



Isela Reyes
Mayor
Leticia Miranda
Alderson Place 1
David Cantu
Alderson Place 2

Lorenzo E. Leyva Sr.
Alderson Place 3
Antonio Flores
Alderson Place 4
Thomas Black
Alderson Place 5

RESOLUTION NO. 2203R.04

WHEREAS, the City of San Elizario has received an unsolicited offer to lease approximately 70 acres of land out of the parcel municipally known and numbered as 13661 Chicken Ranch Road, San Elizario Texas for use as a solar energy farm from EDF Renewables Distributed Solution, Inc. ("EDF") ;

WHEREAS, EDF has requested the City grant it an Option to Lease Agreement to allow EDF to conduct due diligence to determine the suitability of the property;

WHEREAS, an option period will also be beneficial to the City of San Elizario so it may confirm the fair market for the lease;

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL:

That the Mayor is authorized to sign an Option to Lease Agreement authorizing EDF to conduct due diligence regarding the suitability of the subject property for use as a solar energy farm in consideration for the payment of the sum of \$1,000.00 cash and providing proof of a general liability insurance policy naming the City of San Elizario as an additional named insured during the term of the Option to Lease Agreement.

APPROVED AND EFFECTIVE THE 21 **DAY OF June 2022** by a vote of 3 ayes, 1 nays and 0 abstentions.

City of San Elizario, Texas

By: 
Isela Reyes, Mayor

ATTEST:

By: 
Nancy Montes, City Clerk

San Elizario Resolution
Option to Sign Lease Agreement

APPROVED AS TO FORM:

By: 
Sylvia Borunda Firth
City Attorney

San Elizario Resolution
Option to Sign Lease Agreement

OPTION TO LEASE AGREEMENT

Agreement:	This Option to Lease Agreement between Option Holder and Optionor	
Effective Date:	_____ June 30, _____ 2022	
Parties:		
Optionor or Landlord:	Legal Name(s): <u>City of San Elizario</u> Address: <u>PO Box 1723, San Elizario, TX 79849</u> Phone: (915) 974-7037 Email: <u>msanchez@cityofsanelizario.com</u> Multiple persons shall be referred to as a single "Optionor" and all such persons shall be bound jointly and severally hereby.	
Option Holder or Tenant:	EDF Renewables Distributed Solutions, Inc. ("EDF RE") 5 Commerce Avenue, West Lebanon, NH 03784	
Subject Property:	Address: <u>13661 Chicken Ranch, Rd, San Elizario TX 79849</u> <i>Include - Street address or nearest street if no number; Municipality; County; State</i> Description: Acres: 114.60 Parcel ID: S07500003500101 _____ <i>Include - Total Acres; Parcel ID; Deed Book & Page; Other</i> The Subject Property is depicted or described on Exhibit A .	
Leased Premises or Premises:	Up to a 70-acre portion of the Subject Property, with the precise size and location of such portion to be determined by agreement of the Parties after due diligence	
Option:	An exclusive option to lease the Leased Premises , exercisable by Option Holder's delivery to Optionor of written notice of exercise on or before the Termination Date	
Option Payments and Due Dates:	Option Payment:	Due Date:
	\$ <u>1000</u>	The 10 th business day after the later of: (x) the Effective Date or (y) the date on which Optionor countersigns this Agreement and delivers an IRS Form W-9 to Option Holder
	\$ _____	_____, 2023
	\$ _____	_____, 20
\$ _____	_____, 20	
Termination Date:	The earliest to occur of the following: A. the date that Optionor and Option Holder (or its assign) execute and deliver a Lease (defined below); B. the date on which Option Holder delivers to Optionor a written notice terminating this Agreement; C. the date immediately following a Due Date if, the Option Payment due on such Due Date is not paid; D. the anniversary (one year after) the last Due Date set forth above.	
Option Term:	The period beginning on the Effective Date and ending on the Termination Date.	
Terms and Conditions:	The Terms and Conditions attached as Exhibit B , are incorporated into and made part of this Agreement.	

RV

EDF

Optionor

Option to Lease Agreement (20211210)

Signature Page follows.



SIGNATURE PAGE TO OPTION TO LEASE AGREEMENT

In consideration of the Option Payment(s) and the mutual covenants and other good and valuable consideration set forth in this Agreement, Optionor and Option Holder agree to perform this Agreement in accordance with its terms, including the description of the Subject Property set forth on **Exhibit A** and the Terms and Conditions set forth in **Exhibit B**.

