

**AN ORDINANCE AUTHORIZING AN OPTION TO LEASE  
AND A GROUND LEASE OF URBANA LANDFILL COMPLEX**

**WHEREAS**, the City of Urbana (hereinafter, the “City”) is an Illinois home rule unit of local government pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and the Statutes of the State of Illinois; and

**WHEREAS**, Subsection (a), entitled "Sale of real estate," of Section 2-118, entitled “Purchase, sale, lease, etc., of real estate,” of the Code of Ordinances, City of Urbana, Illinois, provides that any real estate owned by the City of Urbana may be leased in any manner prescribed by the City Council in an ordinance authorizing such lease; and

**WHEREAS**, the City Council expressly finds and declares that the real estate, or interest therein, that is therein authorized to be leased is no longer needed for governmental purposes or proprietary activity of the City.

**WHEREAS**, the City owns certain property commonly known as the “Urbana Landfill Complex” a portion of which consisting of approximately 24 acres of land readily suitable for solar energy development is situated in Champaign County, Illinois (hereinafter, the “Landfill”); and

**WHEREAS**, the City Council for the City of Urbana, Illinois has a strong interest in fostering the development and use of sustainable, non-fossil fuel, energy sources including, but not limited to energy generated by solar power arrays; and

**WHEREAS**, TotalEnergies Distributed Generation USA, LLC, directly or through one or more of its affiliated organizations, (hereinafter, collectively, “Total”) is in the business of leasing property and constructing solar power generating facilities on such property; and

**WHEREAS**, the City of Urbana has selected Total as a qualified landfill solar developer and desires to enter into a lease option with Total to facilitate a commercially viable solar development on up to 24 acres of the Landfill.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

**Section 1.**

The Option to Lease Agreement and the exhibit appended thereto and incorporated therein in substantially the form appended hereto Exhibit B and incorporated herein by reference, shall be and the same is hereby authorized and approved.

**Section 2.**

The Mayor of the City of Urbana, Illinois, shall be and the same is hereby authorized to execute on behalf of the City of Urbana, Illinois and deliver the same to the City Clerk of the City of Urbana, Illinois, the latter being and the same being hereby authorized to attest to said execution of the Option to Lease Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

**Section 3.**

In the event Total exercises the option provided in the Option to Lease Agreement hereinbefore referenced, the Form of Solar Facility Ground Lease, in substantially the form appended to and incorporated as an exhibit to the Option to Lease Agreement, shall be and the same is hereby authorized and approved.

**Section 4.**

In the event Total exercises the option provided in the Option to Lease Agreement hereinbefore referenced, the Mayor of the City of Urbana, Illinois, shall be and the same is hereby authorized to execute on behalf of the City of Urbana, Illinois and deliver the same to the City Clerk of the City of Urbana, Illinois, the latter being and the same being hereby authorized to attest to said

execution of the Form of Solar Facility Ground Lease as so authorized and approved for and on behalf of the City of Urbana, Illinois.

**PASSED BY THE CITY COUNCIL** this 22nd Day of August, 2022.

AYES: Wu, Kolisetty, Bishop, Wilken, Quisenberry

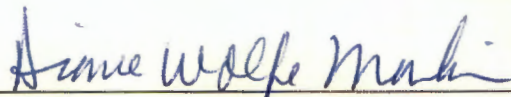
NAYS: None

ABSTAINS: None



Phyllis D. Clark, City Clerk

**APPROVED BY THE MAYOR** this 24<sup>th</sup> Day of August, 2022.



Diane Wolfe Marlin, Mayor



***OPTION TO LEASE – URBANA LANDFILL SOUTH***

**OPTION TO LEASE AGREEMENT**

**By and Between**

**City of Urbana, Illinois**

**(“Owner”)**

**and**

**Solar Star Urbana Landfill South, LLC**

**(“Optionee”)**

## OPTION TO LEASE AGREEMENT

THIS OPTION TO LEASE AGREEMENT (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2022 (“**Effective Date**”), by and between City of Urbana, Illinois (“**Owner**”), and Solar Star Urbana Landfill South, LLC, a Delaware limited liability company (“**Optionee**”) (collectively and singly, the “**Parties**” or the “**Party**”).

### RECITALS

A. Owner is a unit of local government and owns the real property, commonly known as the Urbana landfill, situated in Champaign County, Illinois (the “**County**”) and consisting of approximately 24 acres of land in the aggregate, as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”).

B. Optionee and some of its Affiliates, are engaged in the business of designing, developing, marketing, constructing, installing and operating photovoltaic solar electric facilities (hereinafter, “**Solar Facilities**”). “**Affiliate(s)**” shall mean with respect to an entity any other entity that directly or indirectly controls, is controlled by, is under common control with such entity. The term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as used with respect to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract, judicial order or otherwise. For clarity, “Affiliate” shall also mean any third-party investment vehicle in which Optionee (or any of Optionee’s Affiliates) owns an interest.

C. Optionee is fully aware that the Property which is the subject of this Agreement was, at some time in the past, operated by Owner as a local government-owned landfill.

D. Subject to the terms and conditions of this Agreement, Optionee desires to obtain, for itself and its Affiliates, an option to lease, in one or more installments, all or a portion of the Property, and so much subsurface rights (hereinafter, collectively, the “**Property**”) as is or are necessary or may become necessary for the Optionee to install footings and other support-like structures and to run or install necessary wiring, cables and related materials to facilitate the development, construction and operation of one or more solar-powered electrical generating facilities on the Property and, at Optionee’s election, on other lands in the vicinity of the Property (hereinafter, the “**Project.**”) should Optionee or one or more of its Affiliates choose to exercise the grant of Option provided for in this Agreement.

