

**OPTION AND RIGHT OF ENTRY  
AND  
DEED OF SOLAR LEASE AGREEMENT**

**by and between**

**MONTGOMERY REGIONAL SOLID WASTE AUTHORITY (“LESSOR”)**

**AND**

**MONTGOMERY REGIONAL SOLAR CENTER, LLC (“LESSEE”)**

**DATED: \_\_\_\_\_, 2023**

**OPTION AND RIGHT OF ENTRY  
AND  
DEED OF SOLAR LEASE AGREEMENT**

This **Option and Right of Entry (Part I) and Deed of Solar Lease Agreement (Part II)**, dated as of \_\_\_\_\_, 2023 (the “Effective Date”), is made by and between **MONTGOMERY REGIONAL SOLID WASTE AUTHORITY**, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as “Lessor”) and **MONTGOMERY REGIONAL SOLAR CENTER, LLC**, a Virginia limited liability company (hereinafter referred to as “Lessee”). Lessor and Lessee may each be referred to herein as the “Party”, or collectively as the “Parties”, as the usage of such term may require. Section cross-references regarding the Option and Right of Entry (Part I) and Deed of Solar Lease Agreement (Part II) shall be preceded by a “I” and “II,” respectively. The Option and Right of Entry (Part I) is sometimes referred to herein as the “Option Agreement,” and the Deed of Solar Lease Agreement (Part II) is sometimes referred to herein as the “Lease Agreement.” Certain terms defined in this Option Agreement may be used in the Lease Agreement and vice versa, and the definitions in Section I.14 below shall apply to both the Option Agreement and the Lease Agreement.

**RECITALS**

**WHEREAS**, Lessee is a renewable energy developer that desires to evaluate the development, construction, and operation of a solar photovoltaic electric energy facility with a capacity of approximately 3 megawatts as measured in alternating current generation capacity, consisting of improvements and facilities necessary to harness sunlight for photovoltaic energy generation including, without limitation, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, braces, wiring, plumbing, and related equipment, including battery energy storage system facilities, and any and all other equipment and facilities used or useful in connection with the production and transmission of electrical energy (collectively, the “System”).

**WHEREAS**, Lessee desires to conduct certain resource assessment studies and to erect and maintain equipment for the purpose of evaluating the development, construction and operation of the System on a certain portion of Lessor’s property in the County (as defined herein) as more particularly described on Exhibit “A” attached hereto and made a part hereof (such closed landfill being the “Landfill,” and such property being the “Landfill Property”). In the event of inaccuracies or insufficiencies in the legal description in Exhibit A, this Agreement shall be amended to correct the inaccuracies or insufficiencies.

**WHEREAS**, Lessor conducts maintenance and post-closure care activities at the Landfill as required by law and under Solid Waste Permit Number 397 issued by the Virginia Department of Environmental Quality (“DEQ”).

**WHEREAS**, Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, an exclusive option to obtain an exclusive lease of the Landfill Property for development, construction, operation, transmission, access, and other purposes related to the generation and

supply of electrical power on the Landfill Property, or a portion thereof, upon the terms and conditions set forth in this Agreement.

**WHEREAS**, in furtherance thereof, Lessor desires to provide Lessee with site control (in the form of an exclusive Option and Right of Entry) for a certain tract of real property within the Landfill Property containing approximately 32 acres (the “Option Premises”), with the boundaries further depicted in [the survey/map included in] Exhibit A attached hereto, which Option Premises, with such boundary changes as may be agreed upon during the Option Period (including taking into account, without limitation, the rights and development plans of other parties with respect to the Landfill Property), shall be referred to as the “Demised Premises” under the Lease Agreement, to the extent the same becomes effective;

**WHEREAS**, Lessee requires that it be accorded a certain time period in which to conduct due diligence on and about the Option Premises, undertake other customary studies which may include design, planning, engineering, environmental analysis and mitigation, and financial and revenue studies and analysis, obtain the rights to interconnect the System with the Grid, and undertake other customary activities (collectively, as further described hereunder, the “Feasibility Studies”), upon the completion of which Feasibilities Studies, Lessee shall decide whether or not to proceed to the binding terms of the Lease Agreement; and

**WHEREAS**, Lessor's Entire Property (as defined below) includes the Landfill, a municipal solid waste transfer station operating under DEQ Permit-By-Rule Number 149 and a tire recycling facility under DEQ Permit-By-Rule Number 559.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

## **I. OPTION AND RIGHT OF ENTRY**

### **1. Option Term and Payment.**

(a) Grant of Option. Subject to the terms and conditions of this Option Agreement, Lessor hereby irrevocably grants to Lessee the exclusive right and option (the “Option”) to (i) lease the Option Premises and (ii) obtain certain access and easement rights necessary for the Permitted Use (as defined herein). Section I.13 establishes the effect of exercise of this Option with respect to the commencement of the Lease Agreement. For avoidance of doubt, Lessee acknowledges and agrees that, to the extent the Option is exercised, Lessee’s leasehold interest may be subject to, among other things, (i) existing third-party rights or obligations to and use requirements of other users of the Landfill Property (“Third-Party Landfill Property Use Requirements”) as contained in Exhibit H, (ii) the contractual and/or real property interests of others with respect to the Landfill Property, either as disclosed hereunder or of official record, and (iii) the rights of any Governmental Authority (as defined herein) related to the Landfill Property, including the right to enter on, inspect and regulate the use of the Landfill Property. Exhibit A shall also depict the intended Facility Access Areas, as defined in Section II.1(c) of the Lease Agreement. The Facility Access Areas are also subject to Third-Party Landfill Property Use Requirements, as applicable.

(b) Option Period. This Agreement will become effective on the Effective Date and will end three (3) years after the Effective Date unless earlier terminated in accordance with the provisions herein (the “Initial Option Period”). Unless Lessee gives to the Lessor notice of termination of this Option Agreement prior to the end of the Initial Option Period, then this Option Agreement and the Option herein provided shall be renewed automatically for a further period of two (2) years (such period is referred to as the “Renewal Option Period”). The Initial Option Period and the Renewal Option Period (if applicable) are collectively referred to as the “Option Period.” Lessee shall have the unilateral right to terminate this Agreement at any time during the Option Period, without penalty, upon written notice to the Lessor. The Option shall terminate on the date set forth in such written notice and Lessee shall have no further obligation to pay any Annual Option Payment or any other compensation otherwise required to be paid by Lessee hereunder from and after such termination.

(c) Option Payment. During the Option Period, Lessee shall pay to Lessor, the following amounts, as applicable, unless this Agreement is terminated by Lessee during the Option Period as provided herein:

<u>Period</u>		<u>Option Payment per Year</u>
Initial Option Period	Year 1	\$ 10,000
	Year 2	\$ 15,000
	Year 3	\$ 15,000
Renewal Option Period	Year 4	\$ 15,000
	Year 5	\$ 20,000

Each annual option payment amount described above is hereinafter referred to as the “Option Payment” and collectively, the “Option Payments.” The Option Payment amount shall be payable by Lessee to Lessor on an annual basis (the “Annual Option Payment” and collectively, the “Annual Option Payments”). The first Annual Option Payment shall be payable by Lessee to Lessor within fifteen (15) days after the Effective Date or the anniversary of the Effective Date, thereafter during the Option Period.

All Annual Option Payments and any other payments required to be made by Lessee hereunder shall be paid to Lessor at Lessor’s address set forth herein or at such other place as Lessor may designate by notice in writing from time to time and may be made by check payable to the order of Lessor.

(d) Periodic Progress Update. No later than the last day of each six (6)-month period during the Option Period, Lessee shall provide Lessor with a reasonably detailed summary of actions taken in furtherance of the Feasibility Studies organized by the categories of such studies that are necessary to study or pursue in deciding whether to exercise the Option (the “Diligence Elements”), during the previous six (6) months and the status of such studies, including, based on then-known facts, an assessment of the likelihood of eventual exercise of the Option (each, a “Progress Report”). Each Progress Report shall summarize the status of and findings to date of

each Feasibility Study on which such assessment is based. Lessee shall provide Lessor with a true and complete copy of each Feasibility Study requested by Lessor, subject to any confidentiality provisions of the applicable Feasibility Study agreement. Lessor shall have no ownership or proprietary rights in or to the Feasibility Studies which are provided on an as-is basis, without representation or warranty of any nature, and for informational (and not reliance) purposes only.

(e) Exercise of Option. At any time before the second anniversary of the Effective Date of the Option Agreement, the Lessee shall provide to Lessor a written report of the advantages and disadvantages of proceeding under both the Lease Option and the PPA Option (as each are defined in the Interim Agreement) or explanation of the legal viability of entering into a PPA. Within forty five (45) days after the delivery of the report, Lessor may provide notice to Lessee that Lessor wishes to pursue negotiation of a PPA with Lessee, and for three months following such notice Lessee shall not market the project to other potential off-takers; after such period of exclusivity, if the Parties have not entered into a PPA, Lessee may freely market the project to other off-takers and Lessor shall have no additional rights with respect to the PPA Option. In any event and irrespective of the execution of a PPA, Lessee may exercise the Option to lease the Demised Premises if it so chooses in its absolute discretion, and it shall do so by providing written notice to Lessor on or before the expiration of the Option Period (the “Notice of Exercise”) stating that Lessee has elected to exercise the Option. If Lessee fails to deliver the Notice of Exercise on or before the expiration of the final Renewal Option Period, this Agreement shall terminate, in which event Lessee shall forfeit all Option Payments paid prior to the date of termination and both Parties shall be released from all obligations hereunder, except for those specified to survive the termination of this Agreement.

(f) Termination. During the Option Period, Lessee shall have the right at any time to terminate this Agreement upon ten (10) days advance written notice to Lessor. Upon Lessee’s termination of this Agreement, Lessor shall be entitled to keep any Option Payment previously received and Lessee and Lessor shall have no further obligations to one another regarding this Agreement or with respect to the Landfill Property, except for those specified to survive the termination of this Agreement.

**2. Lessor Development.** Except as expressly provided herein, Lessor shall not undertake any development within the Option Premises during the Option Period without the express written consent of Lessee. Lessor shall continue to maintain and operate the Option Premises substantially in the same manner in which Lessor has maintained and operated the Option Premises prior to the Effective Date, provided that, during the Option Period, Lessor shall not make any changes to the Option Premises and its appurtenances and will not act or omit to act in any manner that could adversely affect or impair the rights granted to the Lessee under this Agreement without the prior written consent of the Lessee, which consent may not be unreasonably withheld. Without limiting the generality of the foregoing, the Lessor (i) shall not disturb the solar insolation (sunlight) over the Option Premises by undertaking or allowing any other party to undertake any building, installing or planting on the Option Premises or adjacent lands owned by the Lessor, structures, fencing, trees, bushes, hedges, trees and berms that may shadow the Option Premises, prevent the System from receiving direct sunlight or negatively affect any aspect of the System; (ii) shall not take any action which will in any way interfere with the transmission and/or distribution of electric, electromagnetic or other forms of energy to or from the Option Premises; and (iii) shall not seek, in its acts, public assertions or statements, or in material submitted to

governmental authorities, commercial entities or other regulatory bodies, or do any act or initiate proceedings, whether directly or indirectly, which challenges or otherwise adversely affects the System or which is inconsistent with its obligations under this Agreement. Notwithstanding any other provision of this Option Agreement to the contrary, it is understood and agreed by the parties hereto that the Lessor's primary obligations and purposes are the efficient operation of its solid waste disposal, reuse and recycling facilities, including its transfer station and materials recovery facility and the closure and post-closure care of the Landfill, in accordance with all Applicable Law, and that the rights granted to the Lessee in this Option Agreement for physical entry and inspection of the Option Premises shall remain secondary to such operations, provided however, that the Lessor shall not take any action or omit to take any action that would unreasonably interfere with the Feasibility Studies unless required to by a Governmental Directive. The Lessee shall conduct the Feasibility Studies so as to not unreasonably interfere with any ongoing Lessor operations at Lessor's Entire Property.

**3. Exclusivity of Option.** During the Option Period Lessor shall not enter into a lease agreement, option to lease, or any other contract or agreement, affecting the Option Premises, with any other party prior to the expiration or termination of this Option without the prior written approval of Lessee, and shall not do any of the following without the prior written approval of Lessee, which approval may be given or withheld in Lessee's sole and absolute discretion: (a) enter into any agreement affecting the survey condition of, title to, or possession of the Option Premises, (b) create any encumbrances, or materially modify any existing encumbrances, on or against the Option Premises, (c) initiate or request any change in the existing zoning or other land use entitlements affecting the Option Premises, or (d) amend or modify any existing lease or contract affecting the Option Premises. The Agreement is exclusive and exists solely for the benefit of the named Parties and their respective successors and assigns. Lessor may freely assign this Option, provided that any assignment agreement shall include a provision expressly subordinating such agreement to this Option. Lessee may assign this Option subject to the same terms set forth in Section II.22 of the Lease Agreement. Notwithstanding any other provision of this Option Agreement and Lease Agreement, the parties agree that during the Option Period Lessor shall comply with any Governmental Directive and law, ordinance or regulation applicable to any portion of Lessor's Entire Property (collectively, the "Applicable Laws") and that such compliance by Lessor shall not constitute a violation or breach of any provision of this Option Agreement and Lease Agreement, subject to the terms of the Lease Agreement including Section I.(d) of the Lease Agreement.

**4. Right of Entry.** Lessor grants Lessee and its employees, agents, contractors, Subcontractors, and invitees (collectively, "Agents"), for the duration of the Option Period, the right to enter the Landfill Property at any time during daylight hours Monday through Saturday for performing the tasks described in Exhibit B, provided, however, that Lessee may not utilize any such Agents unless (a) such Agents meet or exceed all applicable insurance, safety and site requirements contained in this Option Agreement and applicable to Lessee, (b) Lessee exercises reasonable oversight over the activities of such Agents and (c) Lessee remains the main point of contact for Lessor. Such Agents may comply with the applicable insurance requirements of this Option by coverage afforded under Lessee's insurance policy or insurance policies. Other than the Feasibility Studies, Lessee shall make no other use of the Landfill Property during the Option Period and shall perform no other activities on the Landfill Property without Lessor's prior written approval.

