

**Lower Rio Grande Valley Development Council (LRGVDC)
INTERLOCAL CONTRACT**

CONTRACT SIGNATURE PAGE

Contract Name	Local Enforcement Implementation Project
Contract No.	08-21-G09
Performing Party	Hidalgo County

Maximum LRGVDC Obligation Amount:
Maximum LRGVDC obligation under this contract shall not exceed: Thirty-Thousand Dollars (\$30,000.00).
Note that this obligation is dependent upon other provisions incorporated herein.

	<u>Effective Date</u>	<u>Expiration Date</u>
Contract Period	May 9, 2008	December 31, 2008
Extension Period		

The Lower Rio Grande Valley Development Council (LRGVDC) and the named Performing Party enter this agreement (Contract) for the cooperative conduct of authorized governmental functions and activities. The Parties agree: Performing Party will conduct the Contract Activities; LRGVDC will reimburse authorized Allowable Costs subject to the Texas Uniform Grant Management Standards; Performing Party is not a vendor of goods and services under Texas Government Code Chapter 2251; the contract may be terminated by a party with written notice.

Parties to Contract:	<u>Receiving Agency:</u> Lower Rio Grande Valley Development Council (LRGVDC)	<u>Performing Party:</u> Hidalgo County
By (Authorized Signature)		
Printed Name:	Kenneth N. Jones	Judge J.D. Salinas
Title:	Executive Director	Hidalgo County Judge
Date of Signature:		
Contract Manager Name	Marcie Oviedo	Lazaro Gallardo, Jr.
Contact Numbers	(956) 682-3481	(956) 581-6800
Contact Name and Address	LRGVDC 311 N. 15 th Street McAllen, TX 78501	Hidalgo County 730 North Breyfogle, Suite B Mission, TX 78572

This contract is in furtherance of the Solid Waste Contract Number 582-8-86692 between TCEQ and LRGVDC. TCEQ has certified that it has the authority to contract with Lower Rio Grande Valley Development Council of Governments by authority granted in the Current Appropriations Act; Texas Water Code, sections 5.229 and 361.014 of the Texas Health and Safety Code. Funds for this sub-contract are provided from the Municipal Solid Waste Disposal and Transportation Revenue Fee.

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Attachment A Special Contract Provisions

Article 1 Scope of Services

All parties agree that the PERFORMING PARTY, in consideration of compensation hereinafter described, shall provide the service with LRGVDC as specifically described in Work Program (Attachment C) according to the Special and General Contract Provisions in a time-frame as indicated in the Schedule of Deliverable (Attachment D) of this Solid Waste Inter-local Agreement. The PERFORMING PARTY agrees to implement the project according to the agreed upon budget shown in Attachment B of this agreement.

Article 2 LRGVDC Obligations

Article 2.1 Measure of LRGVDC Liability

- a. Upon review and approval of a Request for Reimbursement voucher submitted by the PERFORMING PARTY, LRGVDC will make payment to the PERFORMING PARTY against LRGVDC liabilities to be accrued hereunder which are conditioned upon the Budget and Payment Procedures Section and any other provisions contained herein this contract that may limit the payment of any liabilities of LRGVDC.
- b. Except as specifically authorized by LRGVDC in writing, LRGVDC is liable only for expenditures made in compliance with the cost principles and administrative requirements set forth in Federal OMB Circular A-87 and the Uniform Grant and Contract Management Standards (UGCMS).
- c. The LRGVDC will coordinate with the PERFORMING PARTY and TCEQ regarding public awareness.
- d. The LRGVDC will provide templates to the PERFORMING PARTY for educational flyers as they are made available by TCEQ.
- e. The LRGVDC will respond to inquiries for technical assistance and information made by the PERFORMING PARTY.

Article 2.2 Limitation of LRGVDC Liability

- a. The PERFORMING PARTY will become the owner/operator of any equipment listed in Budget and Authorizations Sheet (Attachment B of this contract). The LRGVDC shall have no responsibility or liability for the operation of the said equipment or PERFORMING PARTY'S executive of tasks included in the Work Program of Attachment C. Further, the LRGVDC's sole responsibility shall be limited to funding the project, except as stated in Article 2.1.
- b. The owner/operator (PERFORMING PARTY) will be responsible for purchasing any equipment, supplies, and contractual services as listed in the Budget and Authorizations Sheet (Attachment B of this contract). Note that reimbursable expenses adhere to provisions in this contract such as those listed in prohibited uses and activities and equipment requirements.
- c. No obligations exist under this contract, with respect to the LRGVDC, for payments of any kind to the owner/operator, except as such payments relate to the authorized reimbursable owner/operator incurred expenditures, located in Budget and Authorizations Sheet (Attachment B) of this contract, and further explained in Budget and Payment Procedures sections, necessary to carry out those activities identified or described in the contract, subject to the following:

1. LRGVDC is not liable for any cost incurred by PERFORMING PARTY in the performance of this agreement, which have not been billed to LRGVDC within fifteen days following termination of this agreement.
 2. LRGVDC is not liable for expenditures made in violation of General Provisions for Texas Commission on Environmental Quality List of Prohibited Activities, Article 7 which outlines prohibited activities as defined by the Texas Commission on Environmental Quality (TCEQ).
 3. LRGVDC is not liable to PERFORMING PARTY for costs incurred or performance rendered by PERFORMING PARTY before commencement of this agreement or after termination of this agreement.
- d. The PERFORMING PARTY shall be solely responsible and liable for any and all loss or damages to persons, property, or the environment, including damages to the LRGVDC or the TCEQ and including reasonable attorney's fees and court costs caused or occasioned by the PERFORMING PARTY's performance under this contract or operation of the implementation project. The PERFORMING PARTY agrees to indemnify, to the extent permitted by law, and hold harmless the LRGVDC and the TCEQ, their officers, directors, or employees against any and all claims arising out of or in any way related to the operation of the equipment, the use of the equipment, or any other activity related to any of the matter described in this contract.
- e. More specifically, PERFORMING PARTY shall indemnify and save harmless LRGVDC and its officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of or occasioned by the acts of PERFORMING PARTY or its agents, contractors, or employees, and the performance of this contract.

Article 3 Reporting Requirements

1. Detailed records that are not required to be submitted with the reports referred to in this section must be kept at the designated location for records access.
2. The PERFORMING PARTY shall maintain and submit to LRGVDC mileage records on the use of any vehicles being used for Local Enforcement Program and originally purchased for the program.
3. The PERFORMING PARTY shall comply with any reasonable request by the LRGVDC for additional information on activities conducted in order for the LRGVDC to adequately monitor the PERFORMING PARTY's progress in completing the requirements of and adhering to the provisions of this contract.
4. Payments (reimbursements) required under this contract may be withheld by the LRGVDC until such time as any past due progress reports are received.
5. The PERFORMING PARTY's failure to comply with the requirements of this Article shall constitute a breach of this contract.

Article 3.1 Progress Reports

1. The PERFORMING PARTY shall prepare and submit to the LRGVDC, a written progress report concerning performance under this contract documenting accomplishments and units of work performed under Attachment C: Work program of this agreement. The PERFORMING PARTY's progress reports contain descriptions of activities for the LRGVDC to ensure that the provisions of this contract are being complied with.
2. The PERFORMING PARTY shall prepare and submit to the LRGVDC, the summary Pass-Through Grant Expenditure report and the request for reimbursement vouchers and appropriate backup can be submitted if cost has been incurred.
3. The PERFORMING PARTY shall prepare and submit to the LRGVDC Report(s) Identifying Chronic Illegal Dumpsites that are ¼ acre in size or larger, their general description, exact location, boundary information in feet, length, width, and height if applicable and photos of the sites located.

Article 3.2 Results Reports

1. In addition, the PERFORMING PARTY must submit to the LRGVDC a results report each quarter. The results report will include quantifiable measurements or reasonable estimations of the project outcomes.
2. All progress and results reports shall be submitted within 10 days after the end of the month for the term of this contract so that LRGVDC may submit a consolidated report to TCEQ.

