2021 (such date, the "Termination Date"), provided that the right to terminate this Agreement pursuant to this Section 7.01(b)(i) shall not be available to any Party whose breach of any provision of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by the Termination Date; or

(ii) if any court of competent jurisdiction in the United States or other Governmental Authority shall have issued an Order or taken any other final action restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, and such Order or other action is or shall have become final and nonappealable, provided that any Party seeking to terminate this Agreement pursuant to this Section 7.01(b)(ii) shall have used all reasonable commercial efforts to prevent the entry of and to remove such Order;

(c) by Purchaser if there has been a breach by Seller of any representation, warranty, covenant or agreement contained in this Agreement which would result in a failure of, or inability of Seller to satisfy, any condition set forth in Section 6.01 and such breach has not been cured within thirty (30) days following written notification thereof; or

(d) by Seller if there has been a breach by Purchaser of any representation, warranty, covenant or agreement contained in this Agreement which would result in a failure of, or inability of Purchaser to satisfy, any condition set forth in Section 6.02 and such breach has not been cured within thirty (30) days following written notification thereof.

Section 7.02 Effect of Termination. In the event of termination of this Agreement by Seller or by Purchaser prior to a Closing pursuant to the provisions of Section 7.01, there shall be no contractual liability or obligation on the part of Purchaser or Seller or their respective officers, commissioners, members, managers or directors under this Agreement except as set forth in this Section 7.02, Section 5.03 (Press Releases), 5.04 (Expenses and Fees), and Article X (Miscellaneous), all of which shall survive the termination hereof, provided that nothing in this Section 7.02 shall relieve either Party from any breach of this Agreement and the other Party shall be entitled to pursue, to the fullest extent available at law or in equity, recovery of such other Party's Losses and other damages caused by or resulting from such Party's breach of this Agreement. If this Agreement is terminated pursuant to the provisions of Section 7.01 prior to Closing, then Purchaser shall return to Seller all information delivered by or on behalf of Seller, and the Escrow Agent shall be directed to return any deliverables provided under this Agreement to the Party that provided such deliverables, as applicable.

ARTICLE VIII.
INDEMNIFICATION; LIABILITY

Section 8.01 Survival. All representations, warranties, covenants and other obligations in this Agreement or in any other agreement, instrument or other document delivered in connection herewith, and the right to commence any Claim with respect thereto (including with respect to all Environmental Liabilities), shall survive the Closing Date.

Section 8.02 Indemnification.

(a) Purchaser, from and after the Closing Date, shall indemnify, defend and hold harmless Seller, the Member Cities, and their respective council members, directors, commissioners, officers, agents, employees, advisors, Representatives, successors, and assigns (collectively, the "Seller Indemnitees") from and against any Losses that arise out of or result from any and all (i) Environmental Liabilities, (ii) Assumed Liabilities, and (iii) Taxes (or the nonpayment thereof) of Purchaser or for which Purchaser is responsible under this Agreement. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS

AGREEMENT, IT IS THE EXPLICIT INTENTION OF THE PARTIES TO THIS AGREEMENT THAT (I) THE INDEMNIFICATION OBLIGATIONS OF PURCHASER SET FORTH IN THIS AGREEMENT ARE INTENDED TO INDEMNIFY EACH SELLER INDEMNITEE AGAINST HIS, HER, OR ITS OWN SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OR TORTIOUS ACTS AND (II) THE INDEMNIFICATION PROVISIONS SET FORTH IN THIS AGREEMENT WILL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFIT OF THE SELLER INDEMNITEES, REGARDLESS OF ANY EXTRAORDINARY SHIFTING OF RISK, AND EVEN IF THE CLAIM IS CAUSED BY THE ACTIVE OR PASSIVE, SOLE, JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OR TORT OF ANY SELLER INDEMNITEE, OR LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED ON, OR ALLEGED AGAINST, ANY SELLER INDEMNITEE.

(b) For the avoidance of doubt, it is the express intention of the Parties that the indemnification provided for in this Section 8.02 shall apply to direct Claims between the Parties for a breach of this Agreement (whether or not involving a third party).

Section 8.03 Right to Specific Performance; Certain Limitations. Notwithstanding anything in this Agreement to the contrary:

(a) Without limiting or waiving in any respect any rights or remedies of a Party under this Agreement or now or hereafter existing at law in equity or by statute, each Party shall be entitled to specific performance of the obligations to be performed by the other Party in accordance with the provisions of this Agreement; and

(b) No Member City and no Representative, Affiliate of, or direct or indirect equity owner in, Seller or any Member City shall have any personal liability to Purchaser or any other Person relating to, or arising from this Agreement; and

(c) Other than with respect to (i) Environmental Liabilities and (ii) the Indemnification Obligations with respect to any third party Claims, neither Party shall be liable for special, punitive, exemplary, incidental, or indirect damages, or lost profits or losses calculated by reference to any multiple of earnings before interest, tax, depreciation or amortization (or any other valuation methodology) whether based on contract, tort, strict liability, other Law or otherwise and whether or not arising from the other Party's sole, joint or concurrent negligence, strict liability or other fault for any matter relating to this Agreement and the transactions contemplated hereby.

Section 8.04 No Other Representations. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III OR IN ANY CERTIFICATE OR INSTRUMENT DELIVERED HEREUNDER, THE PURCHASED ASSETS ARE "AS IS, WHERE IS," AND SELLER EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION REPRESENTATIONS OR WARRANTIES AS TO LIABILITIES, OPERATIONS OF THE PURCHASED ASSETS, CONDITION, VALUE OR QUALITY OF THE PURCHASED ASSETS OR THE PROSPECTS THEREOF), AND SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED REPRESENTATIONS OR WARRANTIES OF

MERCHANTABILITY, USAGE OF TRADE, OR FITNESS FOR ANY PARTICULAR PURPOSE. NO MATERIALS OR INFORMATION PROVIDED BY, OR COMMUNICATIONS MADE BY OR ON BEHALF OF SELLER, OR BY ANY REPRESENTATIVE OF SELLER, INCLUDING BUT NOT LIMITED TO INFORMATION MADE AVAILABLE TO PURCHASER, OR ANY ORAL, WRITTEN OR ELECTRONIC RESPONSE TO ANY INFORMATION REQUEST PROVIDED BY SELLER TO PURCHASER, WILL CAUSE OR CREATE ANY ADDITIONAL WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN.

ARTICLE IX. ENVIRONMENTAL

Section 9.01 No Environmental Representations or Warranties; Disclaimer.

(a) AS IS, WHERE IS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, PURCHASER IS EXPRESSLY PURCHASING THE PURCHASED ASSETS IN THEIR EXISTING CONDITION "AS IS, WHERE IS, AND WITH ALL FAULTS" WITH RESPECT TO ALL FACTS, CIRCUMSTANCES, CONDITIONS AND DEFECTS, AND SELLER HAS NO OBLIGATION TO DETERMINE OR CORRECT ANY SUCH FACTS, CIRCUMSTANCES, CONDITIONS OR DEFECTS OR TO COMPENSATE PURCHASER FOR SAME. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER HAS SPECIFICALLY BARGAINED FOR THE ASSUMPTION BY PURCHASER OF ALL RESPONSIBILITY TO INVESTIGATE THE PURCHASED ASSETS, LAWS, ENVIRONMENTAL LAWS, ENVIRONMENTAL LIABILITIES, ENVIRONMENTAL COMPLIANCE, FACTS, CONDITIONS, VIOLATIONS, AND OF ANY AND ALL RISK OF ADVERSE CONDITIONS, AND HAS STRUCTURED THE PURCHASE PRICE AND OTHER TERMS OF THIS AGREEMENT IN CONSIDERATION THEREOF. PURCHASER HAS UNDERTAKEN ALL SUCH INVESTIGATIONS OF THE PURCHASED ASSETS, LAWS, ENVIRONMENTAL LAWS, ENVIRONMENTAL LIABILITIES, ENVIRONMENTAL COMPLIANCE, FACTS, CONDITIONS AND VIOLATIONS AS PURCHASER DEEMS NECESSARY OR APPROPRIATE UNDER THE CIRCUMSTANCES AS TO THE STATUS OF THE PURCHASED ASSETS AND ANY FUTURE OBLIGATIONS ARISING IN CONNECTION WITH THE PURCHASED ASSETS AND BASED UPON SAME, PURCHASER IS AND WILL BE RELYING STRICTLY AND SOLELY UPON SUCH INSPECTIONS AND EXAMINATIONS AND THE ADVICE AND COUNSEL OF ITS OWN CONSULTANTS, AGENTS, LEGAL COUNSEL AND OFFICERS. PURCHASER IS AND WILL BE FULLY SATISFIED THAT THE PURCHASE PRICE IS FAIR AND ADEQUATE CONSIDERATION FOR THE REAL PROPERTY AND, BY REASON OF ALL THE FOREGOING, PURCHASER ASSUMES, WITHOUT LIMITATION, THE FULL RISK OF ANY AND ALL ENVIRONMENTAL LIABILITIES AND ENVIRONMENTAL COMPLIANCE AS SET FORTH HEREIN. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE THE CLOSING, NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND SHALL BE INCORPORATED INTO THE WARRANTY DEEDS FOR PARCELS WITH RECOGNIZED ENVIRONMENTAL CONDITIONS.

