

ORDINANCE NO. 2024-08-027

AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO OPTION TO LEASE AGREEMENT – LANDFILL SOLAR LEASE

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; and

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 of 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 selected Total as a qualified landfill solar developer and entered into a lease option with Total to facilitate a commercially viable solar development on up to 24 acres of the Landfill and executed an Option to Lease Agreement with Total on August 24, 2022.

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

Section 1.

The First Amendment to Option to Lease Agreement and the exhibits appended thereto and incorporated therein in substantially the form appended hereto, shall be and the same are 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 First Amendment to 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 herein 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.

DS



PASSED BY THE CITY COUNCIL this 12th Day of August, 2024.

AYES: Wu, Evans, Kolisetty, Bishop, Quisenberry

NAYS: None.

ABSTAINS: None.

DocuSigned by:

Darcy E. Sandefur

FF1B402C2BC6488...

Darcy E. Sandefur, City Clerk

APPROVED BY THE MAYOR this 12th Day of August, 2024.

DocuSigned by:

Diane Wolfe Marlin

0FB88E5B1B94C5...

Diane Wolfe Marlin, Mayor

FIRST AMENDMENT TO OPTION TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO OPTION TO LEASE AGREEMENT (this "**First Amendment**") is made this ___ day of July 2024 ("**Effective Date**") by and between **City of Urbana, Illinois**, (the "Owner"), and **Solar Star Urbana Landfill South, LLC** ("Optionee").

WITNESSETH:

WHEREAS, Owner and Optionee entered into that certain Option to Lease Agreement dated August 24, 2022 (the "**Option Agreement**"), relating to certain real property located in Champaign County, State of Illinois (the "**Property**"); and

WHEREAS, the parties desire to extend the Option Term for an additional twenty-four (24) months and amend the Option Agreement upon the terms and conditions hereinafter set forth.

WHEREAS, the parties desire to further amend the Option Agreement upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used herein but not defined herein shall have the meanings given to them in the Option Agreement.

2. Recitals. The foregoing recitals are hereby incorporated as if fully set forth herein.

3. Amendment to Section 2 Option Term. Section 2. Option Term is deleted in its entirety and replaced as follows:

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 forty-eighth (48th) month beginning on August 24, 2022. 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 to Owner and Optionee shall have no residual rights in or to the Property in any respect.

5. Memorandum. The parties intend to record the Memorandum of First Amendment to Option to Lease Agreement, as shown in Exhibit A attached hereto.

6. Savings Clause. Except as specifically modified by this First Amendment, all of the terms, covenants and conditions of the Option Agreement shall remain in full force and effect and are hereby ratified and affirmed by the parties hereto.
7. Conflict. In the event of a conflict between any provision of this First Amendment and the Option Agreement, the terms and conditions of this First Amendment shall govern and control.
8. Entire Agreement. This First Amendment constitutes the entire agreement concerning the subject matter of this First Amendment. No subsequent alteration, amendment change or addition to this First Amendment or the Option Agreement shall be binding upon the parties hereto unless reduced to writing and signed by the party or parties to be charged herewith.
9. Binding Effect. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
10. Counterparts. This First Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one original.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE 1 OF 2 TO FIRST AMENDMENT TO OPTION TO LEASE
AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have duly executed this First Amendment to Option to Lease Agreement as of the day and year first above written, but effective as of the Effective Date.

OWNER:

CITY OF URBANA

By: _____
Name:
Title:
Date:

[SIGNATURE PAGE 2 OF 2 TO FIRST AMENDMENT TO OPTION TO LEASE AGREEMENT]

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: _____

Name: _____

Title: _____

EXHIBIT A

**FORM OF MEMORANDUM OF FIRST AMENDMENT TO OPTION TO LEASE
AGREEMENT**

(Attached)

**RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:**

SOLAR STAR URBANA LANDFILL SOUTH, LLC
c/o TotalEnergies Distributed Generation Assets USA, LLC
1201 Louisiana St, Suite 1800
Houston, TX 77002
Attn: Legal

MEMORANDUM OF OPTION TO LEASE

This **MEMORANDUM OF OPTION TO LEASE** (this “**Memorandum**”) is made this ____ day of _____, 2024 (“**Effective Date**”) by and between **City of Urbana, Illinois**, (the “**Owner**”), and **Solar Star Urbana Landfill South, LLC** (“**Optionee**”).

WITNESSETH:

WHEREAS, Owner and Optionee entered into that certain Option to Lease Agreement dated August 24, 2022 (the “**Option Agreement**”), relating to certain real property located in Champaign County, State of Illinois, and as further described in Exhibit A to this Memorandum (the “**Property**”); and

WHEREAS, the parties desire to amend the Option Agreement upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration and mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree 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 August 24, 2022, and, unless sooner terminated, shall end at 11:59 p.m. on the forty-eighth (48) month anniversary thereof (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. The parties have executed and recorded this Memorandum for the propose of imparting notice to all third parties of the Agreement, Optionee right to lease the Property, and the parties' rights and obligations pursuant to the Agreement. If any of the terms of this Memorandum conflict with the terms of the Agreement, then the Agreement shall control.

