

HACKBERRY CREEK RANCH BRISCOE COUNTY

OFFER PACKET



DAWN BUCKINGHAM, M.D.
Commissioner, General Land Office

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GENERAL DESCRIPTION

LOCATION

From Silverton, travel 31 miles east and north on State Highway 256 to County Road 1 (Hall County).

Proceed south and west on County Road 1 and County Road SS (Briscoe County) 7.2 miles to the ranch.

DESCRIPTION

Topography ranges from rolling to rough broken country. Soils on the ranch are loams and clays with gyp outcrops. Vegetation consists of hooded windmill grass, big bluestem, little bluestem, silver bluestem, blue grama, sideoats grama, tobosagrass, buffalograss and Wright's threeawn. Woody species consists of redberry juniper, mesquite, elm, cottonwood, and catclaw mimosa. The ranch is completely fenced and divided into seven pastures. Four wells and an extensive water pipeline and storage system provide water for the ranch.

Below is a recent list of improvements/repairs:

2024: New roof on house.

Sprayed 480 acres in East Pasture for mesquite control.

2023: New windows in house.

Sprayed 160 acres in Headquarters Pasture for prickly pear control.

Sprayed 110 acres in East Pasture for prickly pear control.

2021: 2.3 miles of new fence in Midway Pasture.

2 miles of new fence in East Pasture.

2018: New HVAC in house.

2017: 1.86 miles of new fence in Midway Pasture.

Misc.:

Grubbed 24.5 miles of road in Midway, Northwest and North Pastures in 2021, 2022 and 2023.

Grade ranch roads annually.

Installed 2,500 gallon water tank, 1 mile of underground pipe and 12 foot fiberglass tub.

Repaired working pens in Headquarter's Pasture.

Added net wire to existing fence in water lot in Headquarter's Pasture.

Numerous windmill and solar pump repair/replacements.

House Description

Hackberry Ranch House is a two-bedroom one bath house with a small living room, kitchen/dining room. The house has a gas stove for cooking. There is a central heating and cooling unit. The water supply to the house consists of a 2,000-gallon black storage tank outside of the yard fence. The water must be hauled in by the lessee and pumped into the black tank. There is a small electric pump located in the well house that kicks on when water is used in the house. The water pump is not supplied by the GLO.

LEASE INFORMATION and SPECIAL CONDITIONS

1. Acres: 9,540 acres, Briscoe County
2. Lease Term:
 - A. The lease shall be issued for a period of five (5) years.
 - B. The lease term will begin no later than July 1, 2025.
3. Minimum Offer:
 - A. Grazing - 150.00 per Animal Unit for 250 Animal Units = \$37,500.00 per year.
 - B. Hunting - \$2.00 per acre = \$19,080.00 per year

The total minimum offer for grazing/hunting rights shall be no less than \$5.93 per acre or Fifty-Six Thousand, Five Hundred Eighty dollars and 00/100 (\$56,580.00) per year. Rent shall be due on or by the first of the month of anniversary of lease term.

4. Special Conditions:
 - A. The carrying capacity shall be subject to change based on a forage inventory, conducted by the General Land Office during October of each year. If stocking rate adjustments are deemed necessary, lessee will have thirty (30) days after notification to make said adjustments. The grazing lease rental will be adjusted on a per animal unit pro rata basis.
 - B. Lessee shall observe Lessor's game management recommendation in regard to game management practices and the number of mule deer/whitetail harvested annually. An annual deer census may be utilized to determine if and how many deer will be harvested each year. This recommendation shall be provided to lessee by October fifteenth (15th) of each year.
As an option, Lessee may work with Texas Parks and Wildlife to develop and follow a wildlife management plan upon approval from Lessor.

- C. Lessee shall initiate a predator control program with emphasis on the control and management of the coyote population.
- D. Lessee shall implement a sound soil and water conservation plan for the leased premises, subject to Lessor's approval. Lessee shall develop the plan in cooperation with the Lessor and the USDA Natural Resource Conservation Service. Lessee shall file the plan with the Lessor within six (6) months of execution of the lease.

INSTRUCTIONS TO APPLICANT(S)

1. **General Land Office (GLO) personnel will be on-sight for public viewing on March 4th & 5th, 2025 from 8:00 AM to 4:00 PM.**
2. **Potential applicants must provide their own transportation to, on, and from the site and shall sign in/out with GLO staff that will be staged on site within the house area for questions. Maps of the property will be provided but GLO staff will NOT be guiding tours of the property.**
3. All sections of the enclosed application form must be completed and returned to the Texas General Land Office along with the applicant's offer.
4. Each offer must be accompanied by a fifty and 00/100 Dollar (\$50.00) non-refundable filing fee made payable to the Texas General Land Office, and a **separate** payment for the first year's rental payment also made payable to the Texas General Land Office. Only a personal check, cashier's check, or money order will be accepted.
5. **NO OFFER WILL BE ACCEPTED WITHOUT THE FIRST YEAR'S LEASE PAYMENT ENCLOSED.**
6. **Along with the offer, please submit a draft management plan for the ranch. The plan must address deferred rotation grazing systems, wildlife habitat management, brush management and any other enterprise planned for the property. The management plan WILL be considered in evaluating each offer received.**
7. The lease will be awarded to the applicant submitting the offer which provides "Best Value" to the State of Texas and whose qualifications, experience and management plan are acceptable to the Commissioner of the General Land Office.
8. Each offer must be enclosed in a sealed envelope addressed to the Commissioner of the Texas General Land Office, Stephen F. Austin Building, Post Office Box 12873, Austin, Texas 78711-2873, Attention: Brice Finley. Please write "RE: Hackberry Creek Ranch" on the front of the envelope.
9. No oral, telephone, or facsimile offers will be considered.
10. Each applicant is responsible for studying the terms and conditions set

forth in the enclosed sample lease form, as well as all special conditions disclosed in this packet.