IN WITNESS WHEREOF, and intending to be bound in accordance with this Agreement, Optionor and Option Holder are executing and delivering this Agreement as of the Effective Date.

City of San Elizario
Name of Optionor

By: [Signature]
Name: Isela Reyes
Title: Mayor
Duly Authorized

EDF Renewables Distributed Solutions, Inc.

Rod Viens
By: _____
Name: Rod Viens
Title: General Manager
Duly Authorized

Name of Optionor

By: [Signature]
Name: Nancy Montes
Title: City Clerk
Duly Authorized

EXHIBIT A

Subject Property

The address of the Subject Property is:
13661 Chicken Ranch, Rd, San Elizario TX 79849

The Subject Property is further described as:
Acres: 114.60 Parcel ID: S07500003500101

The Subject Property, and if indicated, the Leased Premises are more particularly described as follows:



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EXHIBIT B
Terms and Conditions
to
Option to Lease Agreement

These Terms and Conditions are incorporated into and made part of the Option to Lease Agreement to which these Terms and Conditions are attached as **Exhibit B**; and such Option to Lease Agreement, and all Exhibits to such Option to Lease Agreement are referred to as this “**Agreement**.” Capitalized terms used, but not defined, in these Terms and Conditions, have the meanings given to them elsewhere in this Agreement, including on the Cover Page.

1. **Grant of Exclusive Option to Lease.**

- a. **Option.** Optionor hereby grants to the Option Holder an exclusive option to lease (“**Option**”) from Optionor pursuant to a lease (the “**Lease**”) for the area of the Subject Property designated as the “Leased Premises”, which Lease shall conform with the provisions of this Agreement and which otherwise shall be in the form and substance agreed by Optionor and Option Holder. Optionor and Option Holder will negotiate the terms and provisions of the Lease, consistent with the requirements of this Agreement, with the intention of agreeing on a form of Lease prior to the Termination Date.
- b. **Restrictions.** During the Option Term, (i) Optionor will not extend to any person, other than Option Holder, its successors, or assigns, any right to lease, acquire, option, control, or use the Subject Property that would interfere with the Option, and (ii) will not enter into any new agreement, commitment, or arrangement that provides ownership, occupancy, or control rights with respect to the Subject Property to any person, other than Option Holder or its successors or assigns, that would interfere with the rights or obligations of the parties under this Agreement. Notwithstanding the foregoing, during the Option Term, Optionor may enter into farming, hunting, timber, or apiary leases with third parties with respect to the Subject Property, provided that any such third party leases shall be terminable by Optionor on no more than thirty (30) days’ notice to the tenants and sub-tenants thereunder and provided further that Optionor agrees to terminate or amend to exclude, upon or before the applicable Lease Start Date (defined below), any portion of said third-party leases that affect the contemplated use of the Leased Premises pursuant to the Lease.

2. **Optionor’s Title.** Optionor represents and warrants to Option Holder that Optionor is the sole owner of the Leased Premises in fee simple, free and clear of liens, encumbrances, and restrictions, except for liens, encumbrances, and restrictions that do not and will not interfere with or impair the rights of Option Holder under this Agreement or pursuant to any Lease. Optionor has all requisite power and authority to execute and deliver this Agreement and any Lease, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Optionor of this Agreement, and the performance by Optionor of its obligations hereunder, have been duly and validly authorized by all necessary action on the part of such Optionor.

3. **Consideration.** In consideration of the Option granted pursuant to this Agreement, Option Holder shall pay to Optionor the Option Payment or Option Payments. If Option Holder fails to tender any Option Payment by the applicable Due Date, then the Option shall lapse and the Option Term shall terminate as of the day immediately following such Due Date.



EDF Optionor

Option to Lease Agreement (20211210)

4. **Exercise of the Option.** The Option Holder may exercise its Option hereunder by delivering to Optionor, at any time during the Option Term prior to the Termination Date, written notice of exercise, which notice shall include a description of the tract or tracts Option Holder is exercising its right to lease (i.e. the Leased Premises) (the “**Option Notice**”). If the precise location of the Leased Premises has not been finalized as of the delivery of the Option Notice, Option Holder shall provide a description of the anticipated Leased Premises which shall be replaced by a precise and final description at a later date. Not later than five (5) business days after Optionor’s receipt of the Option Notice, Option Holder shall execute and acknowledge a copy of the Lease and a memorandum of lease in recordable form (“**Memorandum of Lease**”) with the legal description, or anticipated description, of the Leased Premises set forth in the Option Notice attached to each and deliver same to Optionor. Not later than fourteen (14) business after receipt of Option Holder’s executed Lease and Memorandum of Lease, Optionor shall execute and acknowledge same and deliver fully executed counterparts of each to Option Holder. Unless otherwise agreed by Option Holder and Optionor, the Lease shall be effective on the date on which the last of the Parties executes the Lease, which shall not be later than thirty (30) business days following the date of the Option Notice.

