

**DEPARTMENT OF SOLID
WASTE MANAGEMENT**



RFP REQUEST

LEASE 400 ACRES OF AGRICULTURAL LAND

RFP # 2014-019

**RFP DUE DATE: Tuesday, September 02, 2014
DUE TIME: 3:00 P.M., C.S.T.**

**CITY OF EDINBURG
415 W. UNIVERSITY
P.O. BOX 1079
EDINBURG, TEXAS 78540**

LEASE 400 ACRES AGRICULTURAL LAND
LOCATED NORTH OF EDINBURG, TEXAS
EDINBURG REGIONAL SANITARY LANDFILL
PROPOSAL NUMBER: 2014-019

PROPOSALS MUST BE RECEIVED AT OR BEFORE: 3:00 PM on September 02, 2014

PROPOSALS WILL BE PUBLICLY OPENED: 3:30 PM on September 02, 2014

City of Edinburg invites interested parties and qualified farmers to submit proposals to lease approximately 400 +/- acres agriculture land for Agricultural Crop production on The City of Edinburg's Regional Sanitary Landfill property on US Highway 281, 7 Miles north of Edinburg, Texas.

PROPOSAL SUBMISSION

Proposal packets may be obtained from the:

City of Edinburg Purchasing
415 West University Drive
Edinburg, Texas, 78541

Between the hours of 8:00 A.M. and 5:00 P.M. or may be downloaded from our website:

www.cityofedinburg.com

Addendums, if any, will be posted to the city website. These must be acknowledged on the Request for Proposal Form (included herein).

The City of Edinburg reserves the right to reject any or all proposals and to accept any proposal that best serves its needs and is in the best interest of the city

DEADLINE: Proposals must be received in the City of Edinburg , City Secretary Department at or before the date and time set forth above. Proposals will be publicly opened at the date and time set forth above or soon thereafter in the City of Edinburg Purchasing Department.

METHODS: Sealed Proposals may be hand-delivered or mailed to the

City of Edinburg
C/O CITY SECRETARY
RFP 2014-019 – LEASE OF 400 ACRES OF AGRICULTURAL LAND
415 W. University Drive
Edinburg, Texas 78541

no later than 3:00 P.M. on Tuesday September 02, 2014. Late proposals will not be accepted.

FAX/EMAIL: Facsimile and electronic mail transmittals will not be accepted.

SCOPE OF WORK

This proposal will provide for a five year lease on the land beginning on the day the bid for this proposal has been awarded and ending September 30, 2019. The land lease is based upon the current condition of the land. The land is 400 +/- acres with the most recently cut crop of grain. The primary access for this land is from FM 2812.

In the event the City requires the use of the property, for either surface or sub-surface, evaluations during this lease period, the city reserves the right to modify the lease as necessary to accommodate its needs. In doing so, the city will consider ways to minimize the impact upon crop farming operations.

During the term of the lease, the lessee will be responsible for paying the city a lease fee once a year for five years for the use of the land with the first payment due November 1, 2014 and each subsequent payment being November 1 of each subsequent year with the final payment being due November 1, 2018. During the term of the lease, the lessee will also be responsible for: maintaining overgrowth of weeds along the within the property; any improvements that may be necessary to maintain crop farming operations; and notifying the city of issues that may arise.

PROPOSAL REQUIREMENTS

SUBMITTAL: Submit one (1) original Proposal and two (2) copies consisting of the COMPLETED AND SIGNED Proposal Form and any other required documentation. (Attachment #1)

SEALED: All Proposals should be returned in a sealed envelope with the Proposal name, number and Vendor Name clearly marked on the outside. If an overnight delivery service is used the Proposal name, number and Vendor Name should be clearly marked on the outside of the delivery service envelope.

REFERENCES: City of Edinburg requires Proposer to supply with this Proposal a list of at least three (3) references of whom Proposer has leased farm and/or grazing land from in the past. Include name of reference, address, telephone number and name of representative.

LEGIBILITY: Proposals must be legible and of a quality that can be reproduced.

FORMS: All Proposals should be submitted on the forms provided in this Request for Proposal. Changes to forms made by Proposer shall disqualify their Proposal.

LATE PROPOSAL: Proposals received after submission deadline will not be opened and will be considered void and unacceptable. City of Edinburg is not responsible for lateness of mail, courier service, etc.

RESPONDENTS QUALIFICATIONS/RESPONDSIBILITY: A prospective Proposer must affirmatively demonstrate responsibility and must meet the following requirements:

- a) have adequate financial resources, or the ability to obtain such resources as required;
- b) be able to comply with the required lease payment;
- c) have a satisfactory record of performance in agriculture;
- d) be otherwise qualified and eligible to receive an award of said land lease.
- e) provide proof of Liability Insurance Coverage, limits as stated, with the City of Edinburg as additionally insured. (Insurance must accompany Bid)

Please complete Attachment 2; (Application) in order to assist the City of Edinburg to determine Proposer's ability to meet these minimum standards listed above.

AWARD

SIXTY DAYS: Awards should be made within approximately sixty (60) days after the Proposal opening date. Results may be obtained by contacting the Purchasing Contact.

REJECTION OR ACCEPTANCE: It is understood that the City Council of City of Edinburg, Texas, reserves the right to accept or reject any and/or all Proposals for the offering covered in this Proposal request, and to waive informalities or defects in the Proposal or to accept such Proposal it shall deem to be in the best interest of City of Edinburg.