11. **Evaluation Criteria.**

A. Conformance with State Law. Offers shall be evaluated in accordance with State Law. The GLO shall not be obligated to accept the highest offer, but shall make an award to the applicant who provides the "Best Value" to the State of Texas.

B. Minimum Qualifications. Potential applicants must meet the following minimum qualifications. Furthermore, offers which appear to be unrealistic in terms of commitments, lack of competence as a hunting and grazing lessee, or which indicate a failure to comprehend the complexity and risk of the leasehold operations contemplated this Offer Packet, may be rejected.

a.) Applicant must demonstrate qualifications and experience as a hunting and grazing lessee, particularly with respect to game management and range management; and

b.) Applicant must demonstrate the ability to cooperate with Natural Resources agencies and to develop the programs described in item four (4) of this Offer Packet entitled "Lease Information and Special Conditions."

c.) Applicant must pass a background check performed by GLO.

C. Specific Criteria. Offers shall be consistently evaluated and scored in accordance with the following criteria:

a. Qualifications and experience of the applicant (35 %)

b.) Proposed ranch management plan submitted (25%)

c.) Terms offered by the applicant (Price) (40 %)

NOTE: The offer evaluation committee may contact references provided in response to this solicitation to clarify any response, or contact any current hunting and grazing lessor of an applicant and/or solicit information from any available source concerning any aspect of an offer deemed pertinent to the evaluation process.

NOTE: All offers shall be kept confidential until a lease is awarded, pursuant to Chapter 552 of the Texas Government Code.

12. The Texas General Land Office reserves the right to reject any or all offers.
13. All offers must be received by 5:00 PM on March 19, 2025.
14. All offers will be opened on March 25, 2025 at 10:00 AM, and the winning applicant will be notified by written notice and/or telephone.
15. All rejected offers will be notified in writing, and their check representing the first year's rental will be returned.
16. Any questions concerning the application packet or application procedures may be directed to Brice Finley at (512) 463-7117 or Jason Smalley at (512) 463-4610.

OFFERFORM

*****NOTE***: ALL SECTIONS OF THIS FORM MUST BE COMPLETELY FILLED OUT. ALL INFORMATION WILL BE EVALUATED TO DETERMINE THE WINNING OFFER.**

To Whom It May Concern:

The undersigned proposes to lease the state-owned Hackberry Creek Ranch, 9,540 acres, for hunting and grazing purposes, as cited in the attached lease specifications, for a term of 5 years.

My offer for the grazing rights is _____ dollars (\$ _____) per animal unit, based on the initial carrying capacity of 250 animal units.

My offer for the hunting rights is _____ dollars (\$ _____) per acre.

My total offer for the hunting/grazing rights is _____ Dollars (\$ _____)

My Fifty and no/100 Dollars (\$50.00) check for non-refundable application fee is enclosed.

My \$ _____ check for the first year's lease payment is enclosed. I understand that it will be returned to me if I am not awarded the lease.

I UNDERSTAND THAT ALL OFFERS TO BE CONSIDERED MUST BE RECEIVED BY 5:00 PM ON March 19, 2025.

If I am awarded the lease, I agree to execute and return the lease contract within ten (10) days of receipt. I understand that should I fail to do so, I shall forfeit my offer, not as a penalty, but as liquidated damages for breaching this agreement.

Printed Name: _____

Signature: _____

REFERENCES:

Name:		Name:	
Address:		Address:	
Daytime Phone#:		Daytime Phone#:	

APPLICANT'S INFORMATION:

Print Name:		Signature:	
Address:		Address:	
Home Phone#:		Date:	
Work Phone#:		Social Security#:	

ATTACHED IS A DRAFT LEASE ACCEPTABLE TO THE TEXAS GENERAL LAND OFFICE. MATERIAL CHANGES TO THIS LEASE BY APPLICANT MAY SUBJECT THE OFFER TO DISQUALIFICATION.

The State of Texas



Austin, Texas

SURFACE LEASE SL2025XXX

SAMPLE DRAFT

STATE OF TEXAS

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§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF BRISCOE

This Surface Lease SL2025XXX, (the "Lease"), is granted by virtue of the authority granted in TEX. NAT. RES. CODE §51.121, et seq., 31 TEX. ADMIN. CODE §13.001, et seq., and all other applicable statutes and rules, as the same may be amended from time to time, and is subject to all applicable rules that may be promulgated from time to time.

ARTICLE I. PARTIES

1.01. In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the STATE OF TEXAS, acting by and through the Commissioner of the General Land Office, on behalf of the Permanent School Fund ("Lessor"), hereby grants to _____, whose address is _____, TX _____, the right to use the surface estate of certain Permanent School Fund land (the "Premises") for the purposes identified in Article V.

ARTICLE II. PREMISES

2.01. The Premises are described below:

<u>Survey</u>	<u>File No.</u>	<u>GLO Control No.</u>	<u>Acres</u>	<u>County</u>
PSL	154067	17-002614	9,540.0	Briscoe

2.02. LESSEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND ACCEPTS SAME "AS IS" IN ITS EXISTING CONDITION. LESSEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF LESSOR REGARDING ANY ASPECT OF THE PREMISES, BUT IS RELYING ON LESSEE'S OWN INSPECTION OF THE PREMISES. LESSOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS LEASE. LESSOR AND LESSEE HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERMS "GRANT" AND/OR "CONVEY" IN NO WAY IMPLIES THAT THIS LEASE OR THE PREMISES ARE FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. LESSEE IS HEREBY PUT ON NOTICE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCES MAY BE OF RECORD AND LESSEE IS ADVISED TO EXAMINE ALL RECORDS OF LESSOR AND THE COUNTY IN WHICH THE PREMISES ARE LOCATED. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE EARLIER TERMINATION OF LESSEE'S RIGHTS UNDER THIS LEASE.

