

STATE OF TEXAS §
COUNTY OF HIDALGO §

INTERLOCAL AGREEMENT

This Agreement made and entered into on this the ____ day of _____, 2008, by and between the COUNTY OF HIDALGO, TEXAS, a municipal corporation with its principal office situated at Edinburg, Hidalgo County, Texas 78539 (“County”), and the CITY OF EDINBURG, TEXAS, a home-rule municipal corporation situated in Edinburg, Hidalgo County, Texas (“Edinburg”) for the purpose of setting forth the agreement between parties, whereby City desires to contract with County subject to the terms and conditions of this Agreement.

WHEREAS, City operates a recycling center located in the City of Edinburg, Hidalgo County, Texas; and

WHEREAS, the City desires to continue its recycling operation in the City of Edinburg, Texas; and

WHEREAS, County has agreed to provide certain property to City for the purpose of allowing City to continue the City’s operation of the recycling center in the City of Edinburg, Texas, such property more particularly described on Exhibit “A” attached hereto (the “Leased Premises” or “Premises”), on the following terms and conditions:

NOW, THEREFORE, in consideration of the foregoing and the following, City and County hereby agree as follows:

I. DEMISE OF PREMISES

In consideration of the mutual covenants and agreements set forth in the Agreement, and other good and valuable consideration, County does hereby demise and lease to City, and City does hereby lease from County, the Premises.

City is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and amenities belonging to or in any way appertaining to the Premises, including, but not limited to, any and all easements, rights, title, and privileges of County, existing now or in existence at any time during the lease term, in, to or under adjacent streets, sidewalks, alleyways, party wall, and property contiguous to the Premises and reversions which may later accrue to County as owner of the Premises by reason of the closing of any street, sidewalk or alley.

II. TERM

2.01. This agreement shall be for a term of ten (10) years, referred to herein as the Term, commencing on _____, 2008 and ending on _____, 2018 (the "Termination Date"), subject however, to earlier termination as provided in this Agreement, or unless renewed and extended in accordance with Paragraph 2.02 hereof.

2.02. City shall have the right and option to renew and extend the term of this Agreement for one (1) ten-year term. If City desires to renew and extend the term of this Agreement for the additional one (1) ten-year term, City must give County written notice of such renewal at least sixty (60) days prior to the last day of the then existing term. Any renewal or extension of this Agreement shall be on the same terms and conditions as provided herein. This Agreement shall terminate and become null and void without further notice on the expiration of the term specified in Section 2.01, unless sooner terminated or renewed and extended in accordance with this Paragraph 2.02, and any holding over by City after the expiration of any such term shall not constitute a renewal of this Agreement or give City any rights under this Agreement in or to the Premises.

III. RENT

3.01. Lessee agrees to pay to Lessor the sum of TEN AND NO/100THS DOLLARS (\$10.00) as rental for the term of this Agreement.

Time and Manner of Payment

3.02. All rent due under this Article shall be paid by City in advance, on the first business day of the first month of the Term. All installments of rent shall be paid in lawful money of the United States to the County of Hidalgo, Attention: County Judge, at Edinburg, Texas 78539, unless and until County notifies City in writing to make payments to any other location.

IV. TAXES

City shall pay and discharge all taxes, general and special tax assessments, and other charges which are levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on the Premises during the term of this Agreement, whether belonging to County or to City, City shall pay all such taxes, charges and assessments directly to the public officer charged with their collection not less than twenty-five (25) days before the same shall become delinquent.

V. UTILITIES

City shall pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the Premises throughout the term of this Agreement, including any connection fees.

VI. USE OF PREMISES

6.01. City shall have the right to use the Premises solely for the purpose of a recycling center drop-off point. In this connection, it is understood and agreed that City

shall not permit the use of the Premises for storage of any material in excess of sixty (60) days.

Illegal Use Not Permitted

6.02. City agrees not to use any part of the Premises or any structure situated or to be situated upon the Premises for any use or purpose in violation of any applicable law, (including any Hazardous Waste Law), regulation or ordinance of the United States, the State of Texas, County of Hidalgo, or the City of Edinburg or other lawful authority having jurisdiction over the Premises.

(a) Without limiting the foregoing, the term "Hazardous Waste Law" shall mean any provision of Federal, State or Local law or regulation or common law, in effect on the date hereof (and as hereafter amended from time to time) or hereafter enacted or imposed, pertaining to health, safety or environmental protection, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, and the Texas Water Code and the Texas Solid Waste Disposal Act. The term "environment" means any surface or groundwater, drinking water supply, land, surface or subsurface strata or the ambient air. The term "release" means spilling, leaking, dumping or disposing into the environment.

(b) City represents and warrants to County that (i) City will not be involved in operations at or near the Leased Premises, which operations could lead (A) the imposition of liability under any Hazardous Waste Law on County, or on any subsequent owner of the Leased Premises, or (B) the creation of a lien on the Leased Premises under any Hazardous Waste Law or under any similar laws or regulations.

(c) To the extent allowable by Texas Law, City agrees to indemnify County against and agrees to defend and hold County harmless from any claim, obligations, liability, loss, damage or expense (including, without limitation, attorney's fees and court costs) or whatever kind or nature, contingent or otherwise, known or unknown, accruing after the execution date of this Agreement, (i) that is incurred or imposed based upon any Hazardous Waste Law and that arises out of any act or omission of City, its employees, agents or representatives that causes the release of any substance into the environment, that arises out of the use, control or operation by City or any area within the Leased Premises from which any substance is released into the environment, or (ii) that otherwise arises from the breach by City of any representation, warranty or covenant made by City in this Agreement relating to the use, storage or disposal of hazardous materials.

(d) County warrants that it is not aware, after reasonable inquiry, of any potential hazardous waste law under Federal, State, or Local Law violations.

Clean-up by City

6.03. City will comply with all governmental regulations, laws, rules and ordinances, all industry standards and insurance requirements, all a City's sole cost, expense and risk. Prior to the end of the term of this Agreement, or within thirty (30) days of the termination of this Agreement if this Agreement terminates for any reason prior to the Termination Date, City will perform all necessary clean-up, testing and backfilling necessary to assure that the Leased Premises is not contaminated with any gasoline, petroleum product or hazardous material or in violation of any Hazardous Waste Law, and restore any such areas to grade. City will, without limiting the generality of the foregoing, test the Lease Premises (including subsurface soil and will

deliver copies of the testing report showing no contamination on the site to County). To the extent allowable under Texas Law, City agrees to indemnify and hold County harmless against any and all cost, expense and liability arising from the location, maintenance or operation of the recycling center on the Leased Premises (whether existing on the Leased Premises as of the date of the execution of this Agreement or installed during the tenancy provided for under this Agreement) including, without limitation, any leaks therefrom or contamination of the Premises or adjacent property therefrom. As of the execution of this contract, County represents that it does not know of any hazardous conditions that would violate the provisions of this section 6.03.

VII. GENERAL CONDITIONS

7.01. City shall have the right at any time and from time to time during the term of this Agreement, to erect, maintain, alter, remodel, reconstruct, rebuild, replace, and remove buildings and other improvements on the Leased Premises, and correct and change the control of the Leased Premises, subject to the following general conditions:

- a. The cost of any such work shall be borne and paid by the City.
- b. The leased Premises shall at all times be kept free of mechanics' and materialmen's liens.
- c. County shall be notified of the time of commencement and the general nature of any such work, other than routine maintenance of existing buildings or improvements at the time of commencement.
- d. The provisions of Article 7.04 concerning County's approval of plans shall be followed.

Ownership of Buildings, Improvements, and Fixtures

7.02 Subject to the provisions of Article 7.04 hereof, any and all buildings, improvements, additions, alterations, and fixtures, except furniture and trade fixtures,

constructed, placed, or maintained on any part of the Leased Premises (the "Improvements") during the Term shall be considered part of the real property of the Premises and on termination of this Agreement shall at County's option either remain on the Premises and become the property of County, or removed at City's expense. If County elects for City to remove the improvements, City shall, at City's expense, restore the real property to grade.

Termination Prior to End of Ten-Year Term

7.03 Should County elect to terminate this Agreement other than for a default by City under Article 13 of this Agreement during the ten year term of this Agreement ("the Primary Term") then County shall pay the City's pro rata share ("Share", as hereinafter defined) of construction investment (the "Investment") in the Leased Premises. Investment shall mean the sum of \$60,000 regardless of whether City's actual cost equals such sum. Share shall mean, for the purpose of computing the dollar amount due City by County under this Article 7.03, the Investment multiplied by a fraction, the numerator of which is the number of days remaining in the Primary Term and the denominator of which is 365.

Right to Remove Improvements

7.04 City shall have the right at any time during City's occupancy of the Leased Premises, or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment or other fixtures owned or placed by City, its subleases, in, under or on the Leased Premises, or acquired by City, whether before or during the term hereof, provided, however, that prior to the termination of this Agreement, City must repair any damage to the Improvements on the Premises resulting from their removal if

County elects under its option in Article 7.02 of this Agreement for the Improvements to remain on the Leased Premises. In the event any items other than the Improvements which are not removed or required by County to be removed by the termination date of this Agreement shall become the property of County as of that date.

VIII. ENCUMBRANCE OF LEASEHOLD ESTATE
City's Right to Encumber

8.01. City may not, at any time, encumber the leasehold interest, by deed of trust, mortgage, to any of those enumerated or not, the time for commencing or completing, or both, of the restoration will automatically be extended for the period of each such delay.

IX. REPAIRS, MAINTENANCE AND RESTORATION
City's Duty to Maintain and Repair

9.01. At all times during the term of this Agreement, City will keep and maintain, or cause to be kept and maintained all buildings and improvements which may be erected on the Leased Premises in a good state of appearance and repair, reasonable wear and tear excepted, at City's own expense.

Damage or Destruction

9.02. In the event any building or improvement constructed on the Leased Premises is damaged or destroyed by fire or any other casualty, regardless of the extent of such damage or destruction, City shall, within sixty days (60) from the date of such damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed building or improvement and pursue the repair, reconstruction or replacement with reasonable diligence so that the improvements shall be restored to substantially the condition it was prior to the happening of the casualty; provided, however, that if commencement or completion of this restoration is prevented or delayed by reason of

war, civil commotion, acts of God, strikes, governmental restrictions or regulations, or interferences, fire or other casualty, or any other reason beyond the control of City, whether similar to any of those enumerated or not, the time for commencing or completing, or both, of the restoration will automatically be extended for the period of each such delay.

X. LIENS

10.1 City shall not cause or permit any mechanic's liens or other liens to be filed against the fee of the Leased Premises or against City's leasehold interest in the land or any buildings or improvements on the Leased Premises by reason or any work, labor, services, or materials supplied or claimed to have been supplied to City or to anyone holding the Leased Premises or any part of them through or under City. If such a mechanic's lien or materialman's lien is recorded against the Leased Premises or any buildings or improvements on the Premises, City shall either cause the same to be removed or, if City in good faith desires to contest the lien, they shall take timely action to do so at City's sole expense. If City contests the lien, to extent allowable under Texas Law, City agrees to indemnify County and hold County harmless from all liability for damages occasioned by the lien or the lien contest and shall, in the event of a judgment of foreclosure on the lien, cause the lien to be discharged and removed prior to execution of the judgment.

XI. INSURANCE AND INDEMNIFICATION Insurance on Buildings and Improvements

11.01. At all times during the term of this Agreement, City shall 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. The insurance shall be carried by insurance companies authorized to transact business in Texas, selected by City and approved by County and any Lender under Article 8 of this Agreement. The insurance shall be paid for by City and shall be in amounts not less than eighty percent (80%) of the fair insurable value of the buildings and other improvements. Such policy or policies of insurance shall name both County and City as a named insured and shall provide that any loss shall be payable solely to City, which sum City shall use for repair and restoration purposes. Should City not repair and restore the Leased Premises within six (6) months from the date of any such loss, then notwithstanding any provision herein to the contrary, County may terminate this Agreement without penalty or notice. Should such termination of this Agreement occur under this Article 11.01, City shall comply with all covenants and agreements imposed on City under this Agreement related to or connected with City's obligations on termination of this Agreement related to or connected with City's obligations on termination of this Agreement.