CONTRACT/LEASE AGREEMENT: This Proposal, when properly accepted by City of Edinburg, shall constitute a contract equally binding between the Selected Proposer and City of Edinburg.

The Selected Proposer shall be required to execute a formal Farm Lease at the City's offices in Edinburg, Texas within ten (10) days after the Proposer has been notified that it/he/she has been selected. Said Farm Lease shall be in the same form as the lease that is attached hereto and marked Attachment 3, Farm Lease. The only anticipated changes in the attached Farm Lease will be to include additional exhibits, to fill in blanks to identify the Proposer as the lessee, insert terms relating to the rent, and/or to revise the Farm Lease to accommodate corrections and changes required by the City.

Proposers should raise any questions regarding the terms of the attached Farm Lease, or submit requested changes in said terms, in the form of written questions or submittals, prior to the deadline for the submittal of Proposals. Because the signed Farm Lease will be substantively and substantially derived from the attached Farm Lease, each Proposer is urged to seek independent legal counsel as to any questions about the terms, conditions or provisions contained in the attached Farm Lease before submitting a Proposal. Again, the attached Farm Lease contains important legal provisions and is considered part and parcel of this Request for Proposals. Failure or refusal to the attached Farm Lease shall be grounds for the County to revoke selection of a Proposer and select another Proposer.

The terms of this contract (this Proposal when properly accepted by City of Edinburg) and the Farm Lease shall be collectively referred to herein as the "Lease Agreement." If, after the Proposer executes the Farm Lease, there is a conflict between the terms and conditions of this contract and the Farm Lease, the terms and condition of the Farm Lease shall control.

CONTRACT ADMINISTRATION: Under the Lease Agreement, Ramiro Gomez, City of Edinburg Solid Waste Management Director (or successor), shall be the contract administrator with designated responsibility to ensure compliance with the requirements of the Lease Agreement, such as but not limited to, acceptance, inspection and delivery. The contract administrator will serve as liaison between City of Edinburg City Council and the Selected Proposer.

DURATION & TRANSFERABILITY OF LEASES: The term of each lease will be a Three (3) year lease with two additional one (1) year extensions. The City is not responsible for any forward contracts for commodity sales entered into by the Lessee.

No transfer or sublet of the right to occupy and operate a farm property is allowed unless the City approves such transfer or sublet. Such approval will be assessed upon consideration of whether such transfer or sublet will be to the benefit of the City. It will also be contingent upon the lessee and transferee satisfactorily demonstrating that such a change will result in equal or superior operation of the farm property and no economic harm will be done to the City.

If a Lessee becomes unable to fulfill the obligations of his or her lease, for whatever reason, the Lessee or lessee's agent) must transfer or sublet the remaining leasehold interest as described above, or relinquish the remaining interest directly back to the City.

CONTRACT PERIOD: The Initial Term of the Farm Lease shall be three (3) years, commencing October 1, 2014 (the "Commencement Date") and terminating on the 30th day of September, 2017 (the "Termination Date"), unless sooner terminated in accordance with the Farm Lease

CONTRACT EXTENSIONS: On or before the termination date the City of Edinburg City Council reserves the right to extend the lease by mutual agreement of both parties, as it deems in its sole discretion, to be the in the best interest of City of Edinburg . Any such extensions will be in twelve (12) month increments for up to two (2) additional increments, with the terms, covenants and conditions of the Lease Agreement remaining the same for any extension; and with a price escalation at renewal of each additional year of no more than the consumer price index for each such new extended year. The total term of the lease, including all extensions thereto, shall not exceed a maximum combined period of sixty (60) months. Each new extension of the lease is contingent upon the approval of City of Edinburg City Council for each extended lease term in question. The City and the proposer agree that termination shall be the proposer's sole remedy if the City of Edinburg City Council decides not to extend the lease for additional term(s) as set forth above.

Initial Lease Term: October 1, 2014 to September 30, 2017 (36 months)

First Extension: October 1, 2017 to September 30, 2018 (12 months)

Second Extension: October 1, 2018 to September 30, 2019 (12 months)

FAIR MARKET VALUE RENT: A major financial goal of this farm property RFP will be to establish leases that are consistent with fair market cash rent. Respondents will offer one fixed annual proposal for the entire 400 +/- acres for which a cash rent offer is being submitted using Attachment 3. The same annual cash rent will be applied to each of two annual extensions on the lease.

FIRM PRICING: The leased premises, described in the attached Farm Lease is to be on a "per acre per twelve month" basis, stating a firm price per acre. This price must be good from the date of Proposal opening for a fixed period of time. Unless the Proposal expressly states otherwise, this period shall be from the above referenced Commencement Date to the Termination Date. Proposals which do not state a fixed price, or which are subject to change without notice, will not be considered. The City may award a lease for the period implied or expressly stated in the highest and best Proposal.

INSURANCE REQUIREMENTS:

1. The successful bidder will be required to carry the following insurance coverage and limits of coverage, as well as list the City as an additional insured to liability coverage as requested by the City. In addition, the successful bidder shall provide the City with evidence of coverage and furnish acceptable proof of payment of insurance premiums.
2. The successful bidder will be required to secure and/or have insurance coverage in force with an admitted property and casualty insurance company licensed by the State of Texas to conduct business in the State of Texas.
3. In contracts not involving building and construction projects, as that activity is defined in TEX. LABOR CODE §406.096, contractors may obtain alternative form of worker accident insurance with minimum limits of liability of \$100,000 per claim.