Article 3.3 Close-out Progress and Results Report

The PERFORMING PARTY will submit a closeout progress and results report with the final requests for payment under this contract. The closeout report will include the cumulated information from previous progress and closeout reports. The closeout report must be submitted within 15 days of the ending date of this contract. The PERFORMING PARTY shall certify in writing to the LRGVDC, through the final progress report, the satisfactory completion of all activities and deliverables required under this contract.

Article 3.4 Follow-up Summary Results Report

The PERFORMING PARTY shall submit periodic follow-up summary results reports according to Attachment D: Schedule of Deliverables. The PERFORMING PARTY shall document the results of the grant-funded project and provide those results to the LRGVDC for use of evaluating program effectiveness and for providing regional results information to TCEQ. The results reporting documentation and reporting requirements shall specifically cover reporting on results during the term of the contract and continue to document, the results of the project activities for the life of the program or activity.

Article 3.5 Other Reports

1. The PERFORMING PARTY shall provide LRGVDC with a reasonable number of photographs of the project activities for documentation purposes such as inclusion in a report to the State Legislature.
2. The PERFORMING PARTY shall occasionally present an oral report to the LRGVDC Solid Waste Advisory Committee during the committee's meetings regarding the status of the project implementation. LRGVDC will notify the PERFORMING PARTY at least four weeks in advance of such requests for oral reports. Note that the committee typically meets quarterly.

Article 4 Monitoring Requirements

1. LRGVDC may periodically monitor PERFORMING PARTY for:
 - a) The administrative and operational effectiveness of the project; and
 - b) The degree of compliance with the terms of this contract, including compliance with applicable rules, regulations, and promulgations referenced herein.
2. LRGVDC may conduct periodic analysis, including site visits, of PERFORMING PARTY's performance under this contract for the purpose of assessing the degree to which contractual objectives and performance standards, as identified in this contract or as subsequently amended, are achieved by PERFORMING PARTY.

Article 5 Equipment

1. Unless specifically authorized in Attachment B: Budget and Authorizations, no purchases of equipment (item costing more than \$500) shall be eligible for reimbursement under this contract unless the procurement for such equipment is approved ahead of time, in writing by LRGVDC.
2. Title to equipment and any constructed fixtures acquired from funds provided under this contract shall, throughout the term of this contract, be in the name of the PERFORMING PARTY. All parties agree that upon full performance of this contract, title shall remain with the PERFORMING PARTY, provided however, that if this contract is terminated, due to substantial failure by the PERFORMING PARTY to fulfill its obligations under this contract, title and physical possession of all equipment and constructed fixtures shall, upon written notification from LRGVDC, be transferred in good condition and within five (5) working days to LRGVDC.
3. The PERFORMING PARTY agrees that all equipment purchased under this contract shall be used solely to support the purpose of this contract and agrees to conduct physical property inventories, to maintain property records and necessary control procedures, and to provide adequate maintenance with respect to all equipment and/or constructed facilities acquired under this contract, as set forth below.
4. The PERFORMING PARTY shall develop and use its own property management system, which must conform to all applicable state and local laws, rules and regulations. If an adequate system for accounting for personal property owned by the PERFORMING PARTY or its subcontractor is not in place or currently in use, the Property Accounting System Manual issued by the State of Texas General Services Commission shall be used as a guide for establishing such a system.
5. A physical inventory of all equipment or property acquired or replaced under this contract having an initial purchase price of \$1,000 or more, shall be conducted no less frequently than once every two years and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY shall include adequate safeguards to prevent loss, damage, or theft of the acquired property. The PERFORMING PARTY agrees to develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event such equipment or property is sold.
6. All equipment and/or constructed facilities acquired or replaced under this contract shall be used by the PERFORMING PARTY or its subcontractor, to support the purpose of this contract, for as long as the

equipment or facilities are needed for such purposes, whether or not the original projects or programs continue to be supported by State funds.

7. For property with a current fair market, per-unit value of five thousand dollars (\$5,000) or less, the FUNDS RECIPIENT may for the purpose of replacing the property acquired under this Agreement, either trade in or sell the property and use the proceeds of such trade in or sale to offset the cost of acquiring needed replacement property.
8. For property with a current fair market, per-unit value in excess of five thousand dollars (\$5,000), the PERFORMING PARTY shall, for the purpose of replacing the property acquired under this Agreement within six years of the initiation date of this Agreement, obtain written authorization from the LRGVDC prior to trading in or selling the property and using the proceeds of such trade or sale to offset the cost of acquiring needed replacement property.
9. Property with a current fair market, per-unit value of five thousand dollars (\$5,000) or less, if no longer needed for the support of the authorized projects or programs under this contract, whether original or replacement, may be used in support of other activities currently or previously supported by TCEQ or alternatively, may be made available for use on other projects or programs, providing such other use will not interfere with the work on those projects or programs for which such equipment or facilities were originally acquired or constructed.
10. For property with a current fair market, per-unit value of excess of five thousand dollars (\$5,000), if not longer needed for support of the authorized projects or programs under this contract, where original or replacement, and within six years of the initiation date of this contract, the PERFORMING PARTY shall obtain written authorization from the LRGVDC prior to changing the use of the property, to include selling or transferring ownership of the property. In requesting authorization for a change in use of the property, the LRGVDC shall provide information as requested by the PERFORMING PARTY, to include information to assure that the new use of the property will adhere to the requirements of this Article. Prior to authorizing the LRGVDC to change the use of the property, the LRGVDC may, at its discretion, require the PERFORMING PARTY to notify and request input from private industry providers of recycling or solid waste service in the area of the proposed new use or activity, to determine that a competitive advantage issue does not exist. After six years of the initiation date of this contract, the PERFORMING PARTY is not required to obtain authorization for a change in use of the property acquired under this contract.
11. If any equipment or property acquired or replaced under this contract is sold or transferred within six (6) years of the initiation date of the contract, the PERFORMING PARTY agrees that TCEQ is entitled to a share of the proceeds from such sale, provided the fair market, per-unit value of the property at the time of the sale is in excess of five thousand dollars (\$5,000). TCEQ's share of the sale proceeds shall be the same percentage as was the funding providing under this contract that enabled the original purchase or acquisition of the property in question. Property that is no longer needed and that has a fair market, per-unit value of five thousand dollars (\$5,000) or less may be retained, sold, transferred, or otherwise disposed of with no further obligation to TCEQ. If the property or equipment has a fair market, per-unit value of five thousand dollars (\$5,000) or more and less than six years has elapsed from the initiation of the contract, the PERFORMING PARTY or the subcontractor must contact TCEQ for final disposition instructions. However, the PERFORMING PARTY, may for the purpose of replacing various equipment or property utilized under this contract, either trade in or sell the equipment referred to in attachment (B) of this Contract and use the proceeds of such trade-in or sale to offset the cost of acquiring needed replacement property.

12. The use of property acquired under this contract, both during the term of this contract and for the useful life of the property, shall be in accordance with Section 361.014(b) of the TEX. HEALTH & SAFETY CODE ANN., which directs cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.
13. If, prior to the termination date of this contract, the PERFORMING PARTY or its subcontractor determines that any equipment or constructed facilities acquired with funds provided as a result of this contract is no longer needed for support of the programs or projects, the LRGVDC may require the PERFORMING PARTY to transfer title and possession of such equipment or movable constructed facilities to a third party named by LRGVDC.
14. The PERFORMING PARTY agrees that if a determination is made after this contract has terminated that any equipment or constructed facilities acquired with funds provided as a result of this contract is no longer needed for support of the programs or projects, TCEQ has a right to require the transfer of any equipment or movable constructed facilities having a fair market, per-unit value of more than five thousand dollars (\$5,000) to a third party named by TCEQ.
15. The PERFORMING PARTY shall not grant or allow a third party a security interest in any original or replacement materials, equipment, or facilities purchased or constructed with funds made available to the PERFORMING PARTY under this contract.
16. The PERFORMING PARTY agrees that, in the event any funds provided under this contract are in turn awarded to any subcontractor for the purchase or acquisition of any equipment or constructed facilities, by such other party, the PERFORMING PARTY's contract with that subcontractor shall include the requirements set forth in Subsections 8 of this Section.

