

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Parks and Recreation

**AGENDA DATE:** April 13, 2010

**CONTACT PERSON NAME AND PHONE NUMBER:** Joel McKnight, Assistant Director, 541-4331

**DISTRICT(S) AFFECTED:** All Districts

**SUBJECT:**

Approve a resolution authorizing the City Manager to sign a State Use Contract – Contract for Parksite Maintenance Services between the City of El Paso and Texas Industries for the Blind and Handicapped (TIBH) and Border TM Industries (BTM) for mowing in City Parks. The term of the contract will be for three years with options to extend for up to two additional years. Compensation for the contract is not to exceed the sum of \$205,000 per year.

**BACKGROUND / DISCUSSION:**

TIBH/BTM provides mowing services for City parks. This contract is exempt from competitive bidding requirements of Local Government Code 252.021 under Local Government Code 252.022(a)(13), and BTM is certified by TIBH as providing employment for the blind and/or disabled.

**PRIOR COUNCIL ACTION:**

The current contract which expires on May 3, 2010 for these services with TIBH/BTM was authorized on May 3, 2005.

**AMOUNT AND SOURCE OF FUNDING:**

This item has been budgeted for in Parks and Recreation operating budget, account 51010366-502221-01101.

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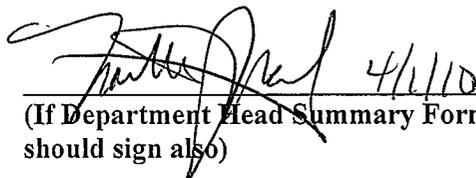
**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

 4/13/10

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**THAT** the City Manager is hereby authorized to sign, on behalf of the City of El Paso, a Parksite Maintenance Contract among the City of El Paso (the "City"), Texas Industries for the Blind and Handicapped ("TIBH") and Border™ Industries, Inc. d/b/a Xceed Resources ("Border™") for the purpose of parksite maintenance in various parks within the city limits for an amount not to exceed TWO HUNDRED FIVE THOUSAND DOLLARS and NO/100 (\$205,000.00) per year for a primary term of three years to be automatically extended for two additional one year terms.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda, Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kristen L. Choi  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Nanette L. Smejkal, Director  
Parks and Recreation Department

**THE STATE OF TEXAS**                   §  
  §       **PARKSITE MAINTENANCE**  
**COUNTY OF EL PASO**               §       **CONTRACT**

This Parksites Maintenance Contract (“Contract”) is made this the \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of El Paso, a home rule municipal corporation (“CITY”), TEXAS INDUSTRIES FOR THE BLIND AND HANDICAPPED, a private non-profit corporation and the certifying party (“TIBH”), and BORDER TM INDUSTRIES, INC d/b/a XCEED RESOURCES. the performing party (“BORDERTM”)(hereinafter collectively referred to as “Contractors”).

**WHEREAS**, the CITY has previously contracted the Border TM Industries, Inc., an employment corporation for individuals with mental disabilities, who is certified by TIBH as providing employment for the blind and disabled, to provide services to the citizens of the CITY; and

**WHEREAS**, Texas Industries for the Blind and Handicapped (“TIBH”) is a private non-profit corporation responsible for coordinating programs for the visually impaired and handicapped; and

**WHEREAS**, the CITY has a need for parksites maintenance (“Services”)in various parks within the city limits. Therefore, the CITY intends to engage the CONTRACTORS to perform such Services at the parks, whose locations are further described in **Attachment “A;”** and

**WHEREAS**, CONTRACTORS are able and qualified to provide such Services for the mutual benefit of its clients and the CITY; and

**WHEREAS**, the City has determined that it is in the best interest of the citizens of El Paso to employ disabled citizens to perform services requested herein; and

**WHEREAS**, the competitive bidding requirements of Local Govt Code §252.021 are exempt under Local Govt. Code §252.022(a)(13), and this contract complies with Chapter 122 of the Human Resources Code;

**NOW, THEREFORE**, for the consideration set forth in this Contract and its attachments, the CITY and CONTRACTORS agree as follows:

**1.0 ATTACHMENTS**

1.1 The attachment listed herein and attached to this Contract are incorporated herein by reference for all purposes as if set forth verbatim:

**Attachment “A”       Parks Recreation Department Mowing Locations & Maintenance Locations**

## 2.0 CONTRACTUAL RELATIONSHIP

2.1 The CITY hereby agrees to retain the CONTRACTORS, who is a full time mowing/cleaning contractor and the CONTRACTORS agree to perform the Services set forth in this Contract.