MISCELLANEOUS

STATEMENTS: No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, plans and/or specifications stated in the various Proposal Packages and/or Proposal Instructions/Requirements.

PAYMENT: Payments will be made in annual installments during the Initial Lease Term and any extension(s) thereafter. The first installment will be due on or before November 1st and every subsequent for the term of the lease.

Payments must be made payable to City of Edinburg and be hand delivered or mailed to the City of Edinburg Department of Solid Waste Management, Attn: Solid Waste Director, 8601 North Jasman Rd, Edinburg Texas 78541

CONFLICT OF INTEREST: No public official shall have interest in a contract, in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171.

As of January 1, 2006 Vendor's are responsible for complying with Local Government Code Title 5, Subtitle C, Chapter 176. Additional information may be obtained from the County website at the following link: http://wcportals.wilco.org/Interest_Conflict/index.html

The City of Edinburg Conflict of Interest Statement is located below. This form must be completed, signed, and submitted with your Proposal.

ETHICS: The Proposer shall not accept or offer gifts or anything of value nor enter into any business arrangement with any employee, official or agent of City of Edinburg.

DOCUMENTATION: Proposer shall provide with this response, all documentation required by this request for Proposal. Failure to provide this information may result in rejection of the Proposal.

TERMINATION FOR DEFAULT: In addition to the termination rights set forth in the Farm Lease, City of Edinburg reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. Non-Performance of the Proposer in terms of specifications shall be a basis for the termination of the contract and the Farm Lease by the City.

VOLUNTARY TERMINATION: In the event that the City may require the Land or use of the Land during this lease period, the city reserves the right to modify the lease as necessary to accommodate its needs. In doing so, the city will consider ways to minimize the impact upon crop farming operations. City of Edinburg or the Selected Proposer may terminate the Farm Lease, without cause or liability, upon giving sixty (60) day's written notice to the other party. Upon the termination of the Farm Lease, the Selected Proposer must surrender the premises peaceably to City of Edinburg and pay City of Edinburg all rental amounts and any other amounts that may be due under the Farm Lease as of the date of termination.

SILENCE OF SPECIFICATIONS: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

COMPLIANCE WITH LAWS: The Selected Proposer shall comply with all applicable federal, state and local laws and regulations pertaining to the practice of the profession and the execution of duties under this

Proposal including the TEXAS HAZARD COMMUNICATION ACT and THE CITY OF EDINBURG HAZARD COMMUNICATION PROGRAM POLICY.

OTHER PROVISIONS:

1. The parties agree and understand that the City of Edinburg, as a governmental entity, cannot enter into long-term contracts or lease agreements, without accepting competitive Proposals.

2. City of Edinburg may become responsible for major soil conservation work and repairs or improvements as determined to be necessary for the upkeep of the leased premises. The Selected Proposer/Lessee shall submit said improvement requests to City of Edinburg in writing, and City of Edinburg reserves the right to reject any and all requests if City of Edinburg determines that the requested improvements are not necessary.

PROPOSAL EVALUATION: Proposals will be evaluated by the City staff. The evaluation process will rely on the requested information provided on the following pages and elsewhere in this RFP. Consequently, it is expected that successful proposals will demonstrate a thoughtful and thorough response to the entire set of questions and requests for information addressed in the RFP. Please note that Respondents' cash rent offer amounts will be the dominant criterion, although not the only factor, considered in reaching a recommendation.

The City will utilize a two-stage process to evaluate all proposals received in response to this RFP and may request best and final offers in the event that it is deemed in the best interests of the City for making a final selection on the award of a farm property lease. All awards will be contingent on the execution of a lease agreeable to both the Respondent and the City.

The first stage of the process will consist of a review of all proposals received by the due date and time and will evaluate the following items:

1) Is the response complete, including providing all necessary information and answers to any required questions?

2) Is the cash rent offered in the top range of all offers received?

Proposals determined to be deficient in any of the above areas of consideration will be eliminated from further review.

During the second stage of the evaluation process, an assessment will be made of the remaining responses for each farm property and the responses will be scored based on a weighted matrix of evaluation criteria. The criteria will include:

1) Is the response consistent with the intended operation of the farm property as an ongoing and functional agricultural endeavor? Point Value (0-40 PTS)

2) Has the Respondent provided satisfactory descriptions of their farming experience and their soil stewardship/conservation practices? Point Value (0-40 PTS)

3) Is the Respondent's farming base of operation in proximity of the farm property they are interested in? Point Value (0-20 PTS)

Each question or request for information is important and failure of a Respondent to adequately or completely address any question or request for information could adversely affect the Respondent's evaluation score. If deemed necessary during this phase of the evaluation process, correspondence will be initiated with Respondents to request clarification or additional details on information provided in a Respondent's response to questions or informational items in the RFP such as additional financial information. This response clarification request cannot and will not be used to remedy or request information that was incomplete or omitted from a Respondent's response. Responses with critical or significant deficiencies will likely be eliminated in the first stage of the evaluation process. Following the receipt of any clarifications, each proposal will be scored and ranked using the evaluation criteria mentioned above.

After this second stage of the evaluation process is completed, the highest rated proposal will be identified. The Respondent offering the highest rated proposal will be notified of an offer to enter into a lease agreement with the City. If the successful Respondent and the City, for whatever reason, are unable to execute a lease agreeable to both parties, the City will then proceed to issue an offer to the next highest rated Respondent to work out a lease agreement for the farm property.