### AGREEMENT

NOW, THEREFORE, for the exchange of good, valuable and mutual consideration which the Parties have in hand received and in exchange of the terms, conditions and

provisions contained herein, the receipt and sufficiency of which are acknowledged, Owner and Optionee agree as follows:

1. **Option.** Owner hereby grants to Optionee and its Affiliates the exclusive right and option to lease, in one or more installments, all or a portion of the Property from Owner pursuant to the terms and conditions of this Agreement (hereinafter, the “**Option**”). If Optionee exercises the Option with respect to any portion of the Property in accordance with Section 3.1, the leasing of such portion of the Property shall be pursuant to the terms and provisions of a lease agreement (the “**Lease Agreement**”) in the form attached hereto as Exhibit B and incorporated herein by this reference. For clarity, if Optionee or one or more of its Affiliates exercises the Option to lease only a portion of the Property, Optionee and its Affiliates may continue to have the Option to lease the remaining portions of the Property which were not included in the first Option Exercise Notice for the remainder of the Option Term. Should Optionee decide in its sole discretion that it will not exercise the Option with respect to all or a portion of the Property, Optionee will notify Owner and execute and file in the property records a release and quitclaim of this Option Agreement as to the portion of the Property Optionee has decided it will not use.
  
2. **Option Term.** The term of the Option (the “**Option Term**”) shall commence on the Effective Date and, unless sooner terminated, shall end at 11:59 p.m. on the last day of the twenty-fourth (24<sup>th</sup>) month after the Effective Date. Optionee shall have the right, in its sole discretion, to terminate this Agreement at any time by giving written notice thereof to Owner and this Agreement shall terminate on the date specified in Optionee’s written notice. In the event of any such termination, absent a material default by Owner, Owner shall retain all the payments tendered by Optionee pursuant to this Agreement prior to the date of termination and Optionee shall have no further obligations to make further payments under this Agreement. Upon the effective date of the termination of this Agreement, all rights granted to Optionee pursuant to this Agreement shall cease and revert back to Owner and Optionee shall have no residual rights in or to the Property in any respect
  
3. **Option Payments.**
  - 3.2. **Option Payment Amount.** Optionee shall pay Owner option payments in the amount of One Hundred Dollars (\$100) per acre per year (each an “**Option Payment**” and collectively, the “**Option Payments**”) to keep this Agreement in effect. The first Option Payment shall be payable within thirty (30) days after the Effective Date, and thereafter the second and each subsequent Option Payment shall be payable on or before each six-month period following the Effective Date during the Option Term (each an “**Option Payment Due Date**”).

- 3.3. **Option Payments Non-Refundable; Notice of Non-Payment.** The Option Payments shall be the consideration for the grant of the Option and Owner's commitments herein and, except in the event of an Owner default or as expressly provided otherwise herein, shall be non-refundable. If Optionee fails to make an Option Payment required to extend the Option Term and does not cure such failure within thirty (30) days after receiving written notice of such failure from Owner, and provided that Optionee's failure to make the Option Payment was not subsequent to, or the result of, a default or breach by Owner, then this Agreement shall terminate and Owner shall retain all Option Payments previously made by Optionee. If Optionee delivers an Option Exercise Notice and the Closing (as such terms are defined below) fails to occur under this Agreement as a direct result of Optionee's breach of this Agreement, then the portion of the Option Payments delivered as of such date shall be Owner's liquidated damages hereunder. In the event that Owner defaults or breaches any of its obligations or agreements, or a representation or warranty of Owner ceases to be true, under this Agreement, and either (i) Optionee elects not to exercise the Option due to such default, breach or failure or (ii) the execution and delivery of a Lease Agreement fails to occur due to such default, breach or failure, then, in addition to Optionee's other remedies at law or in equity, Owner shall be liable to Optionee for the aggregate amount of all Option Payments made by Optionee to Owner under this Agreement and for all of Optionee's expenses incurred in connection with due diligence, entitlement and development efforts pertaining to the Property.

#### 4. Option Exercise.

- 4.1. **Exercise Notice.** Optionee or one or more of its Affiliates shall have the right to exercise the Option by delivering a written exercise notice to Owner at any time on or prior to the expiration of the Option Term (such written notice being an "**Option Exercise Notice**"), which shall include a specific legal description of the property to be included in the Lease Agreement, if not the entire Property. Closing following Optionee's exercise of the Option contained in this Agreement shall be, at Optionee's sole election, subject to a surveyor's determination of the acreage of the Property. Optionee's determination whether to exercise the Option by delivering an Option Exercise Notice to Owner shall be in Optionee's sole and absolute discretion.
- 4.2. **Option Closing(s).** Within ten (10) days after Optionee's delivery of an Option Exercise Notice, Optionee shall provide Owner with two (2) original identical Optionee-signed Lease Agreements for the Property which shall be in the form provided in Exhibit B appended hereto and made a part hereof. Optionee shall, at the time Optionee tenders to Owner the aforesaid original identical Optionee-signed Lease Agreements, also provide Owner with a Memorandum of Lease Agreement in such form as is the Parties deem satisfactory for purposes of



recording with the Champaign County Recorder's Office. Within ten (10) days following Owner's receipt of the aforesaid duly executed Lease Agreements and Memorandum of Lease Agreement, Owner shall execute the two Lease Agreements and shall return one fully executed original identical Lease Agreement and Memorandum to Optionee. Owner shall retain the other fully executed original identical Lease Agreement. The Parties agree that the Effective Date of the Lease Agreement shall be a date which is no more than twenty (20) days after the date of the Option Exercise Notice.

