

STATE OF TEXAS *

COUNTY OF WEBB *

AGRICULTURAL AND HUNTING LEASE
Cuchillas and Lomas II Pastures Texas School Lands
Survey No. 1687, Abstract 1890 and being approx. 2,292.00 acres
Located 27 Miles E./U.S. Hwy 59 East/I.69 Webb County School Land Tract.

This lease is made effective on the 13th day of October 2020, by and between **WEBB COUNTY, TEXAS**, a political subdivision of the State of Texas, hereinafter referred to as **LESSOR** acting herein by and through Tano Tijerina, its County Judge, as authorized by the Commissioners Court of Webb County, Texas, and **JAMES E. KAINER**, whose address is 549 FM 960 RD., El Campo, Texas 77437 hereinafter referred to as **LESSEE**.

RECITALS

WHEREAS, the State of Texas granted LESSOR the herein described lands under Article 7, Section 7, of the Constitution of the State of Texas for educational purposes: and

WHEREAS, the LESSOR may lease said lands under authority of the Constitution of the State of Texas. Chapter 263 of the Texas Local Government Code, and Chapter 17 of the Texas Education Code; and

WHEREAS, LESSOR complied with the competitive bidding requirements of the Texas Local Government Code, Sections 263.003 and 263.007 in making this Agricultural and Hunting Lease; and

WHEREAS, LESSEE herein was duly awarded at Lessee as the high bidder for this lease at a meeting of the Webb County Commissioners Court held September 28, 2020 2015

NOW, THEREFORE, the parties hereby agree as follows:

I.
DEMISE OF PROPERTY

That LESSOR, for and in consideration of the payment of rental, herein reserved and agreed to be paid by LESSEE, and pursuant to all of the terms, covenants and conditions herein contained to be observed, kept, and performed on the part of the LESSEE, has LEASED, LET AND DEMISED unto LESSEE, The "Surface Only" of the following described land situated in Webb County, Texas, to wit: The Cuchillas and Lomas Pastures containing approximately 2,292.00 acres of land, located approximately 27 Miles

East/U.S. Hwy 59 East/I.69 Webb County School Land (W.C.S.L.), Tract, granted to Webb County, Texas as School Lands by the State of Texas being Survey No's. 1687 & 577, Abstract 1890, & Abstract 911, in said County, and located approximately 27 miles east of the City of Laredo on U.S. Hwy. 59 E, a/k/a I-69. (Lessor and Lessee agree that each acknowledge of the location and boundaries of said land and each party formally waives a metes and bounds description thereof.) for agricultural grazing and hunting purposes only, and subject to the terms of any valid and subsisting oil, gas, mineral leases and geophysical exploration agreements covering said land or any part thereof now of record in Webb County, Texas, and to any oil, gas, mineral leases and geophysical exploration agreements that may be made in the future by LESSOR covering said lands, or any part thereof, on the following terms and conditions.

II. PRIMARY TERM/RENEWAL OPTIONS/CONDITION PRECEDENT

The Primary Term of the lease shall be for a period of One (1) year beginning the 13th day of October 2020, and ending on the 12th day of October, 2021. Webb County as Lessor, shall have the Sole and Exclusive Right to determine whether or not to cancel, partially renew (pro-rate), modify, terminate, the term this lease for FOUR (4) possible additional one year (1yr.) terms, commencing on October 12 2021, and each successive October 12, of each year thereafter subject to an Express Condition Precedent for the possible Webb County Renewable Energy Project Request for Proposals (R.F.P.), see Section III, below.

*****Lessee, may have the opportunity and option to renew the lease for an additional FOUR (1yr.) terms, for a combined total lease term of FIVE (5) years, subject to the express condition precedent for any renewable energy project(s) proposal(s) that may also be considered and awarded a lease by Webb County, for the exclusive, non-exclusive and/or possible concurrent future use(s) of the subject property (Cuchillas & Lomas Pastures) being the same tract of land covering this Kainer/WCSL Hunting & Grazing Lease, as approved by Webb County on Monday, October 12, 2020 as an Express Condition Precedent.**

In the event that any future one year (1yr.) renewal option is offered by Lessor, and exercised by Lessee under the same and/or revised pro-rated rental rate, term(s) and/or conditions as agreed to by the parties, provided that LESSEE provides written notice to LESSOR of LESSEE's intention to renew the lease term must not later than Five (5) months prior to the expiration of the primary and/or any possible renewal option(s).

III.

LESSOR'S SOLE RIGHT TO CANCEL/TERMINATE/EXTEND/CONDITION PRECEDENT

*****LESSOR, HEREBY RESERVES THE SOLE AND EXCLUSIVE RIGHT AND AT ITS SOLE DISCRETION TO CANCEL, TERMINATE, MODIFY, AMEND, AND/OR PRO-RATE THIS LEASE TERM, OR ANY PRIMARY AND RENEWAL AND/OR PARITAL TERM RENEWAL HEREIN, DUE TO ANY POTENTIAL, AND/OR POSSIBLE CONFLICT OF LAND USES, PUBLIC HEALTH, SAFETY, WELFARE, CONCERNS, IN REGARDS TO HUNTING & GRAZING OPERATIONS IN POSSIBLE CONFLICT OR WITH ANY POTENTIAL REWABLE ENERGY PROJECT OPERATIONS ON THE W.C.S.L. CUCHILLAS/LOMAS PASTURES/U.S. HWY 59 E. TRACT OF LAND AS AN EXPRESS CONDITION PRECEDENT, UPON LESSOR PROVIDING NOT LESS THAN SIXTY (60) DAYS WRITTEN NOTICE TO LESSEE.**

***Lessor is aware that Webb County is currently seeking Request for Proposals for a renewable energy project, such as wind and/or solar projects that would be operational within the tract of land identified in the solicitation, if approved by Webb County. Such renewable energy project may have an impact on the operation of an Agricultural Grazing and Hunting lease. Lessee acknowledges consents and agrees that he is aware that the hunting and grazing lease is for a one (1) year term only, subject to Webb County's rights in Sections II & III, herein.

***Lessee consents and agrees that he is accepting a Non-Exclusive Hunting & Grazing Lease subject to an express condition precedent for a possible renewable energy project lease that may be granted by Webb County for the use of all, part and/or portions (exclusive vs. non-exclusive use) of the subject property herein.

***Lessee consents and agrees that any proposed renewable energy project lease may have an impact on the hunting and grazing operations on this tract and the exclusive and/or non-exclusive uses of the subject property.

***For each succeeding renewal term hereafter, Lessor and Lessee agree that on or before May 31st, 2021, and on or about the same date of each possible lease renewal year term, Lessee and the Webb County's Civil Legal Division will commence formal discussions with Lessee to address and discuss the express condition precedent as to Lessor/Webb County's Sole and Exclusive Rights/Options regarding any possible future one year (1yr.) lease renewal term(s) as follows;

- a. Lessor shall decide whether or not the possible renewable energy project will impact the Lease, the Lease terms, conditions, rents, and Lessor's options for any particular lease term and/or renewal thereof.

- b. Lessor shall decide if it will offer a One year (1yr.) and/or partial year renewal option period for the upcoming hunting season/year and/or the lease term in its entirety, and/or;
- c. Lessor shall decide whether or not Lessor will elect to Cancel/Terminate/Modify/Extend and/or Partially Extend and/or Pro-Rate the lease term for that particular year and/or the lease term in its entirety and the parties agree to negotiate any such pro-rated rents on a good faith basis, based on impact on the degree of impact or limits on the Lessee's hunting and/or grazing rights of the this lease and/or any possible renewal term in the future.
- d. During the annual lease renewal evaluation process, Lessor will notify Lessee if the Webb County Commissioner's Court has elected to exercise the lease renewal option(s) due any possible renewable energy project(s) proposed for the subject property.

**IV.
RENTALS**

LESSEE shall pay LESSOR as rent \$14.52 per acre for approximately 2,292.00 total acres for the first year primary term of this lease, the ANNUAL sum of Thirty Three Thousand Two Hundred Seventy Nine & 84/100 Dollars (\$33,279.84) which amount shall be payable to LESSOR at Laredo, Webb County, Texas, and any such renewal term shall also be paid in annual rental payments in the sum of Thirty Three Thousand Two Hundred Seventy Nine Dollars & 84/100 Dollars (\$33,279.84) each. The first such installment being payable on or before the first day of the term of this lease accompanying his bid and any remaining annual rental lease payments installments being due and payable on or before each anniversary date thereafter until fully paid past due rentals shall bear interest at the rate of ten percent (10%) per annum from its due date LESSEE covenants and agrees with LESSOR to pay all installments of rent and interest incurred all rentals shall be paid to LESSOR by cashier's check payable to:

Webb County Treasurer's Office
1110 Washington St., Ste. 202
Laredo, Texas 78040

**V.
OPERATIONS ON SUBJECT PROPERTY**

Operations by LESSEE on subject property shall be limited to grazing and hunting activities. LESSEE agrees not to use all or part of the leased premises or any improvements situated upon the leased premises for day/daily hunting lease use and/or any use or purpose in violation of any valid and applicable law, regulation or ordinance of the United States, the State of Texas, or other lawful authority having jurisdiction over the leased premises.

VI. GRAZING

LESSEE is hereby granted the right to utilize the subject property for the grazing of approved livestock. LESSEE shall be allowed to sublease the subject property for grazing purposes, subject to the provisions of this section, and all other provisions of this lease. LESSEE and/or any sub-lessee shall limit its grazing operations on the subject property to cows and calves only, and no steers shall be allowed thereon. The grazing of sheep and goats on the demised property is expressly prohibited.

LESSEE, and/or any sub-lessee agrees not to cause or allow the land leased hereunder to be overstocked with cattle or animals in such a manner as to materially injure the property for such grazing purposes or to cause the land to be used in a manner that will commit waste thereon. LESSEE, and/or any sub-lessee shall stock the land so that no fewer than twenty-five (25) acres shall be allowed per cow.

VII. HUNTING

LESSEE is hereby granted the right to sublease the property for the hunting of deer and upland game birds and varmints, provided that each hunter's name, address and telephone number is submitted to LESSOR, if available, prior to subletting and is approved by LESSOR in writing. **LESSEE hereby acknowledges and covenants and agreed that DAILY/DAY LEASING for any purpose pursuant to this lease agreement shall be strictly prohibited.** LESSEE, at his sole cost and expense, shall consult with a game biologist to aid in all game surveys and harvests and to implement wildlife management and conservation practices. All game surveys, harvest records, and game biologist recommendations shall be furnished to LESSOR. Game shall be harvested in accordance with good and prudent game management plans, as directed from time to time by LESSOR and the Texas Parks and Wildlife Department. LESSEE shall conduct all hunting activities in accordance with all applicable laws, rules, requirements and proclamations of the State of Texas, the Texas Parks and Wildlife Department and the United States. LESSEE shall keep and maintain at all times proper hunting permits and harvest records and shall provide copies thereof to LESSOR as requested. LESSEE shall supervise and be responsible for all hunting conducted on the premises and shall require each hunter to execute, on forms provided by LESSOR, such releases of liability and covenants not to sue, as LESSOR desires. It is further understood and agreed by the parties hereto that violation of any game laws by LESSEE, assignees, sub-lessees or invitees shall result in the immediate termination of this lease.

**VIII.
IMPROVEMENTS**

LESSEE shall, at his sole cost and expense, replace the perimeter fences that are in poor condition. LESSEE shall contact abutting landowners regarding to participation in the cost of the replacement of the fences and in the event the abutting landowners do not participate LESSEE shall maintain and repair the fences so that they are strong enough to tum cattle. LESSEE shall, at his sole cost and expense, maintain all senderos that are adjacent to perimeter fences. Additionally, LESSEE, at his sole cost and expense, shall plow and reseed all previously prepared fields with buffel grass and millet, but not less than 365 acres, and shall maintain and repair all cattle pens. LESSEE shall, at his sole cost and expense, have the right at any time and from time to time during the term of this lease to erect, maintain, alter, remodel, reconstruct, rebuild or replace buildings or other improvements on the leased premises, including but not limited to: fences, corrals, water wells, water tanks, water lines, water storage facilities, dwellings, existing roads, as well as undertaking brush control and grass seeding measures, subject to the following general conditions:

- a. Any and all improvements (excluding routine maintenance and upkeep) must have the prior approval of LESSOR.
- b. The cost of any such work shall be borne and paid for the LESSEE.
- c. The leased premises shall at all times be kept free of mechanics and materialmen's liens.
- d. LESSOR shall be notified in writing of the time of commencement and general nature of any such work, other than routine maintenance of existing buildings or improvements, at the time of commencement.

**IX.
EXISTING IMPROVEMENTS**

LESSEE shall take good care of the leased premises and all fences and improvements thereon to the sole satisfaction of LESSOR, LESSEE shall keep all improvements and fences, at LESSEE's sole expense, and shall be required to provide liability/fire insurance coverage on all buildings and/or structures with Webb County named as additional insured party, and shall maintain and keep all such improvements in good repair and order and shall not, to the best of his ability, permit or allow waste or damage to be committed or permitted on any portion of said premises or improvements.

LESSEE agrees to maintain the fences now existing upon, across and around said property and leave them in as good a condition upon termination of this lease as they are now in, reasonable wear and tear expected. LESSEE further agrees that he will cause said fences herein leased to be maintained in such

a state as can be reasonable expected to turn cattle.

**X.
OWNERSHIP OF BUILDINGS, IMPROVEMENTS, AND FIXTURES**

All repairs, additions, equipment, fixtures and improvements made, placed or installed by LESSEE in, about or upon the leased premises (except personal property belonging to LESSEE and not attached to the premises) shall immediately become the property of LESSOR, and shall remain upon and be surrendered with the leased premises as a part thereof upon the termination or expiration of this lease.

**XI.
UTILITIES**

LESSEE shall pay or cause to be paid all charges for water, heat, gas, electricity, and all other utilities used by LESSEE on the leased premises throughout the term of this lease, including any connection fees.

**XII.
GEOPHYSICAL OPERATIONS**

LESSEE shall not interfere, in any way, with any oil, gas or other geophysical operations, or those operations relative, supportive or incidental thereto, conducted in, on or under the demised property. However it shall be the duty of the LESSEE to report to LESSOR any and all observed actual or potential violations of State or Federal law, rules and/or regulations involving any oil, gas or geophysical operations, related, supportive or incidental thereto, in aid on the property.

**XXIII.
SURFACE DAMAGES**

LESSOR hereby expressly reserves the SOLE AND EXCLUSIVE right to receive and retain any monies paid for the right of exploring and prospecting for minerals and mineral indications on the subject property. It is expressly understood that LESSEE SHALL NOT receive any for rentals or damages to the above described property, including but not limited to seismic damages, well site location damages, and pipeline right-of-way damages, and that any money paid by reason of any geophysical operation in, on or under the land described herein shall be paid to LESSOR.

**XIV.
INSPECTION BY LESSOR**

LESSEE shall permit and allow LESSOR's designated officials, agents, representatives, and officers in and upon said demised premises from time to time to inspect same.

**XXIV.
ACTUAL SETTLER**

LESSEE is not and shall not, during the term hereof, claim any rights as an "actual settler" under Section 6 of Article VII of the Constitution of the State of Texas, and LESSEE expressly disclaims such rights with respect to the leased premises.

**XXV.
INSURANCE AND INDEMNIFICATION**

Insurance on Buildings and Improvements

At all times during the term of this lease, it shall be the responsibility of LESSEE to keep all buildings and other improvements located or being constructed on the leased premises insured against loss or damage by fire, with extended coverage endorsement or its equivalent.

Liability Insurance

At all times during the term of this lease, LESSEE shall provide and keep in force liability insurance covering LESSOR, as an additional insured, and LESSEE for liability for property damage and personal injury. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by LESSEE and approved by LESSOR, and shall be paid for by LESSEE. The insurance provided pursuant to this section shall be in the amount of not less than \$100,000.00 for property damage and not less than \$500,000.00 for one person and \$1,000,000.00 for one accident or personal injury, \$2,000,000.00 for general aggregate liability insurance coverage plus \$5,000.00 for medical expense insurance coverage, together with Umbrella Liability Insurance coverage in the sum of \$1,000,000.00 for one accident or personal injury, plus \$1,000,000.00 aggregate coverage. This insurance shall protect LESSOR and LESSEE against liability to any employees or servants of LESSEE and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the leased premises.

Indemnification of Lessor

LESSOR shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the leased premises, or any part of the leased premises, or caused by any defect in any building, structure improvement, equipment, or facility on the leased premises or caused by or arising from any act or omission of LESSEE, or of any of its agents, employees, licensees, or invitees, or by or from any accident, fire or other casualty on the land, or occasioned by the failure of LESSEE to maintain the premises in safe condition. LESSEE waives all claims and demands on its behalf against LESSOR for any such loss,

damage, or injury, and agrees to indemnify and hold LESSOR entirely free and harmless from all liability for any such loss, damage, or injury of other persons, and from all costs and expenses arising from any claims or demands of other persons concerning any such loss, damage or injury.

**XXVI.
SALE OF SUBJECT PROPERTY**

This lease is subject to the condition that LESSOR reserves the right to sell the land covered hereby or any part thereof, and any such sale may, at LESSOR's option, be either subject to this lease or free and clear thereof; in which latter event LESSEE shall be refunded the proportionate part of unearned installments of rentals previously paid, and shall be given a reasonable time within which to remove his stock and personal property from the premises.

**XXVII.
ABANDONMENT OF LESSEE**

In the event said demised premises is abandoned or vacated by LESSEE, LESSOR shall have the right but not the obligation, to lease the same for the remainder of the period covered hereby; and if rent is not received through such leasing in an amount at least equal to the rent provided for hereunder, LESSEE shall pay and satisfy any deficiency which might exist between the amount of rent herein provided for and that received through such leasing, and shall expenses incurred by LESSOR by any reason thereof. LESSOR shall have the right to treat such abandonment or vacation of the premises as a breach of this agreement, and LESSOR may, at its option, enforce any and rights granted to it hereunder including, but not limited to, termination of this lease.

**XXVIII.
TERMINATION ON DEFAULT**

In the event LESSEE shall make default in the payment of any installment of rent when due, or in the performance or observance of, any of the covenants and conditions herein contained, LESSOR may, at LESSOR's discretion; declare this lease terminated, and LESSOR's agents, officers and representatives shall have the power to immediately enter upon and hold, occupy and repossess by law and expel and remove LESSEE and all persons or property occupying said premises, using such force and means as LESSOR may consider necessary without being liable to LESSEE for any damages that might be considered thereby.

XXIX.

POSSESSION AT TERMINATION

LESSEE shall at the termination of this lease by lapse of time or otherwise, surrender and yield to LESSOR immediate peaceful possession together with all additions and improvements thereto, in good condition, reasonable and ordinary wear and tear expected.

XXX.

CUMULATIVE REMEDIES

All rights, interests, privileges and remedies herein contained as well as existing by statute, in law and in equity, shall be cumulative and not exclusive; LESSOR shall have the authority to pursue such rights, remedies and privileges as it desires and in such order as it might elect.