5. **Lease Provisions.** During the Option Term the Optionor and the Option Holder will exercise good faith, commercially reasonable efforts to negotiate and draft a Lease that includes mutually agreed terms and provisions; provided, however, that, except as set forth on **Attachment B-2**, each of Option Holder and Optionor shall not object to the inclusion of the following provisions in the Lease:
 - a. **Use of Leased Premises.** The following uses shall be permitted on the Leased Premises pursuant to the Lease: the development, permitting, staging, construction, interconnection, operation, maintenance, replacement, and removal of a solar photovoltaic electricity generating facility together with related improvements and electricity storage facility, one or more substations, transmission poles as necessary or useful to such facilities (collectively, the “**System**”). The System shall be the Tenant’s personal property and shall not be or be deemed a fixture or part of any real property.
 - b. **Leased Premises.** The exact location and size of the Leased Premises shall be as agreed in writing, by Landlord and Tenant.
 - c. **Lease Fee.**
 - i. **Lease Fee.** In consideration of the lease of the Leased Premises, commencing the Lease Start Date (defined below) and through the last day of the Lease Term (defined below), the Tenant shall pay to Landlord an annual lease fee (the “**Lease Fee**”) as set forth on **Attachment B-1**, with different Lease Fee levels applicable based on whether the Lease Fee is due prior to, or after, the Commercial Operation Date (defined below).
 - ii. **Payment.** Except as set forth on **Attachment B-1**, the Lease Fee shall be payable: (A) a onetime payment, made within thirty (30) days of the Lease Start Date, representing the Lease Fee from Lease Start Date through the Commercial Operation Date; and (B) from and after the Commercial Operation Date, annually in advance on the Commercial Operation Date and on each anniversary of the Commercial Operation Date during the Lease Term, subject to proration if the Lease Term does not end on an anniversary of the Commercial Operation Date.
 - iii. “**Commercial Operation Date**” means the date when, in Tenant’s sole discretion, the System is ready to generate electricity and has received all approvals and consents from the interconnecting utility to operate.

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- d. **Lease Term.** The Lease shall be effective from the date the Lease first is executed and delivered by the Landlord and Tenant (“**Lease Start Date**”) through the twenty-fifth (25th) anniversary of the Commercial Operation Date, subject to extension at the option of the Tenant for up to three (3) extension periods of five (5) years each, subject to early termination upon default, as mutually agreed, and subject to the Removal Period (defined below). The period during which the Lease will be effective is the “**Lease Term.**” Each period of 12 consecutive months commencing the Commercial Operation Date or any anniversary of the Commercial Operation Date during the Lease Term is referred to as a “**Lease Year.**”
- e. **Removal Period.** There shall be a “**Removal Period**” commencing on the last day of the Lease Term and ending on the date the System is removed from the Leased Premises or, if earlier, the 270th day after the last day of the Lease Term. During the Removal Period, on condition that Tenant pays Landlord a prorated Lease Fee based on the total days included in the Removal Period, Tenant shall have the right to access and use the Leased Premises solely for the purpose of removing the System from the Leased Premises.
- f. **Easements.** As a material condition to the Tenant’s obligations under the Lease, as of the Lease Start Date, Landlord shall grant to Tenant and Tenant’s assignees, the following irrevocable, fully-paid easements and rights of ways (“**Easements**”) over the Landlord’s property (including the Subject Property and any adjacent parcels owned or controlled by Landlord), with the location of each Easement to be determined upon final site plan approval, and with the duration of the Easements to be at least co-extensive with the Lease Term, including any extensions, with certain Easements being perpetual:
- i. Construction and Maintenance Easement. A temporary construction and access easement in, upon, over, along, above, and under a portion of Landlord’s property abutting the Leased Premises as necessary for Tenant and its agents and subcontractors to access the Leased Premises and to construct, maintain, operate, and remove the System thereon. This Easement shall continue through the last day of any Removal Period.
 - ii. Utility Interconnection Easements. An Easement in favor of Tenant and an Easement in favor of the local utility for the installation, operation, maintenance, repair and replacement of utility lines and connections in, upon, over, along, above, and under Landlord’s property, as are necessary for the operation of the System. The interconnection Easement in favor of the local utility shall be perpetual, and shall include such other terms as may be required by the local utility.
 - iii. Ingress and Egress. An Easement for access to the Leased Premises suitable for vehicular travel associated with construction, operation, maintenance, and removal of the System upon, over, along, and under a portion of Landlord’s property abutting the Leased Premises through to a suitable public right of way. This Easement shall continue through the last day of the Removal Period.
 - iv. Solar. An easement restricting placement of buildings or structures or placement or growth of vegetation (including trees) on all or any portion of the Landlord’s property that would impair the passage of sunlight onto the System on the Leased Premises.
- g. **Removal of Tenant’s Components.**
- i. Removal by Tenant. Prior to the last day of any Removal Period, Tenant will remove the System, including any foundations to a depth of at least three (3) feet.

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- ii. ***Removal by Landlord.*** If Tenant fails to remove any of the System as provided in subclause 5.g.i by the last day of the Removal Period, Landlord may remove the System from the Premises and dispose of the System in Landlord's sole discretion. If Landlord removes such System at Landlord's expense, then, within thirty (30) days after receipt of an invoice from Landlord, Tenant will reimburse Landlord for all reasonable out-of-pocket costs incurred by Landlord to remove the System as required by the Lease, less any salvage value received by Landlord.
 - h. ***Tenant's Liability.*** Tenant assumes sole responsibility and liability to all persons and authorities related to Tenant's possession, occupancy, and use of the Leased Premises and will defend, indemnify, and hold Landlord harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises, excluding claims of liability or damage to person or property to the extent due to Landlord or Landlord's use of the Leased Premises, or related to claims occurring prior to the Lease Term.
 - i. ***Insurance.*** At all times during the Lease Term and throughout any Removal Period, Landlord and Tenant shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each with the premiums thereon fully paid on or before due date, affording minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof.
 - j. ***Taxes.*** All real property taxes and assessments with respect to the Leased Premises shall be the responsibility of, and shall be paid when due by, the Landlord. Tenant shall be responsible for, and shall pay when due, all personal property taxes imposed or assessed with respect to the Tenant's improvements on the Leased Premises, including the System.
6. **Removal of Improvements.** If Optionor permits Option Holder to make or construct improvements or place equipment in, upon, over, along, above, or under the Subject Property and no Lease is entered into between the Parties, Option Holder, at its sole cost and expense, will remove any improvements or equipment it placed in, upon, over, along, above, and under the Subject Property and repair any damage caused by it to as close to the same condition as the Subject Property was in prior to the making or construction of such improvements or placement of any such equipment on the Subject Property.
7. **Due Diligence; Permitting.** Optionor grants to Option Holder and its employees, consultants, agents, and subcontractors, during the Option Term at reasonable times and upon reasonable notice, access to the Subject Property, including the Leased Premises, for the purpose of conducting such investigation and diligence of the Subject Property, including the Leased Premises, as Option Holder deems necessary, including, but not limited to, inspections, structural analysis, surveys, geotechnical testing, and inspection, review, and testing to determine environmental conditions. All tests, inspections, analyses, surveys, inspections, investigations or reviews shall be conducted by parties qualified and, where applicable, licensed to conduct such tests, inspections, analyses, surveys, inspections, or reviews. In addition, during the Option Term, at Option Holder's cost and expense, Optionor, will execute, deliver, file, and submit permit applications for, and will provide commercially reasonable cooperation to Option Holder with respect to the procurement of, permits and approvals from governmental authorities or local utilities necessary or appropriate to Option Holder's proposed use of the Leased Premises pursuant to the Lease. Option Holder shall pay the costs of all tests, inspections, analyses, surveys, inspections, investigations or reviews, permit applications, supporting submissions, and undertake the due diligence, attendance at meetings of permitting authorities, and related activities at its sole cost and expense. **Attachment B-2** may grant to Option Holder additional use and access rights during the Option Term.

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8. **Confidentiality.** For a period of two years after the Option Term and during any Lease Term, as applicable (the “**Confidentiality Term**”), neither Optionor nor Option Holder (each, a “**Receiving Party**”) will disclose or use, except as required to perform or enforce this Agreement or the Lease, any “**Confidential Information**” (defined below) of the other party (a “**Disclosing Party**”). A Receiving Party may provide the Disclosing Party’s Confidential Information to the Receiving Party’s, officers, directors, members, managers, employees, agents, contractors, and consultants (collectively, “**Representatives**”), and affiliates, lenders, and potential assignees of this Agreement, in each case whose access is reasonably necessary to the negotiation and performance of this Agreement or the Lease. Each such Representative recipient of Confidential Information shall be informed by the Receiving Party making such disclosure of the confidential nature of the Confidential Information so disclosed and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Receiving Party shall be liable (with respect to the other Disclosing Party) for any breach of this provision by any Representative of the Receiving Party. Each Receiving Party agrees that the Disclosing Party would be irreparably injured by a breach of this provision by the Receiving Party or its Representatives and that the Disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of this provision. Upon the request of a Disclosing Party made any time during the Confidentiality Term, the Receiving Party shall return or destroy the Disclosing Party’s Confidential Information in the Receiving Party’s possession or under the Receiving Party’s control. The term “**Confidential Information**” means the nonpublic, confidential or proprietary information of the Disclosing Party, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or the condition of the Subject Property or the Leased Premises to the extent not publicly available (except to the extent publicly available due to the fault of the Receiving Party). The grant of Option and the Lease provisions outlined in Section 5, and the Option Holder’s right to access and investigate the Subject Property under Section 7 shall not be “**Confidential Information**” of either party; but the consideration being paid for the Option pursuant to this Agreement is “**Confidential Information**” of the Option Holder.
9. **Assignment.** Option Holder has the right to assign this Agreement or any right of Option Holder under this Agreement (including the Option Holder’s rights to enter into the Lease) to any other person, effective upon written notice received by Optionor and without the consent of the Optionor. This Agreement and all rights and obligations of Optionor hereunder shall be assigned and delegated by Optionor to the successor-in-interest of Optionor, if any, in and to the ownership of the Subject Property. On the effective date of such assignment, the assignee shall accept and succeed to all of the Optionor's rights and obligations under this Agreement.
10. **Notices.** Any notices or communication required or contemplated hereunder shall be made in writing and transmitted electronically, in person, via an established overnight courier (e.g. FedEx, DHL, or UPS), or by first-class mail, addressed as provided on the Cover Page:
11. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the state or commonwealth where the Subject Property is located, without regards to principles of conflicts of laws thereof.
12. **Exhibits; Attachments.** All Exhibits and Attachments attached hereto are an integral part of this Agreement and are incorporated herein by reference.
13. **No Rights or Obligations to Third Parties.** Except as otherwise expressly provided in this Agreement, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties to, any person or entity other than Optionor and Option Holder.

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EDF Optionor



14. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE SUBJECT PROPERTY OR ARISING OUT OF THIS AGREEMENT OR THE LEASE.

15. **Further Assurances.** Each of the Optionor and the Option Holder agree to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

16. **Cure Period.** Each of the Optionor and Option Holder may cure any failure to pay any payment due under this Agreement by tendering the payment due no later than 10 days after the applicable due date. Similarly, each of the Optionor and the Option Holder shall have the right to cure any default or breach of this Agreement if such cure is effected before the earlier to occur of: (a) 30 days after such breach or default occurs; or (b) 15 days following receipt by such party from the non-breaching party of notice of such party's breach or default.

17. **Additional Provisions.** Any provisions of this Agreement in addition to those set forth on the Cover Page, the Signature Page, or any Exhibit to this Agreement are as set forth on **Attachment B-2.**

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EDF Optionor



ATTACHMENT B-1

LEASE FEE

1. From the Lease Start Date through the Commercial Operation Date, the "Lease Fee" shall equal approximately Five Hundred Dollars (\$500.00) per acre of Leased Premises, or anticipated Leased Premises if Lease Premises description is not finalized, rounded to the nearest surveyed 1/100th of an acre, per year. Additionally, Tenant shall work with city officials to identify community enhancements up to a value not to exceed Ten Thousand Dollars (\$10,000) to support a healthier economy and healthier community for the residents of San Elizario.
2. From and after the Commercial Operation Date, the Lease Fee shall equal (i) Five Hundred Dollars (\$500) per acre of Leased Premises, rounded to the nearest surveyed 1/100th of an acre, per year.