## **5. Due Diligence.**

### **5.1. Due Diligence and Access to the Property.**

Within twenty-one (21) days following the Effective Date, Owner shall provide Optionee with copies of any and all documents, or an opportunity to review any and all documents, reasonably requested by Optionee relative to and concerning the Property and its condition that are in the possession of Owner or over which Owner has reasonable control. Such documents, if any, shall include but are not limited to unrecorded leases, liens or other agreements that encumber the Property, any title reports or title policies, environmental site assessments and any other documentation and reports that are material to evaluating the status of title, the environmental condition, and the general condition of the Property. Throughout the Option Term, Optionee and Optionee's agents, employees, contractors and invitees (collectively, "**Optionee's Agents**") shall have reasonable access to the Property for the purposes of Optionee's due diligence investigations of the Property ("**Due Diligence Investigation**"), which Optionee's and/or Optionee's Agents due diligence may include, without limitation, the rights to (i) conduct such tests, surveys, studies and other investigations as Optionee may deem appropriate, and (ii) generally seek permits and incentives as Optionee determines to be necessary in connection with the Project and, (iii) with prior consent of Owner, seek such conditional use permit(s) and zoning changes in connection with the Project. Prior to any entry onto the Property, Optionee shall provide at least two (2) days' advanced written notice (which notice may include notice via e-mail) to Owner of Optionee's intention to enter the Property and shall provide Owner with evidence of insurance covering the activities of Optionee and Optionee's employees, contractors, agents, and invitees on the Property. Such right of entry shall include, without limitation, the right to undertake a Phase I Environmental Site Assessment. In no event shall such environmental assessment or other due diligence pierce the cap of the landfill located on the Property. Optionee's right of entry shall also include a nonexclusive irrevocable license to enter upon the Property for the purpose of construction of one or more temporary meteorological stations, each of which may occupy an approximately ten (10) foot by ten (10) foot portion of the Property. The meteorological stations will be in locations reasonably approved by Owner and may be, at Optionee's discretion, surrounded by a lockable chain link fence approximately six feet in height which fence shall be provided and installed by Optionee solely at Optionee's cost and expense. Optionee shall also have an exclusive license and right of possession to operate and maintain the said

meteorological stations on the Property, and the meteorological stations shall be and remain the personal property of the Optionee, and not a fixture, and may be removed by Optionee, at Optionee's sole cost and expense for any reason. Optionee shall remove the meteorological stations if Optionee determines not to exercise or extend its Option and, at that time, the right of entry and license will terminate. In the event this Option is terminated and no Lease is signed by Owner and Optionee, Optionee shall restore the Property to the condition it was in at the Effective Date, including removing any temporary meteorological stations at Optionee's sole cost and expense.

5.2. **Due Diligence Indemnities.** Optionee agrees to indemnify, defend and hold harmless Owner from and against any claims, actions, losses, liabilities, injuries, damages, judgments, or decrees to real or tangible property or persons that arise out of the Due Diligence Investigation activities of Optionee or any of Optionee's agents and their employees on the Property during the Option Term, including reasonable attorney's fees and court costs, except to the extent caused by the negligence or willful misconduct of Owner or its agents or employees.

### 5.3. **Condition of Title**

5.3.1. **Preliminary Title Report.** Optionee, at its sole cost and expense, may at any time during the Option Term obtain a preliminary title report or title commitment covering the Property ("**Preliminary Title Report**") from a title company selected by Optionee in its sole discretion ("**Title Company**"). Prior to delivering an Option Exercise Notice, Optionee may approve or disapprove any exceptions to title to the Property (or applicable portion thereof) shown in the Preliminary Title Report and provide Owner with written notice thereof describing any objections with reasonable particularity, or in lieu thereof, Optionee may provide Owner with a copy of the Preliminary Title Report. Any title exceptions listed on Schedule B of the Preliminary Title Report not expressly disapproved in writing by Optionee prior to delivery of its Option Exercise Notice other than Monetary Liens (as defined below) and Leases (as defined below) shall be "**Permitted Exceptions**" with respect to the Property. Within twenty-one (21) days after Owner receives Optionee's title objections, if any, Owner shall notify Optionee in writing whether Owner intends to remove such disapproved exception on or prior to the Closing. If Owner notifies Optionee that Owner intends to eliminate such disapproved exceptions, Owner shall remove such disapproved exceptions on or before the Closing. If Owner indicates to Optionee that Owner does not intend to remove one or more of such disapproved exceptions or if Owner fails to notify Optionee of its intent concerning the removal of such disapproved exceptions within such twenty-one (21) day period, Optionee may elect to (i) not exercise its Option (or retract its Option Exercise Notice and associated Lease Agreement) with respect to the Property, or (ii) lease the Property pursuant to this Agreement subject to such disapproved exceptions not to be so removed by Owner, in which event such exceptions shall become Permitted Exceptions

with respect to the Property. Owner shall use reasonable efforts to cure any title matters it agrees to remove pursuant to the foregoing.