XXXI.

LEGAL CONSTRUCTION

If it shall be determined that any of the agreements or provisions hereof are invalid, illegal or unenforceable, the same shall not affect the other terms, covenants or agreements herein contained, and this agreement shall be construed as if the invalid, illegal or unenforceable provision(s) had never been contained in the lease.

XXXII.

BANKRUPTCY

Neither bankruptcy, insolvency, assignment for the benefit of creditors, nor the appointment of a receiver shall affect his lease so long as LESSEE and LESSOR or their respective successors or legal representatives continue to perform all covenants of this lease.

XXXIII.

WAIVER

No waiver by either party of any default or breach of any covenant, condition or stipulation contained in this lease shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation of this lease. No act or omission of any official, agent, servant, officer or employee of LESSOR shall act as a waiver of any term or condition herein unless authorized by proper order of the Commissioners Court of Webb County, Texas.

XXXIV.

ASSIGNMENTS/SUB-LEASES

Except as provided herein, LESSEE shall not assign mortgage, pledge or hypothecate all or any portion of this lease or sublet said demised premises in whole or in part are use any portion of said demised premises for any purpose of business other than the purpose for which the premises are leased as stated above, without first obtaining the written consent of the Commissioner's Court of Webb County, Texas.

XXXV.

PARTIES BOUND

This agreement shall be binding upon and inure to the benefit of the parties to the lease and the terms hereof shall extend to the assigns of LESSOR, and to the heirs, personal representatives, assigns and subtenants of LESSEE, provided, however, that LESSEE shall not assign or sublet any rights hereunder without previous written consent of LESSOR as hereinabove set out.

XXVI.

PRIOR AGREEMENTS

This agreement constitutes the sole and only agreement of the parties to the lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this lease.

XXVII.

MODIFICATIONS

This contract may not be modified changed or altered except by written agreement by both parties and approved by order of the Commissioner's Court of Webb County, Texas.

XXVIII.

APPLICABLE LAW/VENUE

This contract is made and entered into in Laredo, Webb County, Texas, and shall be performable at Laredo, Webb County, Texas. The laws of the State of Texas shall apply to any dispute hereunder, and the exclusive venue for any litigation shall lie exclusively in Webb County, Texas.

XXIX.
NOTICES

Any and all notices required to be given under this contract shall be delivered by either personal deliver or mailing to the respective party as follows:

To Lessor:

Webb County Judge/County Treasurer
1000 Houston St./3rd Floor
Laredo, Texas 78040

Webb County Civil Legal Division- Attn:
Webb County General Counsel
1000 Houston St./2rd Floor
Laredo, Texas 78040

To Lessee:

Mr. James E. Kainer
549 F.M. 960 Rd.
El Campo, Texas 77437-5390
(979) 541-9344 (cell)
(979) 543-6137 (home)

IN WITNESS WHEREOF, Webb County, Texas has caused this instrument to be executed in its behalf by Hon. Tano E. Tijerina, its Webb County Judge, duly authorized by the Commissioner's Court of Webb County, Texas, on this ____ day of November, 2020.

LESSOR/WEBB COUNTY, TEXAS

LESSEE:

Tano E. Tijerina
Webb County Judge
Date: _____

James E. Kainer
Date: _____

ATTESTED:

Margie Ramirez-Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Ray Rodriguez
Assistant General Counsel
Webb County Civil Legal Division*

*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

**RFP 2020-013 Passed and approved by the Webb County Commissioners Court
September 28, 2020; item no. 32/RFP 2020-013/W.C.S.L./Cuchillas-Lomas U.S. Hwy 59 E.**

**H&G Lease Execution Passed and approved by the Webb County Commissioners Court
November 9th, 2020; Item no. /H&G Lease Kainer/RFP 2020-013/W.C.S.L./Cuchillas-Lomas U.S. Hwy 59 E.**