(b) Seller Environmental Review. Beginning at Closing and continuing until Regulatory Closure is achieved and all applicable care periods for Environmental Post-Closure Requirements have been completed or expired without additional action required, Seller shall have the right, but not the obligation, to review and audit all environmental activities, conditions, operations and records, waste management units, pollution control equipment and monitoring devices at the Purchased Assets and directly related facilities, including all activities and operations described in Sections 5.09 and 5.10. The Environmental Designee will be allowed to review and audit the Purchased Assets and directly related facilities as set out above, including documentation and correspondence with environmental regulatory agencies, at any reasonable time. The Environmental Designee will simultaneously provide Purchaser with any written reports that the Environmental Designee provides to Seller. To the extent that the Parties cannot reach mutual agreement on the penal sum of any Performance Bond required by this Agreement within thirty (30) days after the matter is first submitted to the other Party for approval, both Parties will submit their proposal to the Environmental Designee, which will make a final, binding determination with respect to the amount of such penal sum. All information received from, and/or provided to, the Environmental Designee will be considered confidential by the Parties per the Confidentiality Agreement, subject to the requirements of the Texas Public Information Act, to the same extent as if such information had been received from, and/or provided to, Seller. If the Environmental Designee's report identifies any violation of Environmental Laws or any failure to expeditiously accomplish any of the Required Remediation Actions in accordance with the Project Schedule, Purchaser shall perform, at its cost, any corrective actions required by Law to address such violation or failure. Purchaser shall conduct all corrective actions with due diligence and complete such actions within a reasonable period of time. In the event that Seller is dissolved or ceases to exist, then, prior to such event, Seller shall assign to an individual or other legal entity or entities the obligations to perform Seller's responsibilities and exercise Seller's rights with regard to this Section 9.01(b). Seller shall provide notice to Purchaser of such assignment.

Section 9.02 Assumption and Covenant; Release; Indemnity. Notwithstanding anything contained herein, and without limiting the scope of any assumption of responsibility, or liability, release or indemnity by Purchaser in favor of any Seller Indemnitee set forth herein:

(a) Assumption and Covenant. At Closing, Purchaser shall be liable for and expressly fully assumes any and all Environmental Liabilities and Environmental Compliance, as well as, without limitation, any remediation, investigation, management, mitigation, closure, maintenance, reporting, removal, disposal of and any other actions with respect to any Hazardous Substances at, on, in, under, or emanating from the Purchased Assets. Without limiting the foregoing, Purchaser shall be liable for any costs and expenses in connection with developing, redeveloping, repurposing or otherwise operating the Purchased Assets, notwithstanding that such costs and expenses may arise from the presence or suspected presence of Hazardous Substances at, on, in or under or emanating from the Purchased Assets, any Environmental Liability or any Environmental Compliance. Purchaser covenants to comply with all Environmental Laws.

(b) Release. Except as expressly provided in this Agreement, Purchaser and anyone claiming by, through or under Purchaser, hereby FULLY AND IRREVOCABLY RELEASE AND DISCHARGE the Seller Indemnitees from and waive any and all Claims that it may now have or hereafter acquire against any Seller Indemnitee for any Losses, cost, response costs, Liabilities, damage, expense, problem, condition, demand, Order, notice, action or cause of action, foreseen or unforeseen, known or unknown, whether arising or accruing before, on or after the Closing Date and whether attributable to events or circumstances which have occurred prior to the Closing Date or may occur hereafter, including without limitation those arising from or related to: (i) any structural, engineering or Environmental Condition at the Real Property, including without limitation, the presence, suspected presence, absence, Release, threat of Release, discovery, location or scope of any Hazardous Substances at, on, in, under, or emanating from the Real Property (whether patent, latent or otherwise); (ii) **Environmental Laws, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601, *et seq.*), as amended, and the Texas Solid Waste Disposal Act (Texas Health and Safety Code § 361.001, *et seq.*), as amended, including the right to seek contribution, indemnity or recovery of costs for environmental cleanup of the Real Property**, (iii) any and all statements or opinions heretofore or hereafter made or information furnished by any Seller Indemnitee or any representative or agent of any of them; (iv) any and all tort Claims made or brought with respect to any of the Purchased Assets or the use or operation thereof; and (v) **ANY IMPLIED OR STATUTORY WARRANTIES OR GUARANTIES OF FITNESS, MERCHANTABILITY** or any other statutory or implied warranty or guaranty of any kind or nature regarding or relating to any portion of any of the Purchased Assets. Purchaser further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including but not limited to those relating to unknown and suspected Claims, damages and causes of action. Purchaser expressly understands and acknowledges that it is possible that unknown conditions may exist with respect to the Purchased Assets and that Purchaser explicitly considered such possibility in determining and agreeing to the acquisition consideration for the Purchased Assets set forth in this Agreement, and that a portion of such acquisition consideration, having been bargained for between Parties with the knowledge of the possibility of such unknown conditions, has been given in exchange for a full accord and satisfaction and discharge of all such conditions. Purchaser further hereby assumes the risk of changes in applicable Laws and regulations relating to past, present and future Environmental Conditions on the Real Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Substances, may not have been revealed by its investigation. As a material covenant and condition of this Agreement, Purchaser agrees that in the event of any Environmental Liability or Liability arising from or related to Environmental Compliance, or any structural, engineering or environmental defects, errors or omissions, including without limitation the presence or absence, location or scope of any Hazardous Substances at, on, in, under, or emanating from the Purchased Assets, or any other conditions affecting the Purchased Assets, whether known or unknown or existing before or as of the Closing Date, Purchaser shall not look to any Seller Indemnitee for any redress or relief. The Closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to cause any Seller Indemnitee to be joined in any action brought under any Environmental Laws. **THE FOREGOING RELEASE SHALL APPLY NOTWITHSTANDING THE NEGLIGENCE OR STRICT LIABILITY OF A SELLER INDEMNITEE.**

(c) ENVIRONMENTAL INDEMNIFICATION. PURCHASER SHALL INDEMNIFY, DEFEND AND HOLD THE SELLER INDEMNITEES HARMLESS FROM ANY LOSSES, CLAIMS, EXPENSES, DEMANDS, ORDERS, CAUSES OF ACTION OR LIABILITIES OF ANY NATURE, KNOWN OR UNKNOWN, INCLUDING WITHOUT LIMITATION NATURAL RESOURCE DAMAGES OR RESPONSE COSTS (AS THOSE TERMS ARE DEFINED UNDER ANY ENVIRONMENTAL LAWS) AND THIRD PARTY

CLAIMS FOR BODILY INJURY OR PROPERTY DAMAGE ARISING FROM, ALLEGEDLY ARISING FROM OR RELATED TO ENVIRONMENTAL CONDITIONS, ENVIRONMENTAL LIABILITIES, ENVIRONMENTAL COMPLIANCE, OR HAZARDOUS SUBSTANCES ON, AT, IN, UNDER OR EMANATING FROM THE PURCHASED ASSETS, IRRESPECTIVE OF WHETHER ARISING OR ACCRUING BEFORE, ON OR AFTER THE CLOSING DATE OR WHETHER ATTRIBUTABLE TO EVENTS OR CIRCUMSTANCES WHICH OCCURRED PRIOR TO THE CLOSING DATE OR MAY OCCUR HEREAFTER. PURCHASER WAIVES ANY RIGHT TO SEEK DAMAGES OR RESPONSE COSTS FROM THE SELLER INDEMNITEES RESULTING FROM EITHER THE PRESENCE OR SUSPECTED PRESENCE OF HAZARDOUS SUBSTANCES IN, ON, AT OR UNDER OR EMANATING FROM THE PURCHASED ASSETS, INCLUDING, WITHOUT LIMITATION, FOR LOST PROFITS, SPECIAL DAMAGES, MEDICAL MONITORING, CONSEQUENTIAL DAMAGES, RESPONSE COSTS, DIMINUTION OF VALUE OR STIGMA OR ANY LOSS OR EXPENSE DUE TO INTERFERENCE WITH OPERATIONS AT, OR DEVELOPMENT OF, THE PURCHASED ASSETS AND PURCHASER SHALL INDEMNIFY, DEFEND AND HOLD THE SELLER INDEMNITEES HARMLESS AGAINST ALL SUCH LIABILITY. **THE FOREGOING INDEMNITY SHALL APPLY NOTWITHSTANDING THE NEGLIGENCE OR STRICT LIABILITY OF A SELLER INDEMNITEE.**

Section 9.03 Purchaser Environmental Covenant. Purchaser covenants and agrees to Seller that it will conduct its operation of the Purchased Assets in compliance with all applicable Environmental Laws and regulations using standard industry practice beginning immediately following Closing. This covenant will survive indefinitely. “Standard industry practice” shall not be used as a defense to Purchaser’s obligation to operate in compliance with Environmental Laws.

Section 9.04 Warranty Deeds. The assumption, release and indemnity and all other representations, warranties, covenants or other obligations of Purchaser under this Article IX shall be incorporated into the Warranty Deeds for Parcels with Recognized Environmental Conditions as set forth on Exhibit C-1 and into the Warranty Deeds for Parcels with No Recognized Environmental Conditions as set forth on Exhibit C-2 and shall expressly run with the land to bind future owners and operators of the Purchased Assets. Purchaser shall not assert that the indemnity or any other post-closing obligations under this Article IX do not run with the land to bind future owners or operators of the Purchased Assets in any litigation or other proceeding of any nature.

Section 9.05 Transferee Obligations.

(a) Purchaser reserves the right to sell any portion of the Real Property, provided that (i) no sale or transfer of all or any portion of the Real Property, or any assumption of Purchaser's obligations under this Agreement, the Escrow Agreement, or the other documents delivered by the Parties at Closing, will relieve or release Purchaser from its obligations under this Agreement, the Escrow Agreement, or the other documents delivered by the Parties at Closing, unless Seller expressly consents in writing to the release of such obligations, (ii) each portion of the Real Property that is transferred by Purchaser shall be transferred subject to Purchaser's obligations under this Agreement, the Warranty Deeds, and the other documents delivered by the Parties at Closing to the extent affecting such transferred Real Property, (iii) the Transferee of such portion of the Real Property will expressly assume in writing, for the benefit of Seller Indemnitees and substantially in the form attached hereto as Exhibit G or in another form reasonably acceptable to Seller, all of Purchaser's obligations under this Agreement, the Warranty Deeds, and the other documents delivered by the Parties at Closing with respect to that portion of the Real Property transferred to such Transferee, including any obligations to obtain or maintain any pollution legal liability insurance policy or Performance Bonds with respect to such portion of the Real Property, and (iv) in connection with such sale or transfer, Purchaser and its Transferee of the Real Property must fully comply with the provisions of this Section 9.05.

(b) Purchaser must include in any instrument conveying an interest in Parcels with Recognized Environmental Conditions an agreement on the part of such Transferee to be bound by Purchaser's indemnities, representations, warranties, covenants, releases, and other obligations under this Article IX with respect to such portion of the Real Property being conveyed as if such indemnities, representations, warranties, covenants, releases, and other obligations were given, made or agreed to by such future owner or operator directly for Seller Indemnitees' benefit, including the obligations of this Section 9.05 to so bind future Transferees of any interest in Parcels with Recognized Environmental Conditions or any related Purchased Assets. Ten (10) days prior to executing any agreement to convey an interest in Parcels with Recognized Environmental Conditions, Purchaser shall provide Seller with a copy of such agreement. Purchaser shall not execute any agreement to convey an interest in Parcels with Recognized Environmental Conditions if Seller reasonably determines and provides written notice to Purchaser within ten (10) days after delivery to Seller that such sale agreement does not comply with the terms of this Article IX. Notwithstanding anything to the contrary in this Section 9.05(b), if any Parcel with Recognized Environmental Conditions has satisfied the conditions set forth in the definition of "Parcels with No Recognized Environmental Conditions" in Section 1.01, then (x) such Parcel shall be reclassified as a Parcel with No Recognized Environmental Conditions and will no longer be subject to this Section 9.05(b), (y) Purchaser and any Transferee may thereafter transfer all or any part of such Parcel free of any obligation to provide Seller with any transfer documents for review, and (z) Seller shall have no right to object to any such transfer. No such transfer or release in favor of a Transferee shall release Purchaser from any of its obligations under this Agreement. For the avoidance of doubt, Parcels with No Recognized Environmental Conditions are not subject to this Section 9.05(b), and Purchaser may transfer all or part of Parcels with No Recognized Environmental Conditions to any Transferee and have no obligation to provide Seller with any agreement with the Transferee and Seller shall have no right to object to any such transfer.

Section 9.06 Performance Bonds.

(a) Regulatory Closure Bonds. Purchaser will obtain and deliver to Seller in connection with the Closing the original of the Regulatory Closure Bond and will maintain the Regulatory Closure Bond, as potentially modified or adjusted in accordance with this Section 9.06, until released by Seller. If all of Purchaser's obligations under this Agreement with respect to Required Remediation Actions, Plant Shutdown and Decommissioning, and Preliminary Regulatory Closure of the Purchased Assets, including all Environmental Compliance and Response Actions, and all payment obligations related to the foregoing items or resulting from Purchaser's default in the performance of such items, including reimbursement of Seller's costs, if any, to cure Purchaser's default or non-performance of any of the foregoing obligations, have been performed and completed in accordance with the terms of this Agreement and in compliance with all applicable Environmental Laws or other applicable governmental regulations, and all costs and expenses related thereto have been paid in full, and no further action is required for the completion of all of the Guaranteed Obligations covered by the Regulatory Closure Bond, then Seller shall consent to such Regulatory Closure Bond being released. The penal sum of the Regulatory Closure Bond may be adjusted periodically as the remediation projects set forth on Schedule 9.06(a) are completed (as determined in writing by the Environmental Designee), provided that (i) an updated estimate of the costs to perform the remaining Guaranteed Obligations covered by the Regulatory Closure Bond (using the same methodology as set forth in Section 9.06(d) with respect to an Annual Estimate) shall be provided to Seller and the Environmental Designee, (ii) no such adjustment may be made that would reasonably be expected to result in an Insufficiency, and (iii) the amount of any adjustment reducing the amount of the Regulatory Closure Bond with respect to any completed remediation project may not exceed ninety percent (90%) of the "Allocation to Bond Amount" set forth on Schedule 9.06(a) with respect to such remediation project.