- 5.3.2. **Optionee's Title Policy.** Owner acknowledges that Optionee may acquire at the Effective Date, at Optionee's sole cost, a policy of title insurance insuring Optionee's interests under this Agreement. If Optionee exercises the Option, Optionee may obtain a title insurance policy insuring its leasehold interest from the Title Company, at Optionee's sole cost. In either event, Owner shall reasonably cooperate and execute such forms and affidavits as may be reasonably required by the Title Company to facilitate issuance of such policies. If, in connection with such forms and affidavits, the Title Company raises any new title exceptions or survey matters, Optionee and Owner shall have the same rights and obligations with respect to such new exceptions or matters as apply to Optionee's initial review of title encumbrances under Section 5.3.1 above. If Optionee approves or is deemed to approve any new exceptions, then the same shall become Permitted Exceptions, and Optionee's title policy(ies) shall include and be subject to such new exception(s).
- 5.4. **Monetary Liens and Encumbrances.** At its expense, Owner shall remove at or before Closing (as hereinafter defined) (but earlier as necessary to prevent any disruption of Optionee's rights under this Agreement) any monetary liens such as a mortgage, unpaid or delinquent taxes or assessments, mechanic's or judgment lien, or any other consensual or non-consensual lien affecting any portion of the Property that Owner has created or permitted to exist, other than non-delinquent taxes or assessments (collectively, "**Monetary Liens**"). In the event Owner fails to so remove any Monetary Liens (or, with respect to any mortgage only, to provide a subordination or non-disturbance agreement from the beneficiary thereunder for the benefit of Optionee, in form and substance satisfactory to Optionee in its sole discretion) and Owner defaults on its obligations to the holder of such Monetary Lien, then Optionee shall be entitled (but not obligated) to fulfill Owner's obligations to such holder and may offset the cost of doing so against future payments due Owner under this Agreement. During the Option Term, Owner shall not place or allow any new encumbrances or liens on the Property that will survive as to the Property beyond the Closing.
- 5.5. **Leases.** Owner represents that there are no leases (including without limitation, any farm leases or oil, gas, or mineral leases) that grant a lessee any rights with respect to the surface of the Property that have not expired by the Effective Date of this Option.
- 5.6. **Incentives.** Tenant may, at Tenant's sole discretion, apply for and receive incentives for its planned use of the Property. Should Tenant's planned use of the Property become commercially unfeasible in the reasonable judgment of Tenant after Tenant has expended and exhausted its reasonable efforts to use the Property as contemplated herein and provided reasonable information to Lessor regarding

the obstacles that make such use commercially unfeasible, Tenant may use any and all incentives awarded for its project on the Property for another project elsewhere.

## **6. Representations and Warranties.**

**6.1. Owner's Representations and Warranties.** As of the Effective Date, Owner hereby makes the following representations and warranties to Optionee:

**6.1.1. Title.** Owner is the sole fee owner of the Property, including, without limitation, all water rights pertaining to the Land. There are no unrecorded leases, liens or other agreements in effect that are binding upon the Property. Owner has not granted or entered into any options, rights of first refusal, rights of first offer, offers to sell or agreements to purchase all or part of the Property other than with Optionee pursuant to this Agreement. Except as disclosed in the Title Report, no parties are either in possession of any part of the Property or have any easement, license, lease or other right or interest relating to the use or possession of any part of the Property.

**6.1.2. Authority.** Owner has the unrestricted right and authority to enter into, execute and perform this Agreement and to grant to Optionee the rights granted hereunder. Each person signing this Agreement on behalf of Owner has the capacity and is authorized to do so and all persons having any ownership or other right, title or interest in the Property are signing this Agreement. When signed by Owner, and signature attested by the City Clerk, this Agreement constitutes a binding and valid agreement enforceable against Owner and the Property in accordance with its terms.

**6.1.3. No Violations or Defaults.** Neither the execution and delivery of this Agreement by Owner nor the consummation by Owner of the transactions contemplated in this Agreement, nor compliance by Owner with the terms and provisions of this Agreement will: (i) violate any provision of the instruments or agreements by which Owner is formed and/or governed or (ii) violate any of the terms or provisions of any instrument or obligation encumbering the Property and/or by which Owner is bound.

**6.1.4. Consents and Approvals.** Once this Agreement is signed, no further consents or approvals of, or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or with any other third party by Owner are necessary in connection with the delivery and performance of this Agreement by Owner.

**6.1.5. Brokers.** Neither Owner nor any person associated with Owner has employed any broker or finder or incurred any liability for any brokers' fees, commissions or finders' fees as a result of the execution of this Agreement.

**6.1.6. Compliance with Laws; Condemnation.** Owner has not received any notice of and, to Owner's best knowledge, there are no violations of any

statute, ordinance or regulation or administrative or judicial order existing with respect to the Property. Owner has not received any notice of, and there are no pending, condemnation actions, nor does Owner have any knowledge of the same or of the threat of the same.

6.1.7. **Hazardous Substances.** The term “**Hazardous Substances**” as used in this Agreement shall include, without limitation, any substances, materials, or wastes which are or may become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; any petroleum or refined petroleum product or byproduct; asbestos; any flammable explosive; lead, or radioactive material. Owner has represented to Optionee that the Property is or was used as a “garbage dump” and that, therefore, there may be one or more Hazardous Substances located on the Property and its sub-surface. Optionee shall take all reasonable precautions to prevent disturbance, puncture, or other damage to the clay landfill cap. The Parties agree that each shall notify the other within twelve (12) hours of discovering any damage which resulted or could result in a breach of the clay landfill cap. If Optionee or any of its agents or contractors causes any damage or breach to the landfill cap that may cause or contribute to the release or possible release of any Hazardous Substance, Optionee shall restore, solely at its expense, the condition of the Property to its condition prior to when Optionee or its agents or contractors damaged or breached the landfill cap and such work shall be completed in a reasonably prompt manner given the character and nature of the repair needed. If Owner, any of its agents or contractors, or any third party not under the control of Tenant causes any damage or breach to the landfill cap that may cause or contribute to the release or possible release of any Hazardous Substance, Owner shall repair solely at its expense the damage to the landfill cap if and to the extent required by applicable Law or advised by the City’s expert landfill advisors, and such work shall be completed in a reasonably prompt manner and with the least disturbance reasonably possible to any equipment that Optionee may have placed on the Property.