Required Documentation: Each Proposer must turn in the City of Edinburg Conflict of Interest Statement (the form being on the pages to follow) and the City of Edinburg Proposal Form (the form being on the pages to follow) with your Proposal.

By submitting a Proposal, Proposer acknowledges that Proposer must execute the attached Attachment 3, Farm Lease, at the City's offices in Edinburg, Texas within ten (10) days after the Proposer has been notified that it/he/she has been selected.

Attachment #1

CITY OF EDINBURG PROPOSAL FORM
LEASE 400 ACRES AGRICULTURAL LAND at
EDINBURG REGIONAL SANITARY LANDFILL
PROPOSAL NUMBER: _____

NAME OF PROPOSER: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Email Address: _____

Telephone: (_____) _____ Fax: (_____) _____

RENT FOR FIRST INITIAL TERM OF LEASE:

October 1, 2014 to September 30, 2017 (36 Months)

APPROXIMATE ACREAGE	RENTAL AMOUNT PER ACRE*	Total Rent Amount For First Lease Period (9 Months)
400 Acres	\$ _____ *	Approx. 400 acres x \$ _____ = \$ _____ to be paid in two equal installments annually.

***If the Proposer has proposed a crop share and a share of any other governmental subsidies in addition to a monetary rental amount, Proposer will need to insert the proposed monetary rental amount on the line above and fully describe such proposed crop shares and shares of any governmental subsidies as a part of Proposer's response to the Selection Criteria set forth in this RFP above.**

The undersigned, by his/her signature, represents that he/she is authorized to bind the Proposer to fully comply with the terms and conditions of the attached Request for Proposal, Specifications, Special Provisions and Farm Lease attached hereto as Attachment 2, for the amount(s) shown on the accompanying Proposal sheet(s). By signing below, you have read the entire document and agree to the terms contained in this RFP and the Farm Lease attached hereto as Attachment 2.

Signature of Person Authorized to Sign Proposal _____

Date: _____

Printed Name and Title of Signer: _____

DO NOT SIGN OR SUBMIT WITHOUT READING ENTIRE DOCUMENT

THIS FORM MUST BE COMPLETED, SIGNED, AND RETURNED WITH PROPOSAL

Attachment 2 – Application

Name: _____ Date: _____

Address: _____ Phone: _____

City/State/Zip: _____ Email: _____

Are you actively engaged in farming at the present time? Yes _____ No _____

If yes, complete below:

1) Acres Owned _____ Acres Crop Share Rented _____ Acres Cash Rented _____

2) Total acres farmed this year: _____

3) Acres of crops grown this year: Corn _____ Soybeans _____ Other _____

4) Number of years as a farm operator: _____

5) Number of years on present farm: _____

6) Reason for applying for additional farmland: _____

7) Have you ever worked with a farm manager before? _____ If yes, who?

8) How many years have you participated in the Federal Farm Program? _____

9) Give the location of your farming operation base:

Attachment 2 – Application (continued)

- 10) Describe your experience farming land similar to each specific farm property for which you are making cash rent offer.

- 11) Describe your current farming operation:

- 12) Briefly provide an overview of your business plan for operating farm property.

- 13) Provide a summary of your educational background:

- 14) Describe any additional agricultural experience or training you have (ag-related employment, FFA, etc.)

- 15) Please provide listing of any and all USDA, USDA NRCS, Texas Dept. of Agriculture, Texas Soil & Water Conservation Board and/or Texas Commission on Environmental Quality Citations or Notices of Violation or Non-Compliance issued to either the respondent or anyone working for the respondent of the Bid, the Corporation (if one is responding) and/or any sublets being utilized to farm or work on City of Edinburg Property.

- 16) Please provide references as requested on the next page.

17) Please provide names of all sublets; officers of the corporation.

18) Have you ever rented Farm Land from the City? List locations and timeframe for the lease.

Attachment 2 – Application (continued)

References

Please give the name, address, and phone number of the following references. If for any reason you do not wish for us to contact any of the references, please make a notation in the margin.

1) **The owner of a farm property currently leased:** Leased: from _____ to _____
Name: _____ Phone: _____
Address: _____ Fax: _____
City/State/Zip: _____ Email: _____

2) **The owner of a farm property previously leased:** Leased: from _____ to _____
Name: _____ Phone: _____
Address: _____ Fax: _____
City/State/Zip: _____ Email: _____

3) **Bank or Ag Lender:**
Name: _____ Phone: _____
Address: _____ Fax: _____
City/State/Zip: _____ Email: _____

4) **Please list other references who are familiar with your ability and whom we can contact.**
Name: _____ Phone: _____
Address: _____
Name: _____ Phone: _____
Address: _____

In an attached cover letter, please give additional information concerning your background that may be beneficial in evaluating this application. You may also include career goals and personal (or family) objectives for the future. All information provided the applicant is deemed confidential, but the information may be subject to public disclosure under the Texas Public Information Act.

Signed: _____ Date: _____

Signed: _____ Date: _____

SECTION II
TERMS OF PAYMENT

During the term of the five (5) year lease , lease will be responsible for paying the city a lease fee once a year for five years for the use of the land with the first payment due November 1, 2014 and each subsequent payment being November 1 of each subsequent year with the final payment being due November 1, 2018.

Initial Lease Term: October 1, 2014 to September 30, 2017 (36 Months).

First Extension: October 1, 2017 to September 30, 2018 (12 Months).

Second Extension: October 1, 2018 to September 30, 2019 (12 Months).

City Council has the option to extend and additional two (2) twelve months lease.

If Lessee does not pay rent or additional rent for a period of ten (10) days from when the same shall have been due and payable, then Lessee, in addition to any other remedies available to Lessor, shall pay a service charge at the rate of one percent (1%) per month (or at the legal maximum in the jurisdiction in which the Premises are located, whichever is less) on any outstanding unpaid amount for each month or portion of a month that the same shall remain unpaid; however, that such service charge shall, in no event, be less than \$25.00 for any month or portion thereof.

SECTION III
LANDLORD RESPONSIBILITES

A. Landlord agrees to—

1. Lease to tenant the premises for the entire term beginning on the commencement date and ending on the termination date.
2. Obey all laws, ordinances, orders, rules, and regulations applicable to the use condition, and occupancy of the premises, including the regulations of the United States Department of Agriculture and the Texas Agriculture Commissioner

B. Landlord agrees not to—

1. Allow any use of the premises inconsistent with Tenant's permitted use as long as Tenant is not in default.
2. Unreasonably withhold consent to a proposed assignment or sublease.

C. Landlord and Tenant agree to the following:

1. **Alterations.** Any physical additions or improvements to the premises made by Tenant shall all at the termination of the Lease remain the property of Tenant. Tenant, at Tenant's cost, may remove any physical additions and improvements, repair any alterations, and restore the premises to the condition existing at the

commencement date, normal wear excepted or may, at Tenant's option, leave all such improvements, which shall then be the property of Landlord.

2. **Abatement.** Tenant's covenant to pay rent and Landlord's covenants are independent. Except as otherwise provided, Tenant shall not be entitled to abate rent for any reason.
3. **Release of Claims/Subrogation.** Landlord and Tenant release each other from any claim, by subrogation or otherwise, for any damage to the premises or Tenant's personal property by reason of fire or the elements, regardless of cause, including negligence of Landlord or Tenant. This release applies only to the extent that is permitted by law, the damage is covered by insurance proceeds, and the release does not adversely affect any insurance coverage.
4. **Notice to Insurance Companies.** Landlord and Tenant will notify the issuing insurance companies of the release set forth in the preceding paragraph and will have the insurance policies endorsed, if necessary to prevent invalidation of the insurance coverage.
5. **Condemnation/Substantial or Partial Taking.** (a) If the premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate; (b) if there is a condemnation or purchase in lieu of condemnation, and this lease is not terminated, the rent payable during the unexpired portion of the term will be adjusted as may be fair and reasonable; and (c) Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.
6. **Default by Landlord/Events.** A default by Landlord is the failure to comply with provision of this lease that is not cured within thirty (30) days after written notice.
7. **Default by landlord/Tenant's Remedies.** Tenant's remedies for Landlord's default are to (a) sue for damages and (b) terminate this lease.
8. **Default by Tenant/events.** Defaults by Tenant are (a) failing to pay timely rent; (b) abandoning or vacating a substantial portion of the premises; or (c) failing to comply within thirty days after written notice with any other provision of this lease.
9. **Default by Tenant/Landlord's Remedies.** Landlord's remedies for Tenant's default are to (a) enter and take possession of the premises, after which Landlord may re-let the premises on behalf of Tenant and receive the rent directly by reason of the re-letting, and Tenant agrees to reimburse Landlord for any expenditures made in order to re-let; (b) enter the premises and perform Tenant's obligations; or (c) take possession of the premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be farming the premises, until the default is cured, without being liable for damages.
10. **Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately an event of default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by law. Landlord and Tenant have a duty to mitigate damages.
11. **Holdover.** If tenant does not vacate the premises following termination of this lease, Tenant shall be deemed a tenant at will and shall vacate the premises on

- receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the term.
12. **Alternative Dispute Resolution Provision.** Landlord and Tenant agree to mediate in good faith before filing a suit for damages.
 13. **Attorney's fees.** If either party retains an attorney to enforce this lease, the party who prevails at the time of trial is entitled to recover reasonable attorneys' fees.
 14. **Venue.** Venue is in the county in which the premises are located.
 15. **Entire Agreement.** This lease, together with the attached exhibits and riders, is the entire agreement of the parties, there are not oral representations, warranties, agreements, or promises pertaining to this lease or to the expressly mentioned exhibits and riders not incorporated in writing in this lease.
 16. **Amendment of lease.** This lease may be amended only by an instrument in writing signed by Landlord and Tenant.
 17. **Limitation of Warranties.** Landlord and Tenant agree that there are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this Lease.
 18. **Notices.** Any notice required by this lease shall be deemed to be delivered (whether or not actually received) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to Landlord or Tenant at their respective addresses.
 19. **Mineral Interests.** This lease is subordinate to any present or future oil, gas, or other mineral exploration agreements and leases. Landlord shall not be liable to Tenant for any damages for actions attributable to these agreements. Tenant shall receive all consideration paid thereof.
 20. **Landlord's Use.** Landlord retains the right to permit third parties to use the premises for any other use that does not interfere with Tenant's farming rights.
 21. **Other Provisions.**

Extension Option. Tenant shall have the option to extend the term as provided below: Landlord grants Tenant an option to extend the term for three (3) successive five (5) year periods on the following terms and conditions, (the "additional term"):

Tenant's rights under this option shall terminate (1) As to any portion of the property terminated under the provisions providing for Early Termination of the lease, or (2) default exists at the time Tenant seeks to exercise the option.

Landlord and Tenant agree to the following:

 - 1) During the additional term the lease shall continue as written.
 - 2) The term shall automatically extend unless the Tenant gives written notice to Landlord ninety (90) days before the termination date of his election not to extend the lease.

SECTION IV

LESSOR'S INVESTMENT AND EXPENSES

The landlord agrees to furnish the property and to pay the items of expense listed below:

- A. The above-described farm, excluding any fixed improvements. However, all buildings and other fixed improvements present on the farm may be provided as a convenience in connection with the farming operations, and the Lessor has no obligation hereunder to maintain any building or improvement in a usable condition.
- B. All repair and improvements, which include material and labor, on any buildings or improvements will at the discretion of the Lessor except as agreed to in amendments to this lease.
- C. Taxes on land, improvements, and personal property owned by the Lessor.

SECTION V
LESSEE'S INVESTMENTS AND EXPENSES

The Lessee agrees to furnish the property and to pay the items of expense listed below:

- A. All the machinery, equipment, labor, fuel, farm/farmstead utilities and power necessary to farm the premises properly.
- B. All charges for light, heat, water, sewer, garbage, and all other utilities and services to the Premises during the term of this Lease.
- C. All license fees and other governmental charges.
- D. The hauling to the farm, except when otherwise agreed, of all material which the Lessor furnishes for making repairs and minor improvements, and the performing of labor, except skilled, required for such repairing and improving.
- E. All seed, inoculation, disease-treatment materials, and fertilizers.

SECTION VI
LESSEE'S DUTIES IN OPERATING FARM LAND

The Lessee further agrees to perform and carry out the stipulation below.

A. Activities Required:

1. To cultivate the farm faithfully and in a timely, thorough, and businesslike manner.
2. To prevent noxious weeds (defined by Texas) and other weeds from going to seed on said premises and to destroy the same and keep the weeds and grass cut.
3. To keep open ditches, tile drains, tile outlets, grass waterways, and terraces in good repair.
4. To preserve established watercourses or ditches, to maintain a grass strip 8 feet to 10 feet wide along the edge of any such ditches or water coursed, and to refrain from any operation that will injure them.
5. To keep the building, fences (including hedges), and other improvements in good repair and condition as they are when the Lessee takes possession or in as good repair and condition as they may be put by the Lessor during the term of the lease – ordinary wear, loss by fire, or unavoidable destruction excepted.
6. To take proper care of all permanent planting such as trees, vines, and shrubs, and to prevent injury to the same.

7. To keep the farmstead neat and orderly and to remove from the farm or farmstead any garbage or refuse generated and any items that are not involved in the current farming operation at the request of the Lessor.
8. To prevent all unnecessary waste, or loss, or damage to the property of the Lessor.
9. To comply with pollution control and environmental protection requirements and to implement soil erosion control practices to comply with the soil loss standards mandated by local, state, and federal agencies.
10. To use prudence and care in transporting, storing, handling, and applying all fertilizers, pesticides, herbicides, and other chemicals and similar substances; to read and follow label instructions for the use of such materials in order to avoid injury or damages to persons or property or both on the leased.
11. To apply chemicals for weed or insect control or other use, when used, at levels not to exceed the manufacturer's recommendation for the soil types involved.
12. To provide the Lessor, annually, a written report indicating the product name, amount, date of application and location of application of all pesticides, and fertilizers used on the farm along with original invoices signed by the Lessee's chemical and fertilizer vendor. The amounts which appear on the invoices must correspond to the amounts on the written reports. Invoices/Receipts must be specific to the farm unit being identified in this lease.
13. To dispose of tractor, car and truck batteries properly. No batteries will be stored on the farm for more than four (4) months.
14. To dispose of used tires properly. No used tires will be stored on the farm for more than four (4) months.
15. To generally follow Natural Resource Conservation Service and Farm Service Agency recommendations and to maintain all other requirements necessary to qualify current and future farm operators to participate in federal farm programs.

B. Activities Restricted. The Lessee further agrees, unless the written consent of the Lessor has been obtained as an amendment to this lease:

1. Not to assign this lease to any person or persons or sublet any part of the premises herein leased.
2. Not to erect or permit to be erected any structure or building or to incur any expense to the lessor for such purposes.
3. Not to add electrical wiring, plumbing, or heating to any building. (If consent is given such additions must meet standards and requirements of power and insurance companies and any local zoning and building regulations.)
4. No to plow permanent pasture or meadowland.
5. Not to allow any stock on any tillable land except by annual agreement.
6. Not to burn or remove cornstalks, straw, or other crop residues grown upon the farm.
7. Not to cut live trees for sale purposes or personal uses.
8. Not to erect or permit to be erected any commercial advertising signs on the farm, other than seed variety signs.
9. Not to enter into any agreement, contract, or other framing or business arrangements that alters rights in the Lessor's security interest, right of entry, default or possession.
10. Not to store chemicals on the property. No chemicals or chemical containers will be disposed of on the property.

11. Not permit the existence of any nuisance on the Premises and keep the same free of any explosive, flammable or combustible material which would increase the risk of fire, except such material necessary to Lessee's or any permitted sub-Lessee's business.
12. Not handle or store any dangerous or potentially dangerous materials or any hazardous or toxic materials, as defined under state or federal laws.
13. Not to permit, encourage, or invite other persons to use any part or all of this property for any purpose or activity not directly related to its use for agricultural production, except as specifically noted here.
14. Not to enter into any agreement, contract, or other farming or business arrangement that alters rights in the Lessor's security interest, right of entry, default of possession.

SECTION VII
LEASE PROCEDURES

The Lessor and Lessee agree that they will observe the following provisions:

- A. **Conservation.** Both Lessor and Lessee affirm the goals of minimizing soil erosion losses and preserving the productivity of the land in ways that are consonant with their needs and desires for acceptable current returns to their individual inputs on the leased premises. To these ends they agree to implement as far as possible the best management practices recommended by the Natural Resources Conservation Service and to cooperate with that agency's soil and water conservation programs.
- B. **Lessee responsible for hired labor.** The Lessee shall be solely responsible for all employer obligations on hired labor with respect to safety requirements and social security and workers compensation contributions, and Lessor shall have no responsibilities therefore.
- C. **Condition of Premises.** It is understood that Lessee has inspected the Premises and takes the "AS IS". Lessor is not obligated by this Lease to make any changes, removals, or repairs of any kind.

SECTION VIII
MINIMUM INSURANCE REQUIREMENTS

In accordance with City ordinances, Tenant shall be required to hold the following minimum insurance coverage throughout the duration of this Agreement:

- A. Workers Compensation-
In accordance with the State statute
- B. Comprehensive General Liability -

Bodily injury	\$ 250,000 each person
	\$ 500,000 each occurrence
Property damage	\$ 100,000 each occurrence

\$ 100,000 aggregate

Or \$ 500,000 combined single limits

C. Comprehensive Auto Liability -

Bodily injury \$ 100,000 each person
\$ 500,000 each occurrence

Property damage \$ 100,000 each occurrence
\$ 100,000 each aggregate

Or \$ 500,000 combined single limits

D. City's Protective Liability

Bodily injury \$ 250,000 each person
\$ 500,000 each occurrence

Property damage \$ 100,000 each occurrence
\$ 100,000 aggregate

Or \$ 500,000 combined single limits

Evidence of the above insurance coverage shall be required prior to final execution of the agreement. The City shall be listed as an additional insured.

Tenant shall not commence work under this agreement until all insurance requirements have been obtained and proof of such insurance shall have been provided to the City, nor shall Tenant allow any Sub-Tenant to commence work until all insurance as noted above has been so obtained and provided to the City. Approval of the insurance by City shall not relieve or decrease the liability of the Tenant.

SECTION IX

TERMINATION, DEFAULT, POSSESSION, LANDLORD'S LIEN RIGHT OF ENTRY, MINERAL RIGHTS, LIABILITY, EXTENT OF AGREEMENT

The Lessor and Lessee agree to the following provisions.

A. **Termination.** Termination of lease may be made by Event of Default or At Will by Lessor.

1. Termination by "Event of Default"- As to any Event of Default by either party, the lease may be terminated by the other party by serving a written notice citing the Event(s) of default and specifying a termination date of ten (10) days from the date of such notice. The lessee will make every effort to minimize the impact and loss of any crops upon termination

2. Termination "At Will" by Lessor – Lessor may cancel this Lease or may terminate it with respect to all or a portion of the Premises by providing ten (10) days advance written notice to Lessee. In the event that Lessor terminates this Lease with respect to all or a part of the Premises prior to harvest, Lessor will compensate Lessee by refunding to Lessee the pro-rata share of rent paid for acreage subject to termination. If termination occurs before planting, Lessor will reimburse Lessee's pro-rata share of out-of-pocket costs for applications and tillage. If termination occurs after planting but prior to harvest, Lessor will pay to Lessee the pro-rata share of sum subject to termination. In the event that termination occurs after harvest, Lessee will not be entitled to any rebate or rent or reimbursement of expense under the terms of this section.

B. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this lease:

1. Failure of either party to carry out substantially the terms of this lease in due and proper time.
2. Either party (i) becomes insolvent; or (ii) is unable to, or admits in writing its inability to pay its debts as they mature; or (iii) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or (iv) becomes the subject of an "order for relief" within the meaning of the United States Bankruptcy Code; or (v) becomes the subject of a creditor's petition for liquidation, reorganization or to effect a plan or other arrangement with creditors; or (vi) applies to a court for the appointment of a custodian or receiver for any of its assets; or (vii) have a custodian or receiver appointed for any of its assets (with or without its consent); or (viii) otherwise become the subject of any insolvency proceedings or propose or enter into any formal or informal composition or arrangement with its creditors.
3. Failure of Lessee to pay the cash rent of the lease when due.
4. Death of Lessee.

C. Lessor's right of entry. The Lessor reserves the right personally or by agents, employees, or assigns to enter upon the premises at any reasonable time to view them, to work or make repairs or improvements thereon, to care for and dispose of the Lessor's share of crops, to develop mineral resources as provided in Clause D below, or, after constructive notice has been given that the lease may not be extended, and following severance of crops, to plow and prepare a seed bed, apply fertilizers, and any other operation necessary to good farming by the succeeding operator, these operations not to interfere with the Lessee in carrying out the regular farming operations.

D. Mineral rights. Nothing in this lease shall confer upon the Lessee any right to minerals underlying the land. Such mineral rights are hereby reserved by the Lessor together with the full right to enter upon the premises and to bore, search, excavate, work, and remove

the minerals, to deposit excavated rubbish, to pass over the premises with vehicles, and to lay down and work any railroad track or tracks, tank, pipelines, power lines, and structures as may be necessary or convenient for the above purpose. The Lessor agrees to reimburse the Lessee for any actual damage the Lessee may suffer for crops destroyed by these activities and to release the lessee from obligation to continue farming this property when development of mineral resources interferes materially with the Lessee's opportunity to make a satisfactory return.