(b) Post-Closure Bonds. Purchaser or a Transferee, as applicable, will obtain and deliver to Seller the original Post-Closure Bond, with respect to each portion of the Real Property subject to Environmental Post-Closure Requirements prior to any release or partial release of the Regulatory Closure Bond with respect to such portion of the Real Property and at least thirty (30) days prior to the start of such Environmental Post-Closure Requirements, and will maintain the Post-Closure Bond until all of such Environmental Post-Closure Requirements have been completed and approved in writing by the TCEQ or the Environmental Designee, as applicable, and Regulatory Closure of all applicable portions of the Purchased Assets has been obtained. Seller, or its successors and assigns, may renew any Post-Closure Bond or obtain a replacement thereof, at the sole expense of Purchaser or such Transferee, or make a claim under a Post-Closure Bond in the event that (i) Seller does not receive confirmation, at least ten (10) Business Days in advance of any expiration of such Post-Closure Bond, from the issuing insurance company or corporate surety company that such Post-Closure Bond will be renewed, or (ii) Purchaser or such Transferee fails to replace such Post-Closure Bond within ten (10) Business Days of the issuing insurance company's or corporate surety company's credit rating being lowered below the required rating. Purchaser or such Transferee shall not, and each Post-Closure Bond shall provide that Purchaser or such Transferee may not, terminate, void, or cancel such Post-Closure Bond or any obligation of Purchaser or such Transferee or the surety thereunder without express written authorization from Seller, or its successors and assigns, and any attempt by Purchaser or such Transferee to do so shall be of no force or effect unless and until Seller, or its successors and assigns, issues express written approval for such attempt.

(c) All Performance Bonds.

(i) Notwithstanding anything in this Agreement to the contrary, to the extent that any rule, regulation or requirement of the TCEQ or other applicable Law governs the form, amount, renewal, replacement and other aspect of a Performance Bond to be obtained by Purchaser or any Transferee pursuant to this Agreement, then such rule, regulation, requirement or other Law shall govern and control over any contradictory term of this Agreement and the terms of this Agreement shall govern every other aspect of such Performance Bond.

(ii) The Performance Bonds, together with the Escrowed Amount and cash payment under Section 2.04(f), are intended to guarantee the performance of

Purchaser's obligations under this Agreement with respect to Required Remediation Actions, Plant Shutdown and Decommissioning, and Regulatory Closure of the Purchased Assets, including all Environmental Compliance, Response Actions and Environmental Post-Closure Requirements, and all payment obligations related to the foregoing items or resulting from Purchaser's default in the performance of such items, including reimbursement of Seller's costs, if any, to cure Purchaser's default or non-performance of any of the foregoing obligations (collectively, the "Guaranteed Obligations"). All Performance Bonds shall name Seller, and its successors and assigns, as obligee.

(iii) Seller, or its successors or assigns, may make a claim under any Performance Bond in the event Purchaser or any Transferee (A) fails to faithfully perform the Guaranteed Obligations covered by such Performance Bond, whenever required to do so, in accordance with the requirements of this Agreement, (B) fails to provide an alternative financial assurance mechanism, when required, or (C) fails to provide continuous coverage by such Performance Bond.

(iv) Each Performance Bond will be issued in form and substance reasonably acceptable to Seller and will be issued by a licensed insurance company or corporate surety company authorized to issue payment and performance bonds in the State of Texas with at least an "A" rating by Standard & Poor's Ratings Services, a division of The McGraw Hill Corporation, or at least an "A-III" rating by Moody's Investors Services, Inc.

(v) Each Transferee of any portion of the Real Property that is subject to any unperformed Guaranteed Obligations shall (as a condition precedent to, and prior to the effectiveness of, any such sale, assignment or transfer) obtain and deliver to Purchaser and Seller and maintain through Regulatory Closure of such Real Property, as determined in writing by the Environmental Designee, one or more payment and performance bonds on substantially similar terms as the Performance Bond(s) maintained by the transferor or grantor of such Real Property prior to such sale, assignment or transfer, or other form of financial assurance, in a penal sum sufficient to guarantee the Parties' mutually-agreeable estimated costs of completing such unperformed Guaranteed Obligations applicable to any such Real Property.

(vi) If a Transferee of any portion of the Real Property has obtained a Performance Bond (in compliance with the requirements of this Agreement) to cover a portion or portions of the Guaranteed Obligations covered by any Performance Bond required to be maintained by Purchaser, then Seller shall consent to a modification and an adjustment to the penal sum of Purchaser's Performance Bond to the extent that the Transferee's Performance Bond covers the same Guaranteed Obligations and provides the same financial assurances for the benefit of Seller and the Member Cities as the Performance Bond to be modified; provided, however, that, Seller shall not be obligated to consent to any modification of any Performance Bond if such modification would reasonably be expected to result in an Insufficiency nor shall Seller's consent to any modification relieve

Purchaser from its obligations to increase the penal sum of such modified Performance Bond in the future if the such Transferee's replacement Performance Bond is not renewed and maintained as required by this Agreement.

(vii) The penal sum of a Performance Bond may not be decreased without advance written authorization from Seller.

(d) Annual Estimates for Performance Bonds. Sixty (60) calendar days prior to each anniversary of the original effective date of each Performance Bond (or at such other date as required by the TCEQ), Purchaser shall provide Seller and the Environmental Designee an updated estimate of the costs to perform the remaining Guaranteed Obligations covered by such Performance Bond, including annual inflation adjustments to the cost estimates, together with documentation providing justification for the estimate as may be reasonably required by Seller (each, an "Annual Estimate"). The Environmental Designee shall review Purchaser's Annual Estimates and may conduct any and all other investigation(s) or review(s) to verify the accuracy of each Annual Estimate. Purchaser and Seller will cooperate with the Environmental Designee in any such other investigation(s) or review(s). If the Annual Estimate with respect to any unperformed Environmental Post-Closure Requirements guaranteed by a Post-Closure Bond, as verified or adjusted by the Environmental Designee, is less than 90.9% of the penal sum of such Post-Closure Bond, then Seller shall consent to the issuance of a rider to such Post-Closure Bond decreasing the penal sum of such Post-Closure Bond to equal 110% of the amount of such Annual Estimate; it being understood by the Parties that the sole mechanism for reducing the Regulatory Closure Bond is set forth in the final sentence of Section 9.06(a). If, as a result of any Annual Estimate or at any other time, Purchaser, Seller, or the Environmental Designee becomes aware that the penal sums of a Performance Bond could reasonably be expected to result in an Insufficiency, Purchaser, Seller, or the Environmental Designee shall promptly, and in no event later than thirty (30) days after it becomes aware of such Insufficiency, notify the other parties and provide documentation demonstrating such Insufficiency as the parties may reasonably require (each, an "Insufficiency Notice"). Upon receipt of each Annual Estimate and Insufficiency Notice, Seller shall determine whether the penal sum of the applicable Performance Bond should be adjusted and, within thirty (30) days of Purchaser's receipt of written notice from Seller, Purchaser shall revise the penal sum of any Performance Bond as requested by Seller; provided, however, that the Seller shall not require the penal sum of a Performance Bond required by the TCEQ to be increased above the penal sum approved by the TCEQ.

(e) Successors. In the event that Seller is dissolved or ceases to exist, then, prior to such event, either (i) Seller shall assign to an individual or other legal entity or entities the obligations to perform Seller's responsibilities and exercise Seller's rights with regard to this Section 9.06 or (ii) the Member Cities shall appoint a designated representative to act as Seller's successor with respect to the exercise of any of Seller's rights under this Section 9.06, including making, prosecuting, or settling any claim under any Performance Bond. Seller or the Member Cities shall provide notice to Purchaser of such assignment or appointment, as applicable.