6.1.8. **No Litigation.** There is no litigation pending or threatened respecting the ownership, possession, condition, use or operation of any portion of the Property.

6.1.9. **Changes.** During the Option Term, Owner shall timely notify Optionee in writing of any changes affecting any of the foregoing representations and warranties. The representations and warranties contained in this Section 6.1, as modified by any such notice, should the Option be exercised by Optionee, shall survive the expiration or termination of this Option Agreement by one (1) year.

6.2. **Optionee’s Representations and Warranties.** As of the Effective Date, Optionee hereby makes the following representations and warranties to Owner:

- 6.2.1. **Formation.** Optionee is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and is qualified to conduct business in the state in which the Property is located. Upon written request of Owner, Optionee shall provide written evidence of Optionee's right to operate its business in the state wherein the Property is located. Optionee has all requisite power and authority to enter into and perform this Agreement.
- 6.2.2. **Formation and Authority.** Optionee has the power and authority to enter into, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Optionee have been duly and validly approved by Optionee and any and all persons or entities whose approval is necessary to the validity hereof or thereof, and no other action on the part of Optionee is necessary to approve this Agreement and/or to consummate the transactions contemplated in this Agreement. This Agreement has been duly and validly executed and delivered by Optionee and constitutes a binding and valid agreement enforceable against Owner in accordance with its terms.
- 6.2.3. **Brokerage Fees.** Each Party agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the lease of the Property (or any portion thereof) by Owner to Optionee, and such claim is made by, through or on account of any acts or alleged acts of such Party or its representatives, such Party will protect, indemnify, defend and hold the other party free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys' fees) in connection therewith.
- 6.2.4. **Changes.** During the Option Term, Optionee shall timely notify Owner in writing of any changes affecting any of the foregoing representations and warranties. The representations and warranties contained in this Section 6.2, as modified by any such notice, should the Option be exercised by Optionee, shall survive the expiration or termination of this Option Agreement by one (1) year.

7. **Default Remedies; Attorneys' Fees.** If any Party defaults (hereinafter, the "**Defaulting Party**") on this Agreement, the other Party (hereinafter, the "**Non-Defaulting Party**") shall give written notice (hereinafter, the "**Notice of Default**") to the Defaulting Party. The Notice of Default shall: (i) state the specific term, provision or condition of this Agreement which the Non-Defaulting Party believes is in default; (ii) provide a reasonably detailed description of the default sufficient to put the Defaulting Party on notice insofar as what act or omission constitutes the default; (iii) specify a reasonable period of time in which the Defaulting Party must cure the default; and (iv) such other information as the Non-Defaulting Party believes is relevant to the default. Within seven (7) days of receipt of the Notice of Default, the Defaulting Party shall (i) commence to cure the default identified in

the Notice of Default; (ii) provide clear evidence that no such default has in fact occurred; or (iii) provide a reasonable but alternative timeframe in which the Defaulting Party can fully cure the default. If the Parties cannot agree on whether a default has occurred, the nature of the default, if any, or the timeframe for curing the default, either Party may initiate and maintain an action for breach of this Agreement in the state or federal court in the jurisdiction in which the Property is located. After the notice and response period described above, the non-defaulting Party shall be entitled to pursue all remedies available at law or in equity with respect to such default, including, with respect to Optionee's remedies, pursuit of specific performance of Owner's obligations under this Agreement. In the event either Party shall commence legal proceedings by reason of any such default or otherwise for the purpose of enforcing any provision or condition of this Agreement or to terminate the same by reason of the other Party's default, then the successful Party in such proceeding shall be entitled to court costs and reasonable attorneys' fees to be determined by the court, together with court costs, reasonable attorneys' fees and litigation expenses incurred in connection with any appellate review of, and any proceeding to enforce a judgment in, such proceeding.

Subject to the Notice of Default process described in the foregoing paragraph, in the event that Owner defaults or breaches any of its obligations or agreements, or a representation or warranty of Owner ceases to be true, under this Agreement, and either (i) Optionee elects not to exercise the Option due to such default, breach or failure or (ii) the execution and delivery of a Lease Agreement fails to occur due to Owner's default, breach or failure, then, in addition to Optionee's other remedies at law or in equity, Owner shall be liable to Optionee for the aggregate amount of all Option Payments made by Optionee to Owner under this Agreement and for all of Optionee's expenses incurred in connection with due diligence, entitlement and development efforts pertaining the Project plus costs to remove any facilities on the Property.

Subject to the Notice of Default process described in the foregoing paragraph, in the event that Optionee or any of its Agents or Affiliates defaults or breaches any of its or their obligations or agreements or if any representation or warranty of Optionee ceases to be true, under this Agreement, Owner shall have the right to terminate this Agreement and/or reject Optionee's or any of its Agents' or Affiliates' efforts to exercise the Option provided for in this Agreement. Further, Owner shall have the right to retain any and all option payments made by Optionee or any of its Agents or Affiliates.