Liability Insurance

11.02. At all times during the term of this Agreement, City shall provide and keep in force during the term of this Agreement, liability insurance covering County and City for liability for property damage and personal injury. This insurance shall be carried by one or more insurance companies selected by City and approved by County Judge, shall be paid for by City. The insurance provided pursuant to this section shall be in the amount of not less than \$2,000,000 per occurrence/\$4,000,000 aggregate. This insurance shall protect County and City against liability to any employees or servants of City 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 or the Leased Premises.

11.03. Lessee agrees to obtain and maintain (to the extent reasonably procurable) construction liability insurance at all times when demolition, excavation, or construction work is in progress on the Premises. This insurance shall be carried by insurance companies authorized to transact business in the State of Texas, selected by City and approved by County, and shall be paid for the City. The insurance shall have limits of not less than \$2,000,000 per occurrence/\$4,000,000 aggregate, and shall protect County and City, as well as any other person or persons City may designate, against all liability for injury or damage to any person or property in any way arising out of demolition, excavation or construction work on the Premises.

Certificates of Insurance

11.04. City shall furnish County with certificates of all insurance required by this Article. City agrees that if it does not keep this insurance in full force and effect, County may notify City of this failure, and if City does not deliver to County certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, County may, at its option, take out and/or pay the premiums on the insurance needed to fulfill City's obligations under the provisions of this Article. Upon demand from County, City shall reimburse County the full amount of any insurance premiums paid by County pursuant to this section, with interest at the rate of ten percent (10%) per annum from the date of County's demand until reimbursement by City.

Indemnification of County

11.05. County 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 City, 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 City to maintain the Premises in safe condition. City waives all claims and demands on its behalf against County for any such loss, damage, or injury and to extent allowable under Texas Law, agrees to indemnify and hold County entirely free and harmless from all liability for any such loss, damage, or injury of other persons, and from all cost and expenses arising from any claims or demands of other persons concerning any such loss, damage, or injury.

XII. ASSIGNMENT AND SUBLEASE

12.01. City may not sell or assign its leasehold estate in its entirety or any portion of it, or sublet the Leased Premises or any portion of them or any portion of any building or other improvement erected on the Premises without County's prior written consent.

XIII. DEFAULT AND REMEDIES **Termination on Default**

13.01. Should City default in the performance of any covenant, condition, or agreement in this Agreement, and not correct the default within sixty (60) days after receipt of written notice (the "cure period") from County to City, the County may declare this Agreement, and all rights and interests by it, to be terminated. If the default involves cleaning a hazardous condition or an environmental problem, then upon written

request by the City to the County within the 60-day cure period, if the City shows evidence that a diligent effort is being made to provide a curing of the default but additional time is needed, the County shall consider granting a reasonable extension of the cure period, not to exceed sixty (60) days. Such an extension shall not be unreasonably withheld. Upon the expiration of the cure period, this Agreement shall cease and come to an end as if the end of the cure period were the day originally fixed in this Agreement for its expiration. County or County's agent or attorney may resume possession of the Premises.

Other Remedies

13.02 Any termination of this Agreement as provided in this Article shall not relieve City from the payment of any sum or sums that are due and payable to County under this Agreement at the time of termination, or any claim for damages then or previously accruing against City under this Agreement, and any such termination shall not prevent County from enforcing the payment of any such sum or sums or claims for damages by any remedy provided for by law, or from recovering damages from City for any default under this Agreement. All rights, options and remedies of County contained in this Agreement shall be construed and held to be cumulative, and not one of them shall be exclusive of the other, and County shall have the right to pursue any one or all such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement. No waiver by County of a breach of any of the covenants, conditions, or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

XIV. TERMINATION BY COUNTY WITHOUT CAUSE

14.01. County may, if applicable, terminate this Agreement without cause upon eighteen (18) months written notice to the City. Should County elect to terminate this Agreement without cause under this Article 14.01, City shall nevertheless comply with all covenants and agreements under this Agreement imposed on City related to or connected with City's obligations or termination of this Agreement.

XV. COUNTY'S WARRANTIES AND COVENANTS **Warranty of Title**

15.01. County hereby represents and warrants that it is owner in fee simple absolute of the Leased Premises, subject only to the following covenants, conditions, restrictions, easements and other matter of record.

Warranty of Quiet Enjoyment

15.02. County covenants and agrees that as long as City pays the rent and other charges as provided in this Agreement and observes and keeps the covenants, conditions, and terms of this Agreement, City shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of this Agreement without hindrance or molestation by County or any person claiming under County.

XVI. GENERAL PROTECTIVE PROVISIONS **Right of Entry and Inspection**

16.01. City shall permit County of County's agents, representatives, or employees to enter on Leased Premises for the purpose of inspection, determining whether City is in compliance with the terms of this Agreement, maintaining, repairing or altering the Premises, or showing the Leased Premises to third parties.

No Partnership or Joint Venture

16.02. The relationship between County and City at all times shall remain solely that of landlord and tenant and not to be deemed a partnership or a joint venture.

Force Majeure

16.03. It is expressly understood and agreed that if the construction of the building provided for in Article 7 of this Agreement or the curing of any default (other than failure to pay rent, insurance premiums, or ad valorem taxes) or the performance of any other covenant, agreement, obligations, or undertaking contained in this Agreement is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire or other casualty, or any other circumstances beyond City's control or beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, each party so delayed shall be excused from doing or performing the same during the period of delay.

No Waiver

16.04. No waiver by either party of any default or breach of any covenant, condition or stipulation contained in this Agreement shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation of this Agreement.

XVII. MISCELLANEOUS

Delivery of Rents and Notices

17.01. All rents or other sums, notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered,

postage prepaid, to the addresses stated in this section and shall be deemed to have been given at the time of personal delivery or at the time of mailing.

All payments notices, demands, or requests from City to County shall be given or mailed to County to the attention of County Judge, Hidalgo County Courthouse, Edinburg, Texas 78539, or such other address as requested by County in writing.

All payments, notices, demands, or requests from County to City shall be given or mailed to City to the attention of City Manager, P.O. Box 1079, Edinburg, Texas 78540.

Parties Bound

17.02. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns.

Texas Law to Apply

17.03. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Agreement are performable in Hidalgo County, Texas.

Legal Construction

17.04. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Prior Agreements Superseded

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

Amendment

17.06. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

Rights and Remedies Cumulative

17.07. The rights and remedies provided by this agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. The rights and remedies provided in this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Attorney's Fees and Costs

17.08. If as a result of a breach of this Agreement by either party, the other party employs an attorney or attorneys to enforce its rights under this Agreement, then the breaching party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce this Agreement.

Time of Essence

17.09. Time is of the essence of this Agreement.

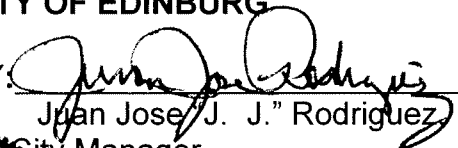
Further Documents

17.10. County agrees that it will from time to time and at any reasonable time execute and deliver to City other and further instruments and assurances as City may reasonably request, approving, ratifying and confirming this Agreement and the

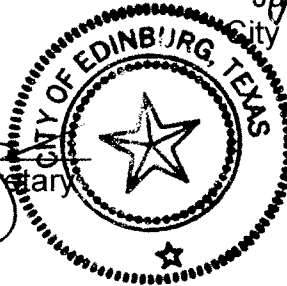
leasehold estate created by this Agreement and certifying that this Agreement is in full force and effect and that no default under this Agreement on the part of City exists, except that if nay default on the part of City does exist, County shall specify in any such instrument each such default.

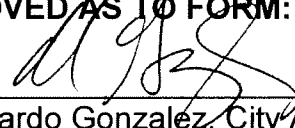
IN WITNESS WHEREOF, EXECUTED by the City of Edinburg and the County of Hidalgo, Texas, acting under the authority of their respective governing bodies in duplicate originals on the date indicated above.

CITY OF EDINBURG

BY: 
Juan Jose "J. J." Rodriguez
City Manager

ATTEST:
BY: 
Myra L. Ayala Garza, City Secretary



APPROVED AS TO FORM:
BY: 
Ricardo Gonzalez, City Attorney

COUNTY OF HIDALGO

BY: _____
J.D. Salinas, County Judge

ATTEST:
BY: _____
Arturo Guajardo Jr., County Clerk

INTERLOCAL AGREEMENT: CITY OF EDINBURG AND HIDALGO COUNTY
(Property for Recycling Center)

I-08-268-10-28

APPROVED AS TO FORM:
Atlas & Hall, LLP

BY: _____
Stephen L. Crain

APPROVED BY COMMISSIONERS COURT: 10/28/08

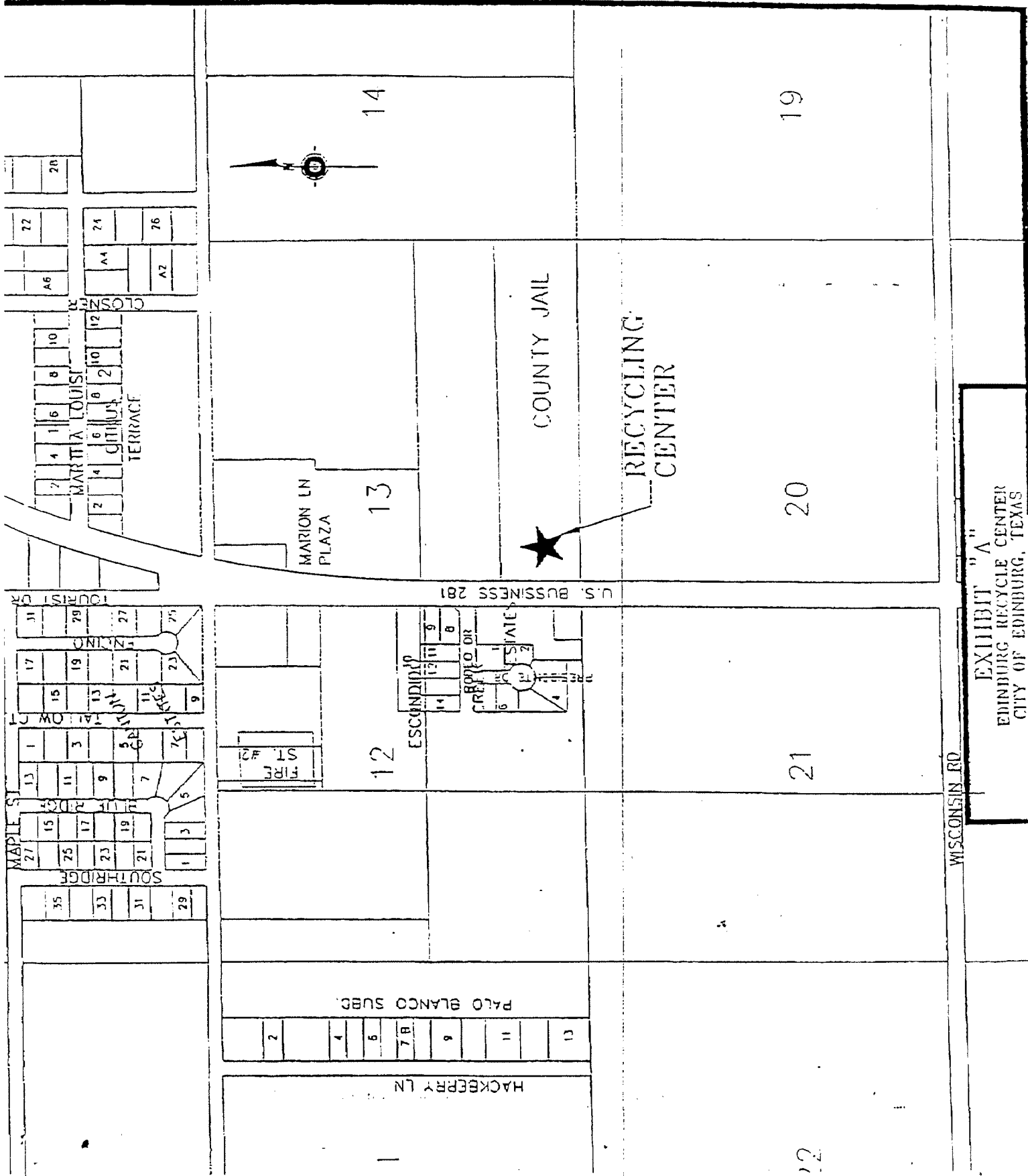


EXHIBIT "A"
 EDINBURG RECYCLE CENTER
 CITY OF EDINBURG, TEXAS