Section 9.07 Permits. Without limiting the generality of the assumption, release and indemnity and all other representations, warranties, covenants or other obligations of Purchaser under this Article IX, Purchaser acknowledges that it has conducted independent investigation and diligence with respect to the Permits associated with the Purchased Assets and any Permits that may be required in connection with Purchaser's future ownership or operation of the Purchased Assets, including, without limitation the assignability or transferability of any such Permits in connection with the transaction contemplated herein, and that, except as set forth in Section 3.05(b) of this Agreement, Seller hereby disclaims all representations and warranties of any kind or nature whatsoever, whether expressed or implied, with respect to the Permits associated with the Purchased Assets and any Permits that may be required in connection with Purchaser's future ownership or operation of the Purchased Assets. While Seller has an obligation to support Purchaser's efforts to transfer and/or obtain Assigned Permits, Purchaser assumes all risk associated with obtaining, transferring, assigning or amending any Permit for Purchaser's ownership or operation of the Purchased Assets and shall be solely responsible for any and all costs and expenses associated therewith. Under no circumstance shall Purchaser terminate this Agreement because of Purchaser's inability to obtain, transfer, assign or amend any Permit.

Section 9.08 Reimbursement of Site F Landfill Costs. Seller and Purchaser agree that $13,600,000 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, Purchaser shall pay such difference to Seller within thirty (30) days of Seller's written request for such amount, which amount may, at Seller's election, be paid in whole or in part to Seller as a distribution from the Escrowed Amount in accordance with the terms of the Escrow Agreement.

Section 9.09 Survival. The provisions of this Article IX shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

ARTICLE X.
MISCELLANEOUS

Section 10.01 Confidential Information. Purchaser acknowledges that Seller, as a public entity organized under the laws of the State of Texas, and this Agreement is subject to disclosure as required by the Texas Public Information Act (Texas Government Code Chapter 552).

Section 10.02 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, to:

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

(b) If to Purchaser, to:

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

Section 10.03 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.04 Assignment. This Agreement shall not be assigned without the prior written consent of all Parties, which consent may be withheld in the sole and absolute discretion of any Party. No assignment of this Agreement by Purchaser (even with the consent of Seller) will relieve or release Purchaser from its obligations under this Agreement, and Purchaser will continue to be responsible to Seller for all of its obligations under this Agreement from and after any such assignment.

Section 10.05 Disputes.

(a) In the event of any controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (a "Dispute"), either Party (the "Notifying Party") may deliver to the other Party (the "Recipient Party") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "Dispute Notice"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers duly authorized to settle, or to recommend settlement of, the Dispute during the twenty (20) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall within three (3) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party's senior officers duly authorized to settle, or to recommend settlement of, the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the twenty (20) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party. If the Dispute is not resolved pursuant to the procedures set forth in this Section 10.05 by the expiration of the twenty (20) day period set forth herein, then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 10.06 of this Agreement.

Section 10.06 Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made and to be performed entirely within such State, without regard to the conflict of laws principles thereof. Subject to Section 10.05, any Disputes or Claims arising out of or in connection with this 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 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 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 Agreement may become involved.

Section 10.07 WAIVER OF RIGHT TO TRIAL BY JURY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES OR EITHER OF THEM WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10.08 Counterparts. This 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 10.09 Amendments. This Agreement may not be amended, waived or modified except by an instrument in writing signed by Purchaser and Seller.

Section 10.10 Entire Agreement. This Agreement, the Confidentiality Agreement, and the Reimbursement Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied upon by either Party. Neither this Agreement nor any provision hereof is intended to confer upon any Person other than the Parties any rights or remedies hereunder except as expressly provided otherwise in this Agreement.

Section 10.11 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of applicable Law, or public policy, then such term or provision shall be severed from the remaining terms and provisions of this Agreement, and such remaining terms and provisions shall nevertheless remain in full force and effect.

Section 10.12 Third Party Beneficiaries. 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 Agreement and each of the rights or benefits granted to Seller or the Seller Indemnitees under this Agreement. Purchaser shall have the same obligations to each Member City as if such Member City was a "Party" under this Agreement. Each Member City shall have the individual right (on its own behalf, in its own name, separate from Seller or any other Member City, and exercisable in its sole discretion) as an express third-party beneficiary of this Agreement to directly (i) enforce the terms and conditions of this 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 or any Seller Indemnitees pursuant to this Agreement or pursuant to any other agreement, instrument or document executed in connection with the consummation of the transactions contemplated by this Agreement or otherwise related to the subject matter of this Agreement, in each instance to the same extent that such Member City would if it were a direct party to this 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 Agreement. In addition, no Party may agree to any changes, modifications or amendments to this 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, and that the Member Cities would not have approved of the sale of the Purchased Assets to Purchaser pursuant to this Agreement without obtaining the express third party beneficiary rights in favor of the Member Cities set forth in this section.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SELLER:

TEXAS MUNICIPAL POWER AGENCY

By: ______________________________

Name:

Title:

PURCHASER:

GIBBONS CREEK ENVIRONMENTAL REDEVELOPMENT GROUP, LLC

By: Charah, LLC, its Manager

By: ______________________________

Name:

Title:

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 though 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. <u>**DUTIES OF ESCROW AGENT, LIABILITIES, LIMITATIONS AND OTHER TERMS AND CONDITIONS OF THE ESCROW AGENT**</u>.

Section 2.1 <u>Duties and Responsibilities</u>.

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[1]. 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.

[1] 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.

REGULATORY CLOSURE BOND

Bond #: [•]

KNOW ALL MEN BY THESE PRESENTS:

That we, **GIBBONS CREEK ENVIRONMENTAL REDEVELOPMENT GROUP, LLC**, a Texas limited liability company, with an address at 435 S. Tyron Street, Suite 180, Charlotte, NC 28202 ("***Principal***"), and **ENDURANCE ASSURANCE CORPORATION**, a Delaware corporation, with an address of 12890 Lebanon Road, Mount Juliet, TN 37122 ("***Surety***"), are held and firmly bound unto **TEXAS MUNICIPAL POWER AGENCY**, a Texas municipal corporation and municipal power agency, with an address at 2751 Nash Street, Suite 130, Bryan, TX 77802 ("***Obligee***"), in the penal sum of lawful money of **Thirty Six Million Five Hundred Thousand and no/100** dollars ($36,500,000) for the payment of which sum Principal and Surety bind themselves, their successors and assigns, jointly, severally, and in *solido*, firmly by these presents.

WHEREAS, Principal and Obligee have entered into that certain Asset Purchase Agreement, dated as of XXXXXXX, 2020 (the "***Agreement***"), which Agreement is by reference made a part hereof and which requires Principal to deliver to, and maintain for the benefit of, Obligee the "Regulatory Closure Bond" (as defined in the Agreement);

WHEREAS, unless otherwise defined in this Regulatory Closure Bond (this "***Bond***"), capitalized terms in this Bond shall have the respective meanings given to such terms in the Agreement;

WHEREAS, pursuant to the Agreement, Principal has delivered to Obligee this Bond executed by Principal and Surety as the Regulatory Closure Bond;

WHEREAS, Surety represents that it is duly authorized by the proper public authorities to transact the business of indemnity and suretyship in the state where it executed this Bond and in the State of Texas, and represents that it is qualified to be surety and guarantor on bonds and undertakings in the State of Texas, which certificate has not been revoked; and

WHEREAS, Surety represents that it has duly executed a power of attorney, appointing the hereafter named representative as its duly authorized deputy, as the true and lawful attorney-in-fact of such Surety, upon whom may be served all lawful process in any action or proceeding arising or filed in the State of Texas against such Surety in any court or before any officer, arising out of or founded upon this Bond or any liability hereunder, and does hereby agree and consent that such service, when so made, shall be valid service upon it, and that such appointment shall continue in force and effect and be irrevocable so long as any liability against it remains outstanding hereunder.