ARTICLE III. TERM

3.01. This Lease is for a term of five (5) years, commencing on _____, 2025 ("Effective Date") and terminating on _____, 2030, unless Lessee's rights hereunder are terminated earlier as provided herein. Renewal or modification of this Lease is at the sole discretion of Lessor, and no right to renew or modify is implied or provided for herein.

ARTICLE IV. CONSIDERATION AND TAXES

4.01. A. As consideration ("Consideration") for the granting of this Lease, Lessee shall pay rent ("Rent") to Lessor (payable to the Commissioner of the General Land Office at Austin, Texas) the sum of _____ (\$_____).

B. Consideration for this Lease shall be payable in five (5) installments, in advance, of _____ (\$_____). The first annual installment shall be made upon the execution hereof and subsequent annual installments are to be made on or before each anniversary of the Effective Date.

C. Past due Rent and other past due payments shall bear interest from the date when due until actually paid, as provided in TEX. NAT. RES. CODE § 51.301, as the same may be amended from time to time. Failure of Lessee to make a payment on or before the date the same becomes due shall, at Lessor's option, make all payments due and payable immediately.

4.02. Lessor is exempt from taxation. If any taxes are levied on Lessee's interest under this Lease, or if any other taxes or assessments are appropriately levied against the Premises, Lessee shall pay such taxes and assessments not less than five (5) days prior to the date of delinquency thereof directly to the taxing authority. Lessee may in good faith and at its sole cost contest any such taxes or assessments, and shall be obligated to pay the contested amount only if and when finally determined to be owed. **LESSEE AGREES TO AND SHALL INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY SUCH TAXES AND ASSESSMENTS LEVIED DURING THE TERM OF THIS LEASE. THIS INDEMNIFICATION SHALL SURVIVE EXPIRATION OF THIS LEASE OR THE EARLIER TERMINATION OF LESSEE'S RIGHTS UNDER THIS LEASE.**

4.03. Lessee shall pay all utility charges for electricity, heat, water, gas, and telephone, and the like used on and about the Premises.

4.04. Pursuant to TEX. BUS. & COM. CODE Ch. 9, Lessee grants to Lessor a security interest to secure payment of all Consideration. This security interest attaches to any and all crops raised on the Premises and any and all proceeds from the sale of those crops, and on any and all presently living and subsequently acquired or born livestock on the Premises owned by Lessee, and any and all proceeds from the sale of such livestock.

ARTICLE V. USE OF THE PREMISES

5.01. The Premises may be used by Lessee solely for grazing, hunting and for no other purpose. Except to the extent that modification is reasonably necessary for Lessee's authorized use, the Premises are to remain in their current topographical condition during the term of the Lease. Lessee is specifically prohibited from modifying the Premises in any manner, and from using or allowing the use by others of the Premises for any other purpose, including, but not limited to, mining, hauling, or otherwise removing rock, sand, gravel, aggregate, or other such materials, without Lessor's prior express written approval.

5.02. The carrying capacity for grazing under this Lease shall be Two Hundred-Fifty (250) animal units for the Premises. Lessee may not exceed said carrying capacity without Lessor's prior express written approval.

5.03. Lessee shall not use or permit the use of the Premises for any unlawful purpose or permit any unlawful use thereof; and will not commit, or permit anyone else to commit, any act that constitutes a nuisance or annoyance to the Lessor or adjacent property owners or tenants, or which might, in the exclusive judgment of Lessor, damage Lessor's goodwill or reputation, or tend to injure or depreciate the value of the Premises and/or any improvements located thereon. Lessee and its officers, employees, agents and invitees shall comply with all applicable federal, state and local laws, ordinances and rules concerning the use of the Premises. Lessee will install, remove, and alter such equipment and facilities in, and make such alterations to, the Premises as may be necessary to comply with said laws, ordinances and rules. Lessee will not make any unlawful use of the Premises. Violation of said laws, ordinances, and/or rules may result in the automatic termination of

Lessee's rights hereunder, at the Lessor's sole discretion upon the Lessor's sending written notice of such termination to Lessee at Lessee's address stated herein.

5.04. Lessor reserves the exclusive right to grant easements, rights-of-way and/or other permits authorizing use of the Premises, provided such use does not unreasonably interfere with Lessee's use thereof (except in the instance of mineral development as provided in Section 5.06 below). Any purported grant of an easement, right-of-way, permit or other license by Lessee shall be void unless specifically authorized in this Lease or by Lessor's prior express written approval.

5.05. Lessor reserves the right to enter upon the Premises at any time with or without prior notice to Lessee to inspect the condition thereof and/or take any action authorized by this Lease. Lessee shall provide Lessor with keys or combinations to all locks that may limit access to the Premises.

5.06. Lessor reserves unto itself all of the oil, gas, and other minerals, all geothermal resources, all solar and wind energy leasing rights, and all water and water rights in, on, under, or associated with the Premises; provided, however, that Lessee is permitted to use such waters located on the Premises, to the extent and in an amount ordinarily and reasonably necessary for the purpose of watering Lessee's permitted livestock and/or wildlife. The Premises are subject to prospecting, production and development of oil, gas and other minerals, and other materials of commercial value, geothermal resources, solar and wind energy by Lessor, its lessees, permittees, licensees or other agents, assigns or representatives. Lessee shall not interfere with such use of the Premises and shall allow any lessee, permit holder, licensee or other agent, assignee or representative of the Lessor the right of ingress and egress over, across and through, and the use of the Premises for any and all purposes authorized by Lessor.

5.07. Lessee may not charge Lessor's authorized lessees, permit holders, licensees or other agents, assigns or representatives surface damages or any other fee for use of the Premises, provided however, the foregoing shall not limit the liability of any person or entity to Lessee for damages caused to property owned by Lessee.

5.08. Lessor reserves the right to use Natural Resources Conservation Service and/or the Texas Parks and Wildlife personnel and their field office technical guides (standards and specifications) for all range and wildlife conservation and/or ranch improvement programs and practices.

5.09. Lessee shall not undertake, nor shall Lessee allow land modifications or excavation, or construction of permanent improvements without Lessor's prior express written consent. Lessee shall not maintain or allow any nuisances or public hazards on the Premises, and shall be under a duty to abate or remove any activity or property constituting or contributing to a hazard or nuisance.

5.10. Existing improvements are and shall remain the property of Lessor. Regardless of ownership, Lessee shall properly maintain all existing improvements and all improvements placed or constructed on the Premises, provided that no improvement owned by Lessor may be altered or modified without Lessor's prior express written consent.

5.11. Lessee shall submit a map or description showing and describing any new improvements and their location on the Premises.

5.12. Lessee may file a criminal complaint or institute civil proceedings to protect his right of possession and leasehold interest in the Premises against trespass or other infringement of Lessee's rights by third parties.

5.13. Lessee shall take all reasonable precautions to suppress and prevent the uncontrolled spread of fire and shall not purposely attempt to burn any part of the Premises without prior approval of Lessor.

5.14. Lessee shall not commit waste and shall keep all improvements and land in reasonably neat condition.

5.15. Hunting on the Premises is allowed only to the extent described elsewhere in this Lease.

5.16. Lessee shall observe Lessor's game management recommendation in regard to the number of mule deer and white-tailed deer to be harvested annually. An annual deer census may be utilized to determine if and how many deer will be allowed to be harvested each year. This recommendation shall be provided to Lessee by October 15th of each year.

As an option, Lessee may work with Texas Parks and Wildlife biologists to develop and follow a game management plan and harvest recommendations agreeable to Lessor.

5.17. Lessee shall initiate a predator control program with emphasis on the control and management of the coyote population.

5.18. Lessee shall implement a sound soil and water conservation plan (the "Plan") for the Premises, subject to Lessor's approval. Lessee shall develop the Plan in cooperation with the Lessor and/or the U.S. Department of Agriculture Natural Resources Conservation Service, as directed by the Lessor. Lessee shall file the Plan with Lessor within six (6) months of execution of this Lease.

ARTICLE VI. ASSIGNMENTS

6.01. Lessee shall not assign or sublease the Premises or the rights granted herein, in whole or part, to any third party for any purpose without the prior written consent of Lessor, which may be granted or denied in Lessor's sole discretion. Any unauthorized assignment or sublease shall be void and of no effect and such assignment or sublease shall not relieve Lessee of any liability for any obligation, covenant, or condition of this Lease. For purposes of this Lease, an assignment is any transfer, including by operation of law, to another of all or part of the property, interest or rights herein granted. **THIS PROVISION AND THE PROHIBITION AGAINST ASSIGNMENT AND SUBLEASING CONTAINED HEREIN SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

6.02. Lessee shall not mortgage, hypothecate, encumber, or grant any deed of trust or security interest that encumbers the Premises or the interests created by this Lease. Further, Lessee may not collaterally assign any rent or other income generated from Lessee's use of the Premises.

ARTICLE VII. PROTECTION OF HISTORICAL RESOURCES

7.01. LESSEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966 (16 USC § 470, ET SEQ.) AND THE TEXAS ANTIQUITIES CODE (TEX. NAT. RES. CODE CH. 191), AS THE SAME MAY BE AMENDED FROM TIME TO TIME. IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL OR HISTORIC INTEREST IS ENCOUNTERED DURING ANY ACTIVITY ON THE PREMISES, LESSEE SHALL IMMEDIATELY CEASE SUCH ACTIVITIES AND SHALL IMMEDIATELY NOTIFY LESSOR AND THE TEXAS HISTORICAL COMMISSION, P.O. BOX 12276, AUSTIN, TEXAS 78711, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.

ARTICLE VIII. INDEMNITY AND INSURANCE

8.01. LESSEE SHALL BE FULLY LIABLE AND RESPONSIBLE FOR ANY DAMAGE, OF ANY NATURE, ARISING OR RESULTING FROM ITS OWN ACTS OR OMISSIONS RELATED TO ITS EXERCISE OF THE RIGHTS GRANTED HEREIN. LESSEE AGREES TO AND SHALL INDEMNIFY, DEFEND (WITH COUNSEL ACCEPTABLE TO LESSOR), AND HOLD LESSOR, LESSOR'S OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM AND AGAINST CLAIMS, SUITS, COSTS, LIABILITY OR DAMAGES OF ANY KIND, INCLUDING STRICT LIABILITY CLAIMS, WITHOUT LIMIT AND WITHOUT REGARD TO CAUSE OF THE DAMAGES OR THE NEGLIGENCE OF ANY PARTY, EXCEPT FOR THE CONSEQUENCES OF NEGLIGENT ACTS OR WILLFUL MISCONDUCT OF LESSOR, LESSOR'S OFFICERS, AGENTS, EMPLOYEES, OR INVITEES, ARISING DIRECTLY OR INDIRECTLY FROM LESSEE'S USE OF THE PREMISES (OR ANY ADJACENT OR CONTIGUOUS LAND OWNED BY LESSOR) OR FROM ANY BREACH BY LESSEE OF THE TERMS, COVENANTS, OR CONDITIONS CONTAINED HEREIN. THE PROVISIONS OF THIS SECTION SHALL SURVIVE EXPIRATION OF THIS LEASE OR THE EARLIER TERMINATION OF LESSEE'S RIGHTS UNDER THIS LEASE.