Article 6 Compliance with Applicable Laws

The PERFORMING PARTY shall give all notices and comply with all laws, ordinances, rules, regulations and order of any public authority bearing on the performance of this contract, including, but not limited to, the laws referred to in this contract. (Such laws include Section 361.014 of the Texas Health and Safety Code: Use of Solid Waste Fee Revenues and Title 30 Texas Administrative Code *330.569). If the PERFORMING PARTY or LRGVDC observes that this contract is at variance therewith in any respect, the observing party shall promptly notify the other party in writing, and any necessary changes shall be adjusted by appropriate contract modification. On request, the PERFORMING PARTY shall furnish LRGVDC modification.

Article 7 Supplemental Funding Standards

In addition to the standards set forth in applicable statutes and regulations, the standards outlined below apply to all users of the funds provided under this contract. Unless authorization is otherwise specifically provided for in or under the terms of this contract, the PERFORMING PARTY shall ensure that the use of funds provided under this contract, are in accordance with the supplemental funding standards set forth in this Article.

1. **Payment of Fees.** PERFORMING PARTY must not be in arrears on payments of their solid waste disposal fees to TCEQ at the time an implementation project is selected for funding.
2. **Land Acquisition Costs.** Funds provided under this contract may not be used to acquire land or an interest in land.

3. **Municipal Solid Waste-Related Programs Only.** Funds provided under this contract may not be used for programs dealing with wastes that are not considered Municipal Solid Waste (MSW), including programs dealing with industrial or hazardous wastes.
4. **Programs Solely Related to Collection of Certain Special Wastes.** Funds provided under this contract may not be used for programs and activities solely related to the management of scrap tires, used oil, oil filters, antifreeze, lead-acid batteries, or other special wastes excluded from disposal in MSW landfills. However, collection of these materials may be included as part of a comprehensive household hazardous waste collection and management program, so long as that is not the sole intent of the program.
5. **Activities Related to the Disposal of Municipal Solid Waste.** Funds provided under this contract may not be used for activities related to the disposal of municipal solid waste. This restriction includes: solid waste collection and transportation to a disposal facility; waste combustion (incineration or waste-to-energy); processing for reducing the volume of solid waste which is to be disposed of; any landfill related facilities or activities, including the closure and post-closure care of a landfill; or other activities and facilities associated with the ultimate disposal of municipal solid waste. However, this provision does not apply to activities specifically included under an authorized project category, to include landfill scales, citizens' collection stations, and small registered transfer stations. In addition, activities that would otherwise be eligible for funding, such as recycling, but that are located at a disposal facility may be funded.
6. **Projects Requiring a TCEQ Permit.** Funds provided under this contract may not be used for expenses related to projects or facilities that require a permit from TCEQ. This provision, however, does not apply to projects or activities that may be located at a permitted facility that, by then would not require a permit and would be otherwise eligible for funding.
7. **Projects Requiring TCEQ Registration.** Projects or facilities that require registration with TCEQ under state regulations, and which are otherwise eligible for funding, may be funded as an implementation project. However, the registration for the facility must be finally received before that project can be selected for funding.
8. **Projects that Create a Competitive Advantage over Private Industry.** In accordance with Section 361.Q14lb of the Texas Health and Safety Code, a project or service funded under this contract must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services. Under this definition, the term private industry includes non-profit entities.
9. **Supplanting Existing Funds.** Funds may not be used to supplant salaries of an existing staff position, where the functions assigned to that position will not change. Staff positions where the assigned functions will remain the same and that were active at the time of the grant application, and were funded from a source other than a previous solid waste grant, are ineligible for grant funding. This provision, however, does not apply to the salaries for staff of the PERFORMING PARTY, in its conduct of activities under this contract.
10. **Acquisition of Goods and Services.** Recipients of funds under this contract must comply with all state and local laws and regulations pertaining to the acquisition of goods and services. In recognition of the requirement that projects not create a competitive advantage over a private industry, it is a goal of this program that competitive processes be used to the extent possible for all purchases using grant funds. In addition, grant recipients are encouraged to participate in the State Cooperative Purchasing Program.

11. **Legislative and Lobbying Expenses.** In accordance with state laws and regulations, funds provided under this contract may not be used for expenses to support political activity, either directly or indirectly. As required under '33, Article IX of H.B. 1, the standards set forth in 5, Article IX of H.B. 1, shall apply to the use of funds provided under this contract.
12. **Food/Entertainment Expenses.** In accordance with the UGCMS, funds provided under this Agreement may not be used for food or entertainment expenses, including refreshments at meetings and other functions. This provision does not apply to authorize employee per-diem expenses for food costs incurred while on travel status.
13. **Use of Alcoholic Beverages.** As required under '33, Article IX of H.B. 1, the standards set forth in '11, Article IX of H.B. 1, shall apply to the use of funds under this Agreement. In accordance with those standards, no funds provided under this contract shall be used for the payment of salaries to any employee who uses alcoholic beverages on active duty. None of these funds shall be used for the purchase of alcoholic beverages, including travel expenses reimbursed with these funds.

Article 8 Budget and Payment Procedures

1. The PERFORMING PARTY shall submit a Request for Reimbursement voucher, which shall include attached legible copies of invoices issued by the subcontractor or vendor providing the products or services that substantiates the incurred expenditure amount. In addition, all requests for reimbursement of expenditures must be itemized and described in such a way that the acquired item can be readily matched to pre-acquisition approvals.
2. The PERFORMING PARTY must submit the Request for Reimbursement vouchers if costs have been incurred. They should be submitted with the required progress reports and results reports (see submittal due dates for reports in Article 3 of this Attachment). However, according to Article 2.2(c1), LRGVDC is not liable for any costs incurred by the PERFORMING PARTY in the performance of this agreement, which have not been billed to LRGVDC within fifteen days following termination of this agreement.
3. The LRGVDC reserves the right to suspend payment of funds awarded under this contract due to incomplete, incorrect, or inconsistent reports or tasks required under this contract until the PERFORMING PARTY satisfactorily completes, revises, or corrects such services or reports. The LRGVDC also reserves the right to require reimbursement of any overpayments determined as a result of any audit or inspection of records kept by the PERFORMING PARTY concerning the contract supported tasks to be performed.
4. The PERFORMING PARTY must submit prior notification and approval by the LRGVDC for any changes in personnel whose salaries will be funded under this contract.
5. All expenditures under the equipment, construction, or contractual, budget categories must be approved in advance by the LRGVDC. Further, for any other category expenses not specifically spelled out in the contract, the PERFORMING PARTY shall obtain prior written approval from LRGVDC for that expense.
6. The contract prohibits any reimbursement of travel expenses for out-of-state travel, except where such travel is specifically authorized in writing by the LRGVDC. Prior to authorizing any out-of-state travel by a PERFORMING PARTY, the LRGVDC must obtain written approval from TCEQ to provide such authorization.

7. If the PERFORMING PARTY does not have a current indirect cost rate approved in accordance with UGCMS, the LRGVDC may negotiate a lump sum indirect cost charges that do not exceed the charges established using the Indirect Cost Consumption Table provided in the Uniform Grant and Contract Management Standards under UGCMS.

Article 9 Financial Administration of Pass-Through Grant

The PERFORMING PARTY agrees to establish and administer a financial management program to make reimbursements for authorized expenditures and to ensure that the expenditures were, in fact, incurred and were reasonable and necessary to the project. In administering a financial management system, the PERFORMING PARTY shall adhere to the specific standards and requirements set forth in this Section, except that the requirements and processes may be more stringent than what is outlined below.

1. The PERFORMING PARTY may account for expenses incurred and request reimbursement of outlays under either a cash or an accrual basis, as defined and authorized under the UGCMS. To be eligible for reimbursement under this contract, a cost must have been incurred and either paid by the PERFORMING PARTY prior to claiming reimbursement from the LRGVDC or incurred by the last day of the time period indicated on a request for reimbursement form and liquidated no later than forty-five (45) days after the end of that time period.
2. The PERFORMING PARTY shall also utilize a summary of pass-through grant expenditures form and supplemental forms as deemed necessary by the LRGVDC under its financial monitoring program at monthly and/or with each request reimbursement to itemize expenditures by budget category.
3. The LRGVDC shall reimburse or otherwise make payment only for expenses incurred during the term of the pass-through grant agreement between the LRGVDC and PERFORMING PARTY.
4. The LRGVDC shall not reimburse or otherwise make payment for an expenditure that is not authorized under this contract. If it is determined, by either the LRGVDC or TCEQ that an expenditure that was reimbursed is not an authorized expense, the LRGVDC shall request return and reimbursement until the funds are returned or are applied to other authorized expenses.

