

**Lower Rio Grande Valley Development Council
Inter-local Contract
CONTRACT SIGNATURE PAGE**

Contract Name: REGIONAL SOLID WASTE GRANTS PROGRAM		
Contract Number: 10-21-G09		
Performing Party: Hidalgo County		
Performing Party Identification Number:		
Maximum LRGVDC Obligation: \$ 30,000.00	Effective Date: Date of last signature	Expiration Date: August 31, 2010
<p>The Lower Rio Grande Valley Development Council (LRGVDC), and the named Performing Party, a governmental body, agency, or political subdivision of the United States, the State of Texas, or another State, enter this Agreement (Contract) to cooperatively conduct authorized governmental functions and activities under the laws of the State of Texas, including, without limitation, the Interagency Cooperation Act, the Interlocal Cooperative Act, and Texas Water Code Chapter (§) 5.124 and 5.229. The Parties agree: to be effective, the Contract must be signed by an authorized official of the LRGVDC and the Performing Party; as authorized by LRGVDC, Performing Party will conduct Contract Activities as part of its own authorized governmental functions and LRGVDC will reimburse Allowable Costs subject to the Texas Uniform Grant Management Standards (UGMS) and this Contract; the Performing Party is not a vendor of goods and services under Texas Government Code Chapter 2251, therefore, no interest is applicable; and the Contract may be terminated by LRGVDC for its own convenience with 30 days written notice. The purpose of this Agreement is to implement the provisions of §361.014(b) of the Texas Health and Safety Code, regarding the distribution of solid waste disposal fee revenue funds in support of local and regional solid waste projects consistent with the LRGVDC authorized §363.064(b) of the Texas Health and Safety Code Regional Solid Waste Management Plans (RSWMPs), and to update and maintain those plans. To enable the PERFORMING PARTY to carry out or conduct various municipal solid waste management-related services and activities within the PERFORMING PARTY's regional jurisdiction that support the implementation of the RSWMP. To administer an efficient and effective, solid waste grant implementation program.</p>		
Parties to the Contract:	Lower Rio Grande Valley Development Council (LRGVDC)	Hidalgo County
By (Authorized Signature):		
Printed Name:	Kenneth N. Jones, Jr.	Rene Ramirez
Title:	Executive Director	County Judge
Date of Signature:		
Contract Manager Name:	Marcie Oviedo	Lazaro Gallardo Jr.
Contact Numbers:	956-682-3481	956-581-6800
Finance Representative:	Ann Lyles	Rey Eufracio

Intergovernmental Cooperative Reimbursement Agreement
CONTRACT DOCUMENTS

The entire Contract between LRGVDC and Performing Party is composed of the Contract Documents listed on this page and marked by an "X." A listed document includes all amendments. The terms "Contract" and "Grant Agreement" include all the Contract Documents. In the event of a conflict of terms, the Contract Documents as amended control in the descending order of the list, subject to provisions in the Special Terms and Conditions, if any. All contract provisions, however, are subject to control by the latest amendment and most specific provision and by the applicable state and federal laws, rules, and regulations.

X	Contract Signature Page
X	Qualifying Conditions
X	Documents Created During the Contract (including any minor contract changes, budget amendments, or COG-Managed Projects approved by LRGVDC in accordance with Contract procedures)
X	Specifications & Standards for Performance
X	Contract Funding
X	Contract Activities
X	Contract Reporting
X	Special Terms & Conditions
X	General Terms and Conditions
X	Project Representatives and Records Location
X	Attachment 1 - PERFORMING PARTY BUDGET
X	Attachment A – SCOPE OF WORK & DELIVERABLES

**LOWER RIO GRANDE VALLEY DEVELOPMENT COUNCIL
Inter-Governmental Cooperative Reimbursement Agreement**

CONTRACT ACTIVITIES

1. INTRODUCTION

The purpose of this Agreement is to define the scope of services for implementation of the Regional Solid Waste Management Plan (RSWMP) goals and objectives. It is understood the obligations identified within this document apply to each pass-through recipient as well as the PERFORMING PARTY.

2. DESCRIPTION OF ACTIVITIES

The PERFORMING PARTY agrees to follow those administrative procedures identified in this Agreement and in the Regional Solid Waste Grants Program Administrative Procedures, Attachment A, in performance of the deliverables identified within this Agreement.

I. QUALIFYING CONDITIONS

3. Eligibility. Only those local and regional political subdivisions located within the State of Texas as set forth in this Article are eligible to receive funding from the PERFORMING PARTY for an implementation project. Federal entities are not eligible to receive funds under this Agreement. Eligible entities include the following:

3-1. Cities.

3-2. Counties.

3-3. Public schools and school districts (does not include Universities or post secondary educational institutions).

3-4. 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.

