

OPTION TO LEASE AGREEMENT

THIS OPTION TO LEASE AGREEMENT (this “**Agreement**”), by and between Doña Ana County, a/k/a Doña Ana County International Jetport at Santa Teresa (“**Owner**”), and EONM182, LLC (“**Tenant**”), is made and entered into as of May 9, 2023 (“**Effective Date**”).

RECITALS

A. Owner owns the real property, commonly known as 8014 Airport Rd., Santa Teresa, NM 88008, situated in Doña Ana County, New Mexico (the “**County**”) and consisting of approximately 1,711.60 acres of land in the aggregate, as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Land**”).

B. Subject to the terms and conditions of this Agreement, Tenant desires to obtain an option to lease that portion of the Land known as Lot T-26, as more identified on Exhibit B attached hereto, on which Tenant intends to construct an aircraft storage hangar.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner and Tenant agree as follows:

1. **Grant of Option.** Owner hereby grants to Tenant the exclusive right and option (“**Option**”) to lease the Property from Owner pursuant to a Ground Lease (the “**Lease Agreement**”) to be negotiated by Owner and Tenant with terms consistent with fair market value rent as determined or confirmed by an appraisal. If Tenant exercises the Option with respect to the Property in accordance with Section 3, the lease of the Property shall be subject to approval by the Doña Ana County Board of Commissioners and the New Mexico Board of Finance.
2. **Option Term.** The term of the Option (the “**Option Term**”) shall commence on the Effective Date and, unless sooner terminated pursuant to this Agreement, shall end at 11:59 p.m. on the date that is six (6) months after the Effective Date (the “**Option Term Expiration Date**”). Tenant shall have the right, in its sole discretion, to terminate this Agreement at any time during the Option Term by giving written notice thereof to Owner, and this Agreement shall terminate on the date specified in Tenant’s written notice. In the event of any such termination, absent a default by Owner, Owner shall retain all the payments tendered by Tenant pursuant to this Agreement prior to the date of termination, and no Option Payment, or installment thereof, shall be due by Tenant from and after such date of termination, and neither party shall have any further rights, duties or obligations hereunder except with respect to the provisions of this Agreement which expressly survive the termination of this Agreement.
3. **Option Payments.**

- 3.1 **Option Payment Amount.** Tenant shall pay Owner an option payment in the amount of One Thousand Dollars (\$1,000.00) (the “Option Payment”). The Option Payment shall be payable within thirty (30) days of the Effective Date.
- 3.2 **Option Payment Non-Refundable.** The Option Payment shall be the consideration for the grant of the Option and Owner’s commitments herein and, except in the event of an Owner default or as expressly provided otherwise herein, shall be non-refundable.
- 3.3 **Payment Forms.** Tenant shall remit any payment due to Owner hereunder, including, without limitation, any applicable Option Payment, by check to Owner’s notice address set forth in Section 8 of this Agreement.
- 3.4 **Exercise Notice.** At any time during the Option Term, Tenant shall have the right to exercise the Option as to the Property by giving written notice to Owner, with the Lease Agreement being effective upon approval by the Board of County Commissioners and further provided, that the lease shall be subject to approval by the New Mexico Board of Finance. Tenant’s election as to whether or not to exercise the Option shall be in Tenant’s sole and absolute discretion.

4. **Due Diligence**

- 4.1 **Due Diligence and Access to the Property.** Throughout the Option Term, Tenant and Tenant’s agents, employees, contractors and invitees (collectively, “**Tenant’s Agents**”) shall have reasonable access to the Property for the purposes of Tenant’s due diligence investigations of the Property, which may include, without limitation, the rights to (i) conduct such tests, surveys, studies and other investigations as Tenant may deem appropriate and (ii) seek such conditional construction permit(s), and other permits and entitlements as Tenant determines to be necessary in connection with the Project. Tenant shall have the right to conduct test pile driving at multiple locations, potholing to confirm pipeline locations in multiple locations (if necessary), and excavation of test pits to determine soil type/geotechnical conditions. Tenant shall also have an exclusive license and right of possession to operate and maintain all of Tenant’s own equipment and facilities required to conduct its Due Diligence Investigations on the Property, and all such equipment and facilities shall be and remain the personal property of the Tenant, and not a fixture, and may be removed by Tenant for any reason.
- 4.2 **Acreage and Legal Description Update at Closing.** Owner and Tenant hereby acknowledge and agree that during the Option Term, Tenant shall have the right to modify the legal description and total acreage of the Property from what is set forth in Exhibit B. Notwithstanding the foregoing sentence, the Parties intend to be fully and legally bound by this Agreement.

The Parties further agree that the rent to be payable by the Tenant under any Lease Agreement to Owner per square foot of the Property based upon a Fair Market Value Appraisal, shall be adjusted any time the square footage of the Property is modified due to a change in the legal description of the Property permitted under this Agreement or any Lease Agreement.

5. **Representations.**

5.1 **Owner's Representations.** As of each of the Effective Date and the Exercise Date, Owner hereby makes the following representations to Tenant:

5.1.1 **Title.** Owner is the sole and exclusive fee owner of the Property, including to the extent permitted by the federal patent conveying the property to Doña Ana County, all water rights pertaining to the Land. Except to the extent true and complete copies have been provided to Tenant, there are no unrecorded leases, liens, or other agreements in effect that are binding upon the Property, and Owner has not granted or entered into any options, rights of first refusal, rights of first offer, offers to sell or agreements to purchase all or part of the Property other than with Tenant pursuant to this Agreement. No other parties are either in possession of any part of the Property or have any easement, license, lease or other right or interest relating to the use or possession of any part of the Property.

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

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

5.1.4 **Consents and Approvals.** No consents or approvals of, or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or with any other third party by Owner are necessary in connection

with the execution, delivery and performance of this Agreement by Owner; provided, however, that any lease that the parties may enter into which is triggered by the exercise of the option granted hereunder is subject to the approval of Doña Ana County Board of Commissioners and the New Mexico Board of Finance.

- 5.1.5 **Compliance with Laws; Condemnation.** Owner has not received any notice of and, to Owner's best knowledge, there are no violations of any statute, ordinance, regulation, or administrative or judicial order existing with respect to the Property. Owner has not received any notice of, and there are no pending, condemnation actions, nor does Owner have any knowledge of the same or of any threat of the same.
- 5.1.6 **Hazardous Substances.** Owner has not stored, released, or generated on the Property any Hazardous Substances (as defined below), except to the extent permitted by and in compliance with any health, safety, or other laws, rules, regulations, or ordinances that govern or are applicable to any Hazardous Substances (collectively, "**Environmental Laws**"). To the best of Owner's knowledge, the Property is in compliance with all Environmental Laws governing the use, handling, or storage of Hazardous Substances. The term "**Hazardous Substances**" as used in this Agreement means any substance or material that is regulated by, or is defined as, a toxic, dangerous or hazardous substance or pollutant under any Environmental Laws.
- 5.1.7 **No Litigation.** There is no litigation pending or threatened respecting the ownership, possession, condition, use or operation of any portion of the Property.
- 5.1.8 **Changes.** During the Option Term, Owner shall timely notify Tenant in writing of any changes affecting any of the foregoing representations; provided, however, that any such notification shall not excuse Owner from any breach of any of the foregoing representation. The representations contained in this Section 6.1 shall survive the expiration or termination of this Agreement and/or the exercise(s) of the Option, as applicable.
- 5.2 **Tenant's Representations.** As of each of the Effective Date and the Exercise Date, Tenant hereby makes the following representations to Owner:
 - 5.2.1 **Formation.** Tenant is a corporation duly formed, validly existing and in good standing under the laws of the State of New Mexico, and is qualified to conduct business in the state in which the Property

is located. Tenant has all requisite power and authority to enter into and perform this Agreement.

5.2.2 **Authority.** Tenant has the power and authority to enter into, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Tenant have been duly and validly approved by Tenant and any and all persons or entities whose approval is necessary to the validity hereof or thereof, and no other action on the part of Tenant is necessary to approve this Agreement and/or to consummate the transactions contemplated in this Agreement. This Agreement has been duly and validly executed and delivered by Tenant and constitutes a binding and valid agreement enforceable against Owner in accordance with its terms.

6. **Default Remedies; Attorneys' Fees.**

- 6.1 **Owner's Remedies.** In the event that Tenant fails to perform its obligations under this Agreement, including but not limited to failure to make any Option Payment when due, and such failure shall continue for a period of forty-five (45) days after receipt of written notice from Owner, Owner, as its sole remedy, may terminate this Agreement by providing written notice to Tenant, in which case Owner shall retain the Option Payment(s) as Owner's liquidated damages, and not as a penalty, it being agreed that it would otherwise be difficult or impossible to determine Owner's actual damages suffered from Tenant's breach of this Agreement, but that the liquidated damages provided herein represent a reasonable, just, and fair estimate of such damages, and Owner and Tenant therefore intend to provide for liquidated damages as herein specified. In no event shall Tenant be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.
- 6.2 **Tenant's Remedies.** In the event that Owner fails to perform its obligations or a representation or warranty of Owner ceases to be true under this Agreement, Tenant shall be entitled to (i) after such failure or cessation has continued for a period of forty-five (45) days after Owner's receipt of written notice from Tenant, terminate this Agreement, in which event Owner shall refund to Tenant all Option Payments less One Hundred Dollars (\$100.00), which shall be consideration for the Option, or (ii) pursue any right or remedy available to Tenant at law or in equity, including, without limitation, the recovery of damages suffered or incurred by Tenant in connection with or as a result of any such matter.

7. **Confidentiality.** Owner shall maintain in strictest confidence, for the sole benefit of Tenant and Tenant's affiliates, the terms of this Agreement or of the Lease Agreement, and any information provided by Tenant to Owner in relation to the transaction contemplated. Furthermore, Owner recognizes that Tenant is engaged in a competitive industry and acknowledges that divulging confidential information relative to this Agreement may cause significant damages to Tenant, and Owner hereby acknowledges, consents and agrees that, in the event of any such breach, or the threat thereof, Tenant shall be entitled, in addition to any other legal remedies and damages available, to seek temporary and permanent injunctive relief (without the necessity of posting a bond) to restrain the violation or threatened violation of these confidentiality obligations by Owner. This Section 8 applies only to the maximum extent permitted by law, including for certainty the New Mexico Inspection of Public Records Act, NMSA 1978, §14-2-1 to -12, as may be amended from time to time.
8. **Notices.** The address of each party hereto for all notices required or permitted to be given hereunder shall be as follows:

If to Owner
Doña Ana County
Airport Manager
845 N Motel Blvd
Las Cruces, New Mexico
88007

If to Tenant:
EONM182, LLC
6130 Doniphan Drive
El Paso, TX 79932

All notices shall be in writing, and may be delivered by any of the following methods, with all delivery charges and/or postage pre-paid: (i) personal delivery (including delivery by private courier services), (ii) reputable overnight courier service (e.g., Federal Express or UPS), or United States first class certified mail with return-receipt requested, or (iii) via email. Any notice personally delivered or provided via email shall be deemed to have been validly and effectively given on the date of such delivery, unless such date shall not be a business day, in which case such delivery shall be deemed to have been validly and effectively given on the next succeeding business day. Any notice sent by reputable overnight courier or by United States first class certified mail shall be deemed to have been validly and effectively given on the date of the receipt for delivery thereof.

Owner or Tenant may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph. Payments shall be made to Owner, at Owner's election, either (i) by wire transfer to an account designated by Owner, or (ii) by check delivered to Owner's address as set forth in this Section.

9. **Owner's Cooperation and Related Covenants.**

- 9.1 **Due Diligence and Authorization.** Throughout the Option Term, Owner shall cooperate with Tenant, in Tenant's Due Diligence Investigation and with Tenant's efforts to obtain any governmental approvals, permits or entitlements for the Property, at no cost to Owner
- 9.2 **Effect of Option Agreement; Interest in Real Property.** The parties intend that this Agreement is given by Owner to Tenant as an option to lease the Property as described herein. The parties intend that this Agreement creates a valid and present interest in the Property in favor of Tenant. Therefore, this Option shall be deemed an interest in and encumbrance upon the Property and shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.
10. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Owner and Tenant respecting its subject matter. Any prior agreement, understanding or representation respecting the Property, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended, except in a writing signed by both parties.
11. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of Tenant and Owner and their respective representatives, successors and assigns. During the Option Term, Owner shall not sell, encumber or otherwise transfer any interest in all or any portion of the Property, or enter any agreement to do any of the foregoing, except with Tenant's consent, which consent shall not be unreasonably withheld, conditioned or delayed, or as otherwise expressly permitted in this Agreement. Notwithstanding the immediately preceding sentence or anything to the contrary in this Agreement, during the Option Term, Owner shall not (i) grant any right, option, interest or privilege to any third party for the use or development of the Property for any purpose similar, or related to, the Intended Use, (ii) convey the Property to a third party without first having provided Optionee at least thirty (30) days prior written notice of such anticipated conveyance and the identity and contact information of such transferee.
12. **Governing Law; Interpretation.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Mexico, without regard to its choice of law rules.
13. **Jury Waiver.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

14. **Forum Selection; Consent to Jurisdiction.** All disputes arising out of or in connection with this Agreement shall be solely and exclusively resolved by a court of competent jurisdiction in the State of New Mexico. The parties hereby consent to the jurisdiction of the courts of the State of New Mexico and the United States District Courts of the federal district where the Property is located and waive any objections or rights as to *forum nonconveniens*, lack of personal jurisdiction or similar grounds with respect to any dispute relating to this Agreement.
15. **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the Effective Date), and including the last day, unless the last day is a holiday or Saturday or Sunday, in which case the time shall be extended to the next business day. Time is of the essence under this Agreement.
16. **Survival.** In the event the Option is exercised by Tenant, except as otherwise expressly set forth herein, the provisions of this Agreement shall not survive and the provisions of the Lease Agreement shall control.
17. **Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.
18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document. PDF or facsimile counterparts, or any other execution by electronic means, shall be deemed originals.

[Signature page follows this page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below to be effective as of the Effective Date.

OWNER(S):

Dona Ana County

By: _____

Name: Fernando R. Macias

Title: County Manager

TENANT:

EONM182, LLC

By: _____

Name: _____

Title: _____

Exhibit B