Article 10 Authorized Representatives

- a. The LRGVDC hereby designated the person in the Contract Signature Page, Project Representative and Records Location, as the individual authorized to give direction to the PERFORMING PARTY for the purpose of this contract. The LRGVDC Project Representative shall not be deemed to have authority to contractually bind the LRGVDC unless the EXECUTIVE DIRECTOR of the LRGVDC has delegated such authority.
- b. The PERFORMING PARTY's Project Representative shall be deemed to have authority to receive direction from the LRGVDC, to manage work being performed, and to act on behalf of the PERFORMING PARTY as an Authorized Representative. The PERFORMING PARTY's Project Representative is designated in the Contract Signature Page.
- c. Either party may change its Project Representative. In addition, the Project Representative of either party may further delegate his or her authority as necessary, including any delegation of authority to a new Project Representative. The party making the change in Project Representative shall provide written notice of the change to the other party.

- d. The PERFORMING PARTY shall ensure that it's Project Representative, or his or her delegate, is available at all times for consultation with the LRGVDC.
- e. The PERFORMING PARTY shall designate a location for record access and review as required under Attachment A, Article 4 and Attachment E, Article 8.

Article 11 Program Education/Promotion

To make maximum use of grant funds for public education and promotion and to ensure maximum media coverage of outreach efforts, the PERFORMING PARTY shall:

- a. Provide specific information to LRGVDC concerning proposed public education materials to avoid duplication of effort with TCEQ's statewide public education effort;
- b. Use camera-ready art developed and provided by TCEQ or LRGVDC for promotional material such as flyers, utility bill inserts, and brochures, if appropriate;
- c. Allow the use of the name and a description of the program in TCEQ informational materials or media programs;
- d. Include the following credit on any media coverage of the program: This project is funded in part by a grant from the Lower Rio Grande Valley Development Council in cooperation with the Texas Commission on Environmental Quality; and
- e. Be able to participate in sharing information from the project with others interested in becoming involved with similar projects.

ATTACHMENT B: PERFORMING PARTY BUDGET AND AUTHORIZATIONS

Maximum LRGVDC obligation under this Contract shall not exceed: \$30,000.00 Note that this obligation is dependent upon other provisions incorporated herein.

Below is the approved budget for the PERFORMING PARTY. Note that any equipment (cost greater than \$500.00) must be authorized below or at a later date in writing.

Grant Budget Summary

Budget Categories	Funding Request
1. Personnel (Salary)	15,490.00
2. Fringe Benefits	5,175.00
3. Travel	0.00
4. Supplies (unit cost of less than \$1,000)	0.00
5. Equipment (unit cost of \$5,000 or more)	5,835.00
6. Construction	0.00
7. Contractual (other than for Construction)	0.00
8. Other	3,500.00
9. Indirect charges	0.00
TOTAL	30,000.00

10. Fringe Benefit Rate:	33%
11. Indirect Cost Rate:	

Budget Category Adjustments: The PERFORMING PARTY is responsible for ensuring that expenditure amounts remain within the various budget limits set forth in this Attachment. Compliance with the requirements of this Article is a necessary condition for payment, by the LRGVDC, of cost reimbursements.

The grant contract between the LRGVDC and the PERFORMING PARTY includes a detailed grant budget, expense authorization forms and detailed work program and activities. These are entered into the contract through adding the grant expenditures submitted in your grant application packet.

These forms may be amended or change to provide for additions, deletions, and revisions to the budget or expense authorizations. To request changes or add information on these forms the PERFORMING PARTY must submit a revised budget form with the new budget shown and include a letter signed by the authorized representative. The LRGVDC will review the request form and if approved will determined whether the change will require either a minor change or an amendment to the contract.

1. Personnel (Salary)

Position	Function	Status FT/PT, perm/temp	Monthly Salary	Time (%FTE)	Salary Request
Environmental Investigator	Solid Waste Enforcement	FT	28,458.	Full time position 50% from grant	20,665.00
					0.00
					0.00
					0.00
					0.00

Narrative: *(In any category where funding is requested, the Narrative must be completed.)*

One Full-time officer –Environmental Investigator with 50% of salary to be paid from grant funds.

3. Travel Please describe the types of routine in-region travel expenses expected and purpose for the travel. All out-of-state travel expenses and other non-routine travel, such as out-of-region travel to special training or events must be pre-approved by the Lower Rio Grande Valley Development Council. Complete the following information for all requested non-routine travel, including any out-of-state travel. If those details are not presently known, the Lower Rio Grande Valley Development Council will need to approve those travel costs before the travel occurs.

Position	Destination	Purpose	Travel Request

Narrative: *(In any category where funding is requested, the Narrative must be completed.)*

4. Supplies (Unit cost of less than \$1,000)

Description	Purpose	Supply Request

Narrative: *(In any category where funding is requested, the Narrative must be completed.)*

5. Equipment (Unit price of \$5,000 or more)			
Description	Purpose	Equipment Request	
Surveillance System – 2 Camera Hardwired Outdoor Digital with Video Motion Detection Outdoor video system with 2 compact bullet style wide angle day/night cameras.	The surveillance system will be placed in high target illegal dumping sites.	\$5,835.00	
Narrative: <i>(In any category where funding is requested, the Narrative must be completed.)</i> The area to be covered by two Environmental Officers is very large and the surveillance equipment will be placed in high target illegal dumping sites to help officers with enforcement and to deter illegal dumping.			
6. Construction			
Description	Purpose	Sub-Contracted (Y/N)	Construction Request
Narrative: <i>(In any category where funding is requested, the Narrative must be completed.)</i>			
7. Contractual			
Contractor	Purpose	Contractual Request	
Narrative: <i>(In any category where funding is requested, the Narrative must be completed.)</i>			

8. Other					
Type Other	Description	Purpose	Other Request		
Postage/Delivery					
Telephone/Fax					
Utilities					
Printing/Reproduction					
Advertising/Public Notices					
Signage					
Training/Registration Fees					
Dues/Membership Fees					
Record Storage					
Office Space					
Basic Office Furnishings					
Equipment Rentals					
Books/Subscriptions					
Repair/Maintenance					
Legal Services					
Temporary Services					
Narrative: <i>(In any category where funding is requested, the Narrative must be completed.)</i>					
Type Other (Cont.)	Description	Purpose	Unit Cost	No. of Units	Other Request
Recycling Bins					0.00
Recycling Bins					0.00
Personal Protective Equip.					0.00
Personal Protective Equip.					0.00
Personal Protective Equip.					0.00
Computer Hardware					0.00
Computer Software					0.00
Audio/Visual Equipment					0.00
Audio/Visual Equipment					0.00
Audio/Visual Equipment					0.00
Promotional Item	Key tags	Promotional items			595.00
Promotional Item	Rulers	Promotional items			610.00
Promotional Item	Star badges	Promotional items			188.00
Promotional Item	School bags	Promotional items			615.00
Promotional Item	Pencils	Promotional items			650.00
Promotional Item	Pens	Promotional items			842.00
Other Equip. (<\$5,000)					
Additional Other					
Additional Other					
Narrative: <i>(In any category where funding is requested, the Narrative must be completed.)</i> These promotional items will be used when making presentations and educating the community and students on the dangers of illegal dumping					

Attachment C: Work Program of Tasks to be completed by PERFORMING PARTY

GOAL: The PERFORMING PARTY will continue to stop illegal dumping by identifying, investigating, and prosecuting illegal dumping violators, and to raise public awareness of the health and environmental hazards of illegal dumping.

Objective 1: TO IDENTIFY A PROJECT COORDINATOR FOR THE PROGRAM

1) Task/Deliverable: Hidalgo County will identify a project coordinator for this program.