**5. Prerequisites to Entry.** Before entering the Landfill Property for each component of the Feasibility Studies (whether conducted individually or collectively), Lessee must:

- (a) Provide proof of insurance as required in Section I.11 of this Agreement; and
- (b) Provide two (2) Business Day advance notice (via email Lessor personnel) unless waived by Lessee.

**6. Performance of Feasibility Studies.**

(a) Monitoring Wells. During initial Feasibility Studies involving work on the Landfill Property, Lessee and its Agents will identify all of Lessor's monitoring wells, gas migration probes, Landfill gas collection wells and appurtenances, whether active or abandoned, that are located within the areas of actual work or investigation pursuant to the Feasibility Studies and surround them with orange construction fencing to prevent disturbance. Lessor will provide a map of all monitoring wells.

(b) Waste. If, as a result of the Feasibility Studies, subsurface trash or waste is disturbed or exposed, Lessee will document, photograph, and locate via GPS each area of exposed trash, including the depth discovered and the surface area of the waste. Lessee will remove at its cost any such exposed or disturbed trash to an active portion of the Landfill, if any, to the adjacent resource recovery facility, or to another facility appropriate to receive the material(s) in Lessor's judgement. Lessee and its Agents will use its best efforts to cap areas of exposed waste by the end of each working day with clay or synthetic material to seal the waste areas. The cap will comply with the Landfill Property's closure plan and applicable permits. When daily cap repair is not practically achievable, Lessee will provide a temporary cover of either 6" of soil, a tarp or other approved material to minimize infiltration and prevent surface litter, provided that such temporary measure is replaced with a permanent cap within three (3) days. No stock piling of waste is authorized. Lessee and its Agents must notify Lessor at the close of business of each working day of the discovery of any subsurface waste or trash disturbed or exposed by Lessee or its Agents.

(c) Site Inspections. Lessee and its Agents will coordinate with Lessor to allow Lessor to arrange for site inspection during all work associated with the Feasibility Studies. The Lessee and its Agents will, upon request, (i) allow Lessor and its designated consultants (as identified by Lessor to the Lessee) such access to the Feasibility Study work areas as Lessor or its consultant may deem necessary from time to time to monitor the work of the Feasibility Studies, and (ii) provide Lessor's consultant with such information regarding the work of the Feasibility Studies as the consultant may reasonably require.

(d) Drainage. Lessee and its Agents will coordinate with Lessor for any temporary modifications to the existing drainage systems if impacted by the Feasibility Studies. Lessee and/or its Agents will modify and connect any underground pipes that become exposed to daylight by new slopes to new project drainage features that meet the requirements of the County, DEQ and any other Governmental Authority.

(e) Landfill Gas. Encountering Landfill gas containing methane should be expected. When conducting the Feasibility Studies, Lessee and its Agents will employ appropriate methane detection and mitigation measures at all times in accordance with industry standards for comparable studies or investigative work.

(f) Facility Rules. The Facility Rules & Regulations for the Landfill promulgated by Lessor (the “Landfill Rules & Regulations”) are attached as Exhibit E hereto. Lessee and its Agents must immediately stop work upon notification from Lessor staff that work is being conducted in an unsafe manner and, in the view of Lessor, poses a risk to the Landfill Property and/or the surrounding area. In such event, Lessee and its Agents may not resume work until Lessor staff and Lessee agree upon modifications or measures intended to address the alleged deficiencies.

(g) Safety. Lessee and its Agents will comply with all safety-related Applicable Laws and OSHA safety protocols related to activities while conducting the Feasibility Studies. Lessee and its Agents will provide and adequately maintain any barricades, fences, signs, lanterns, and other suitable devices as deemed necessary by OSHA guidelines for employee and public safety with respect to the Feasibility Studies performed under this Agreement.

(h) Security. During periods of actual work related to the Feasibility Studies, Lessee and its Agents will assist Lessor in Lessor’s efforts to maintain the security of each of its work sites on the Landfill Property. Lessee and its Agents will each maintain all its work areas on the Landfill Property in a clean and presentable manner.

(i) Scope Modification. Lessor and Lessee may agree to add to the scope of the Feasibility Studies by amending this Agreement in writing, neither Party being under any obligation to do so.

(j) Closed Landfill Permits. At all times, Lessee’s conduct of the Feasibility Studies shall be subject to the requirement that Lessor remain in compliance with that certain “Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity – Registration # VAR051352 issued by the DEQ, that certain Solid Waste Permit Number 397” issued by the DEQ, or other applicable permits and authorizations (collectively, the “Closed Landfill Permits”), including but not limited to with respect to impact on or modification of the Landfill final cover system. Lessee shall coordinate with Lessor at all times, as directed by Lessor, to assure Lessor’s compliance with the Closed Landfill Permits. For avoidance of doubt, during the Option Period and during the term of the Lease Agreement, Lessor retains the right to take all reasonable and necessary actions associated with complying with the Closed Landfill Permits, and the Option and Lease Agreement are subordinated to the requirements of compliance with such permits.

(k) Permits. During the Term, Lessee may apply for any and all permits relating to the System, including all of those permits, approvals, and letters included in Section II.7 of the Lease Agreement, and Lessor shall reasonably cooperate in Lessee’s efforts at no out-of-pocket cost to Lessor. Lessee shall solely bear all costs, risks and liabilities connected with, related to or resulting from such permits including any delay in the issuance of such permits and the failure of Lessee to obtain or cause the issuance of any such permits.



(l) Standard of Care. Lessee shall, at its sole cost and expense, undertake and conduct all Feasibility Studies and take any other actions under this Option Agreement in accordance with good engineering practices and industry standards, in a proper, workmanlike and prudent manner and in accordance with all Applicable Laws including Environmental Laws and any federal, state or local laws, statutes, ordinances, rules and regulations relating to the production and transmission of electricity from the System as contemplated by this Option Agreement.

Any Agents used by Lessee shall be suitably qualified, experienced and licensed for the work to be performed. Lessee shall remain fully liable and responsible for the work done by its Agents and shall ensure compliance by the Agents with all requirements set forth in this Option Agreement. Lessee shall be responsible for the safe performance of work by its Agents. Any Agents engaged by Lessee to perform any portion of the Feasibility Studies shall have all licenses and registrations required to perform such services, and any such Agents shall maintain the insurance required pursuant to Section I 11. Lessee shall pay when due all charges from all Agents, suppliers and other persons supplying goods or services to Lessee in the performance of the Feasibility Studies.

(m) Inspection of Lessor's Entire Property. Lessee represents and agrees that prior to the Effective Date it has inspected Lessor's Entire Property, including the Landfill, and surrounding locations and property, that it is familiar with the conditions thereof and accepts such properties on an "as is" basis for purposes of entering into this Option Agreement and conducting the Feasibility Studies.

(n) Liens. Lessee shall not, directly or indirectly, cause, create, incur, assume or allow to exist any lien on or with respect to Lessor's Entire Property or any portion thereof.

**7. Restoration.** Lessee, at its own expense, will promptly restore, as near as reasonably possible, those portions of the Landfill Property disturbed by Lessee and/or its Agents to their original condition(s) in accordance with the Landfill Property's closure plan, the Closed Landfill Permits and other permits identified in Exhibit G as applicable. Lessee and its Agents will coordinate with Lessor before commencing any such restoration work.

## **8. Hazardous Materials.**

(a) Lessee acknowledges that the Landfill Property is the site of a closed Landfill and may contain Hazardous Materials. If Lessee or its Agents discover any Hazardous Materials on the Landfill Property that would not otherwise reasonably be expected to be discovered when conducting the Feasibility Studies on a closed Landfill, such as evidence of potential chemical contamination or leak, Lessee and/or its Agents will immediately notify Lessor.

## **9. Equipment.**

(a) Lessee and its Agents may store equipment on the Landfill Property during the Option Period at a location reasonably agreed to by Lessor's Executive Director; provided, however, that Lessee and its Agents shall be solely responsible for securing such equipment on the

Landfill Property, and Lessor will not be liable for any theft or damage to any equipment stored by Lessee on the Landfill Property, except where caused by the gross negligence or willful or wanton conduct of Lessor or its officials, officers, employees, or agents.

(b) If the Option hereunder is not exercised, Lessee will remove all tools, equipment, and other personal property from the Landfill Property at its sole cost. This provision survives the expiration or earlier termination of this Agreement.

**10. Indemnification with Respect to the Option Period.** With respect to the Option Period, and without limitation to the indemnification provisions set forth in the Lease Agreement, Lessee will indemnify and hold harmless Lessor and its officials, officers, employees, and agents:

(a) From and against any and all third-party claims, demands, damages, suits, actions, proceedings, judgments, decrees, orders, fines, costs, and expenses (including reasonable attorney's fees) due to any damage to property, injury or death of any person, or otherwise as a result of the entry upon or activities within the Landfill Property by the Lessee or its Agents occurring in connection with, or arising out of the performance of the work permitted by this Agreement; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the negligence or willful misconduct of Lessor;

(b) From all liabilities, remedial costs, environmental claims, fees, or other expenses related to, arising from, or attributable to (i) any Hazardous Materials introduced by Lessee on the Landfill Property, or (ii) Lessee's activities involving Hazardous Materials on the Landfill Property, to the extent that Lessee is either negligent in such activities or in breach of the terms of this Agreement (e.g., failure to appropriately install a cap). The foregoing indemnity excludes any claims or liabilities caused by the negligence or willful misconduct of Lessor; and

(c) From any claims by contractors or subcontractors who perform any activity on the Landfill Property; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the negligence or willful misconduct of Lessor. This Agreement must not be construed as granting Lessee or any contractor of Lessee the right to place any lien, mechanic's lien, or any charge on the Landfill Property.

**11. Insurance With Respect to the Option Period.** During the Option Period, Lessee covenants and agrees to carry and maintain, at its sole cost and expense, the following insurance:

- (a) Coverage. As to all activities hereunder, the Lessee shall obtain and maintain in force during the Term,
  - a. Commercial General Liability insurance (including but not limited to, automobile bodily injury liability and property damage liability combined covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, non-owned or hired by the Lessee providing for minimum limits of Five Hundred Thousand Dollars (\$500,000) per accident, coverage for premises/operations, excavation, collapse and underground hazards, products/completed operations, broad form property damage (including blanket contractual liability), acts of independent contractors, and

bodily injury and property damage) providing for minimum limits of One Million Dollars (\$1,000,000) annually for bodily injury, including death and property damage, arising from any one occurrence and a Two Million Dollar (\$2,000,000) aggregate limit,

- b. workers' compensation and employer's liability coverage in the amount required by law, and
- c. pollution legal liability insurance, on an occurrence basis providing for a minimum limit of liability of One Million Dollars (\$1,000,000).

(b) **Policy Terms.** The commercial general liability insurance maintained by Lessee as described above (i) shall be primary, without right of contribution from any other insurance which may be carried by Lessee, and (ii) shall name Lessor as an additional insured to the limits of the coverage specified herein to the extent available for such policy under commercially reasonable terms.

(c) **Lessee's Premium.** Neither Party shall knowingly and intentionally perform any act that would invalidate the policies that Lessee is obliged to obtain hereunder, or would increase the premiums payable by Lessee under such policies unless such act is required by Applicable Law.

**12. Cooperation.** Lessor shall cooperate with Lessee as Lessee may reasonably require with respect to seeking or applying for any zoning changes, permits, permit modifications, or authorizations (i.e., a change in classification of the Landfill Property) during the Option Period. Notwithstanding anything stated in this Section I.12, Lessee may choose to terminate this Agreement at any time pursuant to Section I.1.

(a) Lessee agrees that as of the Effective Date, it has had access to Lessor's material records dated within twenty years prior of the Effective Date and has received all of the following documents that Lessee has requested (collectively, "Due Diligence Materials"): (A) a preliminary title report, if any, for the Landfill Property ("Title Report"), together with copies of all title exceptions listed therein, issued by a title insurer (B) a copy of the most recent survey, if any, of the Landfill Property, (C) true and complete copies of all leases or other occupancy agreements affecting the Landfill Property and that are in effect on the Effective Date, (D) true and complete copies of all other contracts, notices, work orders, directives and assessments affecting the Landfill Property and that are in effect on the Effective Date, and (E) any other documents reasonably requested by Lessee.

(b) Lessee agrees that as of the Effective Date, it has had access to Lessor's records and has received true and complete copies of all written third-party reports and assessments that Lessee has requested relating to the environmental condition of the Property, including the presence or absence of any Hazardous Substances on or under the Property ("Environmental Reports").

(c) If the Due Diligence Materials, Title Report or Lessee's own title search set forth in a title report to be procured from a reputable title insurance agency by Lessee ("Lessee's Title Report") reveal that Lessor has granted a lease, option, easement, Fee Mortgage (as defined in the Lease Agreement) or other property right related to the Property (the "Prior Encumbrance") to any other person that would interfere with the rights granted to Lessee hereunder, Lessor agrees to

reasonably cooperate with Lessee to obtain from the holder of such Prior Encumbrance any postponement, subordination or non-disturbance agreement, mutual co-existence agreement crossing agreement, waiver (including mineral rights waivers) or any other similar written instrument that Lessee or its lender(s) may reasonably require. Without limiting the generality of the foregoing, Lessor covenants and agrees to make its best efforts to obtain from any prior mortgagee of the Property, a postponement or non-disturbance agreement in favor of Lessee (and Lessee's lenders, if any).

**13. Effectiveness of Lease Agreement upon Exercise of Option.** Upon the delivery to Lessor of the Notice of Exercise, the terms of the Lease Agreement shall automatically become effective with respect to the Demised Premises. The date that the Lease Agreement becomes effective shall be the "Commencement Date" hereunder. For avoidance of doubt, references to the "Lease" in this Option and Right of Entry shall refer to the provisions of the Lease Agreement.

**14. Effect of Agreement; Interest in Real Property.** The Parties intend that this Option Agreement is given by Lessor to Lessee as an option to lease the Option Premises as described herein. The parties intend that this Option Agreement creates a valid and present interest in the Option Premises in favor of Lessee. Therefore, the 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. At the request of either Party, each will execute a short form memorandum, substantially similar to the form of Exhibit I in form satisfactory for recording in the Montgomery County Circuit Court Clerk's Office that shall be recorded on or promptly following the Effective Date for the Option at the cost of the Party seeking to record the same. Upon the expiration or earlier termination of this Option Agreement, the Parties shall promptly execute any release or termination that may be required to release such memorandum of record.

**15. Definitions.** For purposes of this Option Agreement, the following terms shall have the following meanings.

- (a) "Abandoned" means the discontinuation of power generation by the Solar Facility as set out in the Special Use Permit for reasons other than a Force Majeure Event.
- (b) "Affiliate" means an individual or entity that controls, is controlled by, or is under common control with another individual or entity.
- (c) "Applicable Law" means any federal, national, regional, state, municipal or local law, statute, treaty, rule, regulation, ordinance, order, code, judgment, tariff, decree, directive, injunction, writ or similar action applicable to all or any portion of Lessor's Entire Property, or decision duly implementing any of the foregoing by any Governmental Authority.
- (d) "County" means the County of Montgomery, Virginia.

- (e) “Decommission”, “Decommissioned”, “Decommissioning” or “Decommissioning Activities” means the work necessary to remove the System improvements from the Demised Premises, restore the Demised Premises to a reasonably similar the condition of the Demised Premises at the time construction of the System commenced, less wear and tear, and to otherwise comply with the Decommissioning Plan.
- (f) “Decommissioning Plan” means the plan for Decommissioning submitted by the Lessee and approved by the County.
- (g) "Environmental Laws" means any federal, state or local law, code, statute, ordinance, rule, regulation, rule of common law, guideline or informal policy position, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture of any Hazardous Materials regulated thereunder, now or hereafter enacted or promulgated (collectively, and including, without limitation, any such laws which require notice of the use, presence, storage, generation, disposal or release of any Hazardous Materials to be provided to any party), including, but not limited to, the following: the Comprehensive Environmental Response, Compensation and Liability Act, as now or hereafter amended (42 U.S.C. Section 9601, et seq.); the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Section 1801, et seq.); the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Section 6901, et seq.); Air Pollution Control Board, Va. Code Ann. § 10.1-1300, et seq.; Virginia Waste Management Act, Va. Code Ann. § 10.1-1400, et seq.; State Water Control Law, Va. Code Ann. § 62.1-44.2, et seq.; Surface Water Management Areas, Va. Code Ann. § 62.1-242, et seq.; and the Ground Water Management Act of 1992, Va. Code Ann. § 62.1-254, et seq.), the Small Renewable Energy Projects Act, § 10.1-1197.5-1171.11, Va Code Ann. and any so-called “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601 et seq.); or any “toxic pollutant” under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251 et seq.); or any hazardous air pollutant under the Clean Air Act, as now or hereafter amended (42 U.S.C. Section 7901 et seq.).
- (h) “Force Majeure Event” means strikes, lockouts or other labor disturbances; inability to secure labor or materials in the open market; acts of God or other elements of nature or accidents; delays or conditions arising from or relating to acts of war, domestic or international terrorism, pandemic, and civil disturbances or riots.
- (i) "Governmental Authority" means any federal, state or local government

authority, agency or body having regulatory authority over the Landfill Property, the System, the Lessor or the Lessee, excluding Lessor.

- (j) "Governmental Directive" means a binding order, administrative decision, rule, regulation, permit, law or other direction from a Governmental Authority.
- (k) "Grid" means the interconnected network for delivering electricity from producers to consumers (consisting of generating stations, high voltage transmission lines, and distribution lines that connect individual customers) to which the System will be connected and provide power to.
- (l) "Hazardous Materials" means any flammable, reactive, explosive, corrosive or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials, wastes or substances, exposure to which is prohibited, limited or regulated by a federal, state, county, regional or local authority, or any Environmental Laws, including but not limited to, asbestos, PCBs, petroleum products and by-products, hazardous air pollutants, mold or any substance identified, defined or listed as a "toxic pollutant," "hazardous waste," "hazardous material," "hazardous substance," "toxic substance," "pollutant or contaminant," "hazardous chemical," or any hazardous air pollutant, or similarly identified in, pursuant to, or for purposes of, any Environmental Laws.
- (m) "Interim Agreement" means the Interim Agreement between the Lessor and the Lessee dated as of \_\_\_\_\_, 2023 concerning the proposed development of the System.
- (n) "Lease Year" shall mean each one-year period beginning on the Commencement Date. For the avoidance of doubt and by way of example only, if the Commencement Date is December 1, 2025, the first Lease Year shall be the period from December 1, 2025 through November 30, 2026, the second Lease Year shall be from December 1, 2026 through November 30, 2027, and so forth.
- (o) "Lessor's Entire Property" means approximately [131.7] acres of land in Montgomery County, Virginia and the facilities located thereon including a municipal solid waste transfer station regulated by DEQ Permit-By-Rule Number 149, stormwater infrastructure regulated by Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity – Registration # VAR051352, a tire recycling facility regulated by DEQ Permit-By-Rule Number 559 and the Landfill regulated by DEQ Solid Waste Permit Number 397.
- (p) "Losses" means any losses, claims, damages or liabilities, including reasonable fees and expenses incurred in connection therewith, in connection

with the transactions contemplated by the Option Agreement or the Lease Agreement.

- (q) "Special Use Permit" means the special use permit granted by the County to the Lessee for the development, construction, and operation of the System.
- (r) "State" means the Commonwealth of Virginia.
- (s) "Termination Date" means the earlier of (i) the date of the Lessee's voluntary commencement of final Decommissioning (which does not include partial Decommissioning of the System), (ii) the date the Special Use Permit is revoked, lapses, expires, or is voided, or (iii) the date the Solar Facility is deemed Abandoned.

## **II. DEED OF SOLAR LEASE AGREEMENT**

### **1. Lease of Demised Premises; Additional Property Rights.**

(a) Demised Premises. Lessor hereby leases to Lessee, in accordance with the terms and conditions set forth herein, the Demised Premises for the installation, operation, maintenance, repair, replacement and decommissioning of the System, (the elements of such System including, without limitation, solar panels, solar racking structures, electrical power inverters, interconnection equipment, electrical wiring, collection lines, wire management systems, charging stations, electric meters, metering, switch cabinets, power distribution boxes, racking systems and battery energy storage system facilities) (the "Permitted Use"). Lessee shall construct permanent security fencing around the Solar Facility with appropriate security gates allowing entry into the Demised Premises, which fencing may be required by the Special Use Permit.

(b) Use of Demised Premises. Lessee shall use the Demised Premises solely for the Permitted Use, and for no other uses.

(c) Lessee's Ancillary Rights; Easements.

(i) In connection with the lease hereunder of the Demised Premises to Lessee, Lessor hereby grants to Lessee, for a period coterminous with this Lease Agreement, the non-exclusive right (the "Facility Access Rights") to enter upon, cross, and use portions of access drives, parking lots, and other areas of the Landfill Property as shown in Exhibit C (the "Facility Access Areas"). Lessor may change the Facility Access Areas at any time with reasonable prior written notice to Lessee, provided adequate access to the Demised Premises and adequate space for use of the Facility Access Area for the purposes set forth herein is available at all times during the Term (as hereinafter defined). The Facility Access Rights are provided for the purpose of allowing Lessee access to the Demised Premises for installation, operation, maintenance, repair (including replacement, if necessary) and decommissioning of the System and to locate any auxiliary equipment necessary to install, operate, maintain or repair the System on the Demised Premises and for the purposes of

interconnecting the System with the mechanical and electrical systems on or serving the Landfill Property. For avoidance of doubt, Lessor acknowledges and agrees that Lessee may use portions of the Facility Access Areas to be mutually agreed upon by the Parties as a staging area during the periods that Lessee is undertaking the installation and decommissioning of the System or any major repairs to the System. Lessee shall not install any improvements within the Facility Access Areas that would prevent access to or prevent use of the Landfill Property or prevent any holders of easements across the Landfill Property or any governmental or public utility personnel (e.g., fire, police, Governmental Authority representatives, public utility providers, etc.) or other similar parties from exercising their rights with respect to the Landfill Property. Furthermore, Lessee shall utilize the Facility Access Areas in a manner that does not unreasonably interfere with the use of Lessor's Entire Property by Lessor. Lessor hereby grants to Lessee, for a period coterminous with this Lease Agreement, a Transmission Easement, as defined below, across the Landfill Property and any adjacent property of Lessor. Lessee shall reasonably consult with Lessor in the location of the Transmission Easement, and Lessor agrees to consent to the siting of the Transmission Easement. As used herein, "Transmission Easement" means nonexclusive easements on, over, across, under and through the Landfill Property or any adjacent property of Lessor for constructing, placing, operating, maintaining, reconstructing, replacing, rebuilding, upgrading, removing, inspecting, modifying and/or repairing aboveground electrical transmission lines and a line or lines of poles or towers, together with such wires and cables and communications lines as from time to time are suspended therefrom, and/or underground wires, cables and pipes, for the transmission of electrical energy, and all necessary and proper anchors, support structures, foundations, footings, cross arms and other appliances and fixtures for use in connection with transmission necessary for the benefit of the System. Notwithstanding any other provision of this Section II. 1. (c) (i), the Facility Access Rights and Transmission Easement shall be consistent with and as allowed by Environmental Laws, Closed Landfill Permits and any applicable Governmental Directive.

(ii) Upon reasonable request of Lessee, Lessor and Lessee shall enter into one or more recordable easements, in a form and with terms and conditions mutually agreeable to both Parties, that set forth the Facility Access Rights and a mutually agreeable Transmission Easement.

(iii) The Facility Access Rights shall terminate immediately upon the termination or expiration of this Lease for any reason, subject to decommissioning requirements.

(d) Closed Landfill Legal Requirements. Lessee acknowledges that Lessor (i) is subject to certain requirements under (A) Applicable Law and (B) the permits identified in Exhibit G, and (ii) otherwise is committed to use best practices in assuring the maintenance and safety of, the Landfill Property (the "Closed Landfill Considerations"). In recognition of the Closed Landfill Considerations:

(i) Lessor reserves the right to enter upon the Demised Premises at all times as necessary to (i) respond to catastrophic and emergency events, including but not limited to



fires (“Exigent Circumstances”), and (ii) perform necessary closed Landfill infrastructure repairs and maintenance, that are not the result of acts by the Lessee.

(ii) In the event Lessor, its agents or employees, causes damage to the System, Lessor shall be responsible for the reasonable costs associated with such damage, and any resulting System outage time shall be deducted from Annual Rent at the applicable loss rate in Lessee’s offtake agreement for the System.

(iii) Lessee shall design and install the System utilizing ballasted ground mounts or similar state of the art technologies designed to maintain the integrity of the Landfill's cap and that will allow Lessor to conduct maintenance of the Landfill's cap, all as consistent with and required by applicable Environmental Laws, the requirements of Solid Waste Permit Number 397 and all other DEQ requirements.

The Parties acknowledge that the interests of Lessee under this Lease shall be subordinate to Lessor’s management and operation of the Landfill final cover in material compliance with all Applicable Laws, Closed Landfill Permits, and the other permits set forth in Exhibit G, if any. Notwithstanding anything to the contrary, any System outage time resulting from such management and operation or requirements of Applicable Laws, including compliance by Lessee or Lessor with any Environmental Law related to a condition existing before or as of the Commencement Date, Closed Landfill Permits, and the permits set forth in Exhibit G (“Outage Time”) shall be reimbursed to Lessee by credit (calculated based on the Parties’ reasonable, good faith estimate of the amount of lost revenue plus other damages under the applicable offtake agreement for electric output that would have been delivered but for such outage) against Lessee’s Annual Rent payment on a dollar for dollar basis, with any excess credit amount banked and rolled forward. For avoidance of doubt, the previous sentence with respect to Outage Time shall apply if any part of the System is temporarily relocated because of actions required to be taken by Lessor pursuant to Applicable Law, any Closed Landfill Permit, or any other permit set forth in Exhibit G. Outage Time shall also apply where Lessee reasonably determines that the System must be taken offline or relocated due to the requirements of any Environmental Law related to a condition existing before or as of the Commencement Date. If Lessee incurs costs to a third party as a result of such temporary relocation or compliance with Environmental Laws, Lessor shall reimburse Lessee for any such documented third-party costs.

**2. Signage.** Lessee shall not place any signage on or at the Demised Premises (other than as required by Applicable Law) unless approved in advance in writing by Lessor. Notwithstanding the foregoing, Lessee may, without the prior approval of Lessor, place signage on or at the Demised Premises identifying the existence of the System and any required safety notices relating thereto.

**3. As-Built Survey of Demised Premises.** Within one hundred twenty (120) days following the date that the System achieves actual commercial operation by delivering electrical energy to the Grid (excluding any System testing) (the “Commercial Operation Date”), Lessee shall provide Lessor with a final boundary and as-built survey that shows the Demised Premises and includes all of the contents of Lessee’s final site plan for the system, as constructed (the “As-Built Survey”). The As-Built Survey shall be completed by a Commonwealth of Virginia licensed

Professional Land Surveyor, at Lessee's expense. The As-Built Survey shall be attached to the Lease as Exhibit D.

#### **4. Term.**

(a) Term. The term of this Lease shall commence on the Commencement Date and shall terminate and expire on that date which is thirty (30) years after the Effective Date (the "Initial Term"). Lessee shall have the right to extend the term of this Lease for two (2) additional periods of five (5) years each (each, a "Renewal Term" and together with the Initial Term, collectively, the "Term"), upon the terms and conditions hereof, by delivering a written extension notice to Lessor not less than One Hundred Eighty (180) days prior to the expiration of the Initial Term or Renewal Term, as applicable.

(b) Termination Right. Lessee shall have the unilateral right to terminate this Lease at any time by giving Lessor written notice of termination, which notice shall specify a termination date not less than ninety (90) days following the date of the notice. Following the specified termination date, Lessee shall have no further rights or obligations under this Lease, except as otherwise specifically set forth herein.

(c) Access After Termination. Notwithstanding the foregoing, upon the expiration or earlier termination of this Lease, Lessee shall have the right to access the Demised Premises for the purpose of decommissioning and removing the System as provided in Subsection (d). The provisions of this Section II.4(c) will survive the expiration or termination of this Lease. Notwithstanding the foregoing, in the event that Applicable Law, any permit granted to Lessee related to the Permitted Use, or any Governmental Authority requires a shorter period of time for decommissioning or removal or otherwise have stricter requirements, such shorter time and/or requirements, as well as any other applicable requirements, shall control.

(d) Decommissioning. Within one hundred eighty (180) days after the termination of this Lease Agreement or expiration of the Term, Lessee shall decommission, dismantle and remove the System and all other property of Lessee located on the Demised Premises and the Facility Access Areas, returning the Demised Premises and the Facility Access Areas to their condition as of the Effective Date to the extent reasonably practicable; provided, that Lessee shall not be required to dismantle, abandon or remove any underground Utilities or improvements or to significantly alter the grade of the Demised Premises or the Facility Access Areas or to in any way disturb the subsurface of the Demised Premises or the Facility Access Areas. Within thirty (30) days after such period after the expiration or earlier termination of the Term during which Lessee's System or any other related property owned by Lessee remains on the Demised Premises, Lessee shall pay prorated Annual Rent at the same rate applicable during the last Lease Year of the Term. Lessor hereby grants to Lessee and Lessee's Parties a license to enter upon the Demised Premises and the Facility Access Areas to perform the activities required to be performed by Lessee pursuant to this subsection (d), which license shall be effective commencing upon the date of termination of this Lease Agreement or expiration of the Term and shall terminate upon the date on which such decommissioning, dismantling and removal activities are complete. Lessee shall enter into a written agreement with the County requiring the Lessee to Decommission the System as required by Va. Code § 15.2-2241.2 (the "Decommissioning Agreement"). The Decommissioning

Agreement shall describe in detail Lessee's obligations to restore the Demised Premises (the "Decommissioning Obligations"). To secure Lessee's performance of the Decommissioning Obligations, Lessee shall deposit with the County of Montgomery not later than the Commercial Operation Date, financial assurance with corporate surety to assure performance of the Decommissioning Obligations ("Financial Assurance") as required by the Commonwealth of Virginia under Va. Code § 15.2-2241.2. In addition to those requirements under Va. Code § 15.2-2241.2, the amount of that Financial Assurance will be re-evaluated by Lessee not less than every five (5) years during operations, in light of then-current laws and regulations, to assure that it is adequate to cover the anticipated cost of performing the Decommissioning Obligations. If there is a determination of any deficiency, Lessee shall have thirty (30) days to post Financial Assurance to increase the amount of the bond. Notwithstanding any other provision of this Lease Agreement, the Decommissioning Agreement shall provide that Lessee's Decommissioning Obligations and Financial Assurance obligations shall be not less stringent than and shall provide as much or more protection to Lessor as the provisions set forth in Exhibit K attached hereto.

**5. Utilities.** During the Term, Lessor shall have no obligation to provide any utilities to Lessee for Lessee's use in connection with the installation, operation, maintenance, and repair of the System. To the extent that, during the Term, Lessee requires any utilities in connection with the installation, operation, maintenance and repair of the System on the Demised Premises, Lessee further acknowledges and agrees that Lessee shall be responsible, at its sole cost and expense, for providing or obtaining such utilities and that Lessee's inability to provide or obtain any such utilities shall not relieve Lessee from the performance of Lessee's obligations under this Lease.

**6. Annual Rent.** Commencing on the Commercial Operation Date, and continuing thereafter for the remainder of the Term, Lessee shall pay to Lessor annual rent for the Demised Premises in the amount of \$70,000, plus \$10,000 per acre of land utilized for a battery storage facility, plus the annual two percent (2%) increase described below (together, the "Annual Rent"), unless this Lease Agreement is terminated by Lessee earlier during the Term as provided herein. The Annual Rent shall be adjusted and increased at the beginning of the second (2<sup>nd</sup>) Lease Year following the Commencement Date and anniversary thereafter by an amount equal to two percent (2%) of the Annual Rent in effect during the previous Lease Year.

The Annual Rent for the first year of the Term shall be due and payable by Lessee to Lessor within ten (10) Business Days of the Commercial Operation Date, and Annual Rent for each succeeding year of the Term shall be due and payable by Lessee to Lessor, without notice or demand, on or before each anniversary of the Commercial Operation Date during the Term. The Annual Rent shall be payable by Lessee to Lessor at the address for the Lessor set forth herein or at such other place as Lessor may designate by notice in writing from time to time and may be made by check payable to the order of Lessor.

**7. Permits.** During the Term, Lessee may: (a) apply for a bona fide prospective owner letter pursuant to Virginia Code §10.1-1237, *et seq.* from the Virginia Department of Environmental Quality ("DEQ"); (b) request a comfort/status letter from the United States Environmental Protection Agency ("EPA"); (c) meet or correspond with any Governmental Authority with jurisdiction over any pre-existing or newly discovered environmental conditions existing at the Landfill Property; (d) apply for and obtain any necessary permits, approvals and

other governmental authorizations, including authorization from DEQ (collectively called “Governmental Authorizations”) required for the development, construction, operation and maintenance of the System on the Demised Premises and Lessor agrees to co-operate, execute, obtain or join with Lessee in any applications or proceedings relating to the Governmental Authorizations upon Lessee’s written request and at Lessee’s direction, cost and expense; apply for any approvals and permits and any zoning amendment of any area of the Landfill Property required in connection with the Project; and (f) meet or correspond with any governmental agency with jurisdiction over any pre-existing or newly discovered environmental conditions existing at the Landfill Property.

## **8. Liens.**

(a) To the extent permitted by Applicable Law, all of Lessee’s contracts with subcontractors engaged with respect to the constructing, operation, or maintenance of the System (each, a “Subcontractor”) shall provide that no lien shall attach to or be claimed against the Demised Premises or any interest therein by Lessee or its Subcontractors as a result of supplying goods or services pertaining to the Demised Premises, and Lessee shall use reasonable efforts to cause all subcontracts let thereunder to contain the same provision. Lessee shall not permit the Demised Premises to become subject to any mechanics’, laborer’s, or materialmen’s lien on account of labor, material, or services furnished to Lessee or claimed to have been furnished to Lessee (either directly or through Subcontractors) in connection with work of any character performed or claimed to have been performed for the Demised Premises by, or at the direction or sufferance of Lessee.

(b) Indemnification. Lessee shall indemnify and hold Lessor, its officials, officers, employees and agents harmless from, and defend against (with legal counsel reasonably acceptable to Lessor) all Losses of every kind, nature, and description which may arise out of or in any way be connected with the work of Subcontractors and the imposition or existence of any lien as described in Section II.8(a).

(c) Discharge of Liens. If any liens described in this Section II.8 are filed against the Demised Premises, Lessee shall promptly and at its cost and expense discharge the same following Lessee’s receipt of written notice of such filing; provided, however, that Lessee shall have the right to contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien if Lessee shall give to Lessor, within fifteen (15) Business Days after demand, such security as may be reasonably satisfactory to Lessor to assure payment thereof and to prevent any sale, foreclosure, or forfeiture of Lessor’s interest in the Demised Premises by reason of non-payment thereof; provided, further, that on final determination of the lien or claim for lien, Lessee shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If Lessee fails to post such security or does not diligently contest such lien, Lessor may, without investigation of the validity of the lien claim, after ten (10) Business Days’ written notice to Lessee, discharge such lien and Lessee shall reimburse Lessor upon demand for all costs and expenses incurred in connection therewith, which expenses shall include any reasonable attorneys fees and any and all other costs associated therewith, including litigation through all trial and appellate levels and any costs in posting bond to effect a discharge or release of the lien.

(d) No Consent. Nothing contained in this Lease shall be construed as a consent on the part of Lessor to subject the Demised Premises to liability under any lien law now or hereafter existing.

## **9. System Operation and Ownership**

(a) Operation, Maintenance, and Removal of System. Lessee shall operate, maintain, repair, decommission, and remove the System in accordance with the requirements of this Lease Agreement and all Applicable Laws, and in such a manner as will not unreasonably interfere with Lessor's use of any portion of the portion Lessor's Entire Property not subject to the lease or easements or, if there are any other occupants of the Lessor's Entire Property, such occupants' operation or maintenance of their respective premises.

(b) Ownership of System. Lessor acknowledges and agrees that (i) notwithstanding the System's classification as a "fixture" under Applicable Laws, as between the Parties, the System shall be deemed to be personal property of Lessee, and (ii) Lessee is the exclusive owner and operator of the System. In furtherance of the foregoing, Lessor hereby expressly waives all statutory and common law liens or claims that it might otherwise have in or to the System or any portion thereof and agrees not to distraint or levy upon the System or assert any lien, right of distraint or other claim against the System. The System shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Demised Premises by Lessor. Lessor (i) waives, to the fullest extent permitted by applicable law, any and all rights it may have under the laws of the Commonwealth of Virginia arising under this Lease, by statute or otherwise to any lien upon, or any right to distress or attachment upon, or any other interest in, any item constituting part of the System or any other equipment or improvements constructed or acquired by or for Lessee and located on the Landfill Property or within any Facility Access Area, and (ii) shall execute and deliver lien waivers in a form acceptable to Lessee, upon Lessee's reasonable request, to the extent required by applicable law in order to give effect to the waivers set forth in this Lease.

(c) Ownership of Energy Output. Lessor acknowledges and agrees that Lessee is the sole and exclusive owner of all electricity generated by the operation of the System, including any environmental attributes or credits.

(d) Non-interference. Subject to the requirements of Applicable Law and the other provisions of this Lease Agreement, during the Term, Lessor shall not make any changes to the Landfill Property and its appurtenances and will not act or omit to act in any manner that could adversely affect or impair the rights granted to Lessee under this Lease Agreement without the prior express written consent of Lessee. Without limiting the generality of the foregoing, Lessor (i) shall not disturb the solar insolation (sunlight) over the Demised Premises by undertaking or allowing any other party to undertake any building, installing or planting on any adjacent lands owned by the Lessor, of any barns, houses, garages, sheds, silos, towers, fencing, hay stacks, bushes, hedges, trees and berms that may shadow the Demised Premises, prevent the System from receiving direct sunlight or negatively affect any aspect of the Demised Premises; (ii) shall not take any action which will in any way interfere with the transmission and/or distribution of electric,

electromagnetic or other forms of energy to or from the Demised Premises; and (iii) shall not seek, in its acts, public assertions or statements, or in material submitted to governmental authorities, commercial entities or other regulatory bodies, or do any act or initiate proceedings, whether directly or indirectly, which challenges or otherwise adversely affects the System or which is inconsistent with its obligations under this Lease Agreement.

#### **10. Lessee Access to Demised Premises.**

(a) Lessee Access. Without limiting Section II.1(c), and subject to the notice and security requirements set forth in Section II.11 below, Lessor shall provide Lessee with access to the Demised Premises as reasonably necessary to allow Lessee to conduct the Permitted Use, including ingress and egress rights across the Landfill Property within the Facility Access Areas.

(b) Lessor Observation. At its option and upon prior written request, Lessor may have access to the Demised Premises at any reasonable time on an escorted basis, to observe the conduct of Lessee's Permitted Use on the Demised Premises and Facility Access Areas, subject to Lessor's compliance with Lessee's safety and security requirements.

(c) Property Manager. During all activities involving the System on the Demised Premises in connection with which personnel are present on the Demised Premises, including but not limited to installation, maintenance, repairs, decommissioning and removal of the System, Lessor may require that its property manager for the Landfill Property with responsibility to oversee the Demised Premises on behalf of the Lessor, which is Lessor's Executive Director ("Executive Director") or his/her designee be present onsite. On or prior to the Commencement Date, Lessor shall provide Lessee with name and contact information for the Executive Director and his/her designee and, thereafter, Lessor shall advise Lessee in the event of any changes in such information. Lessee shall coordinate its access to the Demised Premises with the Executive Director or his/her designee in accordance with the terms of this Section II.10.

(d) Periods of Access. Lessee shall have access to the Demised Premises during normal business hours (Monday through Friday, 8:00 AM through 5:00 PM) with twenty-four (24) hour prior notice provided to Executive Director and to Lessor's Administrative Coordinator, provided that Lessee may access the Demised Premises at other times or with a shorter prior notice period if Lessee's notice accompanied by a justification of the need for such access that is reasonably satisfactory to the Executive Director. Notwithstanding the foregoing, in the event of Exigent Circumstances that directly affect the operation of the System, Lessee may access the Demised Premises without the need for prior approval, provided that it provides notice to the Executive Director as soon as practicable.

#### **11. Identification, Security, and Access Requirements.**

(a) Identification. If required by Lessor, all of Lessee's Agents shall display Lessor-issued identification badges above the waist at all times that such individuals are on the Demised Premises. Any employee, contractor, or Subcontractor of Lessee who arrives at the Demised Premises without required identification will be dismissed from the Demised Premises. Lessee shall be solely responsible for all costs associated with such identification badges.

(b) Inspection. All supplies, materials, and equipment for use at the Demised Premises are subject to security inspection by Lessor.

(c) Additional Security and Access Requirements. Lessee shall, and shall cause all of its Subcontractors to, at all times comply with the identification, security, and other access requirements set forth on Exhibit E attached hereto.

(d) Amendments to Security and Access Procedures. Lessor reserves the right to amend and/or update its security and access requirements or procedures relative to the Demised Premises, including Exhibit E, from time to time upon at least three (3) Business Days' written notice to Lessee

**12. Insurance.** Lessee covenants and agrees, from and after the Commencement Date, to carry and maintain, at its sole cost and expense, the insurance required under Section I.11.

**13. Taxes.** Lessee shall pay, on or before the due date thereof, all personal property taxes (including machinery and tools taxes), business, and license taxes and fees, service payments in lieu of such taxes or fees, annual and periodic license and use fees, excises, assessments, bonds, levies, fees, and charges of any kind, including any revenue share or similar payments required to be made by local ordinance, Virginia Code Section 58.1-2636 or other applicable law, which are assessed, levied, charged, confirmed, or imposed by any Governmental Authority or any other governmental entity due to Lessee's occupancy and use of the Demised Premises (or any portion or component thereof) or the ownership and use of the System thereon, including but not limited to any real property taxes and assessments attributable to Lessee's leasehold interest under this Lease Agreement or the System improvements on the Demised Premises. Notwithstanding the foregoing, however, Lessee shall have the right to contest such taxes and/or fees in accordance with the applicable procedures of the Governmental Authority or any other governmental entity imposing such taxes and/or fees.

**14. Indemnification.**

(a) Indemnification. Lessee shall indemnify, defend, and hold harmless Lessor, the and Lessor's agents, officers, subcontractors, employees, invitees, and contractors (each, a "Lessor Indemnified Party", and collectively, the "Lessor Indemnified Parties"), from and against any liability for violations or alleged violation of any Applicable Law and Losses (including claims for property damage and claims for injury to or death of persons, including any claim or amounts recovered under "workers compensation laws" or any other Applicable Laws) arising in connection with, or out of, or resulting from (i) the negligent acts or omissions or willful misconduct of Lessee, its Agents, officers, directors, employees, Subcontractors, or contractors; or (ii) the breach by Lessee of any of its obligations under this Lease. The obligation to indemnify shall extend to and encompass all costs incurred by Lessor and any Lessor Indemnitee in defending such claims, demands, lawsuits, or actions, including, but not limited to, reasonable attorneys' fees, witness and expert witness fees, and any other litigation related expenses. Notwithstanding the foregoing, Lessee shall not be required to defend or indemnify Lessor Indemnified Parties for a Loss to the extent any such Loss results from the negligence or willful misconduct of a Lessor Indemnified Party. The provisions of this Section II.14(a) will survive the expiration or termination of this Lease.

(b) Exclusion of Certain Damages. EXCEPT FOR LIABILITY IN RESPECT OF (A) LESSEE'S INTENTIONAL OR WILLFUL MISCONDUCT OR FRAUD OR (B) CLAIMS FOR BODILY INJURY, INCLUDING DEATH AND DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE NEGLIGENCE OF LESSEE OR ANY AGENT OR EMPLOYEE OF LESSEE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY), FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST TAX BENEFITS, OR ENERGY CREDITS, OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES.

**15. Lessee Default.** The occurrence of any one or more of the following shall constitute an event of default of Lessee (a "Lessee Default"):

(a) The failure of Lessee to pay the Annual Rent or other sums due hereunder that is not cured within ten (10) Business Days after written notice thereof to Lessee;

(b) Any representation or warranty of Lessee hereunder proves to be false or misleading in any material respect;

(c) The inability, failure, or refusal of Lessee to perform timely any material obligations under this Lease, unless such failure or refusal is caused by a Force Majeure Event or a Lessor Default; provided, however, such failure continues for thirty (30) Days after Lessor shall have given written notice demanding that such failure to perform be cured (or if such failure cannot reasonably be cured within such 30 Day period, Lessee shall not be in default hereunder if Lessee commences efforts to cure such failure within such 30 Day period and, thereafter, diligently pursues those efforts to completion);

(d) Upon the occurrence of a Lessee Default, Lessor shall have the following rights: (i) to terminate this Lease by written notice to Lessee, and (ii) to pursue any other remedy now or hereafter existing at law or in equity. No termination of this Lease resulting from a Lessee Default shall relieve Lessee of its liability and obligations under this Lease, and such liability and obligations shall survive any such termination.

**16. Lessor Default.** The occurrence of the following shall constitute an event of default of Lessor (a "Lessor Default"): the failure of Lessor to perform any material obligations, or breach in any material respect any of its representations, warranties, agreements, or covenants, under this Lease, unless such failure is caused by a Force Majeure Event, or a Lessee Default; provided, however, such failure continues for thirty (30) days after Lessee shall have given written notice demanding that such failure to perform to be cured (or if such failure cannot reasonably be cured within such 30 Day period, Lessor shall not be in default hereunder if Lessor commences efforts to cure such failure within such 30 Day period and, thereafter, diligently pursues those efforts to completion). Upon the occurrence of a Lessor Default, Lessee pursue any other remedy



now or hereafter existing at law or in equity. Lessor shall refer any claim against Lessor by Lessee to Lessor's insurance or risk management carrier, but makes no representation as to coverage available to Lessor.

**17. Fee Mortgages.** To the extent there any mortgages, deeds of trust, or other indentures shown in Lessee's Title Report encumbering the Demised Premises (each, a "Fee Mortgage"), Lessor shall promptly, on or before the Commencement Date, obtain from the holder of each such Fee Mortgage a non-disturbance and attornment agreement, in a form acceptable to Lessee (each, an "SNDA"), pursuant to which the holder of each such Fee Mortgage shall agree that, upon it or its successors and assigns obtaining title to the Demised Premises (whether through a foreclosure proceeding or through acceptance of a deed in lieu of foreclosure) following an event of default by the Lessor under such Fee Mortgage, the holder of such Fee Mortgage or the Lessor of the Landfill Property at any foreclosure proceeding shall continue to recognize Lessee's leasehold interest in the Demised Premises for the balance of the term of this Lease, so long as Lessee is not then in default hereunder beyond any applicable notice and cure periods provided for herein. Promptly following the Effective Date, each SNDA shall be recorded in the Montgomery County Circuit Court Clerk's Office at Lessee's sole cost and expense, and, within ten (10) Business Days of Lessee's receipt of a written statement from Lessor setting forth all out-of-pocket costs incurred by Lessor in obtaining each such SNDA, together with such supporting documentation as Lessee may reasonably require, Lessee shall reimburse Lessor for such costs.

**18. Casualty or Condemnation.** Notwithstanding anything to the contrary contained herein, in the event of a casualty or condemnation to all or any portion of the Demised Premises, Lessor shall have no duty or liability to Lessee to restore the Demised Premises. If Lessor elects not to restore the Demised Premises, it shall give Lessee written notice of such election within thirty (30) Days after the occurrence of such casualty or condemnation, and, upon its receipt of such written notice, Lessee may, at its option, elect to terminate this Lease upon written notice to Lessor. Lessor shall be entitled to receive the entire award paid by the condemning authority for the Demised Premises, without deduction therefrom for any estate vested in Lessee by this Lease, and Lessee shall receive no part of such award (provided, however, Lessee shall receive any award attributable to the System).

**19. Environmental Provisions.**

(a) Lessor Covenant of Material Compliance. During the Term, Lessor shall materially comply with Environmental Laws applicable to the Demised Premises, except where applicable solely to the development, construction, operation, maintenance or Decommissioning of the System, which shall be responsibility of Lessee. Without limiting the foregoing sentence, Lessor shall, as between the Parties, be responsible for any preexisting Hazardous Materials.

(b) Lessee Covenants. During the Term of this Lease, Lessee shall:

(i) comply, in all material respects, with all Environmental Laws applicable to the Permitted Use at the Demised Premises;

(ii)

at its expense, remove or contain any Hazardous Materials on the Demised Premises that were brought onto or released into the Demised Premises by actions of the Lessee or its Agents during the Term of this Lease.

(c) Termination Right. Lessee shall have the unilateral right to terminate this Lease Agreement at any time by giving Lessor written notice of termination, which notice shall specify a termination date not less than ninety (90) days following the date of the notice. Following the specified termination date, Lessee shall have no further rights or obligations under this Lease Agreement, except that Lessee shall be required to Decommission the System as required by this Lease Agreement and the Decommissioning Agreement and as otherwise specifically set forth herein.

## **20. Covenants of Lessor.**

(a) Subsurface. Except as expressly provided herein (including specifically with regard to the Closed Landfill Considerations) or as required under Applicable Law, the surface of the Demised Premises shall not be disturbed in any manner by Lessor, or anyone claiming under Lessor, for the purpose of conducting operations of any nature without the written consent of Lessee. Except as hereinafter provided, Lessor agrees that neither it nor anyone claiming under it shall, for any purpose or use excluded by this Lease, occupy any portion of the surface of the Demised Premises or place any fixtures, equipment, buildings, or structures thereon. Subject to landfill subsidence as described in, and the requirements, restrictions and limitations of, Section II 20. (d) (ii), Lessee shall, at all times, be entitled to the lateral support of the surface of the Demised Premises and to the underground or sub adjacent support of the surface thereof. Lessee shall not conduct any operations whatsoever on, in, over, or under any portion of the Demised Premises which would or is likely to cause loss of lateral or subjacent support of the surface of the Demised Premises or any improvements thereon. The provisions of this Section shall survive the expiration or termination of the Term or Lessor's Transfer.

(b) Certain Actions. Lessor shall not do any of the following without the prior written approval of Lessee, which approval may be given or withheld in Lessee's sole and absolute discretion: (a) enter into any agreement affecting the survey condition of, title to, or possession of the Demised Premises, (b) create any encumbrances on or against the Demised Premises, (c) materially modify any existing prior encumbrance or institutional controls affecting the Demised Premises, (d) initiate or request any change in the existing zoning or other land use entitlements affecting the Demised Premises enter into any lease, contract, or other agreement affecting the Demised Premises except with respect to the Closed Landfill Considerations, or (f) amend or modify any existing lease or contract affecting the Demised Premises.

(c) Permitting. Lessor shall be responsible for submittal of permit modification applications to DEQ required for installation of the System on the Demised Premises; in this regard, Lessee shall provide Lessor any information, data and documents related to the System that may be required for Lessor to properly complete and submit such permit modification applications. Lessee shall complete an evaluation of impacts of the additional impervious areas of the

System on stormwater run-off and infiltration of stormwater into the final cover system and internal drainage and provide calculations and documentation to Lessor to support permit modification. Lessor shall be responsible for making improvements to the existing stormwater management system resulting from stormwater flow off the System. Lessee shall prepare any required Spill Containment, Control and Countermeasure Plans and receive required permits for transformer oils, as applicable.

(d) Maintenance.

(i) *Vegetative Cover.* To the extent that Lessor does not affirmatively and voluntarily undertake the responsibility under the Closed Landfill Permit for maintaining a good stand of vegetative cover (which may include grass) on the Demised Premises (the access for which, if such responsibility is undertaken, shall be allowed by Lessee under a limited license to undertake such activities), Lessee shall be responsible for maintenance and repair of the Landfill cover vegetated surface in the area of the Demised Premises to maintain a good stand of vegetative cover in accordance with the Closed Landfill Permit and to prevent impacts of vegetation and or woody growth on the System operation.

(ii) *Landfill Subsidence.* If, during the term of the Lease, the surface of the Demised Premises subsides due to natural decomposition of the Landfill mass, Lessor and Lessee shall cooperate in reasonable and necessary re-grading or other responses in order to facilitate the Permitted Use, it being understood that Lessor shall perform any re-grading unless the Parties agree otherwise in advance. The Parties agree that any such re-grading or other responses shall be conducted in a way to prevent future ponding or erosion.

(iii) *Ponding and Erosion.* Notwithstanding anything to the contrary in this Solar Lease Agreement, during the Term, Lessee shall not conduct any activities or allow any condition on the Demised Premises which would or would be likely to cause water impact that threatens the integrity of the Landfill cap, including but not limited to erosion and ponding.

**21. No Warranties.** LESSOR HAS NOT MADE, DOES NOT MAKE, AND HAS NOT AUTHORIZED ANYONE ELSE TO MAKE ANY REPRESENTATIONS OR WARRANTIES AS TO: (A) THE SOIL CONDITIONS TO BE FOUND AT THE DEMISED PREMISES; OR (B) THE MERCHANTABILITY OF THE DEMISED PREMISES OR ITS SUITABILITY FOR LESSEE'S INTENDED USE. LESSEE EXPRESSLY ACKNOWLEDGES AND ACCEPTS THAT: (X) EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, LESSOR HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER CONCERNING THE DEMISED PREMISES OR ANY MATTERS PERTAINING TO THE DEMISED PREMISES AND ACCESS TO THE SAME; AND (Y) IN ENTERING INTO THIS LEASE, LESSEE IS NOT RELYING ON ANY SUCH REPRESENTATIONS OR WARRANTIES. LESSEE HAS FULLY EXAMINED AND INSPECTED OR HAS HAD THE OPPORTUNITY TO FULLY EXAMINE AND INSPECT THE DEMISED PREMISES AND ACCESS TO THE SAME AND BECOME THOROUGHLY FAMILIAR WITH THE CONDITION (INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL CONDITION), STATUS, ACCESSIBILITY, AND SUITABILITY OF THE DEMISED PREMISES. LESSEE IS LEASING THE DEMISED PREMISES ON AN "AS IS, WHERE IS" BASIS.

## **22. Assignment.**

(a) Assignment by Lessor. No assignment of Lessor interest in the Demised Premises, the Facility Access Areas, or the Lease shall relieve Lessor of any of its obligations under this Lease, nor may any such assignment be made unless fee title to the Demised Property is simultaneously transferred to the permitted assignee hereunder and unless such permitted assignee has first assumed all of Lessor's obligations under this Lease in writing in a form reasonably satisfactory to Lessee.

(b) Assignment by Lessee. Lessee shall not assign this Lease or its interest in the Demised Premises or sublease any of its interest under this Lease without the express written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Lessee may, without Lessor's consent, assign its rights under this Lease and interest in the Demised Premises (a) to an Affiliate, (b) to a successor entity in a bona fide merger or corporate reorganization, the primary purpose of which is not to circumvent the restrictions on assignments and subleases set forth herein, (c) to a person or entity acquiring Lessee's interest in the Demised Premises and/or the System in connection with a bona fide sale-leaseback or synthetic lease transaction, the primary purpose of which is not to circumvent the restrictions on assignments and subleases set forth herein, or (d) to a Financing Party or any party providing financing for the System, (e) to a successor entity from a bona fide change of control in connection with the permanent financing of the System. In the case of any permitted or approved assignment of Lessee's interest under this Lease, Lessee shall be relieved of any duty, responsibility or liability arising under this Lease following the assignment.

## **23. Lessee Representations and Warranties.**

Lessee represents and warrants to Lessor as follows:

(a) Existence and Qualification. Lessee is duly organized, validly existing and in good standing in its jurisdiction of formation and is qualified to do business in the State and is in good standing therein. Lessee is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Lease Agreement.

(b) Power; Authorization. Lessee has the full power, authority, and legal right to enter into and perform its obligations set forth herein, and the execution, delivery and performance by Lessee of this Lease Agreement, (i) have been duly authorized, (ii) do not require the approval of any Governmental Authority, other than those permits or approvals required or contemplated to be obtained after the Effective Date and prior to the Commercial Operation Date, (iii) will not violate any judgment, order, law, or regulation applicable to Lessee or any provision of Lessee's organizational documents, and (iv) do not constitute a default under or result in the creation of any lien upon any assets of Lessee under any agreement or instrument upon which Lessee is a party or by which Lessee or its assets may be bound or affected

(c) Enforceability. This Lease Agreement constitutes a legal, valid, and binding obligation of Lessee, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting the enforcement of creditors'

rights or remedies generally, and (ii) general equitable principles, whether considered in a legal proceeding at law or in equity.

(d) Compliance with Laws. Lessee is in compliance with all Applicable Laws in all material respects.

(e) No Conflict. Lessee's performance of its obligations under this Lease Agreement and the transactions contemplated hereby do not conflict with Lessee's performance under any other agreements or instruments to which Lessee or any of its Affiliates is a party or by which Lessee or any of its Affiliates or its or their assets may be bound or affected. Lessee has no obligation or indebtedness that would materially impair its ability to fulfill the terms of this Lease Agreement.

(f) Intellectual Property Rights. Lessee (i) owns or is licensed or is otherwise lawfully permitted to use any and all of the inventions, processes, know-how, trade secrets, technical expertise, copyrights, trademarks, patents, and other intellectual property relating to the design, engineering, manufacture, sale, supply, importation, assembly, installation, commissioning, start-up, testing, servicing and repair of the System and the performance of the Permitted Use, and (ii) the design, engineering, manufacture, sale, supply, importation, assembly, installation, commissioning, start-up, testing, servicing and repair of the System and performance of the Permitted Use will not infringe on the inventions, processes, know-how, trade secrets, technical expertise, copyrights, trademarks, patents, and other intellectual property of any third party.

(g) Knowledge and Experience. Lessee has such knowledge and experience in financial and business matters, specifically the business of providing designing, financing, installing, constructing, interconnecting, owning, operating and maintaining solar photovoltaic and battery energy storage systems, in order to conduct the Permitted Use in accordance with the provisions of this Lease Agreement.

(h) Litigation. There is no litigation pending or, to the knowledge of Lessee, threatened, which questions the validity or enforceability of this Lease Agreement or which affects or may affect the transactions contemplated hereby.

(i) No Gratuities. Neither Lessee, nor any of its Affiliates, has, directly or indirectly, offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any Lessor Board member or Lessor employee with a view toward securing this Lease Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Lease Agreement.

## **24. Lessor Representation and Warranties**

Lessor represents and warrants to Lessee as follows:

(a) Power and Authority. Lessor has the full power, authority, and legal right to enter into and perform its obligations herein.

(b) Enforceability. This Agreement constitutes a legal, valid, and binding obligation of Lessor, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights or remedies generally, and (ii) general equitable principles, whether considered in a Legal Proceeding at law or in equity.

(c) Unrecorded rights. Lessor has neither granted, nor has knowledge of, any option, right of first refusal, right of first opportunity, or other similar option or right, in favor of any person or entity to acquire any fee or leasehold interest in any portion of the Demised Premises.

(d) Reports. Lessee agrees that it has had access to Lessor's records and has received copies of all environmental investigations, reports, studies, audits, tests, reviews sampling, or other analyses conducted in relation to the Demised Premises, to the extent commissioned by or in the possession of Lessor or anyone under its control, that Lessee has requested. To Lessor's knowledge, there are no conditions, facts or circumstances that could result in the imposition of liabilities under, or noncompliance with, any Environmental Laws at the Demised Premises that could reasonably be expected to materially impact the ability to site, design, permit, develop, interconnect, construct, start-up, test, commission, own, use, operate or maintain the Project.

(e) Condition of Title. Lessor represents and warrants as of the Effective Date that Lessor is the legal and beneficial owner of the fee title to the Demised Premises and the Facility Access Areas free and clear of any lien, interest or encumbrance, except as shown in Lessee's Title Report.

## **25. Mortgage of Lessee's Interest.**

(a) Lessee intends to finance a portion of the cost of the System with one or more financial institutions, leasing companies, institutions, joint venture partners and/or private lenders (each a "Financing Party," collectively, the "Financing Parties") and in connection therewith Lessee intends to enter into various agreements and execute various documents in furtherance of such financing, which documents may, among other things, assign this Lease Agreement and the easement and access rights to a Financing Party, grant a sublease in the Demised Premises and a lease of the System from such Financing Party to Lessee, grant the Financing Parties a sublease or other real property interest in Lessee's interests in and to the Demised Premises, grant a first priority security interest in Lessee's interest in the System and/or this Lease Agreement and Lessee's other interests in and to the Demised Premises, including, but not limited to, any Easements, rights of way or similar interests (such documents, "Financing Documents"). Lessor acknowledges notice of the foregoing and consents to the foregoing actions and Financing Documents described above. Lessor agrees, to execute, and agrees to cause any and all of Lessor's lenders to execute, such commercially reasonable subordination agreements, non-disturbance agreements, forbearance agreements, consents,

estoppels, modifications of this Lease Agreement and other acknowledgements of the foregoing as Lessee or the Financing Parties may reasonably request (collectively, "Lessor Financing Consent Instruments"). Lessor acknowledges and agrees that (i) Lessee's ability to obtain financing for the construction and operation of the System is dependent upon the prompt cooperation of Lessor and its lenders as contemplated by this Section II 25; (ii) if Lessee is unable to close on the financing for the System, the construction of the System and the Commercial Operation Date will not likely occur; and (iii) it is in the best interest of both Lessee and Lessor for Lessee to obtain financing from the Financing Parties as contemplated by this Section II 25. Therefore, Lessor agrees to act promptly, reasonably and in good faith in connection with any request for approval and execution of all Lessor Financing Consent Instruments. The Lessor shall also reasonably cooperate with the Lessee or the Financing Party in the making of any filings required by such requesting party for regulatory compliance or in accordance with Applicable Laws and in the operation and maintenance of the System, all solely at the expense of the Lessee.

(b) As a precondition to exercising any rights or remedies as a result of any default or alleged default by Lessee under this Lease Agreement, Lessor shall deliver a duplicate copy of the applicable notice of default to each Financing Party concurrently with delivery of such notice to Lessee, specifying in detail the alleged default and the required remedy, provided Lessor was given reasonable written instructions as to providing such notice to such Financing Parties, and if no such notice of default is required to be delivered to Lessee under this Lease Agreement, Lessor may not terminate this Lease Agreement unless Lessor has delivered a notice of default to each Financing Party that Lessor has been given reasonable written instructions as to providing such notice, specifying in detail the alleged default or breach and permitting each such Financing Party the opportunity to cure as provided in this Section II 25. Each Financing Party shall have the same period after receipt of a notice of default to remedy default, or cause the same to be remedied, as is given to Lessee after Lessee's receipt of a notice of default under this Lease Agreement, plus, in each instance, the following additional time periods: (i) ten (10) Business Days in the event of any monetary default; and (ii) sixty (60) days in the event of any non-monetary default; provided, however, that (A) such sixty (60)-day period shall be extended for the time reasonably required by such Financing Party to complete such cure, including the time required for such Financing Party to obtain possession of the System (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure and (B) such Financing Party shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed. Lessor shall accept such performance by or at the instance of a Financing Party as if the performance had been made by Lessee.

(c) If any Lessee Default cannot be cured without obtaining possession of all or part of the System and/or the leasehold interest created by the Lease Agreement (the "Leasehold Estate"), then any such Lessee Default shall nonetheless be deemed

remedied if: (i) within sixty (60) days after receiving the notice of default, a Financing Party acquires possession thereof, or commences appropriate judicial or non-judicial proceedings to obtain the same; (ii) such Financing Party is prosecuting any such proceedings to completion with commercially reasonable diligence; and (iii) after gaining possession thereof, such Financing Party performs all other obligations as and when the same are due in accordance with the terms of the Lease Agreement. If a Financing Party is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting the proceedings described above, then the sixty (60)-day period specified above for commencing such proceedings shall be extended for the period of such prohibition.

(d) Financing Parties shall have no obligation or liability to the Lessor for performance of the Lessee's obligations under the Lease Agreement prior to the time the Financing Party acquires title to the Leasehold Estate. A Financing Party shall be required to perform the obligations of the Lessee under this Lease Agreement only for and during the period the Financing Party directly holds such Leasehold Estate. Any assignment of the whole Leasehold pursuant to this Section 25 shall release the assignor from obligations accruing under this Lease Agreement after the date the liability is assumed by the assignee.

(e) Each Financing Party shall have the absolute right to do one, some or all of the following things: (i) assign the rights, mortgage or pledge held by Financing Party (the "Financing Party's Lien"); (ii) enforce the Financing Party's Lien; (iii) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to the Leasehold Estate; (iv) take possession of and operate the System or any portion thereof and perform any obligations to be performed by Lessee under the Lease Agreement, or cause a receiver to be appointed to do so; (v) assign or transfer the Leasehold Estate to a third party; or (vi) exercise any rights of Lessee under this Lease Agreement. Lessor's consent shall not be required for any of the foregoing; and, upon acquisition of the Leasehold Estate by a Financing Party or any other third party who acquires the same from or on behalf of the Financing Party or any purchaser who purchases at a foreclosure sale, Lessor shall recognize the Financing Party or such other party (as the case may be) as Lessee's proper successor, and this Lease Agreement shall remain in force and effect.

(f) If this Lease Agreement is terminated for any reason whatsoever, including a termination by Lessor on account of a Lessee Default, or if this Lease Agreement is rejected by a trustee of Lessee in a bankruptcy or reorganization proceeding or by Lessee as a debtor-in-possession (whether or not such rejection shall be deemed to terminate this Lease Agreement), if requested by Financing Party, Lessor shall execute a new lease (the "New Lease") for the Demised Premises with the Financing Parties (or their designee(s), if applicable) as Lessee, within thirty (30) days following the date of such request. The New Lease shall be on substantially the same terms and conditions as are in this Lease Agreement



(except for any requirements or conditions satisfied by Lessee prior to the termination or rejection). Upon execution of the New Lease by Lessor, Financing Parties (or their designee, if applicable) shall pay to Lessor any and all sums owing by Lessee under this Lease Agreement that are unpaid and that would, at the time of the execution of the New Lease, be due and payable under this Lease Agreement if this Lease Agreement had not been terminated or rejected. The provisions of this Section II 25 shall survive any termination of this Lease Agreement prior to the expiration of the Term, and any rejection of this Lease Agreement in any bankruptcy or reorganization proceeding.

(g) Lessor consents to each Financing Party's security interest, if any, in the System and waives all right of levy for rent and all claims and demands of every kind against the System, such waiver to continue so long as any sum remains owing from Lessee to any Financing Parties. Lessor agrees that the System shall not be subject to distraint or execution by, or to any claim of, Lessor.

**26. Miscellaneous.**

(a) Dispute Resolution and Governing Law. The validity, interpretation, construction, and performance of this Lease Agreement, , including the Parties' obligation under this Lease Agreement, the performance due from each Party under it and the remedies available to each Party for breach of it, shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to any choice of law or conflict of law provision or rule (whether of Virginia or any other jurisdiction) that would require the application of any other law. Any disputes arising hereunder shall be brought exclusively in the state and federal courts of the Commonwealth of Virginia.

(b) Due Authorization. Each Party represents and warrants to the other Party that it (i) has been duly authorized to enter into this Lease by all necessary action, and (ii) the execution, by the undersigned, and delivery of this Lease and the performance by such Party of its obligations hereunder will not result in a default under any agreement to which it is a party.

(c) Notices. All notices and consents required or permitted by this Lease Agreement shall be in writing, shall be transmitted by (a) registered or certified mail, return receipt requested, with notice deemed to be given upon receipt; postage prepaid, (b) delivered by hand or by nationally recognized courier service, or (c) electronic mail or other electronic communication system acceptable to the Representatives with confirmed receipt thereof, and in all cases, addressed as follows:

TO LESSOR: [        ]

TO LESSEE: [        ]

With a copy to:

Any party may, upon prior written notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

(d) Successors and Permitted Assignees. This Lease is binding on and inures to the benefit of successors and permitted assignees.

(e) Survivability. Any term, condition, covenant, or obligation that requires performance by a Party subsequent to termination or expiration of this Lease, whether specifically identified herein or not, shall remain enforceable against such Party subsequent to such termination or expiration.

(f) Negotiated Terms. The Parties agree that the terms and conditions of this Lease Agreement are the result of negotiations between the Parties and that this Lease Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Lease Agreement.

(g) Further Assurances. Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute, and deliver any instruments and documents and take such action as may be reasonably necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Lease and which do not involve the assumption of obligations other than those provided for in this Lease in order to give full effect to this Lease and to carry out the intent of this Lease.

(h) Waivers. No delay in exercising or failure to exercise any right or remedy accruing to or in favor of either Party shall impair any such right or remedy or constitute a waiver thereof. Every right and remedy given hereunder or by Applicable Law may be exercised from time-to-time and as often as may be deemed expedient by the Parties. Neither this Lease Agreement nor any provision hereof may be changed, modified, amended, or waived except by a written instrument signed by a duly authorized officer of the Party against whom enforcement of such change, modification, amendment, or waiver is sought. If any representation, warranty, or covenant contained in this Lease is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Lease.

(i) Relationship of the Parties. Nothing in this Lease Agreement shall be deemed to constitute either Party a partner, agent, employee, or legal representative of the other Party or to create any joint venture or fiduciary relationship between the Parties. In addition, nothing in this Lease Agreement shall be deemed or construed as creating any contractual relationship between any Subcontractor and Lessor. The Parties agree that Lessee shall be fully responsible for the acts and omissions of any Subcontractor.

(j) Entire Agreement. This Lease Agreement, the recitals herein, together with the Exhibits attached to this Lease Agreement, constitutes the entire and complete agreement and commitment of the Parties with respect to this Lease Agreement. All prior or contemporaneous understandings, arrangements, negotiations, or commitments, or any or all of the foregoing with

respect to this Lease Agreement, whether oral or written, have been superseded by this Lease Agreement.

(k) Amendments. No amendment, modification, or change to this Lease Agreement shall be effective unless the same shall be in writing and duly executed by an authorized person of each Party.

(l) No Third-Party Beneficiaries. Except as otherwise expressly provided herein, this Lease Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Lessee or Lessor, and do not imply or create any rights on the part of, or obligations to, any other Person.

(m) Headings. Captions and headings in this Lease Agreement are for convenience of reference only and do not constitute a part of this Lease Agreement.

(n) Counterparts and Signatures. This Lease Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. The delivery of an executed counterpart of this Lease Agreement by electronic transmission shall be deemed to be valid delivery thereof. Scanned or digital signatures shall be deemed valid as original as related to this Agreement.

(o) Severability. If any provision, portion, or application of this Lease Agreement is, for any reason, held to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Lease Agreement or such other appropriate actions as shall, to the maximum extent practicable, in light of such determination, implement, and give effect to the intentions of the Parties as reflected herein, and the other terms of this Lease Agreement, as so amended, modified, supplemented, or otherwise affected by such action, shall remain in full force and effect.

(p) Liability of Officers and Employees. No member of the Board of Directors of Montgomery Regional Solid Waste Authority nor any director, officer, agent, consultant, representative, or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Lease Agreement, because of either Party's execution or attempted execution of this Lease Agreement or because of any breach or alleged breach thereof: provided, however, that all Persons remain responsible for any of their own criminal actions.

(q) No Conflict of Interest. Lessee shall not enter into any agreements that would conflict with Lessee's performance of its obligations under this Lease Agreement, or the other transactions contemplated herein, without receiving prior written authorization from Lessor.

(r) Authorization to Conduct Business in the State. At all times during the Term, Lessee shall be authorized to transact business in the State as a domestic or foreign business entity. Lessee shall not allow its existence to lapse or its certificate of authority or registration to

transact business in the State to be revoked or cancelled at any time during the Term.

(s) Immigration Reform and Control Act. Lessee represents and warrants to Lessor that it does not, and Lessee covenants that it shall not during the performance of the Lease Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

(t) Estoppel Certificates. Lessor and Lessee shall execute and deliver to each other, within fifteen (15) Business Days after receipt of a written request therefore, a certificate evidencing whether or not (i) this Lease Agreement is in full force and effect; (ii) this Lease Agreement has been modified or amended in any respect and describing such modifications or amendments, if any; and (iii) there are any existing defaults thereunder to the knowledge of the Party executing the certificate, and specifying the nature of such defaults, if any. If either Party shall fail to deliver said certificate within fifteen (15) Business Days from request therefor it shall be concluded that this Lease Agreement is in full force and effect, unmodified and without default.

(u) Remedies Cumulative. No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

(v) Attorneys' Fees. Lessee shall bear its own attorneys' fees, costs, and expenses in connection with negotiating and/or reviewing this Lease Agreement, including any amendments, and any additional documents relating to the System.

(w) Brokers. Each Party represents and warrants to the other Party that it has not engaged or had any conversations or negotiations with any broker, finder, or other third party concerning the leasing of the Demised Premises to Lessee who would be entitled to any commission or fee based on the execution of this Lease Agreement.

(x) Time is of the Essence. Time is of the essence of this Lease Agreement.

(y) Memorandum. Lessor and Lessee agree that at the request of either, each will execute a short form memorandum, substantially similar to the form in Exhibit F in form satisfactory for recording in the Montgomery County Circuit Court Clerk's Office that shall be recorded on or promptly following the Commencement Date for the Lease Agreement at the cost of the Party seeking to record the same. Upon the expiration or earlier termination of this Lease Agreement, the Parties shall promptly execute any release or termination that may be required to release such memorandum of record.

(z) Deed of Lease. The Parties intend for this Lease Agreement to be deemed a deed of lease and a conveyance of a leasehold interest real property by a sealed writing pursuant to Virginia Code § 11-3.

(aa) Quiet Enjoyment. So long as there does not exist a Lessee Default, Lessor agrees

that, subject to the terms and conditions of this Lease Agreement, Lessee shall have the right to quietly use and enjoy the Demised Premises for the Term, without hinderance or molestation by Lessor or those claiming by, through or under Lessor.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties have executed this Option and Right of Entry and Deed of Solar Lease Agreement as of the Effective Date.

**LESSOR:**

MONTGOMERY REGIONAL SOLID WASTE  
AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSEE:**

MONTGOMERY REGIONAL SOLAR CENTER,  
LLC, a Virginia limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Signature Page to Option and Right of Entry and Deed of Solar Lease Agreement (LANDFILL  
PROPERTY - LANDFILL)]

**EXHIBIT A**

**DEMISED PREMISES**

**LOCATION:** Montgomery County, Virginia

**SIZE:** Approximately [32] [50] acres in total

**Legal Description:** To be added

**Parcel Numbers:** 079- A 4

**Survey Map to be added**

**EXHIBIT B**

**FEASIBILITY STUDIES**

1. AEP Interconnection Studies
2. Wetland Delineation
3. Phase 1 ESA
4. ALTA Survey
5. Topographic Survey
6. Geotech Survey
7. Threatened and Endangered Species Review (desktop)
8. Cultural / Historical Review (desktop)
9. Post Closure Permit Modifications (if any)



**EXHIBIT C**

**FACILITY ACCESS AREAS**

[to be inserted when determined]

**EXHIBIT D**

**AS-BUILT SURVEY**

[to be inserted when determined]

## **EXHIBIT E**

### **LANDFILL RULES AND REGULATIONS**

- No smoking at facility
- Executive Director and Administrative Coordinator must be notified before entering facility
- Follow speed limits within facility
- No disposing of illegal substances within facility
- Areas occupied must be mowed and trimmed
- Follow all “Solid Waste Facility Requirements and Guidance” per VDEQ Administrative Code Chapter 81
- Access to facility will be through back gate
- Be aware of haulers/customers when entering and exiting the facility
- If front gate access is needed, Executive Director and Administrative Coordinator must be notified before access is granted
- To utilize gates, a gate control device will be approved by the Executive Director
- Equipment and vehicles must be parked in location approved by Executive Director
- Waste/trash generated from project will be weighed at scalehouse, and applicable fee paid, before disposal at transfer station
- Erosion and sedimentation control measures must be used as required by law
- Obtain underground utility locations before digging
- All excavated areas must be clearly marked with fencing and/or caution tape
- Keep working site orderly (if during mowing season keep tools visible)
- Lessee and/or contractors must provide portable restrooms near the landfill site as needed

**EXHIBIT F**

**FORM OF MEMORANDUM OF LEASE**

Tax Parcel No.: 079- A 4  
Consideration: \$\_\_\_\_\_

This document prepared by and \_\_\_\_\_

COUNTY OF MONTGOMERY }  
COMMONWEALTH OF VIRGINIA }

**Note to Clerk: [insert re exempt from recordation taxes]**  
Exempt from grantors tax pursuant to 58.1-811 C. 4.

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE (this “**Memorandum**”) is dated as of \_\_\_\_\_ 20\_\_ (the “Commencement Date”) by and between MONTGOMERY REGIONAL SOLID WASTE AUTHORITY (hereinafter referred to as “Lessor”) and MONTGOMERY REGIONAL SOLAR CENTER, LLC, a Virginia limited liability company (hereinafter referred to as “Lessee”), with reference to the following recitals:

WHEREAS, Lessee and Lessor (together, the “**Parties**” and each a “**Party**”) are parties to certain unrecorded Option and Right of Entry and Deed of Solar Lease Agreement dated of even date herewith (the “**Lease**”), which affects the Demised Premises (hereinafter defined);

WHEREAS, the option to lease the Demised Premises set forth in the above-described Lease has been exercised and the lease for a term of years under such Lease is now in effect;

WHEREAS, the Parties desire to enter into this Memorandum for recordation in the land records of the Clerk’s Office of the Circuit Court of Montgomery County, Virginia (the “**Land Records**”);

NOW, THEREFORE, the Parties hereto do hereby certify and agree as follows:

**1.1. Demised Premises.** The premises leased by Lessor to Lessee pursuant to the Lease (the “**Demised Premises**”) are as set forth in Exhibit A attached hereto and made a part hereof. Lessee may use, and have access at all times to, the Demised Premises for the installation, operation, maintenance, repair and, if necessary, replacement and decommissioning of a solar

photovoltaic energy system, and activities necessary or related thereto. The Demised Premises are located on the Landfill Property, which is more particular described in the Lease.

**1.2. Term and Consideration.** The term of this Lease shall commence on the Commencement Date and shall terminate and expire on that date which is thirty (30) years after the Effective Date (the “Initial Term”). Lessee shall have the right to extend the term of this Lease for two (2) additional periods of five (5) years each (each, a “Renewal Term” and together with the Initial Term, collectively, the “Term”).

**1.3. Easements and Other Rights.** The Lease contains provisions granting Lessee certain rights and easements associated with access, transmission of electricity, and other matters.

**1.4. Execution.** This Memorandum may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

**1.5. Governing Law.** This Memorandum and the Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

**1.6. Purpose of Memorandum of Lease.** This Memorandum, when recorded in the Land Records, is intended to serve as public notice of the existence of the Lease and to incorporate and reference all of its promises, covenants, and agreements to the same extent as if the Lease were fully set forth herein. This Memorandum does not describe or refer to all the terms or conditions contained in the Lease, nor does it intend to modify, amend, or vary any of the terms or conditions set forth in the Lease.

**1.7. Relationship to Lease.** Any capitalized terms used in this Memorandum and not otherwise defined shall the meanings set forth in the Lease.

[Signatures pages follow]

**IN WITNESS WHEREOF**, the Parties have caused this Memorandum to be executed on their behalf as of the Commencement Date:

Lessor: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*ACKNOWLEDGEMENT*

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on this \_\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_ (Lessor signatory).

*NOTARIAL SEAL*

\_\_\_\_\_  
(signature)  
Notary Public

Lessee: Montgomery Regional Solar Center, LLC

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGEMENT

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on this  
\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_ (Lessee signatory).

*NOTARIAL SEAL*

\_\_\_\_\_  
(signature)  
Notary Public

**EXHIBIT G**

**LESSOR DEQ PERMITS<sup>1</sup>**

<b>Permit Type</b>	<b>Permit Number</b>	<b>Expiration</b>
Solid Waste	DEQ Solid Waste Permit Number 397	
Stormwater (Virginia Pollutant Discharge Elimination System)	VAR051352	
Transfer Station	DEQ Permit-By-Rule Number 149	
Tire Recycling	DEQ Permit-By-Rule Number 559	

**EXHIBIT H**

**THIRD-PARTY LANDFILL PROPERTY USE REQUIREMENTS<sup>2</sup>**

<b>Third-Party</b>	<b>Type</b>	<b>Location/Tax Map</b>	<b>Description or Deed Book/Page</b>

<sup>1</sup> Lessor's DEQ Permits to be entered.

[<sup>2</sup> NTD: Lessor to include all agreements, leases, recorded and unrecorded rights of or obligations to third-parties in the Landfill Property.]



**EXHIBIT I**

**FORM OF MEMORANDUM OF OPTION**

Tax Parcel No.: 079- A 4  
 Consideration: \$\_\_\_\_\_

This document prepared by and \_\_\_\_\_  
 \_\_\_\_\_

COUNTY OF MONTGOMERY	}
	}
COMMONWEALTH OF VIRGINIA	}

Note to clerk: exempt per [    ]

**MEMORANDUM OF OPTION**

THIS MEMORANDUM OF OPTION (this “**Memorandum**”) is dated as of \_\_\_\_\_, 2023 (the “**Commencement Date**”) by and between by and between MONTGOMERY REGIONAL SOLID WASTE AUTHORITY (hereinafter referred to as “**Lessor**”) and MONTGOMERY REGIONAL SOLAR CENTER, LLC, a Virginia limited liability company (hereinafter referred to as “**Lessee**”), with reference to the following recitals:

WHEREAS, Lessee and Lessor (together, the “**Parties**” and each a “**Party**”) are parties to certain unrecorded Option and Right of Entry Agreement dated of even date herewith (the “**Option**”), which affects the Demised Premises (hereinafter defined);

WHEREAS, the Parties desire to enter into this Memorandum for recordation in the land records of the Clerk’s Office of the Circuit Court of Montgomery County, Virginia (the “**Land Records**”);

NOW, THEREFORE, the Parties hereto do hereby certify and agree as follows:

1.     **Demised Premises.** The premises to be leased by Lessor to Lessee pursuant to the Option (the “**Demised Premises**”) are as set forth in Exhibit A attached hereto and made a part hereof. Lessee may have access to the Demised Premises for the activities necessary to develop a solar photovoltaic facility, further detailed in the Option. The Demised Premises are located on the Landfill Property, which is more particular described in the Lease.
  
2.     **Term and Consideration.** The initial term of the Option commenced on the Effective Date and shall continue for \_\_\_\_\_. Upon the expiration of the initial term, the Lessee may extend the Option for up to \_\_\_\_\_ in accordance with the terms of the Option.

3. **Easements and Other Rights.** The Option contains provisions granting Lessee certain rights and other matters.
4. **Execution.** This Memorandum may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.
5. **Governing Law.** This Memorandum and the Option shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
6. **Purpose of Memorandum of Option.** This Memorandum, when recorded in the Land Records, is intended to serve as public notice of the existence of the Option and to incorporate and reference all of its promises, covenants, and agreements to the same extent as if the Option were fully set forth herein. This Memorandum does not describe or refer to all the terms or conditions contained in the Option, nor does it intend to modify, amend, or vary any of the terms or conditions set forth in the Option.
7. **Relationship to Option.** Any capitalized terms used in this Memorandum and not otherwise defined shall the meanings set forth in the Option.

[Signatures pages follow]

**IN WITNESS WHEREOF**, the Parties have caused this Memorandum to be executed on their behalf as of the Commencement Date:

Lessor: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*ACKNOWLEDGEMENT*

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on this \_\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_ (Lessor signatory).

*NOTARIAL SEAL*

\_\_\_\_\_  
(signature)  
Notary Public

Lessee: MONTGOMERY REGIONAL SOLAR CENTER, LLC

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGEMENT

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me, the undersigned Notary Public, on this  
\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_ (Lessee signatory).

*NOTARIAL SEAL*

\_\_\_\_\_  
(signature)  
Notary Public

**EXHIBIT J**

**[RESERVED]**

## **EXHIBIT K**

### **DECOMMISSIONING REQUIREMENTS**

Unless the context clearly indicates otherwise, capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Option and Lease Agreement to which this Exhibit K is attached.

#### **1. Closure and Decommissioning.**

- A. Notice of Decommissioning. The Lessee shall provide a written notice of Decommissioning to the County and the Lessor within thirty (30) days of a determination to cease operation of the System.
- B. Decommissioning Plan and Activities.
  - i. Prior to the commencement of construction of the System, Lessee shall submit to the County and receive approval from the County of a Decommissioning Plan, which Decommissioning Plan shall be in conformance with the provisions of this Section 1. The Lessee shall comply with all terms and conditions of the Decommissioning Plan as approved by the County. The Decommissioning Plan at a minimum shall include provisions regarding the following:
    - a. Specifications for the removal of solar panels and related equipment, buildings, cabling, electrical components, foundations, pilings, and fencing provided, however, that any stormwater management facility and other improvements made pursuant to the approved erosion and sediment control plan required by the Department of Environmental Quality or any other applicable authority shall remain in place together with any ancillary improvements relating to such facilities, including without limitation access roads and fencing requested to remain in place by the Lessor.
    - b. A requirement that the Demised Premises must be reasonably restored to their condition as of the Effective Date to the extent reasonably practicable. “Reasonably restored” shall mean with respect to the real property upon which the solar equipment, facilities, or devices were located, (i) soil stabilization and (ii) revegetation of the ground cover of the real property disturbed by the installation of such equipment, facilities, or devices, provided, however, that Lessee shall not be required to dismantle, abandon or remove any underground utilities or improvements or to significantly alter the grade of the Demised Premises or to in any way disturb the subsurface of the Demised Premises.
    - c. A requirement that the Demised Premises must be stabilized so as to adequately control and minimize any and all erosion or sediment runoff, consistent with the approved erosion and sediment control plan if required

by Applicable Law for the Decommissioning.

- d. A requirement that prior to stabilization, all soils compacted by the Decommissioning work or by construction or operation of the facility except gravel roads and paths established for the operation of the Demised Premises, shall be de-compacted.
- ii. Decommissioning shall begin by the Termination Date and diligently pursued by the Lessee, and in all events completed within one hundred eighty (180) days of the date Decommissioning commenced.
- iii. Decommissioning Plan obligations shall be binding on the Lessee's successors and assigns as well as any authorized sublessee, licensee or operator of the System. The Lessee shall provide notice to the County at least thirty (30) days prior to any change of ownership, lessee, or party responsible for Decommissioning of the facility, or change in any part of the contact information.
- iv. If Decommissioning is triggered for a portion, but not the entire System, prior to the end of the System life, the Lessee shall commence and complete Decommissioning, in accordance with the Decommissioning Plan, for the applicable portion of the System. If a portion of the System is Decommissioned, the remaining portion of the System will continue to be subject to this Decommissioning Plan, and the entire Demised Premises shall be brought into compliance with the Decommissioning Plan on final Decommissioning.

C. Costs of Decommissioning.

- i. If Decommissioning Activities are not completed within the required time, if the System is Abandoned, or if the Decommissioning Activities fail to reasonably restore the Demised Premises (as defined above), the County may, after written notice to Lessee specifying the nature of the decommissioning breach, with a period of sixty days for Lessee to cure or substantially commence curing (if cure requires additional time) complete or have completed at its expense the Decommissioning Activities required under the terms of the Decommissioning Plan and may recover all costs of completing those Decommissioning Activities from the Lessee.
- ii. To secure the costs of Decommissioning, the Lessee shall at all times, beginning at the Commercial Operation Date and until the completion of Decommissioning, provide financial surety in a form permitted by this Exhibit K, and in an amount approved by the County.
- iii. The amount of the surety required shall be 100% of the estimated Decommissioning costs, net of (minus) the salvage value of such equipment, facilities, or devices, plus a reasonable allowance for estimated administrative

costs related to a default of the Lessee, and an annual inflation factor. The amount shall be based upon an estimate of a professional engineer, engaged by the Lessee and approved by the County, licensed in the Commonwealth with experience in preparing decommissioning estimates. The estimate shall be prepared prior to the issuance of permits for installation of the System. The estimated costs and surety to meet the above requirements shall be reviewed by the County every five years after the Commercial Operation Date (each, a "Surety Review Date"), at which time the County shall reasonably determine if the estimates adequately reflect the costs of Decommissioning and that the surety will guarantee performance. Should the County determine that estimated costs and surety are insufficient, the County shall communicate the reasons for such deficiencies along with supporting documentation from its professional engineer to the Lessee within sixty (60) days following the Surety Review Date, who shall then provide the adequate surety within one hundred eighty (180) days following the Surety Review Date.

- iv. If the engineer retained by the Lessee is not approved by the County and the County determines that the estimated costs and surety are insufficient, the County shall hire a professional engineer, selected by the County, to certify and seal its estimate of adequate Decommissioning costs. The Lessee shall reimburse the County for costs of such second engineer's estimate.
- v. Surety must be provided to the County by means of a cash bond, irrevocable letter of credit or surety bond as permitted by Va. Code § 15.2-2241.2 in effect as of the date of the Option and Lease Agreement to which this Exhibit K is attached in accordance with the following requirements:
  - a. A cash bond shall be in the form of a cashier's check or certified check deposited with the County which has cleared all issuing institutions. Any interest accruing on such funds shall be added to the total amount and retained by the County for Decommissioning. The deposit shall be accompanied by a letter agreement, acceptable to, and issued by, the County Administrator, confirming that the cash deposit is to be held by the County to guarantee the performance of the Decommissioning work required herein and should the System be Abandoned or should the Decommissioning work not be diligently undertaken or performed according to the requirements herein, or should the Special Use Permit be revoked, lapse, expire, or be voided, the County may expend the deposited funds to undertake the Decommissioning work required herein, without more, after providing written notice to the person identified as owner of the property in the land records of Montgomery County as of the date of the notice. Within thirty (30) days of the completion of the Decommissioning work required herein by a person or entity other than the County or a contractor engaged by the County, as confirmed by the County Administrator, the cash bond and accrued interest, less any amounts expended by the County as allowed herein, shall be released and



paid to the person identified as lessee of the Demised Premises in land records of Montgomery County as of the date of the completed Decommissioning or as otherwise directed by that lessee of the Demised Premises.

- b. An irrevocable letter of credit shall mean an instrument provided by a lending institution satisfactory to the County guaranteeing payment to the County within seventy-two (72) hours of the County's written notice to the institution that the System has been Abandoned or the Decommissioning Activities has not been diligently undertaken or performed according to the requirements herein and demand to the institution for the funds, without more. The letter of credit shall have no expiration date or required renewal and shall remain in effect for the benefit of the County and shall under no circumstances be withdrawn before the Decommissioning Activities required herein is completed or the amount guaranteed has been fully drawn by the County. The letter of credit shall require that the County be notified six (6) months prior to any cancellation or alteration of the letter of credit. Should the County receive notice that the letter of credit will be cancelled or otherwise become unavailable or decrease, or should the Special Use Permit be revoked, lapse, expire or be voided, the County may, immediately draw down the entirety of the letter of credit and convert the surety to a cash bond to be deposited with the County and subject to the terms herein; this shall be specifically reflected in the language of the irrevocable letter of credit. The County may expend the guaranteed funds, without more, to undertake the Decommissioning Activities required herein and required pursuant to the terms of the Decommissioning Plan after providing written notice to the person identified as the owner of the Demised Premises in the land records of Montgomery County as of the date of the notice. Within thirty (30) days following the completion of the Decommissioning Activities required herein and required pursuant to the terms of the Decommissioning Plan by a person or entity other than the County or a contractor engaged by the County, as confirmed by the County Administrator, the letter of credit shall be released by the County.
- c. A surety bond shall mean a bond issued by a company with an AM Best rating of A- or better, that is treasury listed, and that is licensed to do business in the Commonwealth of Virginia. The surety bond shall list the County as an obligee and shall remain in effect for the benefit of the County and shall under no circumstances be withdrawn or cancelled before the Decommissioning Activities required herein and required by the terms of the Decommissioning Plan are completed or the amount guaranteed has been fully paid to the County. The surety bond shall require that the County be notified six (6) months prior to any cancellation or alteration of the bond. Should the County receive notice that the surety bond will be cancelled or otherwise become unavailable or decrease below

the limits required herein, or should the Special Use Permit be revoked, lapse, expire or be voided, the County may, immediately file a claim, for the entirety of the amount of the bond, the guarantor shall pay the amounts guaranteed and the County shall convert the surety to a cash bond to be deposited with the County and subject to the terms herein; this shall be specifically reflected in the language of the surety bond. The County may expend the guaranteed funds, without more, to undertake the Decommissioning Activities required herein and required pursuant to the terms of the Decommissioning Plan, after providing written notice to the person identified as the owner of the Demised Premises in the land records of Montgomery County as of the date of the notice with a period of sixty days for Lessee to cure or substantially commence curing (if cure requires additional time). Within thirty (30) days following the completion of the Decommissioning Activities required herein by a person or entity other than the County or a contractor engaged by the County, as confirmed by the County Administrator, the surety bond shall be released by the County.

- d. Should the Special Use Permit be revoked, lapse, expire, or be voided, the County may draw down all of the surety funds and convert them into a cash bond for purposes of Decommissioning as set forth hereunder and as set forth in the Decommissioning Plan; provided, however, the County shall first notify Lessee in writing of any revocation, lapsing, expiration or voiding of the Special Use Permit, and prior to drawing down the surety funds and converting them into a cash bond, or contacting surety, the County shall provide Lessee a reasonable opportunity to perform its Decommissioning obligations. In such case, no contractual agreement shall be required for the cash bond. This shall be reflected in the surety provided.
- e. Should the funds guaranteed for the Decommissioning Activities for any reason not be sufficient for the County to complete the Decommissioning Activities as allowed for herein and as set forth in the Decommissioning Plan, the Lessee shall be and shall remain liable to the County for the difference between the guaranteed funds and the amounts required to Decommission the System and shall pay the difference to the County upon demand; provided, however, if this occurs, the County shall first notify Lessee in writing of any such deficiency in funds (the “**Deficiency Notice**”) and Lessee may either pay the difference or immediately commence and diligently pursue the work required to Decommission the System, provided that Lessee shall notify the County of its election within ten (10) business days of receipt of the Deficiency Notice. The County shall not be liable to any third party in any way for the funds drawn pursuant to the conditions set out herein and expended in relation to Decommissioning. Should the System be Abandoned, or should the Special Use Permit be revoked, lapse, expire, or be voided, or should the Decommissioning Activities not be diligently undertaken or performed,

and should the County draw down the funds for the purpose of performing the Decommissioning Activities and mobilize its contractors to perform the Decommissioning Activities or otherwise incur liability to its contractors for the performance of the Decommissioning Activities, the Lessee shall have no right to perform the Decommissioning Activities unless specifically authorized by the County in a writing that confirms that the County has incurred no liability to any contractors to perform the Decommissioning Activities or that any such liability is transferrable as deemed acceptable to the County.

**1.3 Decommissioning Access.** If the Lessee fails to Decommission the System, the County shall have unrestricted access to the System to effect any and all tasks, as necessary, to Decommission solar panels and all appurtenant facilities and restore the Demised Premises to substantially the same condition that existed prior to construction of the solar facilities and as provided by Virginia Code § 15.2-2241.2, as it may be amended through the Termination Date. Such access rights shall remain in effect through decommissioning regardless of whether Virginia Code § 15.2-2241.2 is repealed or otherwise limited in scope from the access rights it provides the County as of the date of execution of the Option and Lease Agreement.