NOW THEREFORE, Principal and Surety agree as follows:

1. Surety hereby guarantees the full and faithful performance by Principal of all of Principal's obligations under the Agreement with respect to Required Remediation Actions, Plant Shutdown and Decommissioning, and Preliminary Regulatory Closure of the Purchased Assets,

including all Environmental Compliance and Response Actions, and all payment obligations related to the foregoing items or resulting from Principal's default in the performance of such items, including reimbursement of Obligee's costs, if any, to cure Principal's default or non-performance of any of the foregoing obligations (the "***Bonded Obligations***"). The above recitals are incorporated into this Bond as fully as if the agreements therein provided were written herein.

2. This Bond is subject to reduction or replacement in whole or in part in accordance with the terms and conditions set forth in Section 9.06(a) of the Agreement.

3. The maximum obligation of Surety under this Bond (the "***Penal Amount***") shall be the $36,500,000 penal sum of this Bond stated above. Surety shall have no obligation to Obligee under this Bond for any amounts that Principal may owe to Obligee for any expenses, fees, penalties, or damages under the Agreement, other than the Bonded Obligations. Surety shall have no obligation to Obligee under this Bond to the extent Obligee may incur any attorneys' fees or court costs or other expense of litigation in the event of a contest over Surety's denial of the Bonded Obligations (or any part thereof); provided, however, that Surety shall be responsible (in the aggregate with Surety's other liabilities under this Bond, up to, but not in excess of, the Penal Amount) for the reimbursement of all of Obligee's reasonable attorneys' fees, court costs, and other expenses of litigation to the extent that Obligee is the prevailing party in such contest..

4. As set forth under that certain Escrow Agreement dated _____, 202__, by and among Principal, Obligee, and the "Escrow Agent" named therein, as amended (the "***Escrow Agreement***"), if Surety commences or completes performance of the Bonded Obligations, Surety has the right to receive Monthly Distributions (as defined in the Escrow Agreement) and other distributions of Escrow Funds (as defined in the Escrow Agreement). If Surety receives Escrow Funds, Surety may only use such Escrow Funds to pay for or reimburse itself for performance of the Bonded Obligations. No costs or expenses incurred by Surety to commence or complete performance of the Bonded Obligations will have the effect of reducing the Penal Amount to the extent that such costs or expenses are paid for or reimbursed to Surety using Escrow Funds.

5. Whenever Principal fails to perform the Bonded Obligations pursuant to, and as required by, the terms of the Agreement, and Obligee has presented to Surety and Escrow Agent a written notice ("***Notice***") that Principal is in default of its Bonded Obligations under the terms of the Agreement, and such condition has persisted for ten (10) days after written notice of such default has been given by certified mail or overnight delivery to Principal and Surety, Surety shall, within fifteen (15) days of such Notice: (1) cure the default, (2) with the consent of Obligee, assume performance of the remainder of the Bonded Obligations and perform such Bonded Obligations or subcontract same to a qualified entity acceptable to Obligee, or (3) pay as and when required pursuant to the terms of the Agreement and this Bond all amounts due from Principal to Obligee as a result of such default. For the avoidance of doubt, multiple Notices may be made under this Bond, however (i) any payment which Surety may be required to make at any time shall reduce the obligation of Surety hereunder to the extent of any such payment or payments and (ii) in no event shall the Surety's maximum obligation under this Bond exceed the Penal Amount.

6. In the event Obligee commences or completes performance of the Bonded Obligations under the terms of the Agreement upon Principal's default, Surety's obligations shall remain the same as set forth in this Bond regarding payment to Obligee as set forth above.

7. This Bond shall be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made and to be performed entirely within such State, without regard to the conflict of laws principles thereof. Any disputes or claims arising out of or in connection with the subject matter of this Bond 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. Surety consents to be sued in any such state or federal court, hereby irrevocably submitting itself to the jurisdiction of said courts. 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 or claim arising out of or relating to the subject matter of this Bond brought in such courts or any defense of inconvenient forum for the maintenance of such dispute or claim. Each Party agrees that a judgment in any such dispute or claim 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 Bond and the transactions contemplated hereunder, and is not intended to, and shall not, confer consent to venue with respect to any other dispute or claim in which a Party to this Bond may become involved.

8. No amendment of or supplement to the terms or provisions of the Agreement or of the exhibits attached thereto shall release Principal and Surety or any of them from their liability under this Bond, notice to Surety of any such amendment or supplement being hereby waived. Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which the Principal ceased performing work on the Real Property.

9. Notwithstanding any failure of Principal to pay any premium or provide any security to Surety, this Bond shall become effective as of [●] and shall remain in full force and effect thereafter until the earlier of: (i) the performance in full of the Bonded Obligations, or (ii) the payment to Obligee, in the aggregate, of the Penal Amount.

10. No forbearance of Obligee to Principal shall release Principal and Surety from their liability under this Bond except where Obligee expressly agrees to reduce the Penal Amount. No assignment or delegation of Principal's obligations under the Agreement nor any sale, assignment or transfer of all or any part of the Real Property by Principal, its successors or assigns, and no assignment of the Agreement by operation of law or consent of Obligee or otherwise, shall in any degree relieve Principal or Surety of their obligations under this Bond, except as expressly provided below. No delay, neglect or failure of Obligee to proceed promptly to enforce the Agreement or to proceed promptly in case of default on the part of Principal or Surety shall in any degree relieve Principal and Surety or any of them of their obligations under this Bond, except as expressly provided above.

11. If, upon any sale, assignment or transfer of all or any part of the Real Property by Principal, its successors or assigns, Principal shall cause its transferee to post security, in the form of a bond or other security acceptable to Obligee, from a surety acceptable to Obligee, in the amount of and covering the same obligations as stated herein, then Obligee will accept such security in lieu of this Bond and issue an unconditional release of this Bond within sixty (60) days of Obligee's acceptance of such other security.

12. No right or action shall accrue on this Bond to or for the use of any person, or corporation other than Principal, Obligee, and their respective heirs, executors, administrators or successors. For purposes of this Bond, upon any winding up or dissolution of Obligee, each of the Member Cities shall be deemed to be a successor of Obligee; provided, however, that the Member Cities must appoint a designated representative to act on behalf of all of the Member Cities in the exercise of any of Obligee's rights under this Bond, including making, prosecuting, or settling any claim under this Bond.

13. If all Bonded Obligations have been performed and completed in accordance with the terms of the Agreement and in compliance with all applicable Environmental Laws or other applicable governmental regulations, and all costs and expenses related thereto have been paid in full, and no further action is required for the completion of all of the Bonded Obligations, then Obligee will issue an unconditional release of this Bond within a reasonable time period, but in no instance longer than thirty (30) days after receipt of evidence satisfactory to Obligee (*e.g.*, a report from the Environmental Designee to such effect); otherwise this Bond shall remain in full force and effect.

14. This Bond 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.

15. This Bond may not be amended, waived or modified except by an instrument in writing signed by Obligee.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have executed this Bond as of the dates forth below, but effective for all purposes as of [●].

PRINCIPAL:

WITNESSES:

GIBBONS CREEK ENVIRONMENTAL REDEVELOPMENT GROUP, LLC

______________________ Name:	By: ______________________
______________________ Name:	Name: ______________________
	Title: ______________________
	Date: ______________________
______________________ Name:	By: ______________________
______________________ Name:	Name: ______________________
	Title: ______________________
	Date: ______________________

SURETY:

ENDURANCE ASSURANCE CORPORATION

______________________ Name:	By: ______________________
______________________ Name:	Name: ______________________
	Title: ______________________
	Date: ______________________

OBLIGEE:

TEXAS MUNICIPAL POWER AGENCY

______________________ Name:	By: ______________________
______________________ Name:	Name: ______________________
	Title: ______________________
	Date: ______________________

December 10, 2020

AGENDA ITEM NO. 18

SUBJECT: Resolution No. 2020-12-9, amending the annual budget for the generation business for the Fiscal Year October 1, 2020 through September 30, 2021 (the "FY21 Generation Budget") for the purpose of appropriating funds in connection with the sale of the Gibbons Creek Steam Electric Station, including for the establishment of an environmental escrow account; amending the charges associated with the FY21 Generation Budget (the "FY21 Generation Budget Charges"); and resolving matters incidental and related thereto.

DISCUSSION: This Resolution amends the FY21 Generation Budget, and the FY21 Generation Budget Charges, to appropriate funds, and to authorize charges, for the sale of the Gibbons Creek Steam Electric Station ("Gibbons Creek"), including for the establishment of an environmental escrow fund.

The uses of funds and the charges are explained in Exhibits "A" and "B" of the Resolution.

BACKUP MATERIAL: None.

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-9.

RESOLUTION NO. 2020-12-9

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") AMENDING THE ANNUAL BUDGET FOR THE GENERATION BUSINESS FOR THE FISCAL YEAR OCTOBER 1, 2020 THROUGH SEPTEMBER 30, 2021 (THE "FY21 GENERATION BUDGET") FOR THE PURPOSE OF APPROPRIATING FUNDS IN CONNECTION WITH THE SALE OF THE GIBBONS CREEK STEAM ELECTRIC STATION, INCLUDING FOR THE ESTABLISHMENT OF AN ENVIRONMENTAL ESCROW ACCOUNT; AMENDING THE CHARGES ASSOCIATED WITH THE FY2021 GENERATION BUDGET (THE "FY21 GENERATION BUDGET CHARGES"); AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, the FY21 Generation Budget and FY21 Generation Budget Charges were adopted by the Board of Directors on June 4, 2020;

WHEREAS, it is necessary to amend the FY21 Generation Budget and FY21 Generation Budget Charges to provide funds in connection with the sale of the Gibbons Creek Steam Electric Station, including for the establishment of an environmental escrow account;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the FY21 Generation Budget is amended as shown in Exhibit "A";

3. That FY21 Generation Budget Charges are amended as shown in Exhibit "B";

4. That this Resolution shall be effective upon approval of the sale of the plant to the Gibbons Creek Environmental Redevelopment Group, LLC, by all four Member Cities, on the date the sale is approved by the last Member City to approve the sale;

5. That the General Manager shall be responsible for administering the amended FY21 Generation Budget, and all funds appropriated thereunder, subject to the provisions of the Rules & Regulations and General Policy of the Agency;

6. That should any portion of this Resolution or the amended FY21 Generation Budget be declared invalid, the invalidity of that portion shall not affect the remainder of this Resolution or the amended FY21 Generation Budget, which shall remain valid;

7. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST:

Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

EXHIBIT “A”
AMENDED FY21 GENERATION BUDGET

The original FY21 Generation Budget appropriates funds, in the amount of $21,213,762, for the following purposes:

A. $3,513,762 to fund routine maintenance and upkeep of the plant site in preparation for the potential sale of the plant or decommissioning/environmental remediation, if necessary.

B. $17,700,000 to fund the Decommissioning Project.

The amended FY21 Generation Budget appropriates funds, in the amount of $30,947,319, for the following purposes:

A. $2,801,081 to:
   I. fund routine maintenance and upkeep of the plant site in preparation for the potential sale of the plant or decommissioning/environmental remediation, if necessary, until the time the sale closes; and
   II. fund remaining Generation costs after the sale closes, such as ongoing legal fees, environmental representation, and ongoing regulatory/compliance costs.

B. $28,146,238* to fund the sale of the plant.

Payments required by the Asset Purchase Agreement in connection with the sale of Gibbons Creek, including for the establishment of an environmental escrow fund: $36,400,000*.

**$8,253,762 is currently reserved from the FY20 Decommissioning Project and is now repurposed to fund the sale of the plant. This amount plus $28,146,238 equals the total payment required by the Asset Purchase Agreement.*

EXHIBIT “B”
AMENDED FY21 GENERATION BUDGET CHARGES

Original Charges:

A. Original Monthly Charges: $292,813

B. Original Amount to be surcharged to the cities if and when commitments to make the decommissioning expenditures occurred: $17,700,000

Amended Charges:

A. Amended Monthly Charges: $233,423

B. Amended Amounts to be surcharged to the cities prior to scheduled closing of the Asset Purchase Agreement: $28,146,238

TEXAS MUNICIPAL POWER AGENCY
FY21 AMENDED Generation Budget (No Sale)

		FY21
FIXED COSTS		
L01 Labor & Benefits		434,055
L01 Retention Bonuses		43,000
L01 Severance Packages		135,000
M02 Direct Purchases		8,896
R27 Maintenance Agreements		2,500
R51 Contractor Maintenance		244,858
S02 Consulting Services		169,625
S04 Legal Services		632,269
Other Fixed Costs		40,179
Allocation of A&G		1,188,408
Subtotal Fixed Costs	**$**	**2,898,791**
C02 Sale of Plant Fund*		28,146,238
Subtotal Sale of Plant Fund	**$**	**28,146,238**
TOTAL FIXED COSTS	**$**	**31,045,029**
OTHER REVENUES		
Interest Income		(59,068)
Other Revenue		(38,642)
TOTAL OTHER REVENUES	**$**	**(97,710)**
TOTAL COSTS	**$**	**30,947,319**
Monthly Charge (excludes Sale of Plant Fund*)	**$**	**233,423**

**The Sale of Plant Fund will be charged as a one-time invoice if and when the sale of the plant is approved by all four Cities.*

December 10, 2020

AGENDA ITEM NO. 19

SUBJECT: Resolution No. 2020-12-10, amending the fiscal year 2021 budget for the Mine Business; appropriating funds therefore; providing for said budget administration; providing for severability; and resolving matters incidental and related thereto.

DISCUSSION: In the event the plant is sold, the budget for the Mine Business must be amended for the reallocation of A&G expenses and interest income on the Agency's operating account. No other changes are proposed to the Mine Business budget. The Resolution will go into effect if and when the sale of the plant is approved by all four Member Cities.

BACKUP MATERIAL: Attachment A to the Resolution: FY21 Amended Mine Budget (No Sale)

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-10.

Lyndi Birkhead
12/2/20

Competitive – Confidential Information

RESOLUTION NO. 2020-12-10

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY"); AMENDING THE FISCAL YEAR 2021 BUDGET FOR THE MINE BUSINESS; APPROPRIATING FUNDS THEREFORE; PROVIDING FOR SAID BUDGET ADMINISTRATION; PROVIDING FOR SEVERABILITY; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, on June 4, 2020, the Board adopted a separate Fiscal Year 2021 budget for the Mine Business;

WHEREAS, to recover appropriate costs for Fiscal Year 2021 relating to the sale of the plant, the Board desires to amend the Mine Budget, as reflected in Attachment A of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That this Board of Directors of the Agency adopts and approves an amended Fiscal Year 2021 Mine Budget, as shown in Attachment A, and further appropriates the funds therefore, subject to the provisions of the Rules & Regulations and General Policy of the Agency;

3. That this Resolution shall be effective upon approval of the sale of the plant to Gibbons Creek Environmental Redevelopment Group, LLC, by all four Member Cities, on the date it is approved by the last Member City to approve the sale;

4. That the General Manager shall be responsible for administering the Fiscal Year 2021 amended Mine Budget, and all funds appropriated thereunder, subject to the provisions of the Rules & Regulations and General Policy of the Agency;

5. That should any portion of this Resolution or the Fiscal Year 2021 amended Mine Budget be declared invalid, the invalidity of that portion shall not affect the remainder of this Resolution or the amended Mine Budget, which shall remain valid;

6. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law;

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST:

Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

TEXAS MUNICIPAL POWER AGENCY

ATTACHMENT A

FY21 AMENDED Mine Budget (No Sale)

		FY21
FIXED COSTS		
L01 Labor & Benefits		436,759
L01 Retention Bonuses		66,773
L01 Severance Packages		85,632
M02 Direct Purchases		1,500
M44 Mine Maintenance		320,000
R06 Bank Charges		221,000
R51 Contractor Maintenance		110,000
S02 Consulting Services		555,000
S04 Legal Services		200,000
Other Fixed Costs		100,650
Allocation of A&G		771,791
TOTAL FIXED COSTS	**$**	**2,869,106**
OTHER REVENUES		
Interest Income		(74,939)
Other Revenue		(46,000)
TOTAL OTHER REVENUES	**$**	**(120,939)**
TOTAL COSTS	**$**	**2,748,167**
Monthly Charge	**$**	**229,014**

December 10, 2020

AGENDA ITEM NO. 20

SUBJECT: Resolution No. 2020-12-11, amending charges for the Mine Business; designating an effective date for the charges; authorizing and directing that written notice be mailed to the Member Cities setting forth the charges; and resolving matters incidental and related thereto.