8. **Confidentiality.** To the extent permitted by applicable Law, which shall include the Freedom of Information Act (5 ILCS 140/1 *et seq.*), Owner shall maintain in confidence all information pertaining to the financial terms of and payments under this Agreement, except that Owner may disclose the terms to Owner's legal counsel, accounting and financial advisors to the extent necessary. Furthermore, Owner recognizes that Optionee is engaged in a competitive industry and

acknowledges that divulging confidential information relative to this Agreement may cause significant damages to Optionee. Nothing herein shall be deemed, interpreted or construed as requiring that this Agreement or any of its terms, conditions and covenants be treated as confidential. In the event Owner is served with a judicial or administrative order (which shall include any subpoena issued by a court or an administrative agency) or receives a request pursuant to the Freedom of Information Act (5 ILCS 140/1 *et seq.*), Owner shall promptly provide Optionee with a copy of said order or request, however, nothing herein shall be deemed to bar Owner from providing the information requested by such order or request within the time provided in the order or by applicable law, unless an order is issued by a court or an administrative agency which quashes the order or request to produce the requested information. Further, nothing herein shall require Owner to assert any exemption under the aforesaid Freedom of Information Act or defend Optionee's assertion that the information requested by any such third-person is confidential, proprietary or confidential. To the extent Optionee deems any information it provides to Owner to be confidential, proprietary and/or trade secret, Optionee shall clearly place on such information a warning that such information is "confidential", "proprietary" or "trade secret" as Optionee may assert. The Owner shall not be obligated to treat any information Optionee provides to Owner as confidential, proprietary or trade secret if the information provided Optionee is not so labeled.

**9. Notices.** Any notice required to be given shall, unless provided otherwise in this Agreement, be deemed effective if provided in the following manner:

If by First Class U.S. Postal Service, such notice shall be deemed effective four (4) days after placement in a properly addressed and stamped envelope and placement with the U.S. Postal Service.

If by overnight courier, such notice shall be deemed effective upon receipt by the person to whom the notice is directed if the courier service provides written evidence (including printing out of an online tracking) that delivery to the recipient has been made.

If by personal delivery, such notice shall be deemed effective upon hand delivery to the person to whom the notice is directed.

If by facsimile, such notice shall be deemed effective twenty-four (24) hours after the recipient receives such notice and the sender's facsimile machine prints out a receipt which indicates that the recipient's facsimile machine received the notice.

Notices shall be sent to:

Owner:

Optionee:

City of Urbana



Public Works Director  
706 Glover Ave.  
Urbana, IL 61802

With a copy (which shall not constitute notice without delivery to the address above) to:

City Attorney  
400 S. Vine Street  
Urbana, IL 61801

Solar Star Urbana Landfill South, LLC  
c/o TotalEnergies Distributed Generation  
USA

1414 Harbour Way South  
Richmond, California 94804  
Attention: Director of Development

With a copy (which shall not constitute notice without delivery to the address above) to:

Solar Star Urbana Landfill South, LLC  
c/o TotalEnergies Distributed Generation  
USA

1414 Harbour Way South  
Richmond, California 94804  
Attention: Chad Tady

**10. Owner's Cooperation and Related Covenants.** Throughout the Option Term, Owner shall not interfere with Optionee's efforts to undertake and conduct Optionee's Due Diligence Investigation. Further, Owner shall not interfere with Optionee's efforts to obtain such government approvals, permits or incentives that are required of and/or may be available to Optionee. To the extent Optionee applies to Owner for any subdivision of the Property, building permit, or any form of zoning change to the Property, including but not necessarily limited to any zoning reclassification, minor or major variance or special use, Owner shall process such applications with the same diligence and in the same manner as Owner processes other applications for subdivisions real estate, building permits, and zoning reclassifications, minor or major variances, special uses. Owner shall not be obligated to incur or pay any expense or cost in connection with Optionee's Due Diligence Investigation, any subdivision of the Property, or any application or processing of such application for any zoning reclassification, major or minor variance, special use, or building permit in excess of the costs or expenses typically incurred by Owner for processing such application(s) for other applicant(s). Without limiting Owner's obligations under any other provision of this Agreement and at Optionee's sole expense, Owner, as record owner of the Property, shall assist Optionee with Optionee's efforts to obtain any non-disturbance agreement, relocation agreement, or other title curative agreement from any person or entity with a lien, encumbrance, mortgage, easement, or other problematic exception to Owner's title to the Property as may be reasonably requested by Optionee in order to facilitate Optionee's development and financing of the Project on the Property. Owner shall, at Optionee's expense, cooperate with Optionee by executing such applications and other documents that attest to Owner's ownership of the Property and Optionee's option to lease and lease of the Property from Owner as may be necessary in order to obtain such government approvals, permits or incentives that may be required or are available under Illinois state or federal law, rules or regulations. Optionee may, in its sole discretion, choose to complete or not any application or

permitting process it deems required for its activities. Optionee may not, however, abandon an application or permitting process if doing so causes or results in any lien, encumbrance, mortgage, easement, license, or other title defect in Owner's title in and to the Property. To the extent that Optionee's abandonment of or failure to complete any application or permitting process causes any lien, encumbrance, easement, license, or other title defect in Owner's title in and to the Property, Optionee, at Optionee's sole expense, shall undertake such action as is or may be required to cure or remove any such lien, encumbrance, easement, license, or other title defect. During the Option Term, Owner shall not modify the Property in a manner that might interfere with the flow of solar energy onto the Property or the construction of a solar energy project thereon, except as otherwise required by law or by existing contractual requirements related to the capped landfill disclosed to Optionee prior to the Effective Date.

**11. Effect of Option Agreement; Interest in Real Property.** The Parties intend that this Agreement is given by Owner to Optionee as an option to lease the Property as described herein. The parties intend that this Agreement creates a valid and present interest in the Option Property in favor of Optionee. Therefore, this Option shall be deemed an interest in and encumbrance upon the Property and shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns until such time as this Agreement is terminated or expires without Optionee having exercised the option created by this Agreement.

**12. Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Owner and Optionee respecting its subject matter. Any prior agreement, understanding or representation respecting the Property, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended, except in a writing signed by both parties.