3-5. Regional Planning Commissions, Regional Councils of Governments, Regional Area Councils, Regional Development Councils, or Regional Associations of Governments.

II. SPECIFICATIONS AND STANDARDS FOR PERFORMANCE

4. Contract Amendments: This document may be changed by amendment as provided for in the General Terms and Conditions. PERFORMING PARTY must submit a formal budget amendment for budget changes that result in greater than 10% (ten percent) of the PERFORMING PARTY's fiscal year (FY) budget. PERFORMING PARTY has prior authorization to conduct budget category changes for less than 10% (ten percent) of the PERFORMING PARTY's FY budget. All budget category changes and/or amendments must be reflected in Request for Reimbursement Reports. PERFORMING PARTY shall ensure Budget forms (Attachment 1) reflect all changes and amendments.

5. Contract Documents: The working documents, presented in order of preference, are:

5.1. This LRGVDC Grant Agreement.

5.2. PERFORMING PARTY'S Budget Form (Attachment 1).

5.3. Work Program - Deliverables (Attachment A).

III. CONTRACT FUNDING

6. Budget Category Expense Standards and Adjustments. The budget for this Agreement shall be derived from the PERFORMING PARTY's Application documents (Attachment 1). Following review and approval by the LRGVDC, the budget and the completed Application forms submitted by the PERFORMING PARTY, and all approved amendments, shall be incorporated into this Agreement as updates to Attachment 1. Budget amendments are necessary when budget category adjustments exceed 10% (ten percent) of the FY total budget, adjustments less than 10% (ten percent) shall be reported on Requests for Reimbursement. All negative budget categories should be adjusted prior to submitting the Request.

6-1. The PERFORMING PARTY shall not incur expenses in excess of the budget category amounts shown in each fiscal year's budget column.

6-2. Amendments to the budget contained in Attachment 1 shall consist of a signed letter of request submitted by a PERFORMING PARTY representative with signatory authority, addressed to the LRGVDC Project Representative, with copy of an amended Budget Form and supporting reason(s) for the request.

- 7. Budget Category Expense Records and Documentation.** The PERFORMING PARTY shall maintain expenditure documentation to show the work was performed and that the expense was, in fact, incurred. Expense documentation should support reasonable expenditure necessary to this Agreement. Expense record documentation shall be conducted per the UGMS. Budget category expenses not addressed in the following will be administered per the General Terms and Conditions of this Agreement.
- 7-1. Personnel/Salary.** The PERFORMING PARTY's employee positions covered in this Agreement are set forth in Attachment 1.
- 7-1-1.** Time sheets that have been signed and approved.
- 7-2. Travel.** PERFORMING PARTY should maintain onsite travel documentation which, at a minimum, is consistent with LRGVDC Travel Operating Procedures and which identifies the purpose of the travel, supported with actual receipts for hotel accommodations, public transportation receipts, airline receipts, etc. Such travel documentation should be submitted upon request.
- 7-3. Supplies.** Expenses included under the Supplies expense category of the budget set forth in Attachment 1, shall be for non-construction related costs for goods and materials having a unit acquisition cost of less than \$1,000, excluding shipping, handling, freight, tax, etc. Such expenditures shall generally relate to the routine purchase of office supplies (paper, pencils, and staplers) or other goods which are consumed by the PERFORMING PARTY in a relatively short period of time, in the regular performance of the general activities funded under this Agreement.
- 7-3-1.** Supplies expenditure documentation to be maintained by the PERFORMING PARTY includes receipts or purchase orders (if issued) or invoices marked paid, and canceled checks.
- 7-4. Equipment.** Expenses included under the Equipment expense category of the budget set forth in Attachment 1, shall be for non-construction related, tangible, personal property having a unit acquisition cost of \$5,000, or more with an estimated useful life of over one year.
- 7-4-1.** PERFORMING PARTY must seek LRGVDC prior approval for purchase of additional equipment, and such equipment must be placed on the Authorized Equipment Expense list in Attachment 1.
- 7-4-2.** Equipment expenditure documentation to be maintained by the PERFORMING PARTY includes receipts, purchase orders (if issued) or invoices marked paid and canceled checks.
- 7-5. Contractual.** Expenses included under the Contractual expense category of the budget set forth in Attachment 1, shall be for costs for professional services or tasks provided by a firm or individual who is not employed by the performing party as set forth in the Article.
- 7-5-1.** No expenses included under the contractual expense category of the budget set forth in Attachment 1 shall be allowed under this Agreement unless the contractor and the contract amount are approved ahead of time by the LRGVDC and included on the list of authorized contractual expenses in Attachment 1.
- 7-5-2.** The PERFORMING PARTY shall maintain evidence that the contract price is reasonable and necessary. As applicable under state law and regulations for the activity or service being contracted for, this evidence may take the form of bid tab sheets or other form of evaluation of competitive price offers or competitive proposals, and/or a cost analysis or price analysis under the UGMS.
- 7-5-3.** No expenses included under the contractual expenses category of the budget set forth in Attachment 1 shall be allowed under this Agreement unless such contract's scope of work has been approved ahead of time, in writing, by the LRGVDC.
- 7-5-4.** Any amendment to a PERFORMING PARTY subcontract authorized for reimbursement under this Agreement, whether or not such subcontract required LRGVDC pre-approval, which will result in or require substantive changes to any of the tasks required to be performed under this Agreement, as set forth in this Agreement, must be approved in writing by the LRGVDC.
- 7-5-5.** All applicable laws and regulations concerning competitive bidding, competitive proposals, and contracting for services shall be followed.
- 7-6. Other Expenses.** All expenses under the "Other" expense categories of the budget set forth in Attachment 1 shall be in connection with the tasks and activities to be performed under this Agreement. Expenses not falling under the main expense categories may be included under the "Other" expense category if appropriate for the proposed project as set forth in this Article.
- 7-6-1.** No expenses under the "Other" expense category including computer hardware or software purchases not included under the Equipment expense category, e.g., controlled assets costing less than \$5000, shall be eligible for reimbursement under this Agreement unless approved ahead of time by the LRGVDC and included on the list of authorized "Other" expenses in Attachment 1. Subcategories of "Other" expenses for which prior authorization is not required, are set forth in this Article.
- 7-6-1-1.** Books and reference materials.
- 7-6-1-2.** Dues and membership fees for the PERFORMING PARTY's affiliation with organizations and associations which directly relate to the performance of activities under this Agreement (dues for individual employee affiliation to particular organizations or professional associations, unless listed in Attachment 1 to this Agreement, must be pre-approved individually, in writing,

by the LRGVDC).

- 7-6-1-3. Subscriptions, only inasmuch as they relate directly to the performance of activities under this Agreement.
 - 7-6-1-4. Postage, telephone, FAX, and utilities expenses.
 - 7-6-1-5. Printing and reproduction expenses.
 - 7-6-1-6. Advertising and public notices.
 - 7-6-1-7. Registration fees and other staff training costs (fees and training costs for persons not employed by the PERFORMING PARTY, unless listed in Attachment 1, must be approved individually by the LRGVDC).
 - 7-6-1-8. Repair and maintenance costs.
 - 7-6-1-9. Office furniture, not falling under the definition of equipment under this Article.
 - 7-6-1-10. Space and equipment rentals.
 - 7-6-1-11. Signs.
 - 7-6-1-12. Additional Other expenses listed in Attachment 1 to this Agreement.
 - 7-6-1-13. Education and outreach materials used to promote responsible municipal solid waste management practices and planning.
- 7-6-2. The PERFORMING PARTY shall ensure that expenditures charged under the "Other" expense category are not also included within the expenses reimbursed through the Indirect Costs allocation, Central Services Cost allocation, or the Internal Services fund.
- 7-7. **Additional Expense Records.** If requested by the LRGVDC, the PERFORMING PARTY agrees to provide to the LRGVDC the additional expense records and documentation materials, appropriate for the expense, for the time period requested by the LRGVDC. The LRGVDC will provide reasonable time for the PERFORMING PARTY to comply with a request for additional records. The LRGVDC will allow the PERFORMING PARTY reasonable time to respond to any findings of noncompliance or other problems identified by the records review.
- 8. REIMBURSEMENT PAYMENT METHOD.** 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.
- 8-1. 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. However, according 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.
 - 8-2. 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.
 - 8-3. 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.
 - 8-4. 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.
 - 8-5. 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.
 - 8-6. 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.

IV. CONTRACT ACTIVITIES

9. The work identified herein is subject to the guidelines as directed in Attachment A, the Work Program and these guidelines may be updated and or amended throughout the timeline of this document as deemed necessary by the LRGVDC.
10. A project or service funded under this program 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. The PERFORMING PARTY agrees to perform the following activities as prescribed in this document and as outlined in Attachment A:
Insert Deliverables

V. REPORTING REQUIREMENTS

11. 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.
 - 11-1. 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.
 - 11-2. 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.
 - 11-3. Payments (reimbursements) required under this contract may be withheld by the LRGVDC until such time as any past due progress reports are received.
 - 11-4. The PERFORMING PARTY's failure to comply with the requirements of this Article shall constitute a breach of this contract.
 - 11-5. The PERFORMING PARTY shall prepare and submit to the LRGVDC monthly, 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.
 - 11-6. 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 must be submitted monthly. If no costs have been incurred a report must be submitted indicating no costs incurred.
 - 11-7. 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.
 - 11-8. 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.
 - 11-9. 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.

VI. CLOSE-OUT PROGRESS AND RESULTS REPORT

12. 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.

VII. FOLLOW-UP SUMMARY RESULTS REPORT

13. The PERFORMING PARTY shall submit periodic follow-up summary results reports according to Attachment A: 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.

VIII. OTHER REPORTS

- 14-1. 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.
- 14-2. 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.

IX. SPECIAL TERMS AND CONDITIONS

- 15-1. Availability of Funds. It is the understanding of the parties that the source of the funds provided by the LRGVDC is the Solid Waste Disposal and Transportation Fees, as proscribed in Texas Health and Safety Code §363.013. 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 Municipal Solid Waste Disposal Account, as proscribed in Texas Health and Safety Code §363.014(d), may be depleted or reduced prior to completion of this Agreement. The parties agree that all funding arranged under this Agreement is subject to sufficient funds in the Municipal Solid Waste Disposal Account. The PERFORMING PARTY shall place this notice in all subgrants and subcontracts.
- 15-2. PERFORMING PARTY agrees that the purpose of this Agreement is to provide a grant to financially assist PERFORMING PARTY in performing and creating the Work as its own project and therefore, PERFORMING PARTY is not a "vendor" of goods and services within the meaning of Texas Government Code Chapter 2251.
- 15-3. 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, are not eligible to receive subgrant funding from the PERFORMING PARTY. The PERFORMING PARTY shall allow a potential subgrant applicant that is listed as being in arrears in its fee payments the opportunity to provide documentation of payment of the fees owed the state. If the potential applicant provides the PERFORMING PARTY with documentation of payment of the fees, such as a canceled check or receipt from the state, the PERFORMING PARTY may consider that applicant to be eligible to receive subgrant funding under this agreement.
- 15-4. Local and regional political subdivisions that are barred from participating in state contracts by the State Comptroller's of Public Accounts (CPA) under the provisions of §2155.077, Texas Government Code, and Title 1 TAC (Texas Administrative Code) §113.02, CPA (formerly under the Texas Building and Procurement Commission –TBPC) Regulations, are not eligible to receive subgrant funds from the PERFORMING PARTY.
- 15-5. The activities funded under this Agreement, both projects conducted by the PERFORMING PARTY or as a part of a subgrant, shall be in accordance with all provisions of this Agreement, all applicable state and local laws, rules, regulations, and guidelines. The main governing standards include, but may not be limited to, the standards set forth in this Article.
- 15-5-1. §361, §363, and §364 of the Texas Health and Safety Code.
- 15-5-2. Title 30 TAC §330, Subchapter O, LRGVDC Rules.
- 15-5-3. Title 30 TAC §14, LRGVDC Rules.
- 15-5-4. The Uniform Grant and Contract Management Act, Texas Government Code, §§783.001 et seq., and the Uniform Grant Management Standards, 1 TAC §§5.141 - 5.167, (collectively, "UGMS").
- 15-5-5. Title 1 TAC §5.85-5.86, Governor's Office Regulations.
- 15-5-6. General Appropriations Act, 81st Legislature.
- 15-5-7. Pursuant to §391 of the Local Government Code, funds received under this Agreement may be expended only subject to the limitations and reporting requirements set forth in this Article.

X. GENERAL TERMS AND CONDITIONS**16. CONTRACT PERIOD**

- 16-1. **Contract Period.** The Contract begins on the Effective Date and ends on the Expiration Date as provided on the Signature Page of this Contract (Contract Period). If no Effective Date is provided, the Effective Date of the Contract is the date of last signature. If no Expiration Date is provided, the Expiration Date is August 31 of the same Fiscal Year in which the Contract is signed.
- 16-2. **Renewal and Extension Period.** The Contract may be extended by notice of LRGVDC beyond expiration of a Contract Period for up to 90 (ninety) days (Extension Period) during which the parties may agree on a written amendment to extend the Contract for a longer period. Renewals and extensions do not extend any other

deadlines or due dates other than the expiration of the Contract Period.

17. DEFINITIONS

- 17-1. "Include." The word "include" and all forms such as "including" shall be construed to introduce a non-exhaustive list. The parties agree include is a term of enlargement, and does not limit the scope of the preceding noun.

18. FUNDS

- 18-1. **Availability of Funds.** This Contract and all claims, suits or obligations arising under or related to this Contract are subject to the receipt and availability of funds appropriated by the Texas Legislature for the purposes of this Contract or the respective claim, suit or obligation, as applicable.
- 18-1-1. Performing Party will ensure that this clause concerning the availability of funds received indirectly by subcontractors through Performing Party is included in any subcontract it awards.
- 18-2. **Amount Limits on Funds.** The maximum reimbursement is shown on the Contract Signature Page.
- 18-3. **Grants.** If this agreement was entered under the LRGVDC authority to award grants, LRGVDC is providing financial assistance to the recipient to undertake its own project.

19. ALLOWABLE COSTS

- 19-1. **Conforming Activities.** LRGVDC will reimburse the Performing Party for Allowable Costs incurred and paid by the Performing Party in performance of conforming Contract Activities. Allowable Costs are those costs for conforming Contract Activities that are reasonable, necessary, actual, and authorized by this Contract and a Notice to Proceed. Contract Activities must be authorized in writing to be eligible for reimbursement.
- 19-2. **UGMS.** Allowable Costs are restricted to costs that comply with the Texas Uniform Grant Management Standards (UGMS) and additional state and federal rules and law. The text of UGMS is available online at the Governor's Website. (The link as of December 18, 2007 is <http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>.) The parties agree that all the requirements of the UGMS apply to this Contract, including the criteria for Allowable Costs. LRGVDC Allowable Expenditures Guidelines provide additional information as to the construction of UGMS. Additional federal requirements apply when federal funds are included in the reimbursement.

20. REIMBURSEMENT

- 20-1. **Contract for Reimbursement.** The Contract Documents describe the activities to be conducted by the Performing Party for reimbursement by LRGVDC.
- 20-2. **Reimbursement Request Deadline.** Performing Party shall submit all requests for payment to LRGVDC prior to August 15, 2010.
- 20-3. **Reimbursement Requests.** Performing Party shall invoice LRGVDC to request reimbursement for its Allowable Costs for performing the Contract Activities. Performing Party's invoice shall conform to LRGVDC's reimbursement requirements.
- 20-4. **Travel, Other Costs.** Travel costs must be specifically authorized in advance of the travel. Travel costs, including per diem, will be reimbursed only based on receipts in the amount of actual costs, up to the maximum allowed by law for employees of the State of Texas at the time the cost is incurred.
- 20-5. **Supporting Records.** Upon request, Performing Party shall submit records and documentation to LRGVDC as appropriate for the review and approval of reimbursing costs. At a minimum, Performing Party shall submit supporting records with its invoices; LRGVDC may reject invoices without appropriate supporting documentation. LRGVDC has the right to request additional documentation. Performing Party shall maintain records subject to the terms of this Contract.
- 20-6. **Conditional Payments.** Reimbursements are conditioned on the Contract Activities being performed in compliance with the Contract. Performing Party shall return payment to LRGVDC for either overpayment or activities undertaken that are not compliant with the Contract Activities. This does not limit or waive any other LRGVDC remedy.
- 20-7. **Historically Underutilized Businesses.** Performing Party shall include, with its invoicing, reports on the use of Historically Underutilized Businesses.

21. AMENDMENTS

Changes to the Contract may only be made by a written amendment, signed and agreed to by the Parties.

22. CONTRACT INTERPRETATION

- 22-1. **Interpretation of Time.** All days are calendar days, unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday, or a state or federal holiday, it is omitted from the computation.
- 22-2. **State, Federal Law.** This Contract is governed by, and interpreted under the laws of the State of Texas, as well as applicable federal law.
- 22-3. **Severability.** If any provision of this Contract is held to be invalid, illegal or unenforceable, the remainder of the Contract shall be construed to conform to the intent of the parties.

23. PERFORMING PARTY'S RESPONSIBILITIES

- 23-1. **Performing Party's Responsibility for the Contract Activities.** Performing Party undertakes performance of the Contract Activities as its own project and does not act in any capacity on behalf of the LRGVDC nor as a LRGVDC agent, employee or vendor of goods or services. Performing Party agrees that the Contract Activities are furnished and performed at Performing Party's sole risk as to the means, methods, design, processes, procedures and performance of the Contract Activities.
- 23-2. **Independent Contractor.** Nothing in this agreement shall create an employee-employer relationship between Performing Party and LRGVDC. The parties agree that the Performing Party is an independent contractor.
- 23-3. **Performing Party's Responsibility for Subcontractors.** All acts and omissions of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Contract Activities under a direct or indirect contract with Performing Party shall be considered to be the acts and omissions of Performing Party.
- 23-4. **No Third-Party Beneficiary.** The LRGVDC does not assume any duty to exercise any of its rights and powers under the Contract for the benefit of third parties. Nothing in this Contract shall create a contractual relationship between LRGVDC and any of Performing Party's subcontractors, suppliers or other persons or organizations with a contractual relationship with the Performing Party.

24. PERFORMING PARTY PERFORMANCE EVALUATION

Performance evaluations are a part of the LRGVDC review performing party, and may be a factor in the selection of future contracts. The LRGVDC may provide this information to state agencies and upon request, to others. Performing Party consents to the disclosure of any information or opinion in the evaluations.

25. CONFLICT OF INTEREST

The Performing Party shall timely notify the LRGVDC in writing of any actual, apparent, or potential conflict of interest regarding the Performing Party or any related entity or individual. No entity or individual with any actual, apparent, or potential conflict of interest shall take part in the performance of any portion of the Contract Activities, nor have access to information regarding any portion of the Contract Activities. Performing Party agrees that LRGVDC has sole discretion to determine whether a conflict exists, and that a conflict of interest is grounds for termination for cause.

26. INTELLECTUAL PROPERTY

- 26-1. **Third Party Intellectual Property.** Unless specifically waived, Performing Party must obtain all Intellectual Property licenses expressly required in the Contract Activities, or incident to the use or possession of the intellectual property. Performing Party shall obtain and furnish to LRGVDC: documentation on the use of such Intellectual Property, and a perpetual, irrevocable, enterprise-wide license to reproduce, publish, otherwise use, or modify such Intellectual Property and associated user documentation, and to authorize others to reproduce, publish, otherwise use, or modify such Intellectual Property for LRGVDC non-commercial purposes, and other purposes of the State of Texas.
- 26-2. **Grant of License.** Performing Party grants to LRGVDC a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, modify or otherwise use for any non-commercial LRGVDC

purpose any preexisting intellectual property belonging to the Performing Party that is incorporated into the Contract Activities, intellectual property created under this Contract, and associated user documentation.

27. TIME DELAYS

- 27-1. **Time is of the Essence.** Performing Party's timely performance is a material term of this Contract.
- 27-2. **Delays.** Where Performing Party's performance is delayed, except by *Force Majeure* or act of the LRGVDC, LRGVDC may withhold or suspend reimbursement, terminate the Contract, or enforce any of its other rights.

28. TERMINATION

- 28-1. **Termination for Cause.** LRGVDC may, upon 10 (ten) days written notice and the opportunity to cure, terminate this Contract for cause if Performing Party materially fails to comply with the Contract Documents including any one or more of the following acts or omissions: nonconforming Contract Activities, existence of a conflict of interest, failure to provide evidence of required insurance coverage and failure to comply with HUB requirements in law or this Contract. Termination for cause does not prejudice LRGVDC's other remedies authorized by this Contract or by law.
- 28-2. **Termination for Convenience.** LRGVDC may, upon 10 (ten) days written notice, terminate this Contract for convenience. Termination shall not prejudice any other right or remedy of LRGVDC or the Performing Party. Performing Party may request reimbursement for: conforming Contract Activities and timely, reasonable costs directly attributable to termination. Performing Party shall not be paid for: work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of or resulting from the termination.
- 28-3. If, after termination for cause, it is determined that the Performing Party had not materially failed to comply with the Contract Documents, the termination shall be deemed to have been for the convenience of the LRGVDC.

29. INSURANCE AND INDEMNIFICATION

- 29-1. **Insurance.** Unless prohibited by law, the Performing Party shall require its contractors and suppliers to obtain and maintain during the Contract Term adequate insurance coverage sufficient to protect the Performing Party and the LRGVDC from all claims and liability for injury to persons and for damage to property arising from the Contract, whether caused by the Performing Party or by the contractor(s) or by anyone directly or indirectly employed by either. Unless specifically waived by the LRGVDC, sufficient coverage shall include Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.
- 29-2. **Indemnification.** TO THE EXTENT AUTHORIZED BY LAW, THE PERFORMING PARTY SHALL REQUIRE ALL CONTRACTORS PERFORMING CONTRACT ACTIVITIES ON BEHALF OF PERFORMING PARTY TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE LRGVDC AND PERFORMING PARTY AND THEIR OFFICERS, EMPLOYEES AND REPRESENTATIVES FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF THE CONTRACT ACTIVITIES BY THE PERFORMING PARTY OR ITS CONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM A DEFECT IN DESIGN, WORKMANSHIP, MATERIALS, OR FROM INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; OR FROM A BREACH OF APPLICABLE LAWS, REGULATIONS, SAFETY STANDARDS OR DIRECTIVES. THE DEFENSE OF THE LRGVDC SHALL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS TO REPRESENT THE LRGVDC. THIS COVENANT SURVIVES THE TERMINATION OF THE CONTRACT.

30. DISPUTES, CLAIMS, REMEDIES

- 30-1. **Payment not a Release.** Neither payment by LRGVDC nor any other act or omission other than an explicit written release constitutes a release of Performing Party from liability under this Contract.
- 30-2. **Schedule of Remedies available to the LRGVDC.** In accordance with §2261, Texas Government Code, the following Schedule of Remedies applies to this contract. In the event of Performing Party's nonconformance, LRGVDC may:

- 30-2.1. Issue notice of nonconforming performance;
 - 30-2.2. Reject nonconforming performance and request corrections without charge to the LRGVDC;
 - 30-2.3. Reject a reimbursement request or suspend further payments, or both, pending accepted revision of the nonconformity;
 - 30-2.4. Suspend all or part of the Contract Activities or payments, or both, pending accepted revision of the nonconformity;
 - 30-2.5. Demand restitution and recover previous payments where performance is subsequently determined nonconforming;
 - 30-2.6. Terminate the contract without further obligation for pending or further payment by the LRGVDC and receive restitution of previous payments.
- 30-3. Notwithstanding Section 16.2, no adverse action shall be taken against the Performing Party, unless the non-conformity is material to the contract, the Performing Party has been notified of the non-conformity, and the Performing Party has been given a reasonable opportunity to correct the non-conformity.
- 30-4. **Cumulative Remedies.** LRGVDC rights and remedies in this Contract are in addition to, and are not in any way a limitation of, any rights and remedies available under state and federal rules, regulations, and laws and at common law.

31. FINANCIAL RECORDS, ACCESS, AND AUDITS

- 31-1. **Audit of Funds.** The Performing Party understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Performing Party further agrees to fully cooperate with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Performing Party shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.
- 31-2. **Financial Records.** Performing Party shall establish and maintain financial records including records of costs of the Contract Activities in accordance with generally accepted accounting principles. Upon request Performing Party shall submit records in support of reimbursement requests. Performing Party shall allow access during business hours to its financial records by LRGVDC and other state agencies for the purpose of inspection and audit. Records shall be maintained for a minimum of 3 (three) years beyond the expiration or earlier termination of this Contract, and 3 (three) years after the end of any litigation or claims process, including appeals.

32. INDIRECT COST RATE

- 32-1. **Authority for Indirect Cost Rates.** The Performing Party shall comply with the UGMS relating to Indirect Cost Rates. In the event an audit changes the indirect cost rate, Performing Party agrees to waive additional indirect costs, or in the alternative, contribute the difference between the contract indirect rate and audited indirect rate.
- 32-2. **Indirect Cost Rate of Contract Activities.** The cost of services provided to LRGVDC by another agency may include allowable direct costs of the service plus a pro rata share of indirect costs, if authorized by the budget. A standard indirect cost allowance equal to 10% (ten percent) of the direct salary and wage cost of the activity may be used in lieu of determining the actual indirect costs of the activity, if any indirect cost rate is approved.
- 32-3. **Application Indirect Cost Rate, Councils on Government.** A regional planning commission may not spend more than 15% (fifteen percent) of its total expenditures, less capital, on indirect costs. This 15% (fifteen percent) restriction applies to the Authorized Expense Budget in this Agreement for each fiscal year, even if the Cognizant or Coordinating agency approves a rate greater than 15% (fifteen percent). Where an indirect cost exceeds 15% (fifteen percent), the regional planning commission will credit the LRGVDC by reducing indirect charges on a pro rata basis in the subsequent fiscal year.

33. SOVEREIGN IMMUNITY

The parties agree that this Contract does not waive sovereign immunity relating to suit, liability, or payment of damages.

34. MISCELLANEOUS

- 34-1. Assignment.** No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by Performing Party will be binding on LRGVDC without its written consent, except as restricted by law. No assignment will release or discharge the Performing Party from any duty or responsibility under the Contract.
- 34-2. Venue.** Performing Party agrees that the Contract is being performed in Travis County, Texas, because this Contract has been performed or administered, or both, in Travis County, Texas. The Performing Party agrees that any cause of action involving this Contract arises solely in Travis County. This provision does not waive LRGVDC's sovereign immunity.
- 34-3. Publication.** Performing Party agrees to notify LRGVDC 5 (five) days prior to the publication or advertisement of information related this Contract. Performing Party agrees not to use the LRGVDC logo or a LRGVDC graphic as an advertisement or endorsement without an agreement signed by the appropriate LRGVDC authority.
- 34-4. Waiver.** With the exception of an express, written document signed with authority by LRGVDC, no act or omission will constitute a waiver or release of Performing Party's obligation to perform conforming Contract Activities. No waiver on one occasion, whether expressed or implied, shall be construed as a waiver on any other occasion. The making of a payment does not constitute acceptance of the invoiced Contract Activities nor does it constitute a waiver of the LRGVDC's claims against the Performing Party or its sureties.
- 34-5.** LRGVDC relies on Performing Party to perform all Contract Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.
- 34-6. Survival of Obligations.** Except where a different period is specified in this agreement or applicable law, all representations, indemnifications, and warranties made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive for 4 (four) years beyond the termination or completion of the Agreement; or after the end of a proceeding which was brought under the contract or if LRGVDC has notified Performing Party of an on-going proceeding. A proceeding includes any litigation, legal proceeding, permit application, State Office of Administrative Hearings proceeding, or similar activity listed in a LRGVDC notice to the Performing Party.
- 34-7. Release of Claims.** As a condition to final payment or settlement, or both, the Performing Party shall execute and deliver to the LRGVDC a release of all claims against the LRGVDC for payment under this contract.
- 34-8. Legal Fees Prohibited.** This money shall be spent on administrative fees and projects as approved by LRGVDC. The funds under this Agreement may not be used for legal representation, or any other fees associated with hiring an attorney.

PROJECT REPRESENTATIVES/RECORDS LOCATION**ARTICLE 35.1 LRGVDC PROJECT REPRESENTATIVE**

The individual named below is the LRGVDC Project Representative, who is authorized to give and receive communications and directions on behalf of the LRGVDC. All communications including all payment requests must be addressed to the LRGVDC Project Representative or his or her designee.

Marcie Oviedo
(Name)
Program Administrator
(Title)
Lower Rio Grande Valley Development Council
P.O. Box 13087
Austin, Texas 78711-3087

Telephone No.: (956) 682-3481Facsimile No.: (956) 682-3295E-mail: moviedo@lrgvdc911.org**ARTICLE 35.2 PERFORMING PARTY PROJECT REPRESENTATIVE**

The individual named below is the PERFORMING PARTY Project Representative, who is authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications to the PERFORMING PARTY will be addressed to the PERFORMING PARTY Project Representative or his or her designee.

For Financial Matters:

Rey Eufracio
(Name)
County Auditor
(Title)
2808 South Business 281
(Mailing Address)
Edinburg, Texas 78539
(City) (State) (Zip Code)

Telephone No.: (956)-318-2511Facsimile No.: (956)-318-2577E-mail: Ray.Eufracio@auditor.co.hidalgo.tx.us

For Contractual Matters:

Rene Ramirez
(Name)
County Judge
(Title)
100 E. Cano 2nd Floor
(Mailing Address)
Edinburg, Texas 78539
(City) (State) (Zip Code)

Telephone No.: (956)-318-2600Facsimile No.: (956)-318-2699E-mail: rene.ramirez@hidalgocountyjudge.com**ARTICLE 35.3 DESIGNATED LOCATION FOR RECORDS ACCESS AND REVIEW**

The PERFORMING PARTY designates the physical location indicated below for record access and review pursuant to any applicable provision of this contract:

Lazaro Gallardo Jr.
(Name)
Constable
(Title)
730 N Breyfogle Suite B
(Mailing Address)
Mission, Texas 78572
(City) (State) (Zip Code)

Telephone No.: (956)-581-6800Facsimile No.: (956)-519-4245E-mail: constablepct3@swbell.net

Attachment 1

BUDGET CATEGORY	FUNDING AMOUNT
Personnel / Salaries <i>List personnel, # of hours, salary charged to grant</i>	\$
Fringe Benefits	\$
Travel <i>List & itemize travel expenditures</i>	\$
Supplies <i>List & itemize detailed travel expenditures</i>	\$
Equipment <i>List & itemize equipment expenditures (must have a unit cost of \$5,000 or more)</i>	\$ 30,000.00
Recycling Trailer	
Construction <i>List & itemize construction expenditures</i>	\$
Contractual <i>List & itemize contractual expenditures (other than construction)</i>	\$
Other <i>List & itemize other expenditures</i>	\$
Indirect Charges	\$

TOTAL FUNDING \$ 30,000.00

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

GOAL: The PERFORMING PARTY will purchase Recycling Trailers to collect recycled material.

Objective 1: IDENTIFY PROJECT COORDINATOR

- 1) Task/Deliverable: Hidalgo County will identify the Project Coordinator who will be responsible for the implementations of the program. Reduce waste generation disposal and develop responsible waste disposal practices within the community.

Objective 2: PURCHASE RECYCLING TRAILERS

- 1) Task/Deliverable: Hidalgo County will purchase the trailers, following appropriate procurement procedures.
- 2) Task/Deliverable: Recycling trailers will be set up at three different locations within Pct. 3 to collect recycling items. This project will reduce the amount waste going into the landfill and will serve rural residents wanting to recycle.
- 3) Task/Deliverable: Hidalgo County will coordinate efforts with the private sector and local recycling centers to drop off recycled material.

Objective 3: REPORT ON PROGRESS AND RESULTS OF PROGRAM

- 1) Task/Deliverable: The Project Coordinator will measure and document the following: 1) amount (in tons) of brush/yard waste, glass metal, plastic, cardboard, newspaper, other paper, or C&D debris diverted; 2) document the number of months material collected; 3) average monthly diversion amount (in tons); 4) document total of persons served; 5) document total revenue from sale of diverted material; 6) average monthly revenue; 7) document total disposal costs avoided; 8) average monthly disposal cost avoided. The documented information should be included in the Pass-through Grant Summary Report and Results report forms. 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, the last Friday of the month for the length of the contract period. Submit Results on a quarterly basis; through the end of the contract period.
- 2) 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 August 31, 2010.

- 3) 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.