

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 XXXXXXXX, 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it is qualified to be surety and guarantor on bonds and undertakings in the State of Texas, which certificate has not been revoked; and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 Oblige, in the aggregate, of the Penal Amount.

10. No forbearance of Oblige to Principal shall release Principal and Surety from their liability under this Bond except where Oblige 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 Oblige 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 Oblige 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 Oblige, from a surety acceptable to Oblige, in the amount of and covering the same obligations as stated herein, then Oblige will accept such security in lieu of this Bond and issue an unconditional release of this Bond within sixty (60) days of Oblige'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, Oblige, and their respective heirs, executors, administrators or successors. For purposes of this Bond, upon any winding up or dissolution of Oblige, each of the Member Cities shall be deemed to be a successor of Oblige; 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 Oblige'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 Oblige 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 Oblige (*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 Oblige.

[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 [●].

WITNESSES:

Name:

Name:

Name:

Name:

PRINCIPAL:

GIBBONS CREEK ENVIRONMENTAL
REDEVELOPMENT GROUP, LLC

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

SURETY:

ENDURANCE ASSURANCE
CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

OBLIGEE:

TEXAS MUNICIPAL POWER AGENCY

By: _____

Name: _____

Title: _____

Date: _____

Name:

Name:

Name:

Name: