

STAFF REPORT

DATE: March 24, 2020

TO: City Council

FROM: Ashley Feeney, Assistant City Manager
Tracie Reynolds, Property Management Coordinator

SUBJECT: Proposed Solar Farm Lease Option Agreement and Term Sheet

Recommendations

Staff recommends that the City Council approve the attached resolution (Attachment 1) that authorizes the City Manager to execute a lease option agreement and term sheet with BrightNight that will give the solar energy company an option to lease up to 235 acres of City-owned land near the City's wastewater treatment plant on County Road 28H for a commercial solar farm and solar energy testing facility.

City Council Goals

The proposed action supports City Council Goal #3: Pursue Environmental Sustainability. Under that goal, the City Council directs staff to advance the implementation of Community Choice Energy. Under Objective #5, the City Council directs staff to facilitate the expansion of residential and commercial solar and renewable energy generation in the Davis area, including identifying additional commercial renewable energy generation opportunities (Task C).

Fiscal Analysis

The proposed action would result in a positive fiscal impact. As shown in more detail below, the City will earn about \$5,000 a year during the next five years while BrightNight secures its entitlements for the solar facility. Once the ground lease is executed, the solar facility is built, and the operating period begins, the City will then earn up to about \$80,000 a year in revenue. During the operating period, BrightNight is required to pay an agricultural market rate to lease up to 155 acres of the City's land and a lower rate to lease up to 80 acres of the City's land that isn't farmable. Currently, this land is not earning any revenue for the City.

Background

At the February 11, 2020 City Council meeting, the Mayor reported out from closed session that the City Council had directed staff to move forward with a preliminary agreement with BrightNight that would allow the solar energy company to lease up to 235 acres of City-owned land near the City's wastewater treatment plant on County Road 28H for a commercial solar farm and solar energy testing facility (Attachment 2).

The City no longer needs the land around the wastewater treatment plant for treating wastewater. Under the old wastewater treatment system, the land around the plant served as ponds to clean and purify the City's wastewater before it was discharged into the Willow Slough Bypass. But

the recent \$95.6 million upgrade to the City's wastewater treatment plant eliminated the need for these ponds, so the land can now be dried out and used for another purpose.

The proposed solar panels, which are estimated to be able to produce about 25 megawatts of solar power per year, will help the City meet its climate goals under the City's 2020 Climate Action and Adaptation Plan Update which calls for the City to be carbon neutral by 2040.

BrightNight is an energy company that focuses on delivering safe, reliable, high-value, low-cost renewable energy. BrightNight has developed, financed, constructed and operated more than 3,000 megawatts of renewable energy since 2009. It is partnering on this project with PVEL, a reliability and performance testing lab for solar project developers, financiers, owners, and operators. PVEL will operate a solar testing facility next to BrightNight's solar farm under a sublease/sublicense. PVEL tests solar photovoltaic modules and equipment with the objective of improving solar technology and accelerating the adoption of solar technology. PVEL conducts indoor and outdoor testing at three sophisticated laboratories in Northern California, including the PVUSA site in Davis on Pole Line Road.

If the City Council approves the proposed lease option agreement and term sheet, BrightNight can then move forward with its plans to apply for a connection to the electric grid managed by the California Independent System Operator ("California ISO"), which operates one of the largest and most modern power grids in the world. The deadline to apply for this connection is April 1. As part of BrightNight's application, it must demonstrate site control and the proposed lease option agreement and term sheet satisfies this requirement for site control.

Proposed Lease Option Agreement and Term Sheet

The following briefly outlines the key terms of the proposed lease option agreement and term sheet with BrightNight:

- **Premises.** BrightNight will have the right to lease up to 235 acres of City-owned land near the City's wastewater treatment plant on County Road 28H for a commercial solar farm and solar energy testing facility (Attachment 2). About 155 of those acres are farmable and the remainder is not farmable. The entire property is not zoned for agriculture. It is zoned Public/Quasi Public under the Yolo County Zoning Code, and solar farms of a certain size are allowed under this zoning designation.
- **Term.** The total term of the proposed lease option agreement is five years. BrightNight would have the next five years to secure all the required permits and entitlements and then exercise its option to ground lease the City's property and construct the proposed solar project. The City and BrightNight would then execute a ground lease based on the terms outlined in the term sheet attached to the option agreement, and the solar company would be able to operate a solar farm and small battery energy storage system facility on the City's property for 49 years. The term of the future ground lease includes a 29-year operating period and two 10-year options.
- **Rent.** During the term of the option agreement (i.e., during which BrightNight would secure its entitlements and build the project), BrightNight will pay the City a nominal rate

of \$20 per acre per year. Once the ground lease is executed on or before Year 6, BrightNight would pay an agricultural market rate (\$454/acre/year) to lease up to 155 acres and a lower rate (\$100/acre/year) to lease up to 80 acres that isn't farmable. The deal would earn the City up to approximately \$80,000 a year in revenue. The rent would increase at 2% every year. A summary of the rent revenues during the term of the lease option agreement and future ground lease is shown in the table below:

Development Period			Operating Period			First Option		Second Option		Total Term			
Rent/Acre Per Year	Rent/Year		Rent/Acre Per Year	Rent/Year		Rent/Acre Per Year	Rent/Year	Rent/Acre Per Year	Rent/Year	Average Rent/Acre Per Year	Average Rent/Year		
1	\$20.00	\$4,700	1	\$333	\$78,310	1	\$592	\$139,066	1	\$721	\$169,520	\$508	\$119,281
2	\$20.40	\$4,794	2	\$340	\$79,876	2	\$604	\$141,847	2	\$736	\$172,911		
3	\$20.81	\$4,890	3	\$347	\$81,473	3	\$616	\$144,684	3	\$751	\$176,369		
4	\$21.22	\$4,988	4	\$354	\$83,103	4	\$628	\$147,578	4	\$766	\$179,896		
5	\$21.65	\$5,087	5	\$361	\$84,765	5	\$641	\$150,529	5	\$781	\$183,494		
			6	\$368	\$86,460	6	\$653	\$153,540	6	\$796	\$187,164		
			7	\$375	\$88,189	7	\$666	\$156,610	7	\$812	\$190,907		
			8	\$383	\$89,953	8	\$680	\$159,743	8	\$829	\$194,725		
			9	\$390	\$91,752	9	\$693	\$162,938	9	\$845	\$198,620		
			10	\$398	\$93,587	10	\$707	\$166,196	10	\$862	\$202,592		
			29	\$580	\$136,339								
Totals		\$24,459			\$3,037,802			\$1,522,730			\$1,856,199		\$6,441,190

Staff has researched the agricultural market rate of \$454/acre/year and finds that it is comparable to a long-term orchard lease in Yolo County.

- **Subleases/Sublicenses.** Under the future ground lease, BrightNight will be allowed to sublease/sublicense a portion of the premises to PVEL to operate a solar power testing facility. No other subleases or sublicenses will be permitted.
- **Research and Education.** Under the future ground lease, PVEL will offer to provide STEM curriculum for local public-school students including (i) a package for one-week mathematics and physics-based desktop work to educate students on solar power and the basics of energy production calculations using actual site data, and (ii) periodic chaperoned site visits to show students how the solar power generation system works.
- **Power Sales.** Under the future ground lease, BrightNight agrees to work with the City to facilitate the direct sale of energy from PVEL to the City's wastewater treatment plant at the same rate and terms being provided at the time to Valley Clean Energy Alliance, a locally based energy provider, or similar energy buyer, as applicable.
- **Facility Tours.** Under the future ground lease, BrightNight and/or PVEL representatives will offer City staff and guests chaperoned tours of the solar power facility at least once every three months.
- **Site Restoration.** Under the future ground lease, BrightNight will be required to restore the City's property to its original condition if and/or when the ground lease is terminated.

Next Steps

Assuming approval, staff will execute the lease option agreement and continue working with BrightNight to finalize the ground lease based on the terms outlined in the term sheet attached to

the lease option agreement. BrightNight also will move forward with its plans to apply for a connection to the electric grid managed by California ISO. The deadline to apply for this connection is April 1.

Once the ground lease with BrightNight is finalized, it will be brought back to the City Council for approval after the solar power company has secured all of its entitlements from Yolo County, including compliance with the California Environmental Quality Act, and can proceed with the solar project.

Attachments:

- Attachment 1: Proposed Resolution
- Attachment 2: Map of Proposed Premises
- Attachment 3: Proposed Lease Option Agreement and Term Sheet

Attachment 1
RESOLUTION NO. 20-____, SERIES 2020

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE OPTION AGREEMENT AND TERM SHEET WITH BRIGHTNIGHT THAT WILL GIVE THE SOLAR ENERGY COMPANY AN OPTION TO LEASE UP TO 235 ACRES OF CITY-OWNED LAND NEAR THE CITY'S WASTEWATER TREATMENT PLANT ON COUNTY ROAD 28H FOR A COMMERCIAL SOLAR FARM AND SOLAR ENERGY TESTING FACILITY

WHEREAS, at the February 11, 2020 City Council meeting, the Mayor reported out from closed session that the City Council had directed staff to move forward with a preliminary agreement with El Dorado Hills-based BrightNight that would allow the solar energy company to lease up to 235 acres of City-owned land near the City's wastewater treatment plant on County Road 28H for a commercial solar farm and solar energy testing facility; and

WHEREAS, the City no longer needs the land around the wastewater treatment plant for treating wastewater. Under the old wastewater treatment system, the land around the plant served as ponds to clean and purify the City's wastewater before it was discharged into the Willow Slough Bypass. But the recent \$95.6 million upgrade to the City's wastewater treatment plant eliminated the need for these ponds, so the land can now be dried out and used for another purpose; and

WHEREAS, BrightNight is an energy company that focuses on delivering safe, reliable, high-value, low-cost renewable energy. BrightNight has developed, financed, constructed and operated more than 3,000 megawatts of renewable energy since 2009. It is partnering on this project with PVEL, a reliability and performance testing lab for solar project developers, financiers, owners, and operators. PVEL will operate a solar testing facility next to BrightNight's solar farm under a sublease/sublicense. PVEL tests solar photovoltaic modules and equipment with the objective of improving solar technology and accelerating the adoption of solar technology. PVEL conducts indoor and outdoor testing at three sophisticated laboratories in Northern California, including the PVUSA site in Davis on Pole Line Road; and

WHEREAS, the proposed solar panels, which are estimated to be able to produce about 25 megawatts of solar power per year, will help the City meet its climate goals under the City's 2020 Climate Action and Adaptation Plan Update which calls for the City to be carbon neutral by 2040; and

WHEREAS, the City and BrightNight have negotiated a lease option agreement and term sheet. Under the lease option agreement and term sheet, the City will earn about \$5,000 a year during the next five years while BrightNight secures its entitlements for the solar facility. Once the ground lease is executed, the solar facility is built, and the operating period begins, the City will then earn up to about \$80,000 a year in revenue. During the operating period, BrightNight is required to pay an agricultural market rate to lease up to 155 acres of the City's land and a lower

rate to lease up to 80 acres of the City’s land that isn’t farmable. Currently, this land is not earning any revenue for the City; and

WHEREAS, once the ground lease with BrightNight is finalized, it will be brought back to the City Council for approval after the solar power company has secured all of its entitlements from Yolo County, including compliance with the California Environmental Quality Act, and can proceed with the solar project; and

WHEREAS, staff recommends approval of the lease option agreement and term sheet as it will help the City meet its climate goals and generate much-needed revenue for the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager to execute a lease option agreement and term sheet with BrightNight that will give the solar energy company an option to lease up to 235 acres of City-owned land near the City’s wastewater treatment plant on County Road 28H for a commercial solar farm and solar energy testing facility, in the form approved by the City Attorney; and, if necessary, make minor modifications to the document after consultation with the City Attorney.

PASSED AND ADOPTED by the City Council this 24th day of March, 2020, by the following vote:

AYES:

NOES:

ABSENT:

Brett Lee, Mayor

ATTEST:

Zoe Mirabile CMC, City Clerk

**Attachment 2
Map of Proposed Premises**



Attachment 3

LEASE OPTION AGREEMENT

THIS LEASE OPTION AGREEMENT (the “**Agreement**”) is entered into by and between City of Davis, a California municipal corporation (“**City**”), and BrightNight LLC, a Delaware limited liability company (“**Optionee**”) as of March 25, 2020 (the “**Effective Date**”). City and Optionee are each a “**Party**” and sometimes collectively referred to herein as the “**Parties.**”

RECITALS:

A. City is the legal and equitable owner of approximately two hundred thirty-five (235) acres of real property situated in Yolo, County, California, being more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Property**").

B. Optionee is desirous of acquiring the exclusive right and option (but without any obligation) to lease the Property for solar and storage energy development, which may include the construction, installation, operation and maintenance of a site for the conversion of solar and storage energy to electricity, the collection and transmission of solar-generated electric power, transmission lines and related equipment (“**Solar Development**”), at an agreed price and upon agreed terms, all subject to the conditions and other agreements hereinafter set forth, and City is agreeable to granting such an option to Optionee, upon such conditions and agreements.

C. City has agreed to grant an option to lease the Property to Optionee on the terms and conditions described in this Agreement. The Parties intend that this Agreement satisfies the requirement of the California Independent System Operator that Optionee demonstrate site control of the Property.

NOW, THEREFORE, for and in consideration of the aforementioned recitals, the mutual covenants and undertakings of the Parties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency thereof being acknowledged, City and Optionee agree as follows:

1. Grant and Term of Option. For the consideration expressed in Paragraph 2 below, subject to the provisions of this Agreement, City hereby grants to Optionee the exclusive right and option (the "**Option**") to lease the Property for the Solar Development. The term within which the Option may be exercised shall commence on the Effective Date and shall continue for the period of one (1) year (the “**Initial Term**”) as shown in Exhibit “B,” attached hereto and incorporated herein by this reference. At Optionee’s election, Optionee shall have the right to extend the Initial Term for additional one-year periods (each such additional period shall be referred to herein as an “**Extended Term**” and together, the “**Extended Terms**”), all as specified in Exhibit “B.” The Initial Term, as extended by any Extended Term that Optionee elects pursuant to the following provision shall be referred to herein as the “**Term.**” Optionee shall have the right to extend the Term by giving City notice of Optionee’s election to extend the Term not later than ten (10) days before the last date of the Initial Term (as to the election of the first Extended Term) and again not

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later than ten (10) days before the last date of any and each successive Extended Term. In no event shall the Term exceed five (5) years.

2. Consideration for Grant of Option. The Option is granted in consideration of the initial payment (the “**Initial Payment**”) specified in Exhibit “B.” Along with the Initial Payment, Optionee shall deliver to City the sum of One Hundred Dollars (\$100.00) (the “**Independent Consideration**”), as consideration for Optionee’s right to the Option and to terminate this Agreement on or prior to the expiration of the Title Review Period, as defined below. The Independent Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement. The Independent Consideration is non-refundable, and shall be retained by City notwithstanding any other provision of this Agreement. The Initial Payment and Independent Consideration shall be paid by Optionee to City within three (3) business days after the Effective Date of this Agreement. If Optionee elects to extend the Term by any one or more Extended Terms, then Optionee will, together with Optionee’s notice of its election, make the additional payment(s) (each, an “**Additional Payment**,” and together, the “**Additional Payments**”) corresponding to the Extended Term so elected at such time, all as specified in Exhibit “B” (the Initial Payment and Additional Payments are collectively referred to as the “**Option Fee**”). Except as otherwise expressly provided in this Agreement, the Option Fee shall be non-refundable to Optionee and shall belong to the City and be retained by the City in consideration of granting the Option.

3. Title Review Period. Optionee has ordered a preliminary title report from First American Title Insurance Company showing the current title to the Property, and copies of all documents constituting exceptions to title (collectively, the “**Preliminary Title Report**”). Optionee shall have a period of ten (10) days from the Effective Date of this Agreement to review the Preliminary Title Report and advise City in writing (the “**Disapproval Notice**”) of any objections to title or other matters needed to cure title (the “**Disapproved Exceptions**”). City and Optionee shall cooperate in good faith to address the Disapproved Exceptions to the satisfaction of Optionee. If, within thirty (30) days following delivery of the Disapproval Notice, the Disapproved Exceptions have not been addressed to the satisfaction of Optionee in its sole discretion, Optionee may either waive the Disapproved Exceptions, or terminate this Option Agreement and this Option Agreement will be of no further force or effect. The review and cure periods described above are collectively the “Title Review Period.” If Optionee terminates this Option Agreement on or before the termination of the Title Review Period, then City shall refund the Initial Payment to Optionee within thirty (30) days of such termination date. After the Preliminary Title Report is approved by Optionee, City agrees to maintain the condition of title without any adverse changes, subject to the risk of condemnation, or any other cause or event that is beyond City’s control.

4. Exercise of Option. If Optionee is not in default hereunder, Optionee may exercise the Option by delivery of written notice (the “**Exercise Notice**”) to City of its decision to do so at any time during the Term. The Exercise Notice shall include (i) evidence satisfactory to City, in City’s reasonable discretion, that Optionee has sufficient financial and management resources to perform Optionee’s obligations under the Lease; (ii) written documentation satisfactory to City, in City’s reasonable discretion, evidencing receipt of all consents, approvals, permits or entitlements as may be required prior to executing the Lease from the federal government, State

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of California, Yolo County and/or the City in order to proceed with the Solar Development; and (iii) written documentation satisfactory to City, in City's sole discretion, evidencing compliance with all environmental review, including, but not limited to, compliance with the California Environmental Quality Act ("CEQA"). If Optionee presents a complete Exercise Notice to City, as determined by City in City's sole discretion, within thirty (30) days following the delivery by Optionee to City of the Exercise Notice, City and Optionee shall execute the following: (a) a Lease with respect to the Property, to be negotiated between the Parties during the Term, and approved by the City Council after compliance with all requirements set forth herein, based on the Term Sheet attached hereto as Exhibit "C" (the "**Lease**"); (b) a Memorandum of Lease in recordable form to give public notice of the existence of the Lease and the Property affected; and (c) such other documents and instruments as may be reasonably necessary to consummate the transaction contemplated hereby. Notwithstanding the above, in the event that the Lease is not able to be placed on the agenda of a regularly scheduled City Council meeting within thirty (30) days following the delivery by Optionee to City of the Exercise Notice, the Lease will be placed on the agenda of the next available City Council meeting. In no event may Optionee exercise the Option following the expiration of the Term. Both Parties acknowledge that the Term Sheet represents a preliminary agreement and that the Solar Development details will be determined based on the findings of the Parties during the Term. As a result of environmental review, the scope and details of the Solar Development may change and the Parties agree to consider alternatives to the Solar Development, including the option not to proceed with the Solar Development.

5. Termination. If (a) Optionee fails to exercise its Option prior to the expiration of the Term, or (b) Optionee fails to comply with any covenant herein, and does not cure such failure within thirty (30) days of written notice from City to do so then this Agreement shall terminate. Upon such termination, Optionee and City shall promptly execute and record such agreement or instrument as may be reasonably necessary to remove the Memorandum, as defined below, as an instrument affecting title to the Property. Upon termination, Optionee shall provide a copy of any and all reports, studies, site plans or other documents produced in connection with Optionee's investigation of the Property. Unless otherwise expressly provided herein, upon the termination of this Agreement, neither Party shall have any further rights, obligations, or liabilities hereunder.

6. Operation of Property During the Option Term. During the Term, pursuant to Optionee's notice to City, and provided that such activities do not unreasonably interfere with the City's other current uses of the Property, Optionee, or the authorized agent of Optionee, shall have the right of ingress and egress onto, off of, and across the Property to conduct any feasibility or other tests, studies, borings or investigations that Optionee deems necessary or desirable in connection with Optionee's determination, in its sole and absolute discretion, whether or not the Property is suitable for the purpose of developing a Solar Development. City hereby grants to Optionee a right of entry to the Property for the purposes of conducting the aforementioned inspections and examinations. All acts done on the Property by Optionee, or on behalf of Optionee, shall be performed at no expense to City. In connection with Optionee's entry upon the Property pursuant to this Agreement, Optionee shall: (i) access the Property in a safe manner; (ii) conduct no invasive testing or boring without the written consent of City, which shall not be unreasonably withheld; (iii) allow no dangerous or hazardous condition created by Optionee or Optionee's agents to remain following such access; (iv) comply with all laws and obtain all permits required in connection with such access; (v) not permit itself or any of its third party

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contractors or consultants to use, generate, handle, store or dispose of any hazardous material in, on, under, upon or affecting the Property; and (vi) not allow any liens to be recorded against or to attach to the Property in connection with Optionee's inspection and investigation of the Property. Without limiting the generality of the foregoing, Optionee is specifically entitled to construct, maintain and utilize one (1) or more meteorological test stations ("MET") on the Property and to obtain data from the station(s). However, Optionee shall have no right to erect any permanent structure, build roads, gates or cattle guards, to cut or move fences, or conduct similar activities disruptive of the surface of the land, without the written consent of the City, which consent is in the City's sole discretion. Additionally, said activities of Optionee during the Term shall be conducted with a minimum of twenty-four (24) hours notification to City, and with approval by City as to routes of access upon the Property, the gates and entrances which shall be used for access during the Term, and other similar matters. Subject to the foregoing, City reserves the right to maintain all current and lawful activities on the Property, so long as said activities do not unreasonably interfere with Optionee's tests, studies, and other uses of the Property. In the event that the Option lapses without exercise or otherwise terminates, Optionee shall, within ninety (90) days of the termination or expiration of said Option, restore the Property substantially to its prior condition.

7. Insurance. During the time that Optionee exercises its rights to enter the Property hereunder, Optionee shall comply with the laws of the State of California concerning worker's compensation, including, but not be limited to, obtaining and maintaining one or more policies of insurance insuring against any liability Optionee may have for worker's compensation. In addition, Optionee shall obtain and maintain, at its sole cost and expense, commercial general liability and automobile insurance in the amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. The City shall be added as an additional insured under the policies of insurance required by this Section and such policies shall stipulate that such insurance shall operate as primary insurance. No other insurance effected by City or any other named insureds under the policies of insurance required under this Section will be called upon to cover a loss covered thereunder. The policies of insurance required by this Section shall provide that no cancellation, major changes in coverage, expiration or renewal shall be made without thirty (30) days prior written notice to City. Prior to entering the Property, Optionee shall file with City Certificates of Insurance or endorsements demonstrating that the policies of insurance required by this Section have been obtained. The City shall have the right to reasonably revise the requirements of this Section to reflect insurance standards used by the City for its other lessees and contractors.

8. Indemnification. Optionee hereby agrees to indemnify City against, and to hold City harmless and, at the option of City, defend City, its officials, employees, agents and representatives (collectively, "**Indemnified Parties**") with counsel approved by City, from all liabilities, losses, damages, costs and expenses, including, without limitation, legal fees and disbursements, incurred by Indemnified Parties by reason of any actions, claims, damages, liabilities, disabilities, or expenses that arise out of, pertain to, or relate to (1) Optionee's access to, activities on, or testing of the Property, or (2) Optionee's acts or omissions in furtherance of this Agreement, including, but not limited to, pursuit of entitlements and permits for Solar Development. This Section shall survive the termination or expiration of this Agreement.

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9. AS-IS. Optionee is accessing the Property in its "AS-IS" condition. Except for the express representations and warranties set forth in this Agreement, the City makes no representations or warranties, express or implied, whatsoever to Optionee as to the condition of the Property, including but not limited to the suitability of the Property for the Solar Development.

10. Representations and Warranties.

(a) Each Party hereto represents and warrants to the other that such Party (i) has and, to the extent applicable, the person executing this Agreement has, received all requisite power and authority to execute this Agreement and consummate the transactions contemplated hereby, without the joinder or consent of any other person or party; (ii) has not been represented by a real estate broker or agent; and (iii) has been represented by counsel of their own choosing.

(b) City further represents and warrants to the best of City's actual knowledge and belief with no duty to investigate, as follows:

(i) City owns the entire fee interest in the Property and has full power and authority to enter into this Agreement and the Lease in accordance with the terms of this Agreement (and without the consent or approval of any governmental authority or any other person or entity);

(ii) City has not received any written notice of, and to the best of City's actual knowledge and belief with no duty to investigate, there is no, violation of any ordinance, regulation, law, or statute of any governmental authority or agency pertaining to the Property;

(iii) As used herein, the term "**Hazardous Substance**" means and includes all hazardous or toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents, radon and urea formaldehyde), and any other similar substances, or materials which are included or regulated by any local, state, or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure (collectively, the "**Environmental Laws**"). Neither City, nor to the best of City's actual knowledge and belief with no duty to investigate, has any other entity or person stored, released, transported, or disposed of any Hazardous Substance on or from the Property or any portion thereof in violation of applicable Environmental Laws. To the best of City's actual knowledge and belief the Property does not contain, and is not affected by, any Hazardous Substance(s), underground storage tanks, hydrocarbon contamination, radioactive materials, lead based paint, mold or other pollutants or contaminants in violation of any Environmental Laws and has not been used as a landfill or other waste disposal site. Notwithstanding the above, Optionee acknowledges that the Property was formerly used to treat wastewater via overland flow and facultative pond processes until 2017.

(c) Each Party hereto respectively agrees to save, defend, indemnify and hold the other harmless against any breach of any representation, warranty or covenant set forth in this Paragraph and all claims, demands, liabilities, losses, costs and expenses associated therewith.

11. Designation of Solar Development Acreage. Within fifty-four (54) months of the

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Effective Date Optionee agrees to designate the acreage to be included in its proposed Solar Development on the Property. In this regard, Optionee agrees to have the perimeter of the Solar Development acreage surveyed, and to request from applicable governmental authorities a subdivision or exemption from requirements of the California Subdivision Map Act. Once approval is obtained for a subdivision or exemption, the unused acreage not to be included in the Solar Development and will be released from this Agreement by an appropriate written instrument. Areas of City's property which are to be utilized for access and for easements for transmission lines will be provided by grants of easements to be included in the Lease.

12. Cooperation with Optionee's Lenders. If requested by Optionee's potential lenders, City agrees to provide such lenders an update on the status of the Option, including, if accurate, confirmation that Optionee has provided evidence satisfactory to City, for the City's purposes, as described in Section 4 above. In no event will City make any representations on which any lender may rely regarding the documentation, except as specifically set forth above.

13. Memorandum of Option. The Parties shall execute and deliver a Memorandum of Option (in the form attached hereto as Exhibit "D") simultaneously with the execution and delivery hereof and Optionee shall be entitled to record same at its own expense.

14. Notices. All notices, demands, statements, and requests (collectively, a "**notice**") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the person to whom the notice is addressed or if such person is not available the date such notice is left at the address of the person to whom it is directed, (ii) on the third business day following the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested, (iii) on the date the notice is delivered by a courier service (including Federal Express, Express Mail or similar operation) to the address of the person to whom it is directed, provided delivery is confirmed by the courier service, or (iv) the date sent by facsimile so long as the same produces a computer-generated confirmation. The addresses of the signatories to this Agreement are set forth below:

To City:

City of Davis
Attn: Property Management Coordinator
23 Russell Blvd
Davis, CA 95616
E-mail: treynolds@cityofdavis.org

With a copy to:

Richards Watson & Gershon
Attn: Inder Khalsa, City Attorney
One Sansome Street, Suite 2850
San Francisco, CA 94104
E-mail: ikhalsa@rwglaw.com

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To Optionee:

BrightNight LLC
Attn: Legal
2120 Huntington Circle
El Dorado Hills, CA 95762
E-mail: Cory@brightnightenergy.com

With a copy to:

Taft Stettinius & Hollister LLP
Attn: Robert Hicks
One Indiana Square, Ste. 3500
Indianapolis, IN 46204
Email: rhicks@taftlaw.com

15. Miscellaneous.

(a) Relationship between City and Optionee. Optionee represents and warrants that it is an independent contractor with no authority to contract for City or in any way to bind or to commit City to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of City. Under no circumstances shall Optionee, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of City.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America. Optionee hereby consents and submits to the jurisdiction and forum of the state and federal courts in the County of Yolo, State of California, in all questions and controversies arising out of this Agreement.

(c) Attorneys' Fees and Costs. In any litigation, or other proceeding, informal or formal, by which one Party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing Party shall pay the prevailing Party's costs and expenses, including but not limited to, reasonable attorneys' fees.

(d) Compliance with Laws; City Policies and Procedures. Optionee agrees to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. Optionee shall comply with City policies and procedures where the same are posted, conveyed, or otherwise made available to Optionee.

(e) Cooperation. Where agreement, approval, acceptance, consent or similar action by either Party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each Party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each Party may properly accomplish its obligations and responsibilities hereunder.

Attachment 3

(f) Advertising and Publicity. Optionee shall not refer to City directly or indirectly in any advertisement, news release, or publication, or use any City logo, seal or mark, without prior written approval from City.

(g) No Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect that Party's right to enforce such provisions, nor shall the waiver by either Party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

(h) Assignment of Agreement. This Agreement and the obligations of Optionee hereunder are personal to Optionee. Provided that Optionee gives advance written notice of such assignment to City, Optionee shall have the right, without City's consent, to sell, convey, lease or assign all or any portion of this Agreement to an affiliate, provided that the assignee agrees to be bound by all of the terms hereof. For all other assignments, neither Optionee nor any successor, receiver, or assignee of Optionee shall directly or indirectly assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of Optionee's assets or stock or through merger, an insolvency proceeding or otherwise, without the prior written consent of City.

(i) Time is of the Essence. Time is of the essence in every provision of this Agreement in which time for performance is a factor.

(j) Counterparts; Facsimile/PDF/Electronic Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

(k) Entire Agreement. This Agreement and any and all attached exhibits, each of which is incorporated by reference herein, constitute the entire agreement between the Parties and supersede any and all previous representations, understandings, or agreements between City and Optionee as to the subject matter hereof. No representation or promise not expressly set forth herein shall be binding. The provisions of this Agreement shall govern over any inconsistent or conflicting provisions contained in any exhibit hereto. This Agreement may only be amended by an instrument in writing signed by the Parties. This Agreement shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

(l) Non-Discrimination. In the performance of this Agreement, Optionee shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.

(m) Conflict Of Interest. Optionee warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct

Attachment 3

or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest.

(n) Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

(o) Inserted Provisions. Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either Party.

(p) Captions and Terms. The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

(q) Exhibits. The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

(r) Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

(Signatures appear on the next page)

Attachment 3

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

OPTIONEE:

BRIGHTNIGHT LLC

By: _____

Title:

CITY:

CITY OF DAVIS

By: _____

Title:

Attachment 3
EXHIBIT A
Property



**Attachment 3
EXHIBIT B
Option Terms**

Initial Term:

Period 1	Begin Date:	March 25, 2020
	End Date	March 24, 2021
	Initial Payment:	\$20.00 per net/acre-year. Based on 235 acres the Initial Payment shall be \$4,700.00

Extended Terms

Period 2:	Begin Date:	March 25, 2021
	End Date	March 24, 2022
	Additional Payment:	\$20.40 per net/acre-year. Based on 235 acres this Additional Payment shall be no greater than \$4,794.00 . This may be adjusted downward based on the Designated Solar Acreage set in accordance with Section 11 of the Agreement.

Period 3:	Begin Date:	March 25, 2022
	End Date	March 24, 2023
	Additional Payment:	\$20.81 per net/acre-year. Based on 235 acres this Additional Payment shall be no greater than \$4,890.35 . This may be adjusted downward based on the Designated Solar Acreage set in accordance with Section 11 of the Agreement.

Period 4:	Begin Date:	March 25, 2023
	End Date	March 24, 2024
	Additional Payment:	\$21.22 per net/acre-year. Based on 235 acres this Additional Payment shall be no greater than \$4,986.70 . This may be adjusted downward based on the Designated Solar Acreage set in accordance with Section 11 of the Agreement.

**Attachment 3
EXHIBIT B
Option Terms**

Period 5: Begin Date: March 25, 2024

 End Date March 24, 2025

Additional Payment: **\$21.65 per net/acre-year**. Based on 235 acres this Additional Payment shall be no greater than **\$5,087.75**. This may be adjusted downward based on the Designated Solar Acreage set in accordance with Section 11 of the Agreement.

**Attachment 3
EXHIBIT C
Term Sheet**

THIS TERM SHEET SUMMARIZES THE PRINCIPAL TERMS TO BE INCLUDED IN A FINAL FORM OF LEASE (“LEASE”) BETWEEN THE PARTIES TO THE OPTION AGREEMENT AND IS NOT ALL-INCLUSIVE, DOES NOT CONSTITUTE A BINDING COMMITMENT OF THE PARTIES, AND IS SUBJECT TO CHANGE.

Owner	City of Davis (“City”)
Lessee	BrightNight LLC, or an affiliate (“Lessee”)
Generating Facility	Generating Facility: May include, without limitation, the installation and maintenance of solar panels, heliostats, energy storage equipment, energy storage facilities, batteries, charging and discharging equipment, substations, underground and/or overhead distribution, collection and transmission lines, underground and/or overhead control, communications and radio relay systems and telecommunications equipment, mounting substrates or supports, wiring and connections, cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, power inverters, interconnection and/or switching facilities, circuit breakers, transformers, service equipment and associated structures, metering equipment, service roads, utility interconnections and any and all related or associated improvements, fixtures, facilities, appliances, machinery and equipment.
Property	<p>The property which shall be used to determine the acreage for the purpose of the Lease is located near the City of Davis in the County of Yolo, CA, Sec 29 & 30, T. 9N., R. 3E., M.D.B.&M, Yolo County tax parcel IDs 042-140-009 and 042-140-013 (“Property”).</p> <p>The exact portion of the Property to be leased by Lessee for the siting of the Generating Facility (“Site”) shall be determined prior to the Lease Commencement Date (defined herein), based, in part, on the results of a licensed survey to be obtained by Lessee during the Term of the Option Agreement, with the final leased acreage being no greater than two hundred thirty-five (235) acres.</p>
Lease Term; Extensions	The initial lease term (“Initial Term”) shall commence on the first day of the calendar month following the effective date of the Lease (“Lease Commencement Date”), and shall end on the 29 th anniversary of the Lease Commencement Date (“Lease Expiration Date”). Lessee shall have the right to extend the Initial Term for ten (10) years, triggered by execution of Lessee option (“First Extended Term”), a second ten (10) year extension, triggered by execution of Lessee option (“Second Extended Term”), and collectively with the Initial Term (“Term”) by

**Attachment 3
EXHIBIT C
Term Sheet**

	<p>giving City written notice of its intent to extend the Lease not later than one hundred twenty (120) days prior to the end of the Initial Term or any Extended Term. In the event Lessee elects to exercise its right to extend the Lease beyond the Initial Term, the terms and conditions in effect during the Initial Term shall be applicable during each Extended Term.</p> <p>In total the Term shall be no longer than forty-nine (49) years if the Initial Term and both Extended Terms are exercised by Lessee.</p>
Rent	<p>The Parties agree that Lessee shall pay City an annual rent for the Site starting from the Lease Commencement Date, of (a) One Hundred Dollars and 00/100 (\$100.00) per acre of leased property from tax parcel ID 042-140-009 for the duration of the Term, and (b) Four Hundred Fifty Three Dollars and 61/100 (\$453.61) per acre of leased property from tax parcel ID 042-140-013 for the duration of the Term (“Annual Rent”). The Annual Rent shall be payable in quarterly installments (the “Quarterly Rent Payment”), with the first partial or full payment due on the Lease Commencement Date and subsequent payments due on the next calendar quarter, defined as January 1st, April 1st, July 1st, and October 1st. The Annual Rent shall increase each year on January 1 (prorated for any periods of less than twelve months at the start of the Term) by an amount equal to two percent (2.0%) multiplied by the prior year’s Annual Rent for the duration of the Initial Term and each Extended Term, if applicable. Any amount of Quarterly Rent paid to City shall be non-refundable.</p>
Lessee Termination Rights	<p>The Parties agree that Lessee may terminate this Lease at any time (the “Lessee’s Termination Right”). In the event Lessee elects to exercise Lessee’s Termination Right, Lessee shall provide City with at least three hundred sixty-five (365) days’ advanced written notice of its intent to terminate the lease agreement (the “Termination Notice”) and of the date of such termination (“Termination Date”). Lessee shall continue to pay any and all Quarterly Rent Payments due during the 365-day notice period and any and all Quarterly Rent Payments paid by Lessee to City prior to the Termination Date shall remain the property of City. Lessee shall pay City all amounts accrued under the Lease through the date of Termination.</p>
City Termination Rights	<p>City shall have the right to terminate the Lease if (a) Lessee is in default; (b) City notifies Lessee and simultaneously Lessee’s financing parties, in writing of the default, which notice sets forth in detail the facts pertaining to the default; and (c) the default shall not have been remedied within thirty (30) days after Lessee receives the written notice, or, if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period of time, Lessee, has not begun to diligently</p>

**Attachment 3
EXHIBIT C
Term Sheet**

	undertake the cure within the relevant time period or to thereafter prosecute the cure to completion.
Permitted Use	During the Term, Lessee shall use the Site for the sole purpose of installation, construction, operation, maintenance, repair, improvement, replacement, and removal of the Generating Facility and uses incidental thereto (the “Permitted Use”) and for no other business or purpose. The City will work with the Lessee to provide temporary and/or permanent easements on or about the Property as may be necessary for the Generating Facility and all appurtenant equipment, to prevent measurable diminishment in output due to obstruction of the sunlight across the Property, or other purposes as may be necessary or desirable for water or sewer lines, electrical service, electric transmission or feeder lines, access or roadways, or communication lines.
Ownership and Use by City	The Parties agree that City shall retain all mineral rights and water rights in connection with the Site owned by City for the Term with the limitation during the Term that City shall have the right to exercise such mineral rights and water rights only to the extent such exercise does not interfere with Lessee’s Permitted Use. During the Term, City shall have no right to enter the Site for exploitation, development, and production of mineral rights or water rights, or both, without Lessee’s prior written consent, which shall not be unreasonably withheld.
Taxes	Lessee shall pay real property taxes levied for and against the Site, and Lessee shall pay as additional rent all taxes attributable to the installation of Generating Facility and assets related thereto. Each Party shall notify the County Tax Assessor and Yolo County Treasurer of the proper address for its respective tax bill. In order to protect its property interests, City shall be entitled to make payments, including any late penalties, in fulfillment of Lessee’s obligations to the taxing authority and may demand reimbursement from Lessee for any tax payments made which are the obligation of Lessee. Lessee shall be responsible for all taxes directly relating to the Generating Facility.
Quiet Enjoyment	City covenants that Lessee shall peaceably and quietly have, hold and enjoy the Site during the Term and City shall protect and defend the right, title and interest of Lessee hereunder from any other rights, interests, titles and claims arising through City.
Removal of the Generating Facility and Site Restoration	Upon expiration of the Term or the earlier termination of the Lease, Lessee shall, at Lessee’s sole cost and expense, restore the Site within three (3) months to the same condition as it was on the Lease Commencement Date, excluding normal wear and tear (or deterioration due to non-usage of such items as drainage systems) as well as groundwater wells and water improvements and existing crops and

**Attachment 3
EXHIBIT C
Term Sheet**

	<p>vegetation, by removing from the Site (a) the Generating Facility and any associated equipment or other personal property owned by Lessee, and (b) all subterranean foundations, cables, conduits or similar equipment installed by Lessee (“Restoration Obligation”). If the Lessee’s Restoration Obligation is not fully satisfied within three (3) months, City may, at its sole discretion: (a) upon receipt of a Quarterly Rent Payment allow Lessee an additional three (3) months to satisfy the Restoration Obligation; or (b) perform the Lessee’s Restoration Obligation and require that lessee reimburse City for all direct costs of the Restoration Obligation. Lessee’s indemnity and insurance obligations and any other applicable terms of the Lease shall remain in effect during Lessee’s performance of the Restoration Obligation.</p>
<p>Assignment</p>	<p>Lessee shall have the ability to transfer or assign this Lease or any of its rights, interests or obligations under this Lease only upon prior written consent of City, which consent shall not be unreasonably withheld, but may be conditioned.</p>
<p>Mortgagee Provisions</p>	<p>Lessee may mortgage, pledge or otherwise encumber Lessee's leasehold interest and any improvements constructed on the Site by Lessee to a Mortgagee. The term "Mortgagee" means either (i) the mortgagee under a Mortgage, or (ii) the trustee and beneficiary under a deed of trust which for purposes hereof shall constitute a Mortgage, in each case, prior to the time such person becomes the lessee under this Lease. The term "Mortgage" means an indenture of mortgage or deed of trust and/or other lien instruments to secure borrowings or obligations of Lessee to a Mortgagee. No Mortgage shall encumber or affect in any way the interest of City hereunder or City’s fee interest in and to the Site and/or Property.</p> <p>City agrees to execute any written documentation reasonably requested by a Mortgagee to confirm the rights that are provided to the Mortgagee, or to make any modifications to the Lease reasonably requested by Mortgagee to provide cure rights, supplemental notices, limitations on lease modifications or terminations, limitations on exercise of remedies, limitations of liability or other provisions which are commercially reasonable and under similar circumstances for any financing arrangements for a Generating Facility of this type.</p>
<p>Cooperation</p>	<p>City shall cooperate with Lessee to apply for, obtain and maintain any permits needed for the Generating Facility from any and all governmental authorities, so long as such cooperation is at no cost to City. City agrees at all times to reasonably cooperate with Lessee in Lessee’s efforts to obtain any approvals that may be necessary for Lessee’s intended use of the Site, and to cooperate in Lessee’s pursuit of any credits, grants, bonds, attributes, or other benefits or facilities that</p>

**Attachment 3
EXHIBIT C
Term Sheet**

	<p>may be associated with the Generating Facility, so long as such cooperation is at no cost to City.</p>
<p>Indemnity and Insurance</p>	<p><u>Indemnity.</u> Lessee agrees to indemnify, defend, and hold harmless City and its elected officials, officers, directors, agents, attorneys and employees (each, an “Indemnitee”) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a “Claim,” and collectively, the “Claims”), including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Lessee, its officers, directors, agents, employees, and subcontractors, during the performance of this Lease, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid to subcontractors, if any, of Lessee; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Lease; or, (d) any material breach of any covenant set forth in this Lease; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the sole negligence or willful misconduct of an Indemnitee.</p> <p><u>Insurance.</u> Unless otherwise approved in writing by City’s risk manager, Lessee shall, at its own expense, procure and maintain in full force and effect during the term of this Lease, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly admitted and qualified in California covering the operations of Lessee, pursuant to this Lease: commercial general liability (\$1,000,000 per occurrence, \$2,000,000 aggregate); excess liability (\$2,000,000 per occurrence, \$2,000,000 aggregate); and workers’ compensation (statutory limits) and employers’ liability (\$500,000 per accident).</p> <p>The Indemnitees shall be named as additional insureds in the commercial general and excess liability policies which shall contain standard cross liability clauses. Lessee shall cause the liability it assumed under this Lease to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any Indemnitee, and Lessee waives all rights of subrogation with respect to said policies. Such policies shall require that City be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. City shall have the right to request an adjustment of the limits of liability for commercial general, cyber, and excess liability, and/or professional liability insurance as Lessee’s exposure to City increases. Lessee shall provide City with certificates of insurance and original endorsements,</p>

**Attachment 3
EXHIBIT C
Term Sheet**

	<p>evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide City with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.</p>
<p>Assignment and Subletting</p>	<p>Lessee shall not assign, encumber or otherwise transfer this Lease, or sublet all or any portion of the Site, or otherwise permit the occupancy or use of all or any portion of the Site by any persons other than Lessee. Notwithstanding, the above, City acknowledges that Lessee anticipates entering into an arrangement with PVEL for use of a portion of the Site, and will allow such arrangement, subject to any terms and conditions to be set forth in the Lease.</p>
<p>Additional Provisions</p>	<p>Research & Education: As part of the overall project, the PVEL team representatives will offer to provide STEM curriculum for local public-school students including:</p> <ul style="list-style-type: none"> a. A package for 1-week mathematics and physics-based desktop work to educate the students on solar resource and basics of energy production calculations including data from the Site to validate student’s calculations b. Periodic chaperoned Site visits to show the students how the system works <p>Power Sales: Lessee will work in good faith with the City to facilitate the direct sale of energy from the PVEL-owned component of the Generating Facility to the City’s wastewater treatment plant under a net metering arrangement at the same rate and terms given to Valley Clean Energy Alliance, or similar energy buyer, as applicable, at the time, to the extent such arrangement does not violate any law, rule or regulation.</p> <p>Periodic Site Visits: With at least one-week advance scheduling with the operator of the Generating Facility, City officials and guests shall have the right once per quarter, and more often as can be reasonably accommodated, to tour the Site with the accompaniment of at least one authorized person from the Generating Facility. Lessee and/or PVEL shall attempt to accommodate site visits on shorter notice to the extent possible. This right is in addition to any access by the City to enforce the terms of the Lease.</p>

**Attachment 3
EXHIBIT D
Form of Memorandum**

Recording requested by
and after recording return to:

City of Davis
23 Russell Blvd.
Davis, CA 95616

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION (this “Memorandum”) is dated as of _____, 200__, by and between the CITY OF DAVIS, a municipal corporation (“City”) and the BRIGHTNIGHT LLC, a Delaware limited liability company (“Optionee”).

1. City and Optionee have entered into an Option Agreement (the “Agreement”) dated as of the date hereof. City hereby grants to Optionee exclusive options (the “Options”) to lease the property described in Exhibit “A” attached hereto and by this reference incorporated herein (“Property”), for a term to be negotiated and in accordance with all of the terms and conditions set forth in the Agreement.

2. The last day on which Optionee may exercise the Options under the Option Agreement is *[Date]*, unless that date is extended until *[Date]* in accordance with Section 1 of the Agreement (as applicable, the “Termination Date”). On the Termination Date the Options and the Agreement shall terminate and be of no further force and effect and the Property shall no longer be subject to this Memorandum.

3. City and Optionee desire to record this Memorandum in order that third parties may have notice of the existence of the Agreement and Optionee’s Options to lease the Property.

[Signatures appear on the next page.]

Attachment 3
EXHIBIT D
Form of Memorandum

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed as of the date first above written for the purpose of providing an instrument for recording.

“City”

CITY OF DAVIS,
a municipal corporation

By: _____
Name: _____
Title: _____

“Optionee”

BRIGHTNIGHT, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____