8.02. The Lessee shall maintain adequate insurance throughout the term of this lease.

ARTICLE IX. DEFAULT, TERMINATION AND EXPIRATION

9.01. If, following thirty (30) days prior written notice from Lessor specifying a default or breach, Lessee fails to pay any money due hereunder or is in breach of any term or condition of this Lease, Lessor shall have the right, at its option and its sole discretion, to terminate Lessee's rights under this Lease by sending written notice of such termination to Lessee in accordance with Article XI of this Lease. Upon sending of such written notice, this Lease shall automatically terminate and all rights granted herein to Lessee shall revert to Lessor. Such termination shall not prejudice the rights of Lessor to collect any money due or to seek recovery on any claim arising hereunder.

9.02. If Lessee fails to remove its personal property from the Premises within thirty (30) days of termination of this Lease, or if Lessee fails to remove improvements placed or constructed on the Premises by or on behalf of Lessee pursuant to a notice by Lessor to remove those improvements pursuant to Section 9.01 above, then Lessor may, at its sole option, remove and dispose of such property (with no obligation to sell or otherwise maintain such property in accordance with the Uniform Commercial Code), at Lessee's sole cost and expense, or Lessor may elect to own such property by filing a notice of such election pursuant to TEX. NAT. RES. CODE §51.302, *et seq.* If Lessor elects to remove Lessee's property and dispose of it pursuant to this Section 9.02, then in such an event Lessee shall be obligated to reimburse Lessor for the reasonable costs of such removal and disposal within ten (10) days of Lessor's written demand for reimbursement. **THE TERMS OF THIS SECTION 9.02 SHALL SURVIVE EXPIRATION OF THIS LEASE OR THE EARLIER TERMINATION OF LESSEE'S RIGHTS UNDER THIS LEASE.**

9.03. The Premises are subject to sale or trade. Lessor reserves the right to permit entry by prospective or actual buyers. In the event Lessor enters into an agreement to sell or trade the Premises or any interest therein, this Lease will automatically terminate upon the earlier of: (i) thirty (30) days after written notice by Lessor; or (ii) conveyance or award of the Premises. Regardless of whether the Premises are offered for sale or trade, Lessee shall have no preference right to purchase the Premises or to renew or extend this Lease.

9.04. Lessor reserves the right to remove from this Lease any portion of the Premises as Lessor may determine necessary for purposes other than those described herein, in which event the Lessee's rights under this Lease to that portion so removed shall be considered terminated and the Lease shall be amended to reflect the remaining portion of the Premises and the new Rent, prorated to reflect the remaining portion of the Premises.

9.05. In the event of a condemnation proceeding that affects all or part of the Premises, Lessor will have the exclusive authority to negotiate with the condemning authority. In the event of a total condemnation, this Lease shall terminate. In the event of a partial condemnation, Lessor may elect to continue or to terminate this Lease, but, if Lessor elects to continue the Lease, the Consideration shall be proportionately reduced. All condemnation proceeds, except for those allocated to improvements belonging to Lessee, shall be the property of Lessor and shall be payable to Lessor.

9.06. If Lessee files a petition for bankruptcy or becomes the subject of an involuntary bankruptcy or other similar proceeding under the federal bankruptcy laws, this Lease shall automatically terminate upon such filing without necessity of notice.

ARTICLE X. HOLDOVER

10.01. If Lessee holds over and continues in possession of the Premises after expiration of this Lease or the earlier termination of Lessee's rights under this Lease, Lessee shall be deemed to be occupying the Premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this Lease, except that as liquidated damages by reason of such holding over, the amounts payable by Lessee under this Lease shall be increased such that the Consideration payable under Section 4.01 of this Lease and any other sums payable hereunder shall be one hundred fifty

percent (150%) of the amount payable to Lessor by Lessee for the applicable period immediately preceding the first day of the holdover period. Lessee acknowledges that in the event it holds over, Lessor's actual damages will be difficult, if not impossible, to ascertain, and the liquidated damages herein agreed to be paid are reasonable in amount and are payable in lieu of actual damages and are not a penalty. Lessee further acknowledges that acceptance of hold over Consideration does not imply Lessor's consent to hold over.

10.02. The tenancy from month-to-month described in Section 10.01 of this Lease may be terminated by either party upon thirty (30) days written notice to the other.

10.03. The Consideration due after notice of termination has been given is to be calculated according to Section 10.01 hereinabove on a pro rata basis. If, upon notice of termination by Lessor, Lessee pays Consideration in excess of the amount due and payable and Lessor accepts such payment, the acceptance of such payment will not operate as a waiver by Lessor of the notice of termination unless such waiver is in writing and signed by Lessor. Any such excess amounts paid by Lessee and accepted by Lessor shall be promptly refunded by Lessor after deducting therefrom any amounts owed to Lessor.

ARTICLE XI. NOTICE

11.01. Any notice which may or shall be given under the terms of this Lease shall be in writing and shall be either delivered by hand, by facsimile, or sent by United States first class mail, adequate postage prepaid, as follows:

If for Lessor:

Texas General Land Office
Leasing Operations
1700 North Congress Avenue
Austin, Texas 78701-1495
FAX: (512) 463-5304

If for Lessee:

Any party's address may be changed from time to time by such party by giving notice as provided above, except that the Premises may not be used by Lessee as the sole notice address. No change of address of either party shall be binding on the other party until notice of such change of address is given as herein provided.

11.02. For purposes of the calculation of various time periods referred to in this Lease, notice delivered by hand shall be deemed received when delivered to the place for giving notice to a party referred to above. Notice mailed in the manner provided above shall be deemed completed upon the earlier to occur of (i) actual receipt as indicated on the signed return receipt, or (ii) three (3) business days (excluding federal holidays) after posting as herein provided.

ARTICLE XII. INFORMATIONAL REQUIREMENTS

12.01. A. Lessee shall promptly provide written notice to Lessor of any change in Lessee's name, address, corporate structure, legal status or any other information relevant to this Lease.

B. Lessee shall provide to Lessor any other information reasonably requested by Lessor in writing within fifteen (15) days following such request or such other time period approved by Lessor (such approval not to be unreasonably withheld).

ARTICLE XIII. MISCELLANEOUS PROVISIONS

13.01. With respect to terminology in this Lease, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders. If any provision of this Lease shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of the Lease, but such other provisions shall continue in full force and effect.

13.02. The titles of the Articles in this Lease shall have no effect and shall neither limit nor amplify the provisions of the Lease itself. This Lease shall be binding upon and shall accrue to the benefit of Lessor, its successors and assigns, and Lessee, Lessee's successors and assigns (or heirs, executors, administrators and assigns, as the case may be); however, this clause does not constitute a consent by Lessor to any assignment by Lessee.

13.03. Neither acceptance of Consideration (or any portion thereof) or any other sums payable by Lessee hereunder (or any portion thereof) to Lessor nor failure by Lessor to complain of any action, non-action or default of Lessee shall constitute a waiver as to any breach of any covenant or condition of Lessee contained herein nor a waiver of any of Lessor's rights hereunder. Waiver by Lessor of any right for any default of Lessee shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of Lessor hereunder or covenant, duty or obligation of Lessee hereunder shall be deemed waived by Lessor unless such waiver be in writing, signed by a duly authorized representative of Lessor. Nothing herein shall constitute a waiver of Lessor's sovereign immunity.

13.04. No provision of this Lease shall be construed in such a way as to constitute Lessor and Lessee joint ventures or partners or to make Lessee the agent of Lessor or make Lessor liable for the debts of Lessee.

13.05. In all instances where Lessee is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

13.06. Under no circumstances whatsoever shall Lessor ever be liable hereunder for consequential damages or special damages. The terms of this Lease shall only be binding on Lessor during the period of its ownership of the Premises, and in the event of the transfer of such ownership interest, Lessor shall thereupon be released and discharged from all covenants and obligations thereafter accruing, but such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership.

13.07. All monetary obligations of Lessor and Lessee (including, without limitation, any monetary obligation for damages for any breach of the respective covenants, duties or obligations of either party hereunder) are performable exclusively in Austin, Travis County, Texas.

13.08. Lessee's obligations to pay Consideration and to perform Lessee's other covenants and duties under this Lease constitute independent, unconditional obligations. Lessee waives and relinquishes all rights which Lessee might have to claim any nature of lien against Lessor and the Premises, or withhold or deduct from or offset against any Consideration or other sums provided hereunder to be paid to Lessor by Lessee. Lessee waives and relinquishes any right to assert, either as a claim or as a defense, that Lessor is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the Lessor not expressly set forth in this Lease.

13.09 A. To the extent that Texas Government Code Section 2252.909 is applicable to this Lease, Lessee must require, as a condition in any contract for the construction, alteration or repair of the Premises, that the Lessee's contractor execute a performance bond, a payment bond, provide the requisite notice, and in all other respects comply with the requirements of Texas Government Code Section 2252.909. Texas Government Code Section 2252.909 provides, among other things, selected conditions stated herein.

B. Lessee, in any contract for the construction, alteration or repair of the Premises, shall include a condition requiring that Lessee's contractor:

(i) execute a **payment bond** that conforms to Chapter 53, Texas Property Code, Subchapter I;

(ii) execute a **performance bond** in an amount equal to the amount of the contract for the protection of the Lessor and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents.

C. Lessee shall provide the Lessor with a **notice of commencement** of construction no later than ninety (90) days prior to the date the construction, alteration, or repair of the Premises begins. Lessee's notice of commencement shall:

(i) identify the public property where the work will be performed;

(ii) describe the work to be performed;

(iii) state the total cost of the work to be performed;

(iv) include copies of the performance and payment bonds required above;

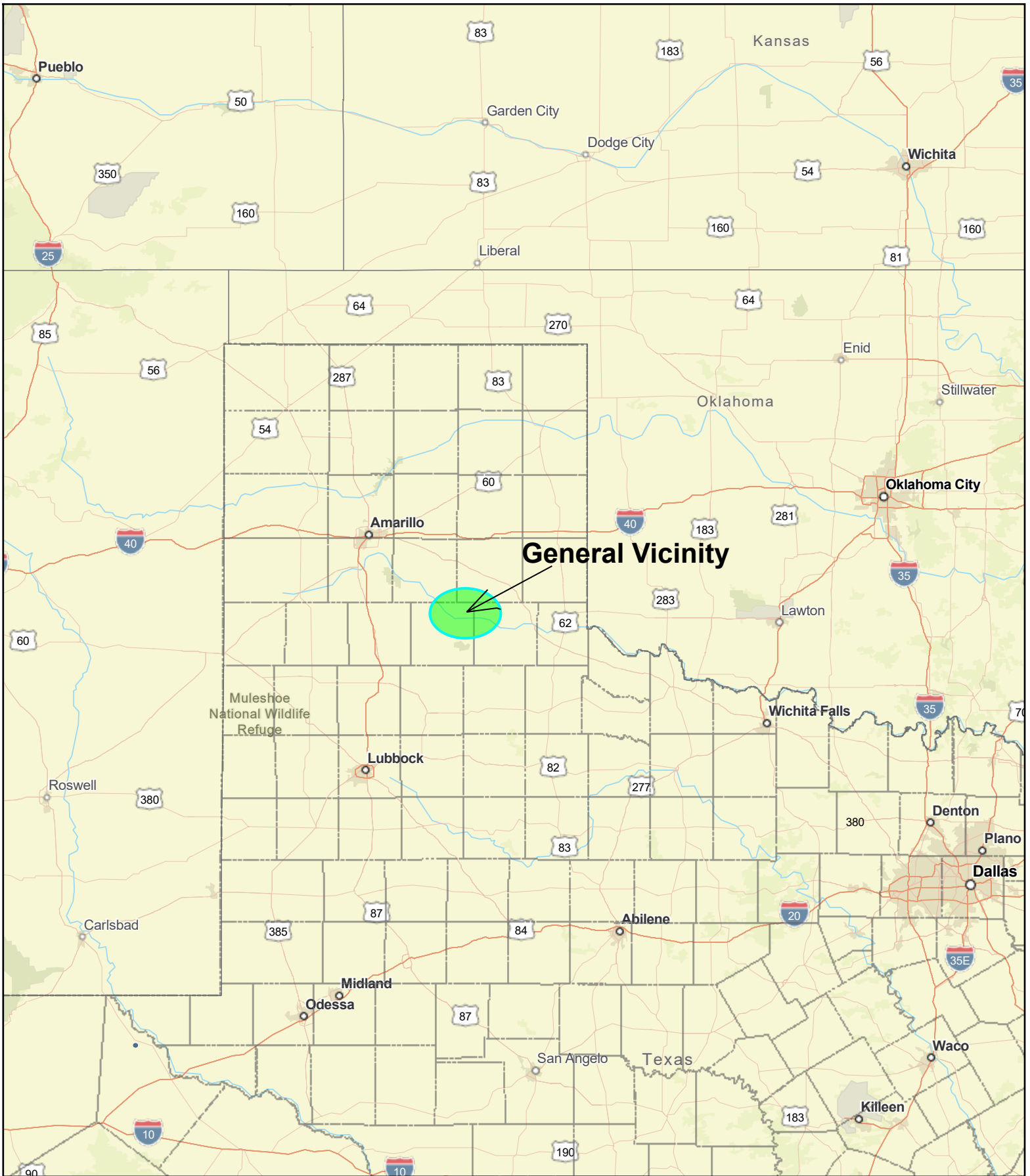
(v) include a written acknowledgment signed by the contractor stating that copies of the required performance payment bonds will be provided to all subcontractors not later than the fifth day after the date a subcontract is executed.

ARTICLE XIV. FILING

14.01. Lessee shall, at its sole cost and expense, record a memorandum of lease in the Official Public Records of the county or counties in which the Premises are located and provide a certified copy of same to Lessor within 60 days after this Lease is executed by all parties.

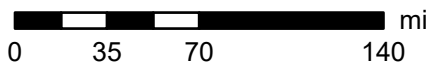
ARTICLE XV. ENTIRE AGREEMENT

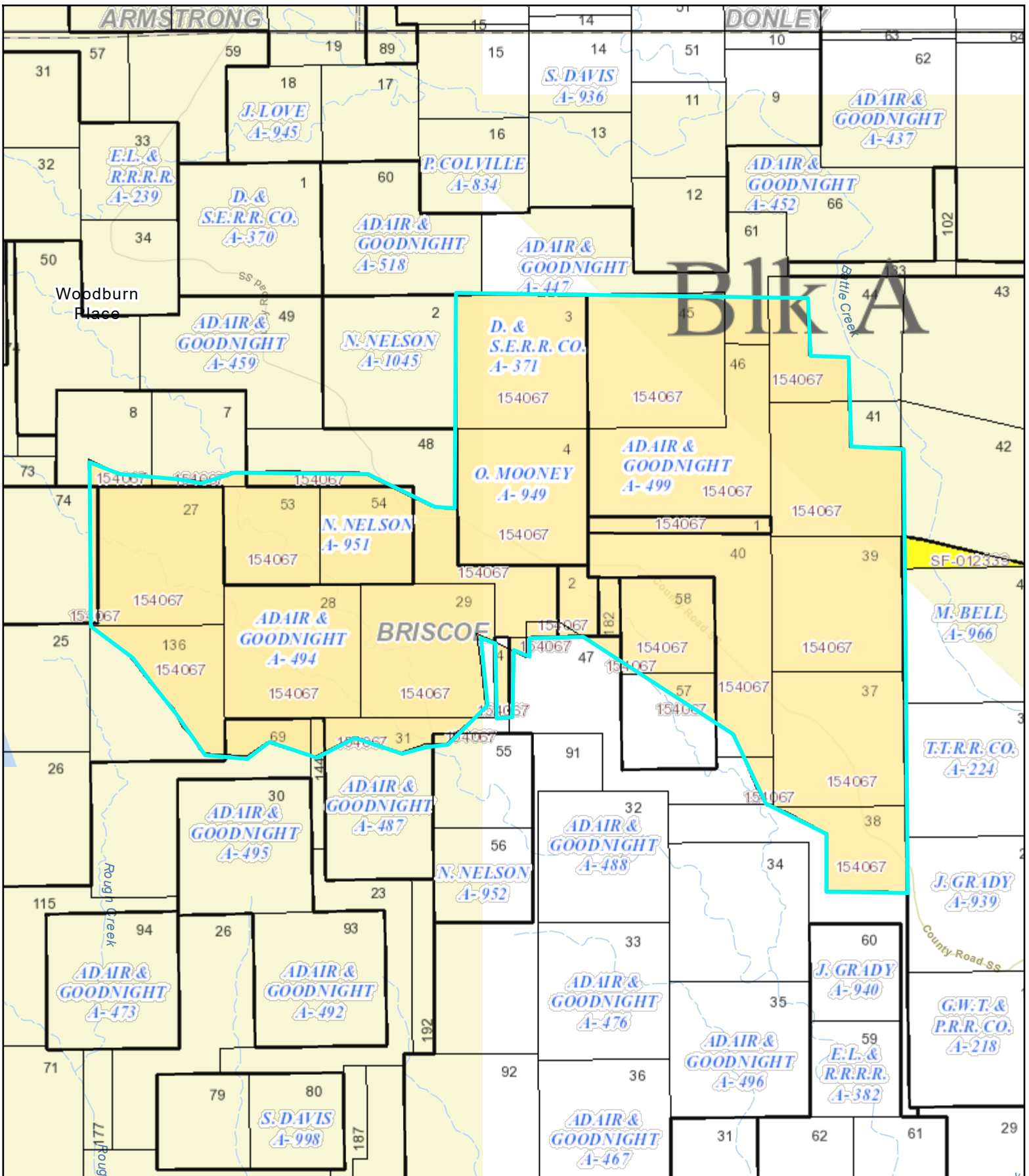
15.01. This Lease, including any exhibits to the same, constitutes the entire agreement between Lessor and Lessee, no prior or contemporaneous written or oral promises or representations shall be binding. The submission of this Lease for examination by Lessee or Lessor and/or execution thereof by the Lessee or Lessor does not constitute a reservation of or option for the Premises and this Lease shall become effective only upon execution by all parties hereto and delivery of a fully executed counterpart thereof by Lessor to the Lessee. This Lease shall not be amended, changed or extended except by written instrument signed by both parties thereto.