Objective 2: TO IDENTIFY AND INVESTIGATE DUMP SITES (5 LBS or more) IN HIDALGO COUNTY

1) Task/Deliverable: Provide the LRGVDC, in each progress report, the documentation/list of case numbers, dates of discovery, and locations of the dumpsite, which are, classified as "Isolated Dumpsites," along with each progress report.

Completion Time Frame: Continuous – Ongoing

Objective 3: ASCERTAIN AS MANY DUMP SITES AS POSSIBLE THROUGH CITIZEN COMPLAINTS, REFERRALS, PATROL TECHNIQUES, SURVEILLANCE AND OTHER LAW ENFORCEMENT METHODS IN HDIALGOCOUNTY

1) Task/Deliverable: Provide the LRGVDC, in each progress report, the documentation of case numbers and dates of discovery and list how the dumpsites were discovered.

Completion Time Frame: Continuous – Ongoing

Objective 4: CLEAN UP AS MANY DUMP SITES AS POSSIBLE IN HIDALGO COUNTY, DISCOVERED AS A RESULT OF THE SOLID WASTE PROGRAM

1) Task/Deliverable: Provide the LRGVDC in each progress report, the documentation/list of case numbers, whether the site was cleaned or not, estimated weight of dumpsites and whether the sites are isolated or chronic dumpsites.

Completion Time Frame: Continuous – Ongoing

Objective 5: ASSIST IN COMMUNITY SERVICE HOURS PROGRAM AND ORGANIZE CLEAN-UP PROGRAM IN HIDALGO COUNTY

1) Task/Deliverable: Provide the LRGVDC, in each progress report, the documentation of assistance efforts.

Completion Time Frame: Continuous – Ongoing

Objective 6: TO IDENTIFY, APPREHEND AND PROSECUTE ILLEGAL DUMPING VIOLATORS IN HIDALGO COUNTY

1) Task/Deliverable: Provide the LRGVDC, in each progress report, the documentation of case numbers, whether or not a violator was identified, first and last names of those who were identified as illegal dumping violators. Document where violator was apprehended and the

enforcement efforts as defined: verbal warning, written warning, unauthorized landfill letter, citation or arrest. Also document dates of the discovery with the violators name, court actions and dates.

Completion Time Frame: Continuous – Ongoing

Objective7: COORDINATE ENFORCEMENT THROUGH CIVIL AND CRIMINAL CASES

- 1) Task/Deliverable: Provide the LRGVDC, in each progress report, the documentation of case numbers, dates of the discovery, court actions, court dates, amount of fines, amount of community service hours, and jail time.

Completion Time Frame: Continuous – Ongoing

Objective 8: REPORT ON PROGRESS AND RESULTS OF PROGRAM

- 1) Task/Deliverable: The Project Coordinator will measure and document the following: 1) sites identified (defined by size as small isolated or large chronic); 2) number of complaints received; 3) number of sites found; 4) warning citations; 5) court cases tried and concluded; 6) number of convictions; 7) fines and dollar amounts of fines; 8) number of dump sites cleaned up through enforcement action and weight or cubic yards removed; 9) number of training activities attended and conducted; 10) the number of participants targeted by local enforcement activities; 11) quantities of media coverage; 12) distribution amounts of public information and/or educational materials; 13) descriptions of promotional events/public meetings including attendance. The documented information should be included in the Pass-Through Grant Summary Report. Financial documentation should also be included and submitted in the Summary of Pass-Through Grant Expenditures and the Request for Reimbursement when necessary.

Completion Time Frame: Submit the Pass-Through Grant Summary Report and the Summary of Pass-Through Grant Expenditures on a quarterly basis.

- 2) Task/Deliverable: The Project Coordinator will measure and document the following: 1) sites identified (defined by size as small isolated or large chronic); 2) number of complaints received; 3) number of sites found; 4) warning and citations; 5) court cases tried and concluded; 6) number of convictions; 7) fines and dollar amounts of fines; 8) number of dump sites cleaned up through enforcement action and weight or cubic yards removed; 9) number of training activities attended and conducted; 10) the number of participants targeted by local enforcement activities; 11) quantities of media coverage; 12) distribution amounts of public information and/or educational materials; 13) descriptions of promotional events/public meetings including attendance. The documented information should be included in the Results Monitoring Report Forms.

Completion Time Frame: Submit Results Report on a quarterly basis, through the end of the contract period.

- 3) Task/Deliverable: Submission of the End of Contract Results Report and Final Summary Report, using the Results Monitoring Report Forms. Deliverable 3: The Project Coordinator will submit the final summary report, using the Pass-Through Grant Summary Report and the final results report, using the Results of Grant Funded Project Report.

Completion Time Frame: Submit the end of contract report by December 31, 2008.

- 4) Task/Deliverable: The Project Coordinator will submit Follow-up Reports using the applicable forms as determined by the LRGVDC. The Project Coordinator will submit Follow-up Reports using the applicable forms to be determined and as requested by the LRGVDC.**

Completion Time Frame: Submit the Follow-up Reports as determined and requested by the LRGVDC.

Attachment D: Schedule of Deliverables to be Completed by PERFORMING PARTY

Tasks	Date
<p>Objective 1: Identification of Staff. Task 1: Hidalgo County will identify a project coordinator who will be responsible for managing the project and submission of reporting information.</p>	1/1/08
<p>Objective 2: Identify and Investigate Illegal Dumpsites (5 lbs or more) in Hidalgo County. Task 1: Provide the LRGVDC, in each progress report, the documentation/list of case numbers, dates of discovery and locations of the dumpsite, which are classified as Isolated Dumpsites along with each monthly progress report.</p>	Continuous-Ongoing
<p>Objective 3: Ascertain as many dump sites as possible through citizen complaints, referrals, patrol techniques, surveillance and other law enforcement methods in Hidalgo County. Task 1: Provide the LRGVDC, in each progress report, the documentation of case numbers, and dates of discovery and list how the dumpsites were discovered.</p>	Continuous-Ongoing
<p>Objective 4: Clean up as many dump sites as possible in Hidalgo County discovered as a result of the solid waste program. Task 1: Provide the LRGVDC in each progress report, the documentation/list of case numbers, whether the site was cleaned or not, estimated weight of dumpsites and whether the sites are isolated or chronic dumpsites.</p>	Continuous-Ongoing
<p>Objective 5: Assist in community service hours program and organize cleanup program in Hidalgo County. Task 1: Provide the LRGVDC, in each progress report, the documentation of assistance efforts.</p>	Continuous-Ongoing
<p>Objective 6: To identify, apprehend and prosecute illegal dumping violators in Hidalgo County. Task 1: Provide the LRGVDC, in each progress report, the documentation of case numbers, whether or not a violator was identified, first and last names of those who were identified as illegal dumping violators. Document where violator was apprehended and the enforcement efforts as defined: verbal warning, written warning, unauthorized landfill letter, citation or arrest. Also document dates of the discovery with the violators name, court actions and dates.</p>	Continuous-Ongoing
<p>Objective 7: Coordinate enforcement through civil and criminal cases. Task 1: Provide the LRGVDC, in each progress report, the documentation of case numbers, dates of the discovery, court actions, court dates, amount of fines and community service hours and jail time.</p>	Continuous-Ongoing
<p>Objective 8: Report on progress and results of the program. Task 1: Submit Progress Reports on a quarterly basis. Task 2: Submit Results Reports on a quarterly basis. Task 3: Submit End of Contract Results and Final Summary Report. Task 4: Submit Follow-up Reports as needed.</p>	<p>Continuous-Ongoing</p> <p>as needed Ongoing</p>