9. **Binding Effect.** This Memorandum and the Agreement shall be covenants and obligations binding on and running with the Property and shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns.

10. **Governing Law.** This Memorandum and the Agreement are governed by Illinois law.

IN WITNESS WHEREOF, Owner and Optionee have executed this Memorandum of First Amendment to Option to Lease as of the day and year first above written.

OWNER:

CITY OF URBANA

By: _____

Name:

Title:

Date:

STATE OF _____

COUNTY OF _____

I, _____, a notary public in and for said County in said State, hereby certify that _____, whose name is signed to the foregoing instrument, and who is known to me, acknowledged me on this day that, being informed of the content of the instrument, he/she executed the same voluntarily on the day the same bears date.

Given under my hand this the _____ day of _____, 20____.

Signature _____(Seal)

Name: _____

Notary Public in and for the State of _____

STATE OF _____

COUNTY OF _____

I, _____, a notary public in and for said County in said State, hereby certify that _____, whose name is signed to the foregoing instrument, and who is known to me, acknowledged me on this day that, being informed of the content of the instrument, he/she executed the same voluntarily on the day the same bears date.

Given under my hand this the _____ day of _____, 20____.

Signature _____(Seal)

Name: _____

Notary Public in and for the State of _____

**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: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

I, _____, a notary public in and for said County in
said State, hereby certify that _____ whose name as
_____ of **TotalEnergies Distributed Generation Assets USA, LLC**, a
Delaware limited liability company, its Sole Member of Solar Star Urbana Landfill South, LLC,
a Delaware limited liability company, is signed to the foregoing instrument and who is known to
me, acknowledged before me on this day that, being informed of the contents of the instrument,
he/she, as such officer and with full authority, executed the same voluntarily for and as the act of
said limited liability company.

Given under my hand this the _____ day of _____, 20____.

Signature _____(Seal)