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EDF Optionor

Option to Lease Agreement (20211210)

ATTACHMENT B-2


Additional Terms and Conditions

The additional terms and conditions set forth on this Attachment 2 supersede and replace any inconsistent term or provision of the Agreement.

1. **Removal of Tenant's Components.** The provisions at Exhibit B Section 5(g) are hereby deleted and approved by the following language:

Removal of Tenant's Components.

- i. ***Removal by Tenant.*** Prior to the last day of any Removal Period, Tenant will make all reasonable commercial efforts to remove the System in its entirety, including any foundations. Tenant shall employ appropriate equipment necessary to fully remove the components of the System. Racking foundations or piles that are embedded in rock or other material which makes their removal impractical without the use of blasting, drilling, or other substantially invasive and costly excavation, may be left on site provided that Tenant make best efforts to remove such racking or pile to the deepest depth possible using commercially reasonable measures and at a minimum of three (3) feet below grade.
 - ii. ***Removal by Landlord.*** If Tenant fails to remove any of the System as provided in subclause 5.g.i by the last day of the Removal Period, Landlord may remove the System from the Premises and dispose of the System in Landlord's sole discretion. If Landlord removes such System at Landlord's expense, then, within thirty (30) days after receipt of an invoice from Landlord, Tenant will reimburse Landlord for all out-of-pocket costs incurred by Landlord to remove the System as required by the Lease, less any salvage value received by Landlord.
2. **Insurance During Diligence.** At all times after the Effective Date and during the Option Term, Option Holder shall, its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to any diligence activities on the Subject Property with the premiums thereon fully paid on or before due date, affording minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Option Holder assumes sole responsibility and liability to the Optionor related to the diligence related activities on the Subject Property by Option Holder, its employees, consultants, agents, and subcontractors, and will defend, indemnify, and hold Optionor harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Subject Property, excluding claims of liability or damage to person or property to the extent due to Optionor or Optionor's use of the Subject Property, or related to claims occurring prior to the Option Term.
 3. **Insurance During the Lease.** The provisions at Exhibit B Section 5(i) are hereby deleted and approved by the following language:


EDF _____
Optionor

Option to Lease Agreement (20211210)

Insurance. At all times during the Lease Term and throughout any Removal Period, Tenant shall, at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each with the premiums thereon fully paid on or before due date, affording minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Tenant shall include Landlord as an additional insured party under such insurance policy.

4. **Taxes.** The provisions at Exhibit B Section 5(j) are hereby deleted and approved by the following language:

Tenant shall be responsible for all real property taxes and assessments with respect to the Leased Premises. If the property tax assessment includes property outside of the Leased Premises, Landlord and Tenant shall agree on a mechanism of apportioning the responsibility for tax payments. Tenant shall be responsible for, and shall pay when due, all personal property taxes imposed or assessed with respect to the Tenant's improvements on the Leased Premises, including the System. Tenant may contest the validity or amount of any levied taxes, assessments or other charges for which Tenant is responsible under the Lease as long as such contest is pursued in good faith and with due diligence.

5. **Public Information.** Section 8 of Exhibit B is hereby deleted.

6. **Waiver of Jury Trial.** Section 14 of Exhibit B is hereby deleted.

7. **Escalator.** The Parties agree to an adjustment of the lease rate (i.e. adjustment for inflation) every three (3) year using the U.S. Consumer Price Index ("CPI") for all urban consumers for all items as published by the Bureau of Labor and Statistics of the Department of Labor with a cap of a 5% increase during any given adjustment period, with formula details to be included and negotiated in good faith in the lease documentation.

8. **Validity of Option and Lease.** Optionor represents that it has the authority to enter into the Agreement and the Lease and shall provide an opinion of counsel stating that the governing counsel of the City of San Elizario has the authority to enter into the Agreement and the Lease. Optionor shall obtain an independent appraisal of fair market value of the Lease Premises by a licensed appraiser. If the fair market value of the Leased Premises is found to be greater than the Lease Fee as defined in Attachment B-1(2), Optionor and Option Holder shall negotiate in good faith to agree to either a lease provision, lease fee, or combination thereof, that will bring the Lease within compliance of all legal requirements related to fair market value.

9. **Assignment.** Notwithstanding the requirements of Exhibit B, Section 9, any assignee of the Option Holder of this Agreement or the Option Holder's rights under this Agreement must be able to demonstrate capacity for providing or securing appropriate expertise and financial capacity for development and operation of the System.

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