Attachment E: General Contract Provisions

Article 1 Records and Documentation

1. In general, expenditure documentation to be maintained by the PERFORMING PARTY (but not necessarily submitted to the LRGVDC with each Expenditure Report) should be documented to show that the work was indeed performed and that the expense was, in fact, incurred. In addition, the documentation should also support the fact that the expenditure was reasonable and necessary to this contract.
2. Documents that should be maintained, as appropriate for the expense, include by category, the records listed below.
 - a) SALARY/WAGES – Time sheets that have been signed and approved.
 - b) TRAVEL – Documentation, which, at a minimum, is consistent with State Travel Regulations. The purpose of the travel should be documented and supported with actual receipts for hotel accommodations, public transportation receipts, airline receipts, etc.
 - c) EQUIPMENT – purchase orders, invoices, and canceled checks.
 - d) SUPPLIES – Purchase orders (if issued), invoices and canceled checks.
 - e) CONTRACTUAL – All of the above plus documentation that the costs were reasonable and necessary. The same standards should be applicable and the same standards should be applicable to subcontractors.
 - f) OTHER – All of the above apply.
3. If requested by the LRGVDC, the PERFORMING PARTY agrees to provide to the LRGVDC that additional expense records and documentation materials, as listed in Section (2) of this Article and appropriate for the expense, for the time period requested by the LRGVDC. Except that the PERFORMING PARTY will not be asked to submit records that have already been provided to the LRGVDC with Financial Status Report. The LRGVDC will provide reasonable time for the PERFORMING PARTY to comply with a request for additional records. If the LRGVDC requests to review additional records to be provided by the PERFORMING PARTY under the LRGVDC financial monitoring program, the LRGVDC will review those records and provide the PERFORMING PARTY a written of findings of the review. The LRGVDC will also allow the PERFORMING PARTY reasonable time to respond to any findings of non-compliance or other problems identified by the records review.

Article 2 Legal Authority

The activities funded under this contract, shall be in accordance with all provisions of this Contract, all applicable state and local laws, rules, regulations and guidelines. The main governing standards include, but may not be limited to the following:

1. '361.014, TEX. HEALTH ~ SAFETY CODE ANN. (as amended by H.B. 3072, 74th Texas Legislature);
2. '330.569 of the TCEQ Municipal Solid Waste Regulations (30 TAC Chapter 330); and

3. The Uniform Grant and Contract Management Ac., TEX. GOV'T CODE ANN., "783.001 et. seq., and the Uniform Grant and Contract Management Standards, 1 Texas Administrative Code (TAC), "5.141 et. seq. (collectively, "UGCMA").

Article 3 Scope of Services

The services to be performed by the PERFORMING PARTY are herewith outlined in the General Provisions and Change Orders which are hereby incorporated into and made a part of this Agreement as if set out word-for-word herein.

Article 4 Purpose

- a. The purpose of this Contract (Agreement) is to accomplish the goals of House Bill 3072 of The 74th Texas Legislature (1995), as they relate to distributing solid waste fee revenue funds to support local and regional solid waste projects consistent with the regional solid waste management plans approved by the TCEQ and to update and maintain those plans.
- b. Under the overall goals of the funding program established under House Bill 3072, the more specific purpose of this Agreement are:
 1. To enable the LRGVDC to carry out or conduct various municipal solid waste management-related services and support activities within the LRGVDC's regional jurisdiction; and
 2. To administer an efficient and effective, region-wide, pass-through (PERFORMING PARTY) assistance grants program and/or, where authorized by the LRGVDC in accordance with Article 4 of this Attachment, to conduct various LRGVDC – managed projects.

Article 5 Types of Solid Waste Implementation Projects & Applicants

1. Only those local and regional political subdivisions located within the State of Texas as listed below are eligible to receive funding from the LRGVDC as a pass-through grant:
 - Cities;
 - Counties;
 - Public schools and school districts (does not include Universities or post secondary educational institutions); and
 - Other general and special law districts created in accordance with state law, and with the authority and responsibility for water quality protection or municipal solid waste management, to include river authorities.
2. All expenditure reports shall contain sufficient identification of and information concerning the costs incurred so as to enable the LRGVDC to ascertain the eligibility of a particular expenditure and to enable subsequent audit thereof.
3. The category specific funding limitations outlined for each category shall apply to all uses of funds under implementation projects conducted for that category.
 - 1) Local Enforcement. This category consists of projects, which contribute to the prevention of illegal dumping. These projects may include programs to investigate illegal dumping problems, educate the

public on illegal dumping laws, and prosecute violators. These programs may also include activities to enforcement laws pertaining to the illegal disposal of liquid wastes.

Funding limitations specific to this category:

This category may not include funding for enforcement activities related to the illegal disposal of industrial or hazardous waste. It is understood, however, that industrial or hazardous waste may periodically be discovered at illegal waste disposal sites. Such instances do not preclude the investigation of that site, so long as the funded program is specifically aimed at the illegal disposal of municipal solid waste.

Grant funds may not be used for either the cleanup of illegal disposal sites or the transportation and/or disposal of waste collected during such cleanups.

- 2) **Source Reduction and Recycling.** This category includes projects, which provide a direct and measurable effect on reducing the amount of municipal solid waste going into landfills, by diverting various materials from the municipal solid waste stream for reuse or recycling, or by reducing waste generation at the source. These programs may include implementation of efficiency improvements in the solid waste management system in order to increase source reduction and recycling, to include: full-cost accounting systems and cost-based rate structures; establishment of mechanisms to track and assess the level of recycling activity in the community on a regular basis.

Funding limitations specific to this category:

Programs and projects funded under this category shall be designed to provide a measurable effect and reducing the amount of municipal solid waste going into landfills. Any program or project aimed at demonstrating the use of products made from recycled materials shall have as its primary function the education and training of residents, governmental officials, and others in order to encourage support for recycling efforts.

Programs aimed at efficiency improvements to increase the source reduction of solid waste must be coordinated with the LRGVDC. Any program to develop a full-cost accounting system shall utilize the full-cost accounting guidance prepared by the LRGVDC.

- 3) **Citizens' Collection Stations and A Small Registered Transfer Stations.** Projects to construct a citizens' collection station, as these facilities are defined under the TCEQ regulations Section 330.4(f), are authorized for funding. Municipal Solid Waste Transfer Stations that qualify for registration under Section 330.4(d) or Section 330.4(r) of the TCEQ's MSW regulations may also be funded. A project funded under this category should include consideration of an integrated approach to solid waste management, to include providing recycling services at the site, if appropriate to the management system in place.

Funding limitations specific to this category:

Transfer stations that require a permit from the TCEQ may not be funded.

Municipal solid waste transfer stations that qualify for registration under Section 330.4(d) of the MSW regulations may be funded. Specifically, this section covers a municipal solid waste transfer station facility that is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

- a municipality with a population of less than 50,000;
- a county with a population of less than 85,000; or
- a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons per day or less.

Municipal solid waste transfer stations that qualify for a registration only under the provisions of Section 330.4(q), allowing for registration of facilities that recover 10% or more of the waste stream for reuse or recycling, but not also under the provisions of Section 330.4(d), may not be funded. However, those components of a transfer facility dedicated to the reuse or recycling activities may qualify for funding under the source reductions and recycling grant category.

Municipal solid waste transfer stations that are used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste, and which qualify for registration under Section 330.4(r) of the MSW regulations may be funded under this category. Specifically, Section 330.4(r) of the regulations allows for registration of a liquid waste transfer facility that will receive 32,000 gallons a day or less.

Only the costs necessary to construct the facility and/or purchase and install necessary equipment may be funded. Costs associated with operating a facility once it is completed, to include lease payments or contractual agreements for operations, may not be funded.

- 4) Education and Training Projects. Educational components are encouraged under the other categories in order to better ensure public participation in projects; those educational components should be funded as part of those projects and not separately under this category. This category may be appropriate for a stand-alone educational project dealing with a variety of solid waste management topics. This category may include funding for information-exchange activities, subject to the other limitations on travel expenses.

Funding limitations specific to this category:

Programs and projects funded under this category must be primarily related to issues involved in the management of municipal solid waste. Education or training events that cover a broader range of environmental issues may be funded on a partial basis appropriate to the extent to which municipal solid waste issues are covered.