- E. Lessor liability.** The Lessee takes possession of the leased premises subject to the hazards of operating a farm, and assumes all risk of accidents personally as well as for family, employees, or agents in pursuance of farming operations, or in performing repairs on buildings, fenced tile, and other improvements.
- F. Indemnity.** Lessee shall indemnify, and hold Lessor and Lessor's affiliated companies, its or their officers, directors, employees, agents, and contractors, harmless against and from all claims (including without limitation), actions, demands, expense, costs, attorney's fees, court costs (and judgment) for death of or injury to persons whomsoever or loss or destruction of or damage to property whatsoever in a way arising out of or caused or contributed to by the Lessee's presence on or use of the Premises hereby leased, except when such claims are caused by the sole negligence of the Lessor or Lessor's affiliated companies, its or their officer, directors, employees, agents or contractors. The provisions of this paragraph shall survive the termination of this Lease.
- G. Condemnation.** If all or any part of the Premises is subjected to taking under eminent domain laws, this Lease shall terminate from the time possession is taken by condemning entity. Prepaid rentals will be prorated and the unearned rental returned to Lessee. Lessee agrees that it is not entitled to, and hereby disclaims, any award made for such taking, excepting only an award issued solely and expressly to compensate for the taking of personal property or buildings owned or constructed by Lessee.
- H. Costs and Attorney's Fees.** If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Lease, it becomes necessary to retain an attorney, or use retained counsel, and expend fees as a result of the other party's breach, then the breaching party agrees to pay all reasonable costs and attorney fees in connection therewith.
- I. Right of Re-entry.** Lessor reserves the right to re-enter the Premises at any time during this Lease without extinguishing the Lessee's obligation to pay rent.
- J. Notices.** Any notice, election or other correspondence required or permitted pursuant to this Lease shall be deemed to have been properly given when made in writing and effective when delivered personally to the party to whom directed, or when deposited in the United States mail, certified, with all necessary postage or charges fully prepaid, returned receipt requested and addressed to the party to whom directed at its address specified below:

As the Lessor:

City of Edinburg
Ramiro Garza Jr.
City Manager
415 W. University Dr.
Edinburg, Texas 78539

As the Lessee:

Either party hereto may change its address for the purpose of receiving notices or Communications hereunder by furnishing notice thereof to the other party in compliance with this section.

- K. Severability.** Unless otherwise provided, or unless the context shall otherwise require, words importing the singular number shall include the plural number, words importing the masculine shall include the feminine gender, and vice versa. If any provisions of this Lease or any application hereof shall be found to be invalid or unenforceable, for any reason, the remainder of this Lease and any other application of such provision shall not be affected thereby.
- L. Entire Agreement.** The Lease represents the entire Lease between the parties and supersedes all other agreement and representations made prior hereto. No amendment hereof shall be binding on either party unless and until approved in writing by both parties.
- M. Governing Law.** This Lease shall be governed and construed in accordance with the laws of the State of Texas, Hidalgo County, where the Premises are located.
- N. Headings.** The heading of each section of this Lease is for convenience only and it shall not be deemed a construction of intent of any such section.
- O. Binding Effect.** This lease shall inure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns.

SECTION X **SEVERABILITY**

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION XI **ALTERNATE DISPUTE RESOLUTION/NEUTRAL PARTY**

- A. Any controversy, claim or dispute between the parties arising out of or relating to the provisions of this Agreement or the breach, termination or validity thereof shall, upon

written request of either part, immediately be referred jointly for resolution of the controversy by non-binding mediation.

- B. The mediation must be concluded within any period mutually agreed upon by the parties but in no event no later than within forty-five (45) days after written notice is given by either party of its intent to proceed to mediation. Unless the parties expressly agree otherwise, each party shall bear its own cost; legal and expert fees incurred in the mediation, and evenly share the cost of the mediator. If, after proceeding in good faith the parties, with the assistance of a neutral mediator, do not resolve the dispute within the forty-five (45) day period, the parties may proceed in accordance with paragraph (C) below.
- C. After exhausting the procedures set forth above, wither party may initiate litigation to resolve the dispute. The Law of the State of Texas shall control the matter in controversy. Venue is mandatory in Hidalgo, County, Texas.

SECTION XII **TERMINATION**

It is expressly agreed hereto that the property is part of the City's plan for the expansion of its landfill. At such time as the City has determined to use any portion of the property, the City shall provide the Tenant thirty (30) days written notice and this lease shall terminate as to that portion to be utilized by Landlord. Landlord shall not be responsible for any loss suffered by Tenant due to Landlord's use of any portion of the property as to the harvest of any crop growing on the property. Upon termination, Tenant shall be paid for all services rendered to date.

SECTION XIII **SUCCESSORS AND ASSIGNS**

City and Tenant each bind themselves, their partners, successors, executors, administrators and assigns to the other party of this Agreement with respect to all covenants herein. Neither City nor Tenant shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other.

EXECUTED by the parties in triplicate originals on this the _____ day of
, 2014.

**LANDLORD
CITY OF EDINBURG**

BY: _____
Ramiro Garza Jr. - City Manager
City of Edinburg
415 W. University Drive
Edinburg, TX 78539

ATTEST:

By: _____
Myra L. Ayala-Garza, City Secretary

TENANT

APPROVED AS TO FORM:

Palacios, Garza & Thompson, P.C.

BY: _____
City Attorney