DISCUSSION: In the event the plant is sold, the charges for the Mine Business must be amended for the reallocation of A&G expenses and interest income on the Agency's operating account. This Resolution amends the mine charges effective on the first day of the month following the approval of the sale by all four Member Cities. This is discussed in further detail in Agenda Item No. 17.

BACKUP MATERIAL: Written notice to Member Cities

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-11.

Lyndi Birkhead
12/2/20

Competitive – Confidential Information

RESOLUTION NO. 2020-12-11

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") AMENDING CHARGES FOR THE MINE BUSINESS; DESIGNATING AN EFFECTIVE DATE FOR THE CHARGES, AUTHORIZING AND DIRECTING THAT WRITTEN NOTICE BE MAILED TO THE MEMBER CITIES SETTING FORTH THE CHARGES; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, pursuant to Section 2.6.1.2 of the Joint Operating Agreement between the Agency and the Cities of Bryan, Denton, Garland, and Greenville (the "Member Cities"), the Agency is empowered to set charges to recover the costs of the Mine Business;

WHEREAS, in the event the plant is sold, an amendment should be made to the Agency's charges for the Mine Business.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the Schedule of Charges attached hereto as Exhibit "A" is adopted and approved as the amended charges for the Mine Business;

3. That the effective date for the charges hereby adopted shall be the first day of the month following the approval of the sale of the plant to Gibbons Creek Environmental Redevelopment Group, LLC, by all four Member Cities, and such charges shall be effective for Fiscal Year 2021;

4. That it is expressly found that the charges approved herein are non-discriminatory, fair, reasonable, based upon the costs of the Mine Business, and adequate to pay or make provision for paying the costs of the Mine Business;

5. That the General Manager of the Agency is authorized and directed to simultaneously mail, on behalf of the Agency, notices to the Member Cities setting out the charges;

6. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

____
Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ______________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

EXHIBIT "A" TO RESOLUTION NO. 2020-12-11

SCHEDULE OF CHARGES

1. For Fiscal Year 2021, the Cities shall pay, in the aggregate, a monthly charge of $229,014. The charge shall be payable on the twenty-fifth of the said month.

2. The charge shall be allocated to the Cities on the following basis:

Bryan	21.7%
Denton	21.3%
Garland	47.0%
Greenville	10.0%

SERVING THE CITIES OF BRYAN, DENTON, GARLAND & GREENVILLE

December 10, 2020

City of ________________
ATTN: Utility Director

Re: TMPA Rate Adjustment

Dear ____________:

On December 10, 2020, the Texas Municipal Power Agency's Board of Directors adopted amended charges to recover the mine costs associated with fiscal year 2021. The amended charges are effective the first day of the month following the approval of the sale of the plant by all four Member Cities, and will be effective for fiscal year 2021. A copy of the resolution is enclosed herein.

The amended charge is, in the aggregate for all Cities, **$229,014/month**, which will be payable proportionally based on each City's share.

A copy of this notice has been mailed simultaneously to each Member City.

Sincerely,

____

Bob Kahn
General Manager

TEXAS MUNICIPAL POWER AGENCY P.O. BOX 7000 BRYAN, TEXAS 77805-7000 (936) 873-2013

December 10, 2020

AGENDA ITEM NO. 21

SUBJECT: Resolution No. 2020-12-12, amending the fiscal year 2021 budget for the Transmission Business; appropriating funds therefore; providing for said budget administration; providing for severability; and resolving matters incidental and related thereto.

DISCUSSION: In the event the plant is sold, the budget for the Transmission Business must be amended for the reallocation of A&G expenses and interest income on the Agency's operating account. No other changes are proposed to the Transmission Business budget. The Resolution will go into effect if and when all four Member Cities have approved the sale.

BACKUP MATERIAL: Attachment A to the Resolution: FY21 Amended Transmission Budget (No Sale)

ACTION REQUESTED: Consideration and action on Resolution No. 2020-12-12.

Lyndi Birkhead
12/2/20

RESOLUTION NO. 2020-12-12

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY"); AMENDING THE FISCAL YEAR 2021 BUDGET FOR THE TRANSMISSION BUSINESS; APPROPRIATING FUNDS THEREFORE; PROVIDING FOR SAID BUDGET ADMINISTRATION; PROVIDING FOR SEVERABILITY; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, on June 4, 2020, the Board adopted a separate Fiscal Year 2021 budget for the Transmission Business;

WHEREAS, to recover appropriate costs for Fiscal Year 2021 relating to the sale of the plant, the Board desires to amend the Transmission Budget, as reflected in Attachment A of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That this Board of Directors of the Agency adopts and approves an amended Fiscal Year 2021 Transmission Budget, as shown in Attachment A, and further appropriates the funds therefore, subject to the provisions of the Rules & Regulations and General Policy of the Agency;

3. That this Resolution shall be effective upon approval of the sale of the plant to Gibbons Creek Environmental Redevelopment Group, LLC, by all four Member Cities, on the date the sale is approved by the last Member City to approve the sale;

4. That the General Manager shall be responsible for administering the Fiscal Year 2021 amended Transmission Budget, and all funds appropriated thereunder, subject to the provisions of the Rules & Regulations and General Policy of the Agency;

5. That should any portion of this Resolution or the Fiscal Year 2021 amended Transmission Budget be declared invalid, the invalidity of that portion shall not affect the remainder of this Resolution or the amended Transmission Budget, which shall remain valid;

6. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law;

PASSED AND APPROVED THIS 10TH DAY OF DECEMBER 2020.

____
Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ______________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

TEXAS MUNICIPAL POWER AGENCY
FY21 AMENDED Transmission Budget (No Sale)

		FY21
FIXED COSTS		
L01 Labor & Benefits		615,738
R06 Bank Charges		298,050
R51 Contractor Maintenance		1,587,500
S04 Legal Services		88,000
Other Fixed Costs		1,301,296
Allocation of A&G		1,835,172
Subtotal Fixed Costs - Non-Debt	**$**	**5,725,756**
R57-R58 Debt Service - Bonds		13,622,808
R55 Interest on Series "A" Notes		695,383
I62 Debt Coverage Payment (DCP)		3,541,930
Subtotal Fixed Costs - Debt	**$**	**17,860,121**
TOTAL FIXED COSTS	**$**	**23,585,877**
OTHER REVENUES		
Transmission System Revenue		(47,079,270)
Interest Income		(368,453)
Other Revenue		(72,300)
TOTAL OTHER REVENUES	**$**	**(47,520,024)**
TOTAL COSTS / (REVENUE)	**$**	**(23,934,146)**
Monthly Charge	**$**	**-**

December 10, 2020

AGENDA ITEM NO. 22

SUBJECT: Future meeting dates and subjects

DISCUSSION: The date for the next scheduled Board meeting is **February 11, 2021 in Bryan**.

TENTATIVE MEETING DATES FOR 2021 and 2022:

June 10, 2021 - Garland
September 9, 2021 - Bryan
December 9, 2021 – Garland

February 10, 2022 – Bryan
June 9, 2022 – Garland
September 8, 2022 – Bryan
December 8, 2022 – Garland