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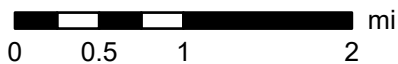


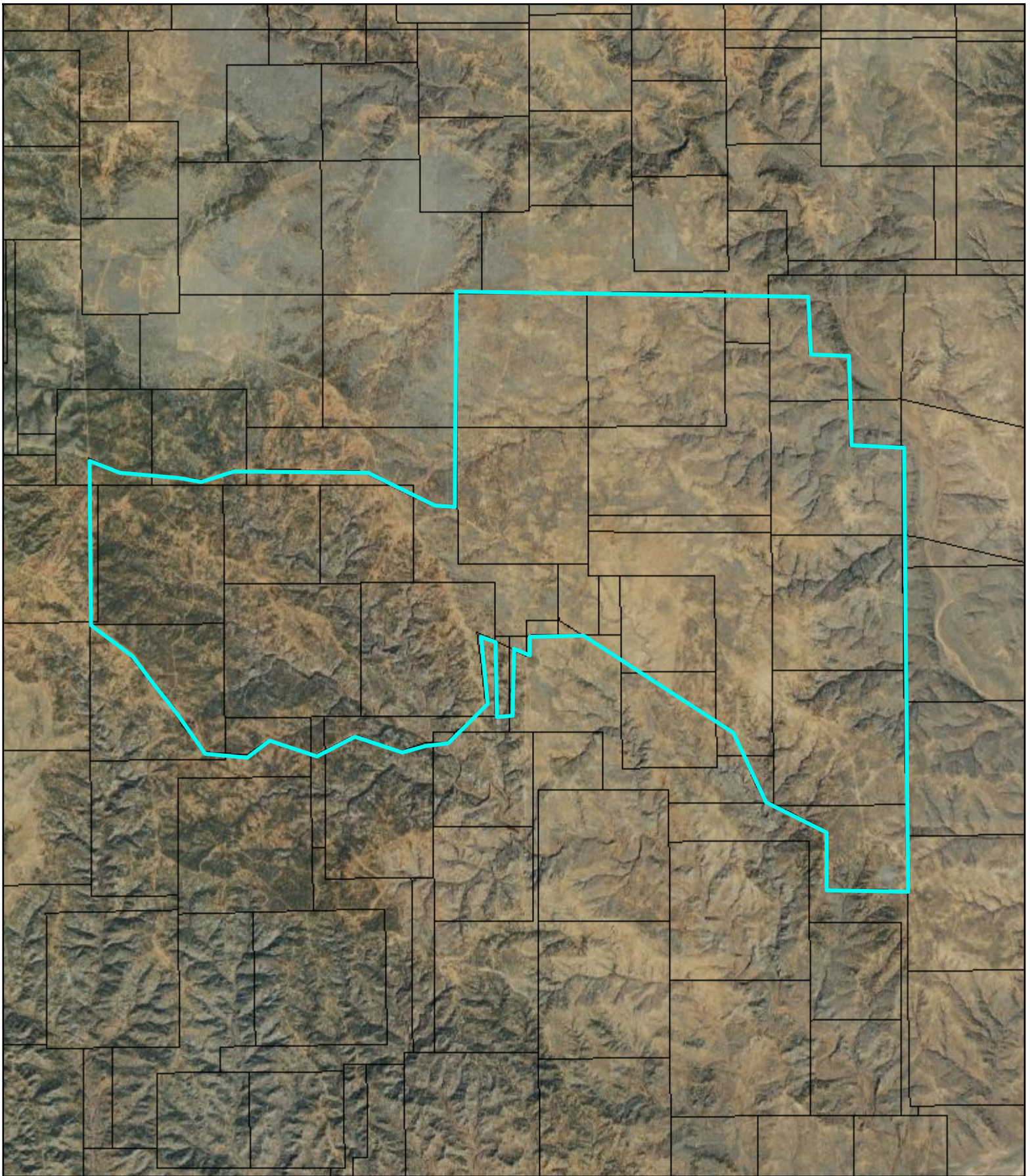


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