

The State of Texas



Austin, Texas

SURFACE LEASE NO. SL20210009  
(Commercial)

STATE OF TEXAS

§  
§  
§

KNOW ALL BY THESE PRESENTS:

COUNTY OF HUDSPETH

This Surface Lease, SL20210009, ("Lease"), is granted by virtue of the authority granted in Section 51.121, et seq., TEX. NAT. RES. CODE ANN., 31 TEX. ADMIN. CODE, Chapter 13, Land Resources, 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 regulations 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 Texas General Land Office, on behalf of the Permanent School Fund of the State of Texas (the "State"), hereby grants to U.S. Customs & Border Protection, whose address is 150 Westpark Way, Suite 200, Euless, TX, 76040-3708, Telephone Number: (214) 297-2035, ("Lessee"), the right to use the surface estate of certain Permanent School Fund land (the "Leased Premises") for the purposes identified in Article V.

ARTICLE II. LEASED PREMISES

2.01. The Leased Premises are described below and further described or depicted on Exhibits attached hereto and collectively incorporated herein by reference for all purposes (the "Leased Premises"):

<u>Section</u>	<u>Block</u>	<u>Survey</u>	<u>File No.</u>	<u>Acres</u>	<u>County</u>
24	71	PSL	141929	0.1	HUDSPETH

2.02. LESSEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE LEASED PREMISES AND ACCEPTS SAME "AS IS" IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. LESSEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF THE STATE REGARDING ANY ASPECT OF THE LEASED PREMISES, BUT IS RELYING ON LESSEE'S OWN INSPECTION OF THE LEASED PREMISES. THE STATE 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. THE STATE 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 LEASED 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 THE STATE AND COUNTY IN WHICH THE LEASED PREMISES ARE LOCATED. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.



### ARTICLE III. TERM

3.01. This Surface Lease No. SL20210009 is for a term of five (5) years, commencing on August 1, 2021 and terminating on July 31, 2026, unless earlier terminated as provided herein. The State reserves the right to review, amend, cancel or otherwise modify this Lease at any time during its term upon thirty (30)-day written notice to Lessee as prescribed in 3.01. Renewal of this Lease is at the sole discretion of the State, and no right to renew 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 the State (payable to the Commissioner of the Texas General Land Office at Austin, Texas) the sum of **Twelve Thousand Five Hundred And 00/100 Dollars (\$12,500.00)**, due payable upon execution of this contract.

B. Past due Rent and other past due payments shall bear interest from maturity at the rate of ten percent (10%) per annum from the date when due until actually paid, as provided in Section 51.301, TEX. NAT. RES. CODE ANN. Failure of Lessee to make a payment on or before the date the same becomes due shall, at the State's option, make all payments due and payable immediately.

### ARTICLE V. USE OF THE LEASED PREMISES

5.01. The Leased Premises may be used by Lessee solely for a Tactical Command Network System (TCNS) Communication Facility and for no other purpose. The Leased Premises are to remain in their current topographical and hydrologic condition during the term of the Lease. Lessee is specifically prohibited from modifying the Leased Premises in any manner not authorized herein, and from using, or allowing the use by others, of the Leased Premises for any other purpose.

5.02. Lessee shall not use, or permit the use of, the Leased Premises for any illegal purpose. Lessee will comply with, and will cause its officers, employees, agents and invitee to comply with, all applicable federal, State and local laws, ordinances and rules concerning the use of the Leased Premises.

5.03. The State reserves the exclusive right to grant easements, rights-of-way and/or other grants of interest authorizing use of the Leased Premises, provided such use does not unreasonably interfere with Lessee's use thereof.

5.04. Lessee shall not grant other rights in or to the Leased Premises to any other person or entity, and any attempt to do so shall be void and of no effect and shall constitute a default by Lessee hereunder.

5.05. The State reserves the right to enter upon the Leased Premises at any time with or without prior notice to Lessee to inspect the condition thereof and/or take action authorized by this Lease.

5.06. The Leased Premises are subject to prospecting, production and development of oil, gas and other minerals and other materials of commercial value by the State, its lessees, permittee, licensees or other agents, assigns or representatives. Lessee shall not interfere with such use of the Leased Premises and shall allow any lessee, permit holder, licensee or other agent, assignee or representative of the State and/or the School Land Board the right of ingress and egress over, across and through, and the use of, the Leased Premises for any and all purposes authorized by State.

5.07. Lessee may not charge State's authorized lessees, permit holders, licensees or other agents, assigns or representatives surface damages, or any other fee, for use of the Leased 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. Lessee shall not commit waste and shall keep all improvements and land in reasonably neat condition.

5.09. No construction, land modifications or excavation, or permanent property improvements may be allowed or undertaken without State's prior express written consent. Lessee may not maintain or allow any nuisances or public



hazards on the Leased Premises, and shall be under a duty to abate or remove any activity or property constituting or contributing to a hazard or nuisance. Lessee may file a criminal complaint or institute civil proceedings to protect his right of possession and leasehold interest in the Leased Premises against trespass of other infringement of Lessee's rights by third parties.

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

5.12. 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 Leased Premises without prior approval of the State.

#### ARTICLE VI. ASSIGNMENTS

6.01. Lessee shall not assign the Leased Premises or the rights granted herein, in whole or part, to any third party for any purpose without the prior written consent of the State, which may be granted or denied in the State's sole discretion. Any unauthorized assignment shall be void and of no effect and such assignment shall not relieve Lessee of any liability for any obligation, covenant, or condition of this Lease. **THIS PROVISION, AND THE PROHIBITION AGAINST ASSIGNMENT CONTAINED HEREIN, SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION 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.

#### ARTICLE VII. PROTECTION OF NATURAL AND HISTORICAL RESOURCES

7.01. Lessee shall take no action on the Leased Premises which results in the discharge of any gas, solid or liquid material. Lessee shall use the highest degree of care and all appropriate safeguards to: (i) prevent pollution of air, ground, and water in and around the Leased Premises, and (ii) to protect and preserve natural resources and wildlife habitat. Lessee shall comply with all applicable rules and regulations of the Texas General Land Office and other governmental agencies responsible for the protection and preservation of public lands and waters. In the event of pollution or an incident that may result in pollution of the Leased Premises or adjacent property which is the result of Lessee's (or Lessee's employees, contractors, invitees and agents) acts or omissions, Lessee shall immediately notify the State, use all means reasonably available to recapture any pollutants which have escaped or may escape, and mitigate for any and all natural resources damages caused thereby.

7.02. **LESSEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966, (PB-89-66, 80 STATUTE 915; §470) AND THE ANTIQUITIES CODE OF TEXAS, CHAPTER 191, TEX. NAT. RES. CODE ANN. 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 LEASED PREMISES, LESSEE WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY STATE 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

8.01. **LESSEE ACKNOWLEDGES THAT THE UNITED STATES IS LIABLE FOR THE NEGLIGENT OR WRONGFUL ACTS OR OMISSIONS OF ITS AGENTS AND EMPLOYEES WHILE ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT TO THE EXTENT PERMITTED BY THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. § § 1346 (B), 2671-2680.**



## ARTICLE IX. DEFAULT, TERMINATION AND EXPIRATION

9.01. If, following thirty (30) days prior written notice from the State 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, the State shall have the right, at its option and its sole discretion, to terminate this Lease and all rights inuring to Lessee herein 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 the State. Such termination shall not prejudice the rights of the State 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 Leased Premises within the time specified in Section 9.01 above, fails to remove improvements placed or constructed on the Leased Premises by or behalf of Lessee pursuant to a notice by the State to do so pursuant to Section 9.01 above, or fails to remove its commercial improvements at the expiration of this Lease, then the State 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 the State may elect to own such property by filing a notice of such election pursuant to Section 51.302, *et seq.*, TEXAS NATURAL RESOURCES CODE ANNOTATED. If the State elects to remove Lessee's property and dispose of it pursuant to this section, then in such an event Lessee shall be obligated to reimburse the State for the reasonable costs of such removal and disposal within ten (10) days of State's demand for reimbursement. **THE TERMS OF THIS SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

9.03. In addition to the above, Lessee shall pay and discharge any and all taxes, general and special assessments, and other charges which during the term of this Lease may be levied on or assessed against the Leased Premises or the Improvements constructed thereon, provided such taxes result from Lessee's use of this easement. Lessee shall pay such taxes, charges, and assessments not less than five (5) days prior to the date of delinquency thereof directly to the authority or official charged with the collection thereof. Lessee shall have the right in good faith at its sole cost and expense to contest any such taxes, charges, and assessments, and shall be obligated to pay the contested amount only if and when finally determined to be owed.