**13. Assignment.** This Agreement shall be binding upon and shall inure to the benefit of Optionee and Owner and their respective representatives, successors and assign as hereinafter provided. Optionee shall have the right, subject to Owner's express prior written consent, which consent shall not be unreasonably withheld or delayed, to assign some or all of Optionee's rights and interests in and to this Option. Notwithstanding the immediate foregoing, Owner's prior written consent shall not be required where (i) Optionee seeks to or may assign this Agreement and the Option to an Affiliate of Optionee so long as the initial Optionee to this Agreement remains responsible for the operation of the Project; (ii) Optionee may mortgage or collaterally assign its interest in this Option to any entity that acquires all or a portion of Optionee's interest in the Project or provides financing to or for the Project so long as, if such acquisition or financing creates an encumbrance on the Property, any such mortgage or other encumbrance contains language that provides that such mortgage or other encumbrance on the Property shall be deemed fully and completely released and discharged as to Owner and the Property upon the earlier of the expiration of this Option and any renewal thereof without having entered into the Lease, the expiration of the Lease and any renewal thereof, or a default on or breach of this Agreement or

the Lease by Optionee or Tenant, as the case may be, without Optionee having cured such default or breach; or (iii) Optionee assigns this Agreement and the Option to an entity that acquires all or substantially all of Optionee's commercial and industrial business unit. Any assignment as provided heretofore which gives operational control of the Project to an entity other than an Affiliate of Optionee shall be null and void unless prior written consent is obtained from Owner, except that Owner's consent shall not be required for a transfer that grants an investor or financier the right to take control of the project under the financing documents. With respect to such a transfer or assignment: (i) such transfer or assignment shall create no greater rights or interest in or to the Property than otherwise provided in this Agreement; (ii) the term of this Agreement shall not extend beyond the end of the Option Term or any Renewal Term provided in this Agreement; (iii) such assignment or transfer shall be expressly made subject to all of the terms, covenants and conditions of this Agreement; (iv) with respect to an assignment, the new assignee shall simultaneously execute an assignment and assumption agreement in form reasonably satisfactory to Owner, agreeing to be bound by all of the terms, covenants, and agreements of this Agreement and assume the obligations of Optionee hereunder; (v) subject to the Permitted Encumbrances recorded against the Property at that time, the burdens and the rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Owner and its successors, assigns, permittees, licensees, Optionees, employees, and agents; and (vi) if an encumbrance or lien is created on the Property, the language of any assignment or transfer document or instrument, as the case may be, shall expressly provide that any mortgage, lien or other encumbrance placed on the Property shall automatically terminate and be deemed fully and completely released as to Owner and the Property without any expense to or obligation of Owner, whether or not such mortgage, lien or encumbrance is fully paid, upon the earlier of the expiration of this Option and any renewal thereof without having entered into the Lease, the expiration of the Lease and any renewal thereof, or a default on or breach of this Agreement or the Lease by Optionee, as the case may be, without Optionee having cured such default or breach. Unless expressly provided otherwise herein, any person or entity to whom Optionee assigns all of its right, title and interest under this Agreement and in the Option shall be included in the term is referred to herein as "Optionee."

- 14. Governing Law; Interpretation.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, without regard to its choice of law rules.
- 15. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the Effective Date), and including the last day, unless the last day is a holiday or Saturday or Sunday, in which case the time shall be extended to the next business day. Time is of the essence under this Agreement
- 16. Memorandum.** Neither Owner nor Optionee shall record this Agreement in its entirety. Concurrently with the execution of this Agreement, the Parties shall execute

the form of Memorandum of Option attached hereto as Exhibit C (the “**Memorandum**”). Optionee is authorized to record the Memorandum in the official real property records of the County. In the event there is any error or inaccuracy in the legal description included on Exhibit A to the Memorandum that is recorded, Optionee shall be authorized to record a corrective Memorandum correcting any such the error. If this Agreement is terminated and the Property is not leased by Optionee, Optionee agrees to execute and record in the same location as the Memorandum was recorded a Release of Memorandum or other termination acknowledgment that is satisfactory to remove any cloud on the title created by the recordation of the Memorandum. In the event that the recording of the Memorandum changes the heretofore property tax exempt status of the Property, Optionee shall be obligated to pay any and all property taxes and/or property assessments, if any. In the event that Optionee pays said property taxes and assessments directly, Optionee shall provide Owner with a copy of a receipt which evidences that the said taxes and/or assessments have been paid. In the alternative, Optionee may reimburse Owner for Owner’s payment of any such taxes and/or assessments. Nothing in this Agreement or the Memorandum shall convey any title in or to the Property.

- 17. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.
- 18. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document. PDF or facsimile counterparts shall be deemed originals.
- 19. Brokerage Fees.** Each Party agrees that if any person or entity makes a claim for brokerage commissions or finder’s fees related to the lease of the Property (or any portion thereof) by Owner to Optionee, and such claim is made by, through or on account of any acts or alleged acts of such party or its representatives, such party will protect, indemnify, defend and hold the other Party free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys’ fees) in connection therewith. Optionee acknowledges its responsibility to pay certain consulting fees to Stadia Realty Inc. pursuant to a separate agreement.

*[Signature page follows this page.]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**OWNER:**

City of Urbana

By: *Diane Wolfe Marlin*

Name: Diane Wolfe Marlin

Title: Mayor

Date: Aug 24, 2022

**OPTIONEE:**

Solar Star Urbana Landfill South, LLC

By: TotalEnergies Distributed Generation Assets USA, LLC its sole owner

By: TotalEnergies Distributed Generation USA, LLC, its Sole Owner

By: *F. A. Potts III*

Name: Frederic A. Potts, III

Title: President and CEO

Date: September 12, 2022

**Exhibit A**  
**To Option to Lease Agreement**

**Legal Description**

The Property is the portion of Property Identification Number (PIN) 91-21-09-401-007 depicted in the below image . Optionee shall have the right to obtain an appropriate legal description for the Property and attach it to the Memorandum of Option to Lease for recording purposes.