Article 6 Arrears of Waste Disposal Fees

Local and regional political subdivisions that are subject to the payment of state solid waste disposal fees and whose fee payments are in arrears, as determined by the LRGVDC or TCEQ, are not eligible to receive pass-through grant funding from the LRGVDC. The TCEQ shall provide, on a quarterly basis, the LRGVDC a list of entities for which fee payments are in arrears. The LRGVDC shall allow a potential pass-through grant application that is listed as being in arrears in its fee payments the opportunity to provide documentation of payment of the fees owed by the state. If the potential applicant provides the LRGVDC with documentation of payment of the fees, such as a canceled check or receipt from the state, the LRGVDC may consider that applicant to be eligible to receive pass-through grant funding under this agreement. The LRGVDC shall notify the TCEQ of any applicants for which a determination of eligibility was made under this subsection.

Article 7 Insurance and Liability

PERFORMING PARTY shall maintain insurance coverage for work performed or services rendered under this contract as specified in the Special Provisions. PERFORMING PARTY understands and agrees that it shall be liable to repay and shall repay upon demand to LRGVDC any amounts determined by LRGVDC, its independent auditors, or any agency of state or federal governments to have been paid in violation of the terms of this Agreement.

Article 8 Audit/Access to Records

- a. PERFORMING PARTY shall engage an independent financial auditor and conduct an annual audit of the PERFORMING PARTY'S financial statements in accordance with the Single Audit Circular provisions of UGCM.

All terms used in connection with audits in this Agreement shall have the definitions and meanings assigned in the Single Audit Circular in UGCMS.

Provisions of the Single Audit Circular in Part IV of UGCMS shall apply to all non-state entities expending the funds of this grant, whether they are recipients, receiving the funds directly from the TCEQ, or are sub-recipients, receiving the funds from a recipient or another sub-recipient. In addition, the PERFORMING PARTY shall require the independent auditor to supply all audit work papers substantiating the work performed, at the request of the TCEQ or its designee.

- b. The PERFORMING PARTY shall furnish LRGVDC with a copy of the annual audit report.
- c. Unless otherwise specifically authorized by the LRGVDC in writing, the PERFORMING PARTY shall submit the report of such audit to the LRGVDC no later than 120 days after the end of the audit period. Audits performed under this Section are subject to review and resolution by the LRGVDC or its authorized representative.
- d. LRGVDC reserves the right to conduct or cause to be conducted an independent audit of all funds received under this contract which may be performed by the local government audit staff, a certified public accountant firm, or other auditors as designated by the LRGVDC. Such audit will be conducted in accordance with applicable professional standards and practices.
- e. The PERFORMING PARTY shall maintain and make available for review, inspection and/or audit books, records, documents, and other evidence reasonably pertinent to performance on all work under this Agreement, including negotiated changes or amendments thereto, in accordance with accepted professional practice, appropriate accounting procedures and practices at the PERFORMING PARTY'S Texas office. The PERFORMING PARTY shall also maintain and make available at its Texas office the financial information and data used by the PERFORMING PARTY or its designee (including independent financial auditors) in the preparation or support of any cost submission or cost (direct and indirect), price or profit analysis for this Agreement or any negotiated sub-agreement or change order and a copy of the cost summary submitted to LRGVDC. The LRGVDC, TCEQ, Texas State Auditor's Office or any of LRGVDC'S duly authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of review, inspection and/or audit. During the conduct of any such review, audit or inspection, the PERFORMING PARTY'S books, records, and other pertinent documents may, upon prior conference with the PERFORMING PARTY, be copied by the LRGVDC or any of its duly authorized representatives. The parties in accordance with good business ethics shall

handle all such information. The PERFORMING PARTY shall provide proper facilities within the State of Texas for such access and inspection.

- f. Audits conducted pursuant to this provision shall be in accordance with State law, regulations and policy, and generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency (ies).
- g. The PERFORMING PARTY agrees to the disclosure of all information and reports resulting from access to records to LRGVDC. Where the audit concerns the PERFORMING PARTY, the auditing agency will afford the PERFORMING PARTY an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report.
- h. Records shall be maintained and made available during the entire period of performance of this Agreement and until three (3) years from date of final LRGVDC payment for the project. In addition, those records which relate to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken shall be maintained and made available until completion of such action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- i. Access to records is not limited to the required retention periods. The authorized representatives designated in Exhibit (8) of this contract shall have access to records at any reasonable time for as long as the records are maintained.
- j. This audit/access to records Article applies to financial records pertaining to all sub-agreements and all sub-agreement change orders and amendments. In addition, this right of access applies to all records pertaining to all sub-agreements, sub-agreement change orders and sub-agreement amendments: to the extent the records reasonably pertain to sub-agreement performance; if there is any indication that fraud, gross abuse or corrupt practices may be involved; or if the sub-agreement is terminated for default or for convenience.
- k. The LRGVDC reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records kept by the PERFORMING PARTY on work performance under this Agreement.

Article 9 Accounting System

The PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with applicable State law, regulations and policies relating to accounting standards or principles. The PERFORMING PARTY must account for costs in a manner consistent with such standards or principles.

Article 10 Americans with Disabilities Act

The PERFORMING PARTY shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. ** 12101 – 12213 (Pamph. 1995).

Article 11 Utilization of Small, Minority, and Women's Business Enterprise

The PERFORMING PARTY agrees that qualified Historically Underutilized Businesses (HUBs) shall have the maximum practicable opportunity to participate in the performance of this Agreement.

Article 12 Energy Efficiency Standards

The PERFORMING PARTY is encouraged to follow the Texas State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Article 13 Acknowledgment of Financial Support

The PERFORMING PARTY shall acknowledge the financial support of the LRGVDC whenever work funded, in whole or part, by this Agreement is publicized or reported in news media or publications. All reports and other documents completed as a part of this Agreement, other than documents prepared exclusively for internal use within the LRGVDC, shall carry the following notation on the front cover or title page:

*PREPARED IN COOPERATION WITH THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AND
THE LOWER RIO GRANDE VALLEY DEVELOPMENT COUNCIL*

Article 14 Amendments to Contract

- a. Any alterations, additions, or deletions to the terms of this contract which are required by changes in Federal Law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation, provide if the PERFORMING PARTY may not legally comply with such change, PERFORMING PARTY may terminate its participation herein as authorized by Article 15.
- b. LRGVDC may, from time to time, require changes in the Scope of the Service of the PERFORMING PARTY to be performed hereunder. Such changes that are mutually agreed upon by and between LRGVDC and the PERFORMING PARTY in writing shall be incorporated into this Agreement.

Article 15 Termination of Contract

The PERFORMING PARTY acknowledges that this Agreement may be terminated under the following circumstances:

- a. Convenience. LRGVDC may terminate this Agreement in whole or in part without cause at any time by written notice by certified mail to the PERFORMING PARTY whenever for any reason LRGVDC determines that such termination is in the best interest of LRGVDC. Upon receipt of notice of termination, all services hereunder of the PERFORMING PARTY and its employees and subcontracts shall cease to the extent specified in the notice of termination. In the event of termination in whole, the PERFORMING PARTY shall prepare a final invoice within 30 days of such termination reflecting the services actually performed pursuant to the Agreement and to the satisfaction of the Executive Director or his designee which has not appeared on any prior invoice. LRGVDC agrees to pay the PERFORMING PARTY, in accordance with the terms of the Agreement, for services actually performed and accruing to the benefit of LRGVDC compensation previously paid.
- b. The PERFORMING PARTY may cancel or terminate this Agreement upon thirty (30) days written notice by certified mail to LRGVDC. The PERFORMING PARTY may not give notice of cancellation after it has received notice of default from LRGVDC. In the event of such termination prior to completion of the contract provided for herein, LRGVDC, agrees to pay services herein specified on a prorated bases for work actually performed and invoiced in accordance with the terms of this Agreement, less payment of any compensation previously paid.

- c. **Default.** LRGVDC may, by written notice of default to the PERFORMING PARTY, terminate the whole or any part of the Agreement in any one of the following circumstances:
1. If the PERFORMING PARTY fails to perform the services herein specified within the time specified herein or any extension thereof; or
 2. If the PERFORMING PARTY fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or so violates the Agreement in any manner which significantly endangers substantial performance of the Agreement or completion of the services herein specified within a reasonable time, and in either of these two instances does not cure such failure within a period of ten (10) days (or such longer periods of time as may be authorized by LRGVDC in writing) after receiving written notice by certified mail of default from LRGVDC. In the event of such termination, all services of the PERFORMING PARTY and its employees and subcontracts shall cease and the PERFORMING PARTY shall prepare a final invoice reflecting the services actually performed pursuant to the Agreement and to the satisfaction of the Executive Director of LRGVDC or his designee, which has not appeared on a prior invoice. LRGVDC agrees to pay the PERFORMING PARTY, in accordance with the terms of this Agreement, for services actually performed and accruing to the benefit of LRGVDC as reflected on said invoices, less payment of any compensation previously paid and less any costs or damages incurred by LRGVDC as a result of such default, including an amount agreed to in writing by LRGVDC and the PERFORMING PARTY to be necessary to complete the service herein specified, in addition to the which would have been required had the PERFORMING PARTY completed the services herein specified as required herein.
 3. Failure to comply with the conditions set forth in this contract shall be the basis for termination of this contract and/or the revocation of any unexpended or inappropriately expended funds.

Article 16 Severability

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not effect any other term of this Agreement, which shall continue in full force and effect.

Article 17 Intellectual Property

- a. For the purpose of this Article, intellectual property refers to 1) any discovery of invention, for which patent rights may be acquired, and 2) any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials, and 3) any other materials in which intellectual property rights may be obtained.
- b. If the PERFORMING PARTY first conceives of, actually puts into practice, discovers, invents, or produces any intellectual property during the course of its work under this contract, it shall report that fact to the LRGVDC.
- c. The PERFORMING PARTY may obtain governmental protection for rights in the intellectual property. However, the LRGVDC and TCEQ hereby reserve a nonexclusive, royalty-free and irrevocable license to use, publish, or reproduce the intellectual property for sale or otherwise, and to authorize others to do so. The LRGVDC also reserves a royalty-free nonexclusive, and irrevocable license to use, publish, or reproduce for sale or otherwise, and to authorize others to use, publish, or reproduce, for sale or otherwise (to the extent consistent with the rights of third parties) any rights with funds received under this contract.

- d. In performing work under this contract, the PERFORMING PARTY shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third-party's intellectual property rights. It shall hold the LRGVDC harmless for, and to the extent permitted by the laws and Constitution of the State of Texas, indemnify the LRGVDC against, any claims for infringement related to its work under this contract.
- e. The PERFORMING PARTY shall include provisions adequate to effectuate the purpose of this Article in all sub-agreements and subcontracts under this contract in the course of which intellectual property may be produced or acquired.

Article 18 Data and Publicity

All data and other information developed under this contract shall be furnished to the LRGVDC and shall be public data and information except to the extent that it is exempted from public access by the Texas Open Records/Public Information Act, Vernon's TEX. GOV'T CODE 552. Upon termination of this contract, all data and information shall become the joint property of the PERFORMING PARTY and the LRGVDC.

Article 19 Dispute Resolution

Any and all disputes concerning questions of fact or of law arising under this Agreement that is not disposed of by Agreement shall be decided by the Executive Director of LRGVDC or his designee, who shall reduce his decision to writing and provide notice thereof to the PERFORMING PARTY. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the PERFORMING PARTY requests a rehearing from the Executive Director of LRGVDC. In connection with any rehearing under this Article, the PERFORMING PARTY shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing may be appealed to the TCEQ. Pending final decision of a dispute hereunder, the PERFORMING PARTY shall proceed diligently with the performance of the Agreement and in accordance with LRGVDC's final decision.

Article 20 Oral and Written Agreements

All oral or written agreements between the parties hereto relating to the subject matter of this Contract, which were developed and executed prior to the execution of this contract have been reduced to writing and are contained herein.

Article 21 Employment Practices

The PERFORMING PARTY agrees that in the performance of this Contract, it will not discriminate against any employee or applicant because of race, religion, color, sex, or national origin and it will comply with Executive Order 11246, entitled A Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (Title 41 CFR Part 60). The PERFORMING PARTY assures that no person will, on the grounds or race, creed, color, handicap, national origin, sex, political affiliation or beliefs, be excluded from, be denied the benefit of, or be subject to discrimination under any program or activity funded in whole or part under this Contract.

Article 22 Force Majeure

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the parties' control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with the LRGVDC.

Article 23 Funding under this Agreement Subject to Funds in the MSWDTRF

It is the understanding of the parties that the source of the funds provided by the TCEQ is the Municipal Solid Waste Disposal and Transportation Revenue Fee (MSWDTRF). Due to demands upon that source for funds necessary to protect the health and safety of the public, it is possible that the funds contained in the MSWDTRF will be depleted prior to completion of this Agreement. The parties agree that all funding arranged under this Agreement is subject to sufficient funds in the MSWDTRF.

Article 24 Safety and Protection

The PERFORMING PARTY shall be responsible for requiring subcontractors and sub-grantees to maintain and supervise all necessary safety precautions and programs in connection with the work. PERFORMING PARTY shall take all necessary safety precautions.

Article 25 Hazardous Substances, Waste Disposal and Manifests

PERFORMING PARTY, subcontractors and sub-grantees must comply with all applicable Laws and Regulations, including but not limited to, those relating to hazardous substances, waste disposal and manifests.

Article 26 Conflict of Interest

PERFORMING PARTY shall notify the LRGVDC immediately upon discovery of any potential or actual conflict of interest. PERFORMING PARTY agrees that the LRGVDC has sole discretion to determine whether a conflict exists and the LRGVDC may terminate the Agreement at any time, on the grounds of actual or apparent conflict of interest.

- 4.68.1 *Notice of Conflict Interest:* The PERFORMING PARTY shall notify the LRGVDC in writing of any actual, apparent, or potential conflict of interest regarding any individual performing or having access to information regarding the work. As applicable, the notification shall include both organizational conflicts of interest. Any individual with a personal conflict of interest shall be disqualified from taking part in any way in the performance of any work that created the conflict of interest.

Article 27 Survival Obligations

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Agreement, as well as all continuing obligations indicated in the Agreement, will survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

Article 28 Contractual Costs

PERFORMING PARTY's contractual costs must comply with allowable costs requirements. PERFORMING PARTIES, which are governmental entities, must engage in contractor selection on a competitive basis in accordance with their established policies. If PERFORMING PARTY has no competitive procurement policy or is a private entity, PERFORMING PARTY must generally select contractors by evaluation and comparison of price, quality of goods or services and past performance. All sub-grants awarded by the PERFORMING PARTY under this Agreement shall be in accordance with Subpart C, Sec. 37, Subsection (b) of the State Uniform Administrative Requirements for Grants and Cooperative Agreements as set forth in Part III of the *Uniform Grant Management Standards* adopted by the Governor's Office of Budget and Planning.

Article 29 Schedule of Remedies available to the FUNDING AGENCY

In accordance with Chapter 2259, Texas Government Code, the following Schedule of Remedies applies to this contract in the event of substandard performance or other failure to conform to the requirements of the contract or applicable law as set forth in this Section.

Reject substandard performance and request corrections without charge to the FUNDING AGENCY.

Issue notice of substandard performance or other non-conforming act or omission.

Request and receive return of any over payments or inappropriate payments.

Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity.

Reject reimbursement requested and withhold all or partial payments. Funds may be retained by the FUNDING AGENCY for recovery or administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law.

Terminate the contract, demand and receive: return of all equipment purchased of contract funds, return of all unexpended funds, and repayment of expended funds.

If the FUNDING AGENCY evaluation finds PERFORMING PARTY's performance to be substandard, FUNDING AGENCY may provide its written evaluation report to other governmental entities at any time. FUNDING AGENCY may also provide its written evaluation report to the public as authorized by law.

Article 30 Entire Contract

This Agreement represents the entire contract between the contracting parties and supersedes any and all prior contracts between the parties, whether written or oral.

Article 31 Headings

The headings to sections contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of the substantive provision to which the heading applies unless the context so requires.

Article 32 Procurement

A copy of the local Procurement Policy used the PERFORMING PARTY must be submitted to the LRGVDC upon the signing of this contract.

Article 33 Order of Preference

Unless otherwise stated, a listing of factors, criteria or subjects in this contract does not constitute an order of preference.