**9.04. LESSEE AGREES TO AND SHALL PROTECT AND HOLD THE STATE HARMLESS FROM LIABILITY FOR ANY AND ALL SUCH TAXES, CHARGES, AND ASSESSMENTS, TOGETHER WITH ANY PENALTIES AND INTEREST THEREON, AND FROM ANY SALE OR OTHER PROCEEDING TO ENFORCE PAYMENT THEREOF.**

9.05 The Leased Premises are subject to sale or trade. The State reserves the right to permit entry by prospective or actual buyers. In the event the State enters into an agreement to sell or trade the Leased Premises, this Lease will automatically terminate upon either: (i) sixty (60) days after written notice by the State; or (ii) conveyance or award of the Leased Premises, whichever occurs later. Regardless of whether the Leased Premises are offered for sale or trade, Lessee shall have no preference right to purchase the Leased Premises or to renew or extend this Lease.

## ARTICLE X. HOLDOVER

10.01. If Lessee holds over and continues in possession of the Leased Premises after expiration or earlier termination of this Lease, Lessee will be deemed to be occupying the Leased 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 two hundred percent (200%) of the amount payable to the State by Lessee for the applicable period immediately preceding the first day of the holdover period. Lessee acknowledges that in the event it holds over, the State'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 State 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 the State, Lessee pays Consideration in excess of the amount due and payable and the State accepts such payment, the acceptance of such payment will not operate as a waiver by the State of the notice of termination unless such waiver is in writing and signed by the State. Any such excess amounts paid by Lessee and accepted by the State shall be promptly refunded by the State after deducting therefrom any amounts owed to the State.

#### 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, if for the State to the Deputy Director of Leasing Operations, addressed to 1700 North Congress Avenue, Austin, Texas 78701-1495, FAX: (512) 463-5304, and if for Lessee, to U.S. Customs & Border Protection, 150 Westpark Way, Suite 200, Euless, TX 76040-3708. Any party's address may be changed from time to time by such party by giving notice as provided above, except that the Leased 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) days after posting as herein provided.

#### ARTICLE XII. INFORMATIONAL REQUIREMENTS

12.01. A. Lessee shall provide written notice to the State 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 the State any other information reasonably requested by the State in writing within fifteen (15) days following such request or such other time period approved by the State (such approval not to be unreasonable 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 the State, its successors and assigns, 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 the State to any assignment by Lessee, but instead refers only to those instances in which an assignment is hereafter made in strict compliance with Article VI above, or in the case of a deceased natural person Lessee, refers to the instances previously referred to in this sentence and also circumstances in which title to Lessee's interest under this Lease passes, after the demise of Lessee, pursuant to Lessee's will or the laws of intestate succession. The words "hereof," "herein," "hereunder," "hereinafter" and the like refer to this entire instrument, not just to the specific article, section or paragraph in which such words appear.

13.03. Neither acceptance of Consideration (or any portion thereof) or any other sums payable by Lessee hereunder (or any portion thereof) to the State nor failure by the State 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 the State's rights hereunder. Waiver by the State 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 the State hereunder or covenant, duty or obligation of Lessee hereunder shall be deemed waived by the State unless such waiver be in writing, signed by a duly authorized representative of the State.

13.04. No provision of this Lease shall be construed in such a way as to constitute the State and Lessee joint ventures or co-partners or to make Lessee the agent of the State or make the State 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 the State ever be liable hereunder for consequential damages or special damages. The terms of this Lease shall only be binding on the State during the period of its ownership of the Leased Premises, and in the event of the transfer of such ownership interest, the State 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 the State 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. The obligation of Lessee to pay all Consideration and other sums hereunder provided to be paid by Lessee and the obligation of Lessee to perform Lessee's other covenants and duties under this Lease constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is expressly provided for in this Lease and not otherwise. Lessee waives and relinquishes all rights which Lessee might have to claim any nature of lien against, or withhold or deduct from or offset against, any Consideration or other sums provided hereunder to be paid to the State by Lessee. Lessee waives and relinquishes any right to assert, either as a claim or as a defense, that the State is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the State not expressly set forth in this Lease.

13.09. In the event any provision of this Lease is more restrictive than any administrative rule promulgated by the Texas General Land Office and/or the School Land Board, this Lease shall control.

13.10. In accordance with 31 U.S.C § 1341, 41 U.S.C. § 11, and Federal law, Lessee's responsibility under this Lease and every provision herein is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. Nothing in this Lease may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies.

#### ARTICLE XIV. FILING

14.01. Lessee shall, at its sole cost and expense, record a memorandum of lease in the Hudspeth County Real Property Records and provide a certified copy of same to State within 60 days after this Lease is executed by all parties.

#### ARTICLE XV. ENTIRE LEASE

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









VICINITY MAP  
EXHIBIT 'A'  
HUDSPETH COUNTY, TEXAS



SL20210009 - EXHIBIT 'A'

Calamity Gap

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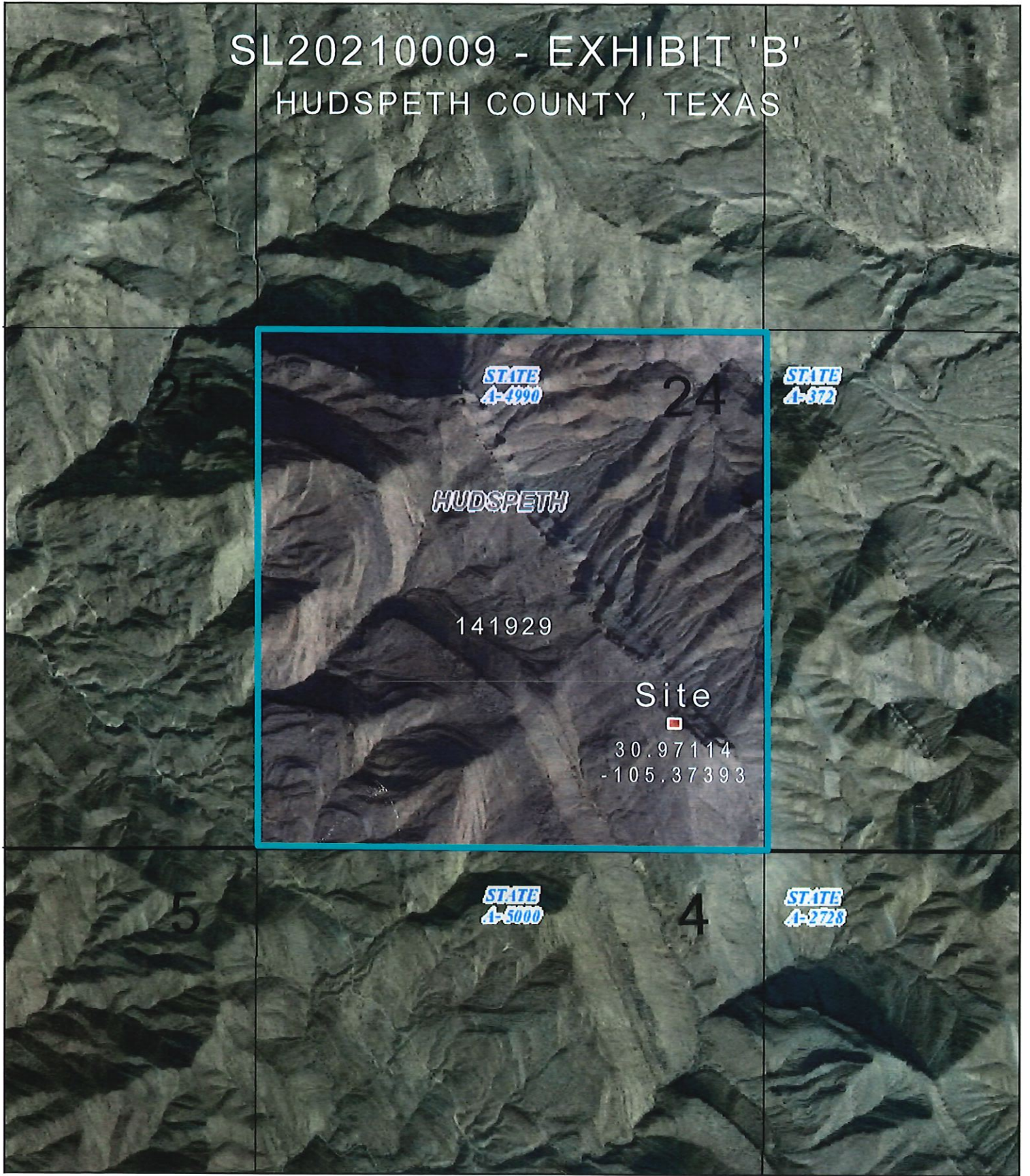


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# SL20210009 - EXHIBIT 'B'

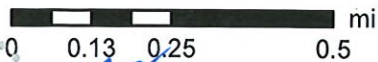
## HUDSPETH COUNTY, TEXAS



### SL20210009 - EXHIBIT 'B'

#### CALAMITY GAP

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Print Date: 12/14/2020