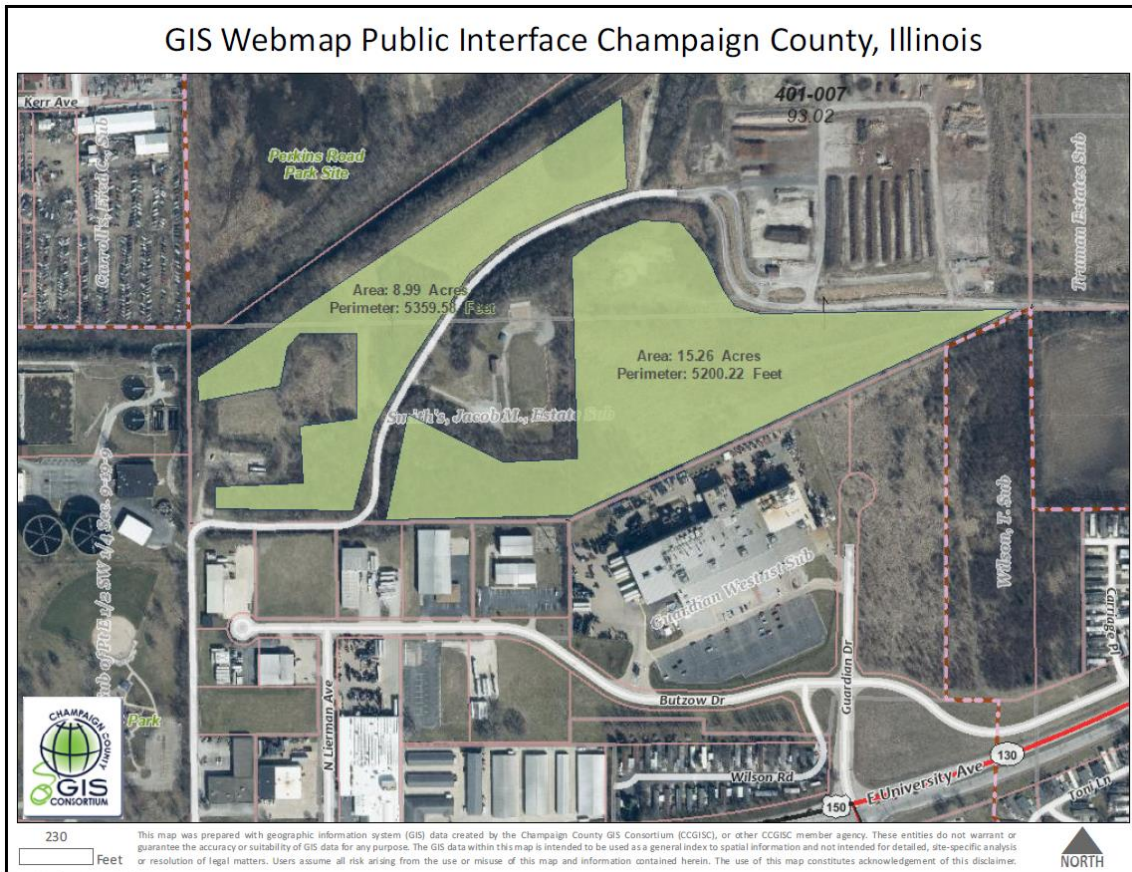
Name: _____

Notary Public in and for the State of _____

Exhibit A to Memorandum of Option to Lease

Legal Description of Leased Premises

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.



Date: Monday, August 9, 2021
 Per Title Commitment No. 25000725751 with an effective date of October 10, 2023, provided by Stewart Title Guaranty Company.

PART OF THE-E1/2 OF SECTION 9, T. 19N., R. 9E. OF THE 3RD P.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS; BEGINNING AT AN IRON PIPE MONUMENT FOUND AT THE SE CORNER OF THE NE 1/4 OF SECTION 9, T. 19 N., R. 9 E. OF THE 3RD P.M.; THENCE S. 66°07'41" W., 1574.02 FEET TO AN IRON PIPE MONUMENT FOUND AT THE NE CORNER OF BUTZOW INDUSTRIAL SUBDIVISION; THENCE S. 89°35'12" W., ALONG THE NORTH LINE OF SAID SUBDIVISION, 1187.58 FEET TO AN IRON PIPE MONUMENT FOUND AT THE NW CORNER OF SAID SUBDIVISION, SAID CORNER BEING ON THE WEST LINE OF THE SE 1/4 OF SAID SECTION 9, THENCE N. 00°51'16" W., ALONG SAID WEST LINE, 627.65 FEET TO A 2"X2" WOODEN HUD FOUND AT THE SW CORNER OF THE NE1/4 OF SAID SECTION 9; THENCE N. 89°36'34" E. ALONG THE SOUTH LINE OF SAID NE 1/4, 109.65 FEET TO A POINT ON THE CENTERLINE OF THE SALINE BRANCH DRAINAGE DITCH; THENCE N. 55°55'18" E., ALONG SAID CENTERLINE, 1448.98 FEET TO THE WEST LINE OF THE E 1/2 OF THE NE ¼ OF SAID SECTION 9; THENCE CONTINUING N. 55°55'18" E., ALONG SAID CENTERLINE, 91.98 FEET; THENCE N. 50°38'22" E., ALONG SAID CENTERLINE, 523.05 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 1468.50 FEET OF THE E 1/2 OF THE NE 1/4 OF SAID SECTION 9; THENCE N. 89°35'31" E., ALONG SAID SOUTH LINE, 10.46 FEET TO A POINT ON THE EAST LINE OF THE WEST 495.00 FEET OF

THE E 1/2 OF THE NE 1/4 OF SAID SECTION 9; THENCE N. 00°35'42" W., ALONG SAID EAST LINE, 1468.50 FEET TO AN IRON PIPE MONUMENT SET ON THE NORTH LINE OF THE NE 1/4 OF SAID SECTION 9; THENCE N. 89°35'31" E., ALONG SAID NORTH LINE, 309.44 FEET TO AN IRON PIPE MONUMENT SET AT A POINT 514.45 WEST OF THE NE CORNER OF THE NE 1/4 OF SAID SECTION 9, SAID POINT BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF F.A.1. ROUTE 5; THENCE S. 00°14'31" W., ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, 23.52 FEET TO AN IRON PIPE MONUMENT SET; THENCE S. 39°55'14" E., ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE, 551.77 FEET TO AN IRON PIPE MONUMENT SET ON THE WEST LINE OF THE EAST 165.00 FEET OR THE NE 1/4 OF SAID SECTION 9; THENCE S. 00°34'46" E., ALONG SAID WEST LINE, 342.80 FEET TO AN IRON PIPE MONUMENT SET ON THE SOUTH LINE OF THE NORTH 792.00 FEET OF THE NE 1/4 OF SAID SECTION 9; THENCE N. 89°35'31" E. , ALONG SAID SOUTH LINE, 165.00 FEET TO A POINT ON THE EAST LINE OF THE NE 1/4 OF SAID SECTION 9; THENCE, S. 00°34'46" E., ALONG SAID EAST LINE, 1860.43 FEET TO THE POINT OF BEGINNING CONTAINING 95.215 ACRES, MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS