

Main Contract # 582-18-80535
Subcontract # 18-14-04

**DEEP EAST TEXAS COUNCIL OF GOVERNMENTS
CONTRACT FOR SOLID WASTE PROJECT**

The Texas Commission on Environmental Quality (TCEQ) has certified that it has the authority to contract with Deep East Texas Council of Governments (DETCOG) by authority granted in the Current Appropriations Act; Texas Water Code, section 5.229 and Texas Health and Safety Code, Chapter 371. Funds for this subcontract are provided from the Solid Waste Fee Revenues. The DETCOG has certified, and the SUBCONTRACTOR certifies that it has authority to perform the services contracted for by authority granted in "The Interlocal Cooperation Act," Texas Government Code, Chapter 791.

This Solid Waste Contract is entered into by and between the parties named below. Neither the FUNDING AGENCY (Texas Commission on Environmental Quality) nor the State of Texas is a party to this Contract.

I. CONTRACTING PARTIES:

The Contractor: Deep East Texas Council of Governments
Herein referred to as "DETCOG"

The Subcontractor: Sabine County
Herein referred to as "SUBCONTRACTOR"

II. SERVICES TO BE PERFORMED:

See "Attachment B - Work Program of SUBCONTRACTOR"
See "Attachment C- Schedule of Deliverables for SUBCONTRACTOR"

III. BUDGET AND PAYMENT PROCEDURES:

See "Attachment D - SUBCONTRACTOR Budget and Authorizations"

IV. ADDITIONAL CONTRACT PROVISIONS:

See "Attachment A - Special Contract Provisions" & Attachment E - General Contract Provisions"

COUNCIL OF GOVERNMENT

Deep East Texas
Council of Governments

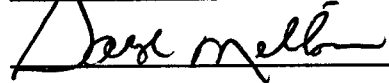
Lonnie Hunt

Executive Director

Date: 08/10/2018

SUBCONTRACTOR

Sabine County



Daryl Melton

County Judge

Date: 07/27/2018

Deep East Texas Council of Governments
Solid Waste Contract
Table of Contents

A. Special Contract Provisions

Article 1	Period of Performance
Article 2	Scope of Services
Article 3	DETCOG Obligations
Article 4	Reporting Requirements
Article 5	Monitoring Requirements
Article 6	Purchase, Title and Management of Equipment and Constructed Facilities
Article 7	Compliance with Applicable Laws
Article 8	Authorized Representatives

B. Work Program of SUBCONTRACTOR

C. Schedule of Deliverables from SUBCONTRACTOR

D. SUBCONTRACTOR Budget and Authorizations

Article 1	Expense Category Standards
Article 2	Supplemental Funding Standards
Article 3	SUBCONTRACTOR's Authorized Budget

E. General Contract Provisions

Article 1	Legal Authority
Article 2	Scope of services
Article 3	Purpose
Article 4	Eligible Entities
Article 5	Implementation Project Categories
Article 6	Insurance and Liability
Article 7	Audit/Access to Records
Article 8	Independent Financial Audit
Article 9	Amendments to Contract
Article 10	Termination of Contract
Article 11	Force Majeure
Article 12	Severability
Article 13	Data and Publicity
Article 14	Intellectual Property
Article 15	Energy Efficiency Standards
Article 16	Permits and Licenses
Article 17	Identification of Funding Sources
Article 18	Dispute Resolution
Article 19	Oral and Written Contracts
Article 20	ADA Requirements
Article 21	Utilization of Small, Minority and Women's Business Enterprises
Article 22	Funding Subject to MSWDTRF
Article 23	Employment Practices and Non-Discrimination
Article 24	Concerning Subcontractors, Suppliers, and Others
Article 25	Conflict of Interest
Article 26	Remedies
Article 27	Contract

Appendix

Exhibit 1, Attachment A

Exhibit 2, Attachment A

Exhibit 3, Attachment A (forms required vary by type of project)

**Deep East Texas Council of Governments
Solid Waste Contract**

Attachment A: Special Contract Provisions

Article 1 Period of Performance

The period of performance of this Solid Waste Interlocal Agreement (hereafter, the Contract) begins on July 24, 2018 and ends on June 1, 2019

Article 2 Scope of Services

All parties agree that the SUBCONTRACTOR, in consideration of compensation hereinafter described, shall provide the services with DETCOG as specifically described in Attachment B and C of this Contract.

The SUBCONTRACTOR agrees to implement the Project according to the agreed upon expense standards and authorized budget shown in Attachment D of this Contract.

Failure on the part of the SUBCONTRACTOR to comply with the conditions set forth in this Contract shall be the basis for termination of the Contract and/or revocation of any unexpended or inappropriately expended funds.

Article 3 DETCOG Obligations

(a). Measure of Liability

In consideration of full and satisfactory performance hereunder, DETCOG will be liable to SUBCONTRACTOR in an amount equal to the actual costs incurred by SUBCONTRACTOR in rendering such performance, subject to the following limitations:

1. DETCOG is not liable for expenditures made in violation of the Authorized Budget and funding guidelines in Attachment D, which outlines the standards, which shall apply to the SUBCONTRACTOR'S use of funds provided under this Contract, including prohibited activities and expense categories as defined by the TNRCC.
2. DETCOG is not liable for any costs incurred by SUBCONTRACTOR in the performance of this Contract, which have not been billed, to DETCOG within fifteen (15) days following termination of this Contract.
3. DETCOG is not liable to SUBCONTRACTOR for costs incurred or performance rendered by SUBCONTRACTOR before commencement of this Contract or after termination of this Contract.
4. Except as specifically authorized by DETCOG in writing, DETCOG is liable only for expenditures made in compliance with the cost principles and administrative requirements set forth in Federal OMB Circular A-87.

(b). Method and Schedule of Payment

To be eligible for payment under this contract, costs must have been incurred and either paid by SUBCONTRACTOR prior to claiming reimbursement from DETCOG 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 the period.

1. **Financial reporting.** SUBCONTRACTOR will submit to DETCOG a completed, signed and dated "Request for Reimbursement" form (Exhibit 1, Attachment A) for expenses incurred. Expenditures shall be consolidated and "Request for Reimbursement" submitted no more than twice a month. All "Requests for Reimbursement" shall include documentation of each detailed paid expenditure listed, to include the appropriate paid invoices, canceled checks and signed time sheets. Each request should also include and updated, signed and dated "Financial Status Report" form (Exhibit 2, Attachment A).
2. **Documentation required.** In general, SUBCONTRACTOR will maintain whatever expenditure documentation is necessary to demonstrate 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 the implementation of the project. The records, which shall be maintained, include but are not limited to the following:
 - (i). SALARY/WAGES- Time sheets that have been signed and approved.
 - (ii). TRAVEL- Documentation should be consistent with State Travel Regulations. The purpose of the travel should be documented and supported with actual receipts for hotel accommodations, public transportation receipts, etc.
 - (iii). EQUIPMENT- Purchase orders, invoices and canceled checks.
 - (iv). SUPPLIES- Purchase orders (if issued), invoices, and canceled checks.
 - (v). CONTRACTUAL- All of the above, plus documentation that the costs were reasonable and necessary. The same standards shall be applicable to subcontractors.
 - (vi). OTHER- All of the above apply.
3. **Payments.** Upon review and approval of each "Request for Reimbursement" and accompanying "Financial Status Report" by DETCOG, payment shall be made to SUBCONTRACTOR against DETCOG liabilities to be accrued hereunder. Payments (reimbursements) required under this contract may be withheld by DETCOG until such a time as any past due Reports are received (see Attachment A, Article 4).

(c). SUBCONTRACTOR Close Out Report

No later than thirty (30) days following the termination of this Contract, SUBCONTRACTOR must submit to DETCOG a final "Financial Status report," on which item (5) of the form indicates that the report is the "Final report." If all expenditures have been completed before the end of the Contract, SUBCONTRACTOR shall submit the final "Financial Status Report" with final "Request for Reimbursement."

Article 4. Reporting Requirements

- (a). The SUBCONTRACTOR shall prepare and submit to the DETCOG, biannual written Summary and Results Reports (Exhibit 3, Attachment A) concerning performance under this Contract, documenting accomplishments and units of work performed under Attachment B of this Contract. All Summary/Results Reports shall be submitted by the dates indicated below:
- **June 10, 2019** For period of **June 1, 2018 – May 31, 2019**
- (b). The **June 10, 2019** report shall serve as a "Final Report," and will certify in writing that the SUBCONTRACTOR has satisfactorily completed all tasks and deliverables required under this contract. If a grant-funded activity ends well before **May 31, 2019**, the SUBCONTRACTOR will continue to submit biannual Summary/Results Reports and a Final Report, unless a written request to do otherwise is approved by DETCOG.
- (c). The SUBCONTRACTOR shall continue to track the results of the project activities for the life of the project and shall provide a written Follow-up Report in **August 31, 2019** on a form to be provided by DETCOG.
- (d). The SUBCONTRACTOR biannual Summary and results Reports required under part (a) of Article 4 contains descriptions of activities and expenditures for the DETCOG to ensure that the provisions of this Contract are being complied with. In particular, any legal research and related legal activities shall be clearly detailed in the biannual Summary and Results Reports in order to assure the DETCOG that the activities are not prohibited under Articles 1 and 2 of Attachment D (relating to funding guidelines). The SUBCONTRACTOR shall comply with any reasonable request by the DETCOG for additional information on activities conducted in order for the DETCOG to monitor adequately the SUBCONTRACTOR'S progress in completing the requirements of and adhering to the provisions of this Contract.
- (e). The SUBCONTRACTOR'S failure to comply with the requirements of this Article shall constitute a breach of this Contract.

Article 5 Monitoring Requirements

- (a). DETCOG may periodically monitor SUBCONTRACTOR for:
1. The degree of compliance with the terms of this Contract, including compliance with applicable rules, regulations, and promulgations referenced herein; and
 2. The administrative and operational effectiveness of the project.
- (b). DETCOG shall conduct periodic analysis of SUBCONTRACTOR'S performance under this Contract, including site visits, 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 SUBCONTRACTOR.

Article 6. Purchase, Title and management of Equipment and Constructed Facilities

- (a). Equipment items with a unit purchase cost of less than \$5000 are not listed in this Contract and are not subject to prior approval by DETCOG before being purchased. However, DETCOG will evaluate all such expenditures which utilize grant funds to determine that such items legitimately serve to fulfill the scope and purpose of the grant. If expenditures do not legitimately serve to fulfill the scope and purpose of the grant, then DETCOG will not reimburse the SUBCONTRACTOR.
- (b). Unless specifically authorized in Attachment D, Contract Budget, no purchase of equipment (items costing \$5000 or any computer hardware or software) or expenditures for construction of facilities shall be eligible for reimbursement under this contract unless expenditures are approved ahead of time, in writing, by DETCOG.
- (c). Title to equipment and any constructed facilities (hereafter, "property") acquired from funds provided under this Contract shall, throughout the term of this Contract, be in the name of the SUBCONTRACTOR. All parties agree that upon full performance of this Contract, title shall remain with the SUBCONTRACTOR, provided however, that this contract is terminated, due to substantial failure by the SUBCONTRACTOR to fulfill its obligations under this Contract, title and physical possession of all property shall, upon written notification from DETCOG, be transferred in good condition and within five (5) working days to DETCOG.
- (d). The use of property acquired under this Contract and the useful life of the property, shall be in accordance with Section 361.014 (b) of the TEX. HEALTH & SAFETY CODE ANN., which directs that 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.
- (e). The SUBCONTRACTOR agrees to conduct physical property inventories, to maintain property records and necessary control procedures, and to provide adequate maintenance with respect to all property acquired under this Contract, as set forth below.
1. The SUBCONTRACTOR shall develop and use a property management system that conforms with all applicable state and local laws, rules and regulations. If an adequate system for accounting for personal property owned by the SUBCONTRACTOR or its subgrantee 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.
 2. A physical inventory of all property acquired or replaced under this Contract having an initial per-unit purchase price of \$5000 or more, shall be conducted no less frequently than once every two years and results of such inventories reconciled with the appropriate property record. Property control procedures utilized by the SUBCONTRACTOR shall include adequate safeguards to prevent loss, damage, or theft of acquired property. The SUBCONTRACTOR shall develop and carry out a program of property maintenance as necessary to keep both originally acquired and 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.

3. All property acquired or replaced under this Contract shall be used by the SUBCONTRACTOR or its subgrantees, to support the purposes of this Contract, for as long as the property is needed for such purposes, whether or not the original projects or programs continue to be supported by State funds.
4. For property with a current fair market, per-unit value of \$5000 or less, the SUBCONTRACTOR or its subgrantee, may for the purpose of replacing the property acquired under this Contract, 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.
5. For property with a current fair market, per-unit value in excess of \$5000, the SUBCONTRACTOR or its subgrantee shall, for purposes of replacing the property acquired under this Contract, within six (6) years of the initiation date of this Contract, obtain written authorization from DETCOG prior to trading in or selling the property and using the proceeds of such trade-in or sale to offset the cost of acquiring needed replacement property.
6. Property with a current fair market, per-unit value of \$5000 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 the DETCOG, or alternatively, may be made available for use on other projects or programs, providing such other use will not interfere with the work on other projects or programs for which such property was originally acquired or constructed.
7. For property with a current fair market, per-unit value in excess of \$5000, if no longer needed for support of authorized projects or programs under this Contract, whether original or replacement, and within six (6) years of the initiation date of the Contract, the SUBCONTRACTOR shall obtain written authorization from DETCOG 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 property, the SUBCONTRACTOR shall provide information as requested by the DETCOG, to include information to assure that the new use of the property will adhere to the requirements of Section (d) of this article. Prior to authorizing the SUBCONTRACTOR to change the use of the property, the DETCOG may, at its discretion, require the SUBCONTRACTOR to notify and request input from private industry providers of recycling or solid waste services in the area of the proposed new use or activity, to determine that a competitive advantage issue does not exist. After six (6) years of the initiation date of the Contract, the SUBCONTRACTOR is not required to obtain authorization for a change in the use of the property acquired under this Contract, but provisions of Section (d) shall still apply.
8. If any property acquired or replaced under this Contract is sold or transferred within six (6) years of the initiation date of this Contract, TCEQ is entitled to a share of the proceeds from such sale or may require the transfer of ownership of the property to a third party, provided the fair market, per-unit value of the property at the time of the sale is in excess of \$5000. TCEQ's share of the sale proceeds shall be the same

percentage as was the funding provided under the 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 (\$5000) or less may be retained, sold, transferred, or otherwise disposed of with no further obligation to TCEQ, provided the other requirements set forth in this Article are met, including the requirements of Section (d).

9. If, prior to the termination date of this Contract, the SUBCONTRACTOR or its subgrantees determine that any property acquired with funds provided by this Contract is no longer needed for support of the authorized programs, DETCOG may require the SUBCONTRACTOR to transfer title and possession to such property to a third party named by DETCOG.
10. The SUBCONTRACTOR shall not grant or allow to a third party a security interest in any original or replacement materials, equipment, or facilities purchased or constructed with funds made available under this Contract.

(f). The SUBCONTRACTOR agrees that, in the event any funds provided under this Contract are in turn awarded to any subgrantee for the purchase of any equipment or constructed facilities, by such other party, the SUBCONTRACTOR'S contact with that subgrantee shall include the applicable requirements set forth in the Article.

Article 7. Compliance with Applicable Laws

The SUBCONTRACTOR 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. If the SUBCONTRACTOR or DETCOG 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.

Article 8. Authorized Representatives

- (a). The DETCOG hereby designates the person in Exhibit A-1, Project Representative, as the individual authorized to give direction to the SUBCONTRACTOR for the purposes of this Contract. The DETCOG Project Representative shall not be deemed to have authority to bind the DETCOG in contract unless the EXECUTIVE DIRECTOR of the DETCOG has delegated such authority.
- (b). The SUBCONTRACTOR shall identify, as its Project Representative, the person authorized to receive direction from the DETCOG, to manage the work being performed, and to act on behalf of the SUBCONTRACTOR. The SUBCONTRACTOR'S Project Representative shall be deemed to have authority to bind the SUBCONTRACTOR in contract unless the SUBCONTRACTOR, in writing, specifically limits or denies such authority to the SUBCONTRACTOR'S Project Representative.
- (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 SUBCONTRACTOR shall ensure that its Project Representative, or his or her delegate, is available at all times for consultation with the DETCOG.

The TCEQ hereby designates the individual below as the person to give direction to the DETCOG as Project Representative of TCEQ:

Cheryl Untermeyer, Grant Manager
Waste Permits Division (MC 126)
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087
TEL (512)239-6016; FAX (512)239-6166

The DETCOG hereby designates the individual named below as the person authorized to receive direction from the DETCOG, to manage the work being performed, and to act on behalf of the DETCOG as a Project Representative:

Bob Bashaw, Solid Waste Program Coordinator
Deep East Texas Council of Governments
210 Premier Dr.
Jasper, TX 75951
TEL (409) 384-5704; Ext. 5302 FAX (409) 384-5390

The SUBCONTRACTOR hereby designates the individual named below as the person authorized to receive direction from DETCOG, to manage the work being performed, and to act on behalf of SUBCONTRACTOR as a Project Representative/Coordinator:

Daryl Melton
Sabine County Judge
Sabine County
201 Main Street
Hemphill, TX 75948

The SUBCONTRACTOR designates the following location for record access and review pursuant to Attachment A & Attachment D of this Contract or any other applicable provision:

Daryl Melton
Sabine County Judge
Sabine County
201 Main Street
Hemphill, TX 75948

Deep East Texas Council of Governments
Solid Waste Interlocal Agreement

ATTACHMENT B: Work Program of SUBCONTRACTOR

PROJECT GOAL STATEMENT- The purpose of this project: Other- Tire Clean Up

Phase I- Planning

Task 1: Identify Project Representative/Coordinator

Deliverable: Complete p.10 of the Contract, designating a responsible individual familiar with the project to receive direction from DETCOG, to manage the work being performed and to act on behalf of the SUBCONTRACTOR.

Task 2: Evaluate Needs

Deliverable: Meet with DETCOG Staff to discuss specific project goals and develop appropriate work program, budget and schedule of deliverables.

Phase II- Contract Execution

Task 3: Coordinate Contract Execution with Officials

Deliverable: Present completed contract to officials for approval and authorization to sign the document, coordinate return of signed copy to DETCOG.

Task 4: Coordinate Contract Execution with DETCOG

Deliverable: Coordinate with designated DETCOG Project Representative to ensure timely return of fully executed contracts to officials, indicating authorization to begin formal implementation of the project.

Phase III-Implementation

Task 5: Prepare Specifications/Design Project

Deliverable: Provide project specifications and summary of proposed project to DETCOG for review and approval, based on previously evaluated needs, before advertising for bids.

Task 6: Advertise for Bids

Deliverable: Provide copies of bids received to DETCOG with request to authorize spending.

Task 7: Purchase Equipment/Construct Facility

Deliverable: Submit Requests for Reimbursement with invoices and updated Financial Status Report to DETCOG following purchases in order to receive funds.

Task 8: Receive Equipment/Complete Construction

Deliverable Upon receipt of equipment/completion of construction or project, all items will be inventoried properly; provide notification and photo to DETCOG.

Task 9: Operate Equipment/Facility

Deliverable: Maintain logs of operation and track waste diversion; keep records for onsite visits and inspections.

Task 10: Publicity and Education

Deliverable: Submit copies of all instructional fliers, educational materials and news articles to DETCOG.

Phase IV- Monitoring and Reporting

Task 11: Maintain Adequate Records

Deliverable: Record and compile daily/weekly/monthly activities; submit as requested to DETCOG.

Task 12: Quarterly Reporting and Evaluation

Deliverable: Submit quarterly Summary and Results Reports to DETCOG with updated evaluation of project results, as detailed in Attachment A, Article 4 of the Contract.

Task 13: Follow-up Monitoring

Deliverable: Track results/activities for the life of the project; submit one-year follow-up Results Report on waste diversion rates, and others if requested by DETCOG and TCEQ.

Solid Waste Interlocal Agreement

ATTACHMENT C : Schedule of Deliverables from SUBCONTRACTOR

Tasks	Description of Deliverables	Schedule
	Phase I – Planning	
1	Identify Project Representative /Coordinator	01/30/18
2	Evaluate Needs	01/30/18
	Phase II - Contract Execution	
3	Execute Contract With Officials	7/24/18
4	Execute Contract with DETCOG	7/26/18
	Phase III – Implementation	
5	Prepare Specifications/Design Project	01/30/18
6	Advertise for Bids	
7	Purchase Equipment/Construct Facilities	
8	Receive Equipment/Complete Construction or Project	12/31/18
9	Operate Equipment/Facility or Implement Project	12/31/18
10	Publicity and education	
	Phase IV - Monitoring and Reporting	
11	Maintain Adequate Records	as required
12	Reporting and Evaluation to DETCOG by requested date	Quarterly
13	Follow-up Quarterly Results Report to DETCOG # 1 to DETCOG by requested date	12/10/18
	Follow-up Quarterly Results Report with cumulative totals of # 1 & # 2 to DETCOG by requested date	03/10/19
	Final Report with cumulative totals of # 1, # 2 & # 3 to DETCOG by requested date	06/10/19

Deep East Texas Council of Governments
Solid Waste Contract
Attachment D: SUBCONTRACTOR Budget and Authorizations

Article 1 Expense Category Standards

In addition to the standards and requirements of this Contract, the definitions and requirements set forth in Sections (a)-(h). below shall apply to the SUBCONTRACTOR's use of funds provided under this Contract and assignment of expenses to the expense categories of the Authorized Budget.

(a). Personnel

1. Appropriate salaries and fringe benefits for employees working directly on the funded project may be authorized.
2. Proposed changes in personnel must be approved by DETCOG.

(b). Travel

1. Travel expenses directly related to the conduct of the funded program, incurred by employees assigned to the project, may be authorized.
2. The SUBCONTRACTORS shall obtain prior written authorization from DETCOG for expenditures under this Contract of any travel outside the State of Texas.
3. In accordance with the UGCMS, if the SUBCONTRACTOR does not have an established written travel policy approved by the local jurisdiction, all employee-related travel expenses must be claimed at no higher than the rates allowed by the State of Texas for its employees.

(c). Supplies

1. Expenses for supplies for the conduct of the funded project may be authorized. Expenses include non-construction related costs for goods and materials having a unit acquisition cost (including freight) of less than \$1,000. Such expenditures shall generally relate to routine purchase of office supplies and other goods consumed by the SUBCONTRACTOR in a relatively short time in the performance of this contract.
2. Non-routine expenditures of goods and materials not defined as equipment should be charged to the "Other" expense category.

(d). Equipment

1. Equipment purchases necessary and appropriate for the approved project may be authorized and include expenditures for non-construction related, tangible, personal property having a unit acquisition cost of \$5,000 or more (including freight and set-up costs) and an estimated useful life of more than one year.
2. No equipment is to be purchased by the SUBCONTRACTOR unless approved in advance in writing by the DETCOG.
3. Any equipment that will be used for other activities, in addition to the funded project, may only be funded at an amount reflecting the appropriate percentage of time it will be directly used for the funded project.

(e). Construction

1. Appropriate construction costs, related to the enhancement of building of permanent facilities, may be authorized, including costs of planning, of materials and labor, of attached equipment and of any subcontracts performed as part of the project.
2. No expenditures under the "Construction" expense category shall be allowed unless approved in advance by DETCOG in advance.
3. All applicable laws and regulations concerning bidding and contracting for service must be followed.

(f). Contractual Expenses

1. Expenses for professional services and tasks provided by a firm or individual who is not employed by the SUBCONTRACTOR, and which are related directly to the approved implementation project may be authorized.
2. No contractual costs should be incurred by the SUBCONTRACTOR unless the contract is approved in advance by DETCOG in writing.
3. All applicable laws and regulations concerning bidding and contracting for service must be followed.

(g). Other Expenses

1. Other expenses, not falling under the main categories, may be authorized, if appropriate for the proposed project.
2. Any "Other" category expenses not specifically spelled out in this agreement, including computer hardware or software purchases not included under the "Equipment" expense category, shall be reimbursed only if approved by DETCOG in writing.
3. Other expenses, related directly to the approved implementation project, for which prior authorization is not generally required include:
 - (i) Books and reference materials, subscriptions, dues, membership, training and registration fees;
 - (ii) Postage, telephone, FAX and utilities expenses;
 - (iii) Space and equipment rentals, office furniture, repair and maintenance costs;
 - (iv) Printing and reproduction, advertising, public notices, signs.

(h). Indirect Costs

1. Indirect costs may be authorized, if applicable to the project.
2. If the SUBCONTRACTOR has current approved cost allocation plans prepared in accordance with OMB Circular No. A-87 of UGCMA, the SUBCONTRACTOR may use the indirect rates in accordance with that plan.
3. If the SUBCONTRACTOR does not have an approved cost allocation plan, the indirect rate used may not exceed the maximum amounts listed on the Indirect Cost Computation table established in the UGCMS.

Article 2. Supplemental Funding Standards

In addition to the standards set forth in applicable statutes and regulations, the standards outlined below apply to all uses of funds provided under this Contract. Unless authorization is otherwise specifically provided for in or under the terms of this Contract, the SUBCONTRACTOR shall ensure that the use of funds provided under this Contract, to include funds provided for pass-through grants, is in accordance with the supplemental funding standards set forth in this Article.

- (a). **Payment of Fees.** Pass-through grant recipients must not be in arrears on payment of their solid waste disposal fees to TCEQ at the time an implementation project is selected for funding.
- (b). **Land Acquisition Costs.** Funds provided under this Contract may not be used to acquire land or an interest in land.
- (c). **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.
- (d). **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 special wastes excluded from the disposal in MSW landfills. However, collection of these materials may be included as part of a more comprehensive project, so long as that is not the sole intent of the program.
- (e). **Disposal of Municipal Solid Waste.** Funds provided under this Contract may not be used for the costs of disposal of municipal solid waste (MSW). This restriction includes: solid waste collection and transportation to a disposal facility; waste combustion (incineration or waste-to-energy); processing for volume reduction; any landfill-related facilities or activities, including closure and post-closure care of a landfill; or other activities and facilities associated with the ultimate disposal of municipal solid waste (MSW). Activities specifically included under an authorized project category (e.g., landfill scales, citizen's collection stations and small registered transfer stations) and activities that would otherwise be eligible for funding (e.g., recycling), but are located at a disposal facility may be funded.
- (f). **Projects Requiring a TCEQ Permit.** Funds provided under this Contract may not be used for projects or facilities that require a permit from TCEQ under state regulations. This provision, however, does not apply to projects or activities that may be located on a permitted facility which, by themselves, would not require a permit and would otherwise be eligible for funding (e.g., recycling collection at a permitted transfer station).
- (g). **Projects Requiring TCEQ Registration.** Projects or facilities that require registration with TCEQ under state regulations, and which are otherwise eligible, may be funded as an implementation project. However, only those expenses related to design and engineering work necessary prior to obtaining a registration may be reimbursable before the registration is finally received. No actual site development, construction, equipment purchased, or similar expenses may be reimbursed prior to and until such time that a required registration is received.

- (h). **Projects that Create a Competitive Advantage over Private Industry.** In accordance with Section 361.014(b) of the Texas Health and Safety Code, 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. Under this definition, the term private industry includes non-profit entities.
- (i). **Supplanting Existing Funds.** Funds may not be used to supplant salaries of an existing staff person, where the functions assigned to that position will not change. Staff positions where the assigned position will remain the same and that were active at the time of the grant application, and were funded from a source other than the previous solid waste grant, are ineligible for grant funding. This provision, however, does not apply to the salaries for staff of the SUBCONTRACTOR, in its conduct of activities under this Contract.
- (j). **Acquisition of Goods and Services.** Recipients of funds 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 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, the SUBCONTRACTOR is encouraged to participate in the State Cooperative Purchasing Program.
- (k). **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 by section 33, Article IX of H.B. 1, the standards set forth in section 5, Article IX of H.B. 1, shall apply to the use of funds provided under this Contract.
- (l). **Food/Entertainment Expenses.** In accordance with UGCMA, funds provided under this Contract may not be used for food or entertainment expenses, including refreshments at meetings and other functions. This provision does not apply to authorized per diem expenses for food costs incurred while on travel status.
- (m). **Use of Alcoholic Beverages.** As required under Section 33, Article IX of H.B. 1, the standards set forth in Section 11, Article IX of H.B. 1, shall apply to the use of funds under this Contract. 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 shall funds be used for the purchase of alcoholic beverages, including travel expenses reimbursed with these funds.
- (n.) **Funds to Law Enforcement Agencies.** Funds provided under this Agreement may not be provided to any law enforcement agency regulated by Chapter 415 of the Texas Government Code, unless the law enforcement agency is in compliance with all rules developed by the Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 415 of the Texas Government Code, or the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

(o). **Safety and Protection.** Where applicable, Subcontractor shall be responsible for requiring subcontractors and subgrantees to maintain and supervise all necessary safety precautions and programs in connection with work. Subcontractor shall take all necessary safety precautions.

(p). **Accounting Systems.** The Subcontractor shall have an accountancy 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 Subcontractor must account for costs in a manner consistent with such standards or principles.

Article 3. SUBCONTRACTOR'S Authorized Budget

(a). DETCOG's obligation for expenses (costs) authorized under this Contract shall in no case exceed the maximum DETCOG obligation amount set forth in this attachment of this Contract.

(b). Budgeted expenses for reimbursement under this Contract are as follows:

BUDGET CATEGORY	GRANT FUNDING
a. Personnel/salaries	\$ 0.00
b. Fringe benefits	\$ 0.00
c. Travel	\$ 0.00
d. Supplies	\$ 0.00
e. Equipment	\$ 0.00
f. Construction	\$ 0.00
g. Contractual (other than construction)	\$ 14,000.00
h. Other	\$ 832.00
i. TOTAL DIRECT COSTS	\$ 14,832.00
j. Indirect costs *	\$ 0.00
k. TOTAL PROJECT COSTS	14,832.00

*Any indirect charges must be in accordance with approved cost allocation plan, or in accordance with the Indirect Cost Computation Table in the current UGCMS, which is available from DETCOG. If you have an approved cost allocation plan, please enclose documentation of your approved indirect rate.

VOL 3 PG 562

**Deep East Texas Council of Governments
Solid Waste Contract
Attachment E: General Contract Provisions**

Article 1 Legal

- (a). The SUBCONTRACTOR warrants and assures DETCOG that it possesses adequate legal authority to enter into this Contract. The SUBCONTRACTOR'S governing body where applicable has authorized the signatory official(s) to enter into this Contract and bind the SUBCONTRACTOR to the terms of this Contract and any subsequent amendments hereto. The SUBCONTRACTOR agrees to adhere to the provisions of section 361.014 TEX. HEALTH & SAFETY CODE ANN. (as amended by H.B. 3072, 74th Texas Legislature), section 330.569 of the TCEQ Municipal Solid Waste Regulations (30 TAC Chapter 330); the Uniform Grant & Contract Management Act , TEX. GOV'T CODE., section 783.001 et. seq.; the Uniform and grant Standards, 1 Texas Administrative Code (TAC), section 5.141 et. seq. (collectively , "UGCMA"); and the contract between TCEQ & DETCOG. The provisions of the Uniform Grant and Contract Management Act, TEXAS GOVERNMENT CODE, Chapter 783 applies to this Agreement, all amendments thereto, and all subcontracts and subagreements. Compliance with the conditions and requirements contained therein is necessary for satisfactory performance of the services and work required under this Agreement.
- (b). Unless otherwise provided in the Agreement, Subcontractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the work. DETCOG and TCEQ shall not be responsible for monitoring the Agreement's compliance with any laws and Regulations.
- (c). If Subcontractor performs any work knowing or having reason to know that it is contrary to Laws and Regulations, Subcontractor shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.
- (d). Subcontractor, its subcontractors and subgrantees must comply with all applicable Laws and regulations, including but not limited to, those relating to hazardous waste, waste disposal and manifests.

Article 2 Scope of Services

The services to be performed by the SUBCONTRACTOR are herewith outlined in the General Contract Provisions (Attachment E) and Special Contract provisions (Attachment A), which are hereby incorporated into and made a part of this Contract as if set out word-for-word herein.

Article 3 Purpose

- (a). The purpose of this Contract is to accomplish the goals of House Bill 3072, 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 purposes of this CONTRACT are:

1. To enable the DETCOG to carry out or conduct various municipal solid waste management-related services and support activities within the DETCOG's regional jurisdiction; and
2. To administer an efficient and effective, region-wide, pass-through (subgrant) assistance grants program and/or, where authorized by the TCEQ, to conduct various DETCOG - managed projects.

Article 4 Eligible Entities

(a). Only those local and regional political subdivisions located within the State of Texas as listed below are eligible to receive funding from the DETCOG as a pass-through grant:

1. Cities;
2. Counties;
3. Public schools and school districts (does not include Universities or post secondary educational institutions); and
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.

(b). 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 TCEQ, are not eligible to receive pass-through grant funding from the DETCOG. The TCEQ shall provide, on a quarterly basis, the DETCOG a list of entities for which fee payments are in arrears. The DETCOG shall allow a potential pass-through grant 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 DETCOG with documentation of payment of the fees, such as a canceled check or receipt from the state, the DETCOG may consider that applicant to be eligible to receive pass-through grant funding under this Contract. The DETCOG shall notify the TCEQ of any applicants for which a determination of eligibility was made under this subsection.

Article 5. Implementation Project Categories

Only the following project categories are eligible for funding. Under each category heading is a brief description of the purpose of that category, as well as certain special requirements.

1. Local Enforcement

This category consists of projects which contribute to the prevention of illegal dumping of MSW, including liquid wastes. Under this category, grant recipients would investigate illegal dumping problems; enforce laws and regulations pertaining to the illegal dumping of MSW, including liquid waste; establish a program to monitor the collection and transportation of municipal liquid wastes, through administration of a manifesting system; and/or educate the public on illegal dumping laws and regulations.

Funding limitations specific to this category:

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

2. Litter and Illegal Dumping Cleanup

This category may include both ongoing and periodic activities to clean up litter and illegal dumping of MSW, excluding cleanup of scrap tire dumping sites. Projects under this category may support Lake and River Cleanup events, conducted in conjunction with the TCEQ's and Keep Texas Beautiful Lake and River Cleanup program. Eligible expenses include waste removal, disposal or recycling of removed materials, fencing and barriers; and signage. Placement of trash collection receptacles in public areas with chronic littering problems may also be funded. Reuse or recycling options should be considered for managing the materials collected through these efforts, to the extent feasible. Cleanup of hazardous waste will not be eligible for funding.

3. Source Reduction and Recycling

This category may include projects which are intended to provide a direct and measurable effect on reducing the amount of MSW going into landfills, by diverting materials from the MSW disposal stream for recycling or reuse, or by reducing waste generation at the source. This category does not include the collection, processing, and/or recycling of scrap tires.

Funding limitations specific to this category:

1. Programs and projects funded under this category must provide a measurable effect on reducing the amount of municipal solid waste going into landfills.
2. Any program or project aimed at demonstrating the use of products made from recycled materials must have as its primary function the education and training of residents, governmental officials, and others, in order to encourage support for recycling efforts.
3. Programs aimed at efficiency improvements to increase the source and recycling of solid waste must be coordinated with TCEQ. Any program to develop a full-cost accounting system should refer to full-cost accounting guidance prepared by the TCEQ.

4. Local Solid Waste Management Plans

This category includes projects to develop and/or amend local solid waste management plans by local governments, in accordance with Subchapter D, Chapter 363, TX Health & Safety Code, as implemented by state rule, Subchapter O, 30 TAC Chapter 330. It is recommended that at least one year be allowed for the completion and adoption of a local plan.

5. Citizens' Collection Stations, "Small" Registered Transfer Stations, and Community Collection Events

This category includes projects to construct MSW collection facilities in areas of the state that are underserved by collection services or lack public access to proper disposal facilities. Projects funded under this category include citizens' collection stations, as these facilities are defined under the TCEQ's MSW regulations (30 TAC Chapter 330); and construction of small municipal solid waste and liquid waste transfer stations that qualify for registration under §330.4(d) or §330.4(r) of the regulations. Periodic community collection events, to provide for collection of residential waste materials for which there is not a readily-available collection alternative, may also be funded. This type of project may not include regular solid waste collection efforts, such as weekly waste collection. Collection events may be held no more frequently than four times per year, and must only be intended to provide residents an opportunity to dispose of hard-to-collect materials, such as large and bulky items that are not picked up under the regular collection system.

Funding limitations specific to this category:

1. Transfer stations that require a permit from the TCEQ may not be funded.
2. 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.

3. 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 reduction and recycling grant category.
4. Municipal solid waste transfer stations that are 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.
5. 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.

6. Household Hazardous Waste (HHW)

This category includes projects which provide a means for the collection, recycling, reuse, or proper disposal of household hazardous waste, including home chemicals and other materials. This category may also include events conducted under the TCEQ's Texas Country Cleanup program. Projects may include permanent collection facilities, periodic collection events, consolidation and transportation of collected materials, recycling or reuse of materials, proper disposal of materials, and education and public awareness programs.

Funding limitations specific to this category:

1. Projects under this category must be coordinated with TCEQ and DETCOG to ensure all applicable regulations and guidelines are followed.
2. Funds provided under this Agreement may not be used for costs related to the disposal of collected wastes.
3. Fund provided under this Agreement may not be used for programs and activities related to the collection and management of commercial, industrial, and hazardous wastes.
4. Funds provided under this Agreement may not be used for programs and activities solely related to the management of scrap tires, used oil, oil filters, antifreeze, lead-acid batteries, and other special wastes excluded from disposal

in municipal solid waste 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.

7. Technical Studies

This category includes projects for the collection of pertinent data, analysis of issues and needs, evaluation of alternative solutions, and identification of recommended actions to assist in making solid waste management decisions at the local or regional level. Projects under this category may also include research and investigations to determine the location, boundaries, and contents of closed old and abandoned MSW landfills, and to assess the possible risks to human health or the environment associated with those landfills or sites.

Funding limitations specific to this category:

1. The total funding provided under this category is limited to no more than ten (10) percent of the total grant budget for DETCOG.
2. All solid waste management plans must be consistent with the adopted regional solid waste management plan, and prepared in accordance with Subchapter O of the TCEQ MSW regulations (31 TAC Chapter 330) and the Content and Format Guideline prepared by TCEQ.
3. All technical studies must be consistent with the adopted regional solid waste management plan, and prepared in accordance with the Content and Format Guidelines prepared by the TCEQ.
4. Funding provided under this category may not be used for final engineering work, designs, or construction plans.
5. A landfill or landfilling may only be the topic of a technical study if it is part of an overall integrated solid waste management plan.

8. Educational and Training Projects

This category is intended for educational projects or training events dealing with a variety of MSW management topics. This category does not include the educational components of projects funded under the other categories.

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.

9. Other Types of Projects

Other types of projects, not specifically prohibited from funding under the more detailed funding standards and restrictions, may be considered by TCEQ on a case-by-case basis. In particular, a COG may request authorization to provide funding for cleanup or remediation of problems at an old or abandoned MSW landfill.

Any project or project category not listed as specifically eligible above, must be identified in the amended regional solid waste management plan. The COG will also need to request authorization from TCEQ to fund the proposed project or type of project. If approved by TCEQ, the additional project eligibility information will be incorporated into the grant contract. Additionally, other types of projects will not be considered for eligibility by the TCEQ if those projects are not included in the amended regional solid waste management plan.

Article 6 Insurance and Liability

- (a). The SUBCONTRACTOR shall maintain insurance coverage for work performed or services rendered under this Contract.
- (b). The SUBCONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to DETCOG any amounts determined by DETCOG, its independent auditors, or any agency of state or federal governments to have been paid in violation of the terms of this Contract.

Article 7 Audit/Access to Records

- (a). The SUBCONTRACTOR 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 Contract, including negotiated changes or amendments thereto, in accordance with accepted professional practice, appropriate accounting procedures and practices at the SUBCONTRACTOR's office. The SUBCONTRACTOR shall also maintain and make available at its office the financial information and data used by the SUBCONTRACTOR or its designee (including independent financial auditors) in the preparation or support of any cost submission or cost (direct or indirect), price or profit analysis for this Contract or any negotiated subagreement or change order or a copy of the cost summary submitted to DETCOG. The DETCOG, TCEQ, Texas State Auditor's Office or any of the DETCOG'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 SUBCONTRACTOR's books, records, and other pertinent documents may, upon prior conference with the SUBCONTRACTOR, be copied by the DETCOG or any of its duly authorized representatives. All such information shall be handled by the parties in accordance with good business ethics. The SUBCONTRACTOR shall provide proper facilities for such access and inspection.

- (b). 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(s).
- (c). The SUBCONTRACTOR agrees to the disclosure of all information and reports resulting from assess to records pursuant to Section (a). above to the DETCOG. Where the audit concerns the SUBCONTRACTOR, the auditing agency will afford the SUBCONTRACTOR an opportunity to comment on the pertinent portions of the draft audit report.
- (d). Records under Section (a). above shall be maintained and made available during the entire period of performance of this Contract and until three (3) years from the date of final DETCOG 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.
- (e). Access to records is not limited to the required retention periods. The authorized representative designated in Section (a). of this article shall have access to records at any reasonable time for as long as the records are maintained.
- (f). The audit/access to records Article applies to financial records pertaining to all subagreements and all subagreement change orders and amendments. In addition, this right of access applies to all records pertaining to all subagreements, subagreement change orders and subagreement amendments: to the extent the records reasonably pertain to subagreement performance; if there is any indication that fraud, gross abuse or corrupt practices may be involved; or if the subagreement is terminated for default or for convenience.
- (g). The DETCOG 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 SUBCONTRACTOR on work performed under this Contract.
- (h). The SUBCONTRACTOR agrees to include Sections (a). through (g). of this article in all subagreements and all change orders directly related to project performance.

Article 8 Independent Financial Audit

The SUBCONTRACTOR agrees to the Single Audit requirements of the UGCMA. The SUBCONTRACTOR shall deliver to the DETCOG any applicable audit report within thirty (30) days of completion of the audit report. The SUBCONTRACTOR is responsible for including the Single Audit requirements in all subagreements and shall be responsible for insuring adherence to those requirements by all subgrantees and subcontractors. or inspection.

All terms used in connection with audits in this Agreement shall the definitions and meanings assigned in the Single Audit Circular in UGMS. Provisions of the Single Audit Circular in Part IV of UGMS shall apply to all non-state entities expending funds of this grant, whether they are recipients, receiving funds directly from DETCOG, or are subrecipients, receiving funds from a pass-through entity (a recipient or another subrecipient). In addition, the Subcontractor shall require the independent auditor to supply all audit work papers substantiating the work performed, at the request of DETCOG or TCEQ or its designee.

DETCOG 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 local government audit staff, a certified public accountant firm, or other auditors as designated by the DETCOG. Such audit conducted in accordance with applicable professional standards and practices.

SUBCONTRACTOR understands that the SUBCONTRACTOR shall be liable to the DETCOG for any costs disallowed as a result of audit.

Article 9 Amendments to Contracts

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 Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation, provided if the SUBCONTRACTOR may not legally comply with such change, SUBCONTRACTOR may terminate its participation herein as authorized by Article 9.

DETCOG may, from time to time, require changes in the Scope of the Services of the SUBCONTRACTOR to be performed hereunder. Such changes that are mutually agreed upon by and between DETCOG and the SUBCONTRACTOR in writing shall be incorporated into this Contract.

Any changes in personnel whose salaries are funded under this Contract or any other Contract amendments, including increasing or decreasing the amount of total funding, altering budget category allocations, extending or shortening the term of the agreement, or making significant changes in the scope of work, schedule, or deliverables, must be approved in advance by the DETCOG. A detailed description of the proposed change(s) shall be submitted in writing by the SUBCONTRACTOR to DETCOG for approval. Authorization to amend the Contract will be documented in writing and copies of the authorization retained in the files of both the DETCOG and SUBCONTRACTOR.

Article 10 Termination of Contract

(a). This Agreement shall be terminated upon performance of all requirements contained herein, unless extended in writing. This Agreement may be terminated in whole or in part by DETCOG in the event of material failure to comply with the contract terms, in accordance with the Uniform Grant Management Standards: Provided that no such termination may be effected unless the other party is given as set forth in this Section.

1. Not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

2. Any opportunity for consultation with the terminating party prior to termination.

(b). This Agreement may be terminated in whole or in part in writing by DETCOG for its convenience, in accordance with the Uniform Grant Management Standards: Provided that the Subcontractor is given not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate. Circumstances in which the DETCOG may terminate for convenience include, but are not limited to, the Texas Legislature's withdrawal of appropriations for this project and the depletion of funds in the Municipal Solid Waste Disposal and Transportation Revenue Fee.

- (c). If the DETCOG terminates the Agreement for a material failure to comply with the Agreement terms under items (a) and (b), an adjustment in the Agreement amount shall be made in accordance with the Uniform Grant Management Standards.
- (d). Upon receipt of a termination action pursuant to items (a), (b), and (c) above, the Subcontractor shall perform the actions set forth in this Section.
 1. Promptly discontinue all services affected (unless the notice directs otherwise).
 2. Deliver or otherwise make available to the DETCOG all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Subcontractor in performing this Agreement, whether completed or in the process.
- (e). If, after termination for failure of the Subcontractor to fulfill contractual obligations, it is determined that the Subcontractor had not so failed, the termination shall be deemed to have been effected for the convenience of the DETCOG.
- (f). If any delay or failure of performance is caused by force majeure event as described in the force majeure Article of this Agreement, the DETCOG may at its sole discretion terminate this Agreement in whole or part pursuant to this Article.

Article 11 Force Majeure

- (a). A force majeure event shall be defined to include decrees of or restraints by a governmental instrumentality, acts of God (except that rain, wind, flood or other natural phenomena normally expected for the locality shall not be construed as an act of God), work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war, rebellion, and sabotage.
- (b). Provided this Agreement has not been terminated, and subject to the conditions below, if a delay or failure of performance by either party results from occurrence of a force majeure event, the delay shall be excused and the time fixed for completion of the work extended by a period equivalent to the time lost because of the event, if, and to the extent set forth in this Section.
 1. The delay or failure was beyond the control of the party affected and not due to its fault or negligence.
 2. The delay or failure was not extended because of the affected party's failure to use all diligence to overcome the obstacle or resume performance immediately after the obstacle was overcome.
- (c). No time extension shall be granted under this Article unless the party seeking relief has notified the other in writing within a reasonable time after the commencement of the event, of the anticipated length and cause of delay, the measures taken or to be taken to minimize the delay, and the timetable by which the Subcontractor intends to implement these measures. The party seeking relief shall also give written notice of the ending of the event within a reasonable time after the event has ended.

- (d). The DETCOG shall be responsible for costs related to a force majeure event only if they are incurred by the Subcontractor after the prior written request by the DETCOG Project Representative, to incur such costs in connection with any force majeure event. Neither the DETCOG nor the Subcontractor shall have, and both hereby waive, any claim whatever for any damages resulting from delays caused by force majeure events.

Article 12 Severability

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

Article 13 Data and Publicity

All data and other information developed under this Contract shall be furnished to the DETCOG and shall be public data and information except to the extent that it is exempted from public access by Texas Public Information Act, TEX. GOV'T CODE Chapter 882 ("Act") Upon termination of this Contract, all copies of data and information shall be furnished, at no charge to DETCOG and TCEQ, upon request, to include data bases prepared using funds provided under this Agreement, and become property of DETCOG and TCEQ. Except as otherwise provided by the Agreement or the Act, the Subcontractor shall not provide data generated or otherwise obtained in the performance of its responsibilities under this Agreement to any party other than the State of Texas and its authorized agents.

Article 14 Intellectual Property

- (a). Subcontractor shall pay all license fees and royalties and assumes all costs incident to the use or possession in the performance of the work or the incorporation in the work of any Intellectual Property.
- (b). Subcontractor shall promptly notify DETCOG and TCEQ of all Intellectual Property which Subcontractor or Subcontractor's employees, subcontractors, or subcontractor's employees may produce, either solely or jointly with others, during the course of work. In addition, Subcontractor shall promptly notify DETCOG and TCEQ of all Intellectual Property to which Subcontractor may acquire rights in connection with the performance of the work. Any notification under this paragraph shall contain sufficient technical detail to convey a clear understanding of the Intellectual Property, and shall identify any publications, sale, public use, or impending publication. Promptly upon request, Subcontractor shall supply such additional information as DETCOG or TCEQ may request.
- (c). With respect to such Intellectual Property as is (1) incorporated in the work (other than Intellectual Property for which DETCOG and TCEQ already possesses equal or greater Intellectual Property Rights by virtue of this Agreement or otherwise), (2) produced by Subcontractor or Subcontractor's employees, subcontractors or subcontractor's employees during the course of performing the work, or (3) specifically identified in the Supplemental Conditions as Intellectual Properties to which Intellectual Property Rights are granted pursuant to this paragraph, Subcontractor hereby grants to DETCOG and TCEQ (1) a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, or otherwise use such Intellectual Property and associated use of

documentation, and (2) a nonexclusive, perpetual, irrevocable, enterprise-wide license to authorize others to reproduce, publish, or otherwise use such Intellectual Property for DETCOG and TCEQ purposes.

- (d). DETCOG and TCEQ shall have the right, in its own discretion, to independently modify any Intellectual Property to which license is granted herein for DETCOG and TCEQ's own purposes and use, through the services of its own employees or independent contractors. DETCOG and TCEQ shall own all Intellectual Property Rights to such modifications. Subcontractors shall not incorporate any such modification into its Intellectual Property for distribution to third parties unless it first obtains license from DETCOG and TCEQ.
- (e). Subcontractor shall comply with all Laws and Regulations relating to Intellectual Property. Subcontractor represents and warrants to DETCOG and TCEQ that Subcontractor will not infringe any Intellectual Property Right of any third party. Subcontractor further represents and warrants to DETCOG and TCEQ that in the course of performing work it will not use or possess any Intellectual Property owned by a third party without paying any required royalty or patent fees. Subcontractor warrants that it has full title and ownership of the Intellectual Property and any enhancements, updates or other modifications, or that it has full power and authority to grant all licenses granted herein, and that such license use by the DETCOG and TCEQ will in no way constitute an infringement or other violation of any Intellectual Property right of any third party. The Subcontractor warrants that it shall have, throughout any applicable license term hereunder, free and clear title to, or the right to possess, use, sell, transfer, assign, license, or sublicense, products that are licensed or provided hereunder to DETCOG and TCEQ by Subcontractor. Except as permitted in the Agreement, Subcontractor shall not create or permit the creation of any lien, encumbrance, or security interest in the work or any part thereof, or any product licensed or provided hereunder to DETCOG and TCEQ for which title has not yet passed to DETCOG and TCEQ, without prior written consent of DETCOG and TCEQ. Subcontractor represents and warrants DETCOG and TCEQ that neither it nor any other company or individual performing the work is under any obligation to assign or give to any third party any Intellectual Property rights granted or assigned to DETCOG and TCEQ, or reserved by DETCOG and TCEQ, pursuant to this Agreement.
- (f). Subcontractor expressly acknowledges that state funds may not be expended in connection with the purchase of any automated information system unless that system meets certain statutory requirements of 2157.005 of the Government Code, relating to accessibility by persons with visual impairments. Accordingly, the Subcontractor represents and warrants to DETCOG and TCEQ that technology provided to the DETCOG and TCEQ for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are blind or visually impaired. For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either

directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

- (g). Subcontractor warrants that, with respect to work performed under this Agreement, that all work is Year 2004 Compliant when used in accordance with the applicable documentation, provided that all products used in combination with it (but not themselves included in or work or incorporated into the work) properly exchange data with the work. Subcontractor warrants that the work meets all applicable standards of the Texas Department of Information Resources relating to Year 2004 Compliance. In the event any work performed under this Agreement is not Year 2004 Compliant, and the Subcontractor is provided written notice thereof, Subcontractor shall at its sole expense immediately cause such work to become Year 2004 Compliant in a manner that will minimize interruption to ongoing business processes, time being of the essence.
- (h). The Subcontractor shall include provision adequate to effectuate the purposes of this paragraph in all subcontracts and subgrants under this Agreement in the course of which Intellectual Property may be produced or acquired.

Article 15 Energy Efficiency Standards

The SUBCONTRACTOR is encouraged to follow standards and policies on energy efficiency which are contained in the Texas State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Article 16 Permits and Licenses

Unless otherwise provided in the Agreement, Subcontractor shall obtain and pay for all construction permits and licenses. Subcontractor shall pay all charges of utility owners for connections to the work, and Subcontractor shall pay all charges for such utility owners for capital costs related thereto such as plant investment fees.

Article 17 Identification of Funding Sources

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

***PREPARED IN COOPERATION WITH THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
THROUGH THE DEEP EAST TEXAS COUNCIL OF GOVERNMENTS***

Article 18 Dispute Resolution

Any and all disputes concerning questions of fact or of law arising under this Contract which are not disposed of by Contract shall be decided by the Executive Director of DETCOG or his designee, who shall reduce his decision to writing and provide notice thereof to the SUBCONTRACTOR. 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 SUBCONTRACTOR requests a rehearing from the Executive Director of DETCOG. In connection with any rehearing under this Article, the SUBCONTRACTOR 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 shall be final and conclusive. Pending final decision of a dispute hereunder, the SUBCONTRACTOR shall proceed diligently with the performance of the Contract and in accordance with DETCOG's final decision.

Article 19 Oral and Written Contracts

All oral or written Contracts 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 20 ADA Requirements

The SUBCONTRACTOR shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101- 12213 (Pamph 1995).

Article 21 Utilization of Small, Minority and Women's Business Enterprises

- (a). A Historically Underutilized Business (HUB) is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51 percent is owned, operated, controlled and actively managed by a person or persons who are historically underutilized (socially disadvantaged) because of their identification with members of certain groups, including Black Americans, Hispanic Americans, Asian Pacific Americans, Native Americans (American Indians) and Women who suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control.
- (b). The SUBCONTRACTOR is encouraged to use qualified Historically Underutilized Businesses (HUBs) in the performance of this Contract.

Article 22 Funding under this Agreement Subject to Funds in the MSWDTRF

It is the understanding of the parties that the source of funds provided by the FUNDING AGENCY is the Municipal Solid Waste Disposal and Transportation Revenue Fee (MSWDTRF). Due to the demands upon that source for funds necessary to protect 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 23 Employment Practices & Nondiscrimination

The Subcontractor agrees that in the performance of this Agreement, it will not discriminate against any employee or applicant because of race, religion, color, sex, age, or national origin and will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and supplemented in the Department of Labor Regulations (41 CFR Part 60). The Subcontractor assures that no person will, on the grounds of 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 Agreement. The subcontractor shall comply with all applicable state and federal statutes relating to nondiscrimination which include, but not limited to, those listed in the Uniform Grant Management Standards.

Article 24 Concerning Subcontractors, Suppliers and Others

- (a). All contractual expenditures using funds provided under this Agreement shall meet all procurement laws and regulations applicable to the Subcontractor and the Uniform Grant and contract Management Act and the Uniform Grant Management Standards. Note that competitive bidding will generally be required. The Subcontractor shall be responsible for the management and fiscal monitoring of all subcontractors and subgrantees. The Subcontractor shall monitor its subcontractors and subgrantees as necessary to ensure that the subcontractors and subgrantees are operating consistently with applicable laws and regulations, applicable contracting policies, and this Agreement. The Subcontractor shall ensure that all subcontractors and subgrantees comply with all record keeping and access requirements set forth in this Agreement. TCEQ and DETCOG reserves the reserves the right to perform an independent audit of the Subcontractor, their subcontractors and their subgrantees. The Subcontractor, their subcontractors and their subgrantees shall maintain detailed records. Funds provided to the Subcontractor pursuant to this Agreement that are paid to the Subcontractor shall be used by the Subcontractor solely to satisfy the purposes of this Agreement.
- (b). Subcontractor's contractual costs must comply with allowable costs requirements. Subcontractors which are governmental entities must engage in contractor selection on competitive basis in accordance with their respective policies. If Subcontractor has no competitive procurement policy or is a private entity, Subcontractor must generally select contractors by evaluation and comparison of price, quality of goods or services and past performance. All subgrants awarded by the Subcontractor 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 25 Conflict of Interest

Subcontractor shall notify DETCOG immediately upon discovery of any potential or actual conflict of interest. Subcontractor agrees DETCOG has sole discretion whether a conflict exists and that DETCOG may terminate the Agreement at any time, on the grounds of actual or apparent conflict of interest. No employee, officer or agent of Subcontractor shall participate in selection, or in the award or administration of a contract supported by State funds if a conflict of interest, real or apparent would be involved. Such a conflict arises as set forth in this section: (1) the employee, officer or agent, (2) any member of his immediate family, (3) his or her

partner, or (4) an organization which employees, or is about to employ any of the above. The Subcontractor shall notify DETCOG 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 and personal conflicts of interest. Any individual with 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 26 Remedies

- (a). In accordance with Chapter 2259, Texas Government Code, the following Scheduling 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.
1. Reject substandard performance and request corrections without charge to DETCOG.
 2. Issue notice of substandard performance or other non-conforming act or omission.
 3. Request and receive return of any over payment or inappropriate payments.
 4. Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity.
 5. Suspend all or part of the work and/or payments pending accepted revision of substandard performance or non-conformity.
 6. Reject reimbursement requested and withhold all or partial payments. Funds may be retained by DETCOG for recovery or administrative costs or returned to TCEQ as authorized by agreements with TCEQ and by state or federal law.
 7. Terminate the contract, demand and receive: return of all equipment purchased of contract funds, return of any unexpended funds, and repayment of expended funds.
- (b). If the DETCOG evaluation finds the Subcontractor's performance to be substandard. DETCOG may provide its written evaluation report to other governmental entities at any time. DETCOG may also provide its written evaluation report to the public as authorized by law.
- (c). DETCOG may avail itself of any remedy or sanction provided in this Agreement or in law to recover any losses rising from or caused by the Subcontractor's substandard performance or any non-conformity with the Agreement or the law. The remedies and sanctions available to DETCOG in this Agreement shall not limit the remedies available to DETCOG under law.
- (d). The duties and obligations imposed in this section, are in addition to, and are not to be in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available, by Law and regulation, by special warranty or guarantee or by other provisions of this Agreement, and the provisions of this paragraph will be effective as if it repeated specifically in the Agreement in connection with each particular duty, obligation, right, remedy to which they apply.

Article 27 Contract

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