**Exhibit B**

**Form of Lease Agreement**

*[Follows this page]*

**Exhibit C**

**Form of Memorandum of Option to Lease**



RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Solar Star Urbana Landfill South, LLC  
c/o TotalEnergies Distributed Generation  
USA  
1414 Harbour Way South  
Richmond, California 94804  
Attention: Director of Development

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

### MEMORANDUM OF OPTION TO LEASE

THIS MEMORANDUM OF OPTION TO LEASE ("**Memorandum**") is made and entered into as of \_\_\_\_\_, 2022\_\_ ("**Effective Date**"), by and between City of Urbana ("**Owner**"), and Solar Star Urbana Landfill South, LLC LLC, a Delaware limited liability company ("**Optionee**").

#### RECITALS

- A. Owner owns the real property, referred to as PIN(s) 91-21-09-401-007, situated in Champaign County, Illinois (the "**County**") and consisting of approximately 24 acres of land in the aggregate, as more particularly described in Exhibit A attached hereto and incorporated herein (the "**Land**").
- B. Owner and Optionee have entered into that certain unrecorded Option to Lease Agreement, dated as of the Effective Date (the "**Agreement**"), pursuant to which Owner has granted an option to Optionee to lease the Land (the "**Option**"), together with any and all rights in or to any improvements or fixtures located thereon, including any easements, appurtenances, surface rights and hereditaments benefiting the Land, and further including, without limitation, all right, title and interest with respect to (the Land together with all of the foregoing, collectively, the "**Property**"), upon the terms and conditions as set forth in the Agreement. Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Agreement.
- C. Owner and Optionee desire to execute this Memorandum and cause the same to be recorded in the official real property records of the County, for the purposes of memorializing the Agreement of record and providing third parties with notice of the Agreement.

#### AGREEMENT

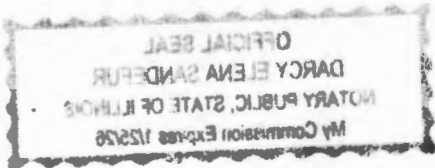
[Signature page to Memorandum of Ground Lease Agreement]

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Optionee and Owner hereby acknowledge that they have agreed in the Agreement as follows:

1. **Grant of Option.** Owner hereby grants to Optionee an exclusive option (the “**Option**”) to lease the Property from Owner upon the terms and conditions set forth in the Agreement, which Option may be exercised until the Option Term has expired.
2. **Exercise of Option.** Should Optionee timely and properly exercise the Option as set forth in the Agreement, Optionee shall lease from Owner, and Owner shall lease to Optionee, the Property, upon the terms and conditions set forth in a lease agreement to be executed by and between Optionee and Owner.
3. **Option Term.** The term of the Option commenced on the Effective Date and, unless sooner terminated, shall end at 11:59 p.m. on the twenty fourth (24) month anniversary of the Effective Date (the “**Option Term**”). Optionee has the right to conduct those due diligence activities on the Property throughout the Option Term as stated in the Agreement.
4. **No Transfers/Lease Limitations.** During the Option Term, Owner shall not, other than in accordance with the Agreement, sell, encumber or otherwise transfer any interest in all or any portion of the Property or enter any agree to do so, except as expressly permitted in the Agreement. During the Option Term, Owner shall not enter into or amend any Leases in a manner which grants rights to any portion of the Property beyond the effective date of any Lease Agreement entered into pursuant to the Agreement.
5. **Notices.** All notices required by the Agreement shall be made in the manner provided in the Agreement.
6. **Recording.** The parties have agreed that this Memorandum shall be recorded in the official real property records of the County. In the event there is any error or inaccuracy in the legal description included on Exhibit A to this Memorandum, Optionee, upon the written consent of Owner, shall be authorized to record a corrective Memorandum correcting the error in the legal description on Exhibit A.
7. **Counterparts.** This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Memorandum to physically form one document.
8. **Purpose.** The sole purpose of this Memorandum is to give notice of the Agreement and all of its terms, covenant and conditions to the same extent as if the Agreement were fully set forth herein. This Memorandum is subject to all of the terms, conditions and provisions of the Agreement, which shall control in the event of any conflicts with this Memorandum.

Nothing in this Memorandum shall confer any rights or interests in the Property other than those set forth in the Agreement.

**[SIGNATURE PAGE FOLLOWS ON SUBSEQUENT PAGE]**



[Signature page to Memorandum of Ground Lease Agreement]

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

**OWNER:**

**City of Urbana**

By: *Diane Wolfe Marlin*  
Name: Diane Wolfe Marlin  
Title: Mayor

**ACKNOWLEDGMENT**

STATE OF Illinois )  
 )  
COUNTY OF Champaign )

SS

This instrument was acknowledged before me on August 29th, by [2022].

*Darcy Sandefur*  
Notary Public

Printed Name: Darcy Sandefur

My Commission Expires: 01/25/2026



**OPTIONEE:**

Solar Star Urbana Landfill South, LLC

By: TotalEnergies Distributed Generation Assets USA, LLC its sole owner

By: TotalEnergies Distributed Generation USA, LLC, its Sole Owner

By *F.A. Potts*

Name: Frederic A. Potts, III

Title: President and CEO

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

[State of California )

County of Alameda )

On 09/12/2022, before me, Simarjit Manhas  
(insert name of notary)

Notary Public, personally appeared Frederic A. Potts, III, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *[Signature]*



(Seal)]

**Exhibit A**  
**to Memorandum of Option**

**Legal Description**

*[To be provided ]*