2.2 The CONTRACTORS are independent contractors. Except as may be expressly and unambiguously provided in this Contract, no partnership or joint venture is intended to be created by this Contract, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-CONTRACTORS.

2.2.1 As an independent contractor, the CONTRACTORS understand and agree that they will be responsible for their respective acts or omissions, and the CITY shall in no way be responsible as an employer to the CONTRACTORS' officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Contract.

2.2.2 The CONTRACTORS shall select their own employees and such employees shall be and act under the exclusive and complete supervision and control of the CONTRACTORS.

2.3 The CONTRACTORS shall not receive any compensation or benefits from the CITY, other than as expressly set forth in this Contract.

2.4 The CONTRACTORS understand and expressly agree that, in all things relating to this Contract, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY enters into this Contract as a governmental entity for the purpose of performing a governmental function.

2.5 The CONTRACTORS understand and expressly agree that the CITY shall not be obligated or liable hereunder to any person other than CONTRACTORS.

## 3.0 SCOPE OF SERVICES AND DURATION

3.1 Scope of Services. The CONTRACTORS shall provide grounds maintenance and described herein for the parks, listed in **Attachment "A."** The CONTRACTORS understand and agree that ground maintenance for the parks listed in **Attachment "A"** shall meet the following mowing and cleaning requirements:

3.1.1 The CONTRACTORS understands and acknowledges that the parks, listed in **Attachment "A,"** include property line to property line and all right of ways adjacent to the given park area as well as the curbs and gutters on streets and any utility easements on the park site.

3.1.2 **WORK SCHEDULES:** The general schedule of work shall be 7am to 5pm, Monday through Friday, or as approved by Park Superintendent. Weekend work will be allowed on a case by case basis in order to make up for circumstances like rain outs,

holidays, etc. providing that there are no conflicts of schedule with athletic competitions or special events at facilities in question. Prior to the start of the mowing season, Contractor and the designated City representative (Park Superintendent) will create a schedule of services to be performed (mowing schedule) for 29 to 31 mowing cycles. The mowing schedule is subject to change depending upon conditions and as agreed upon by the Contractor and Parks Superintendent.

### 3.1.3 MOWING AND CLEANING REQUIREMENTS

3.1.3.1 CLEANING. Remove all obvious accumulations of trash and litter prior to mowing to prevent scattering. This includes paper, cans, bottles, tree limbs, rocks, etc., that are not intended to be present as part of the landscape and are unhealthy and/or unsightly. All material shall be disposed of by approved methods as delineated in the El Paso City Code or any El Paso Ordinance. Mowers shall report all debris or objects too heavy or voluminous to remove to the Parks Superintendent.

3.1.3.2 GRASS CLIPPINGS. Contractor shall mulch all clippings properly so that no clumps or piles of clippings are left after cut. If clumps or piles of clippings are present after first cut contractor shall mow over them again to ensure proper size and distribution of clippings. Contractor shall ensure that landscaped areas and all hardscape adjacent to job sites are free of grass clippings after completion of mowing. Under no circumstances will grass clippings be blown into the stormwater inlets.

3.1.3.3 STRUCTURES. All areas shall be mowed as near as possible to any tree, wall, fence or any other structure without causing damage to it, with remaining trim work performed with proper hand equipment.

3.1.3.4 EQUIPMENT CONDITION AND OPERATION. All equipment shall be in good repair and operated by a person who has received proper training according to the equipment manual. All trucks and trailers must have identification on them including but not limited to contractor's name.

3.1.3.5 TIMELINESS. Contractor shall employ sufficient personnel and equipment to ensure all authorized mowing or cleaning of land is finished within two (2) days of the scheduled mowing cycle or five (5) working days from receipt of supplemental work schedule. In the event of inclement weather, Contractor may be allotted additional time. If Contractor is unable to accomplish scheduled work, the city reserves the right to assign any work to another contractor and to charge Contractor for any expense or cost incurred over the agreed upon charge on Exhibit "A".

3.1.3.6 REWORK. Any property that is not mowed or cleaned to the satisfaction of the Park Superintendent shall be redone at the contractor's expense.

3.1.3.7 WILDFLOWERS. Contractor shall conduct all mowing operations so as to avoid clearing or removing stands of wildflowers before the seeds have matured, unless otherwise directed by Park Superintendent, or their designee.

3.1.3.8 MOWING CYCLES. Mowing and litter removal shall be performed according to the scheduled mowing cycles. The Park Superintendent, or their designee shall coordinate with CONTRACTOR and create the mowing schedule before the contractor may commence work on a given cycle. Although the contract will be based on a maximum number of mowing cycles, the Park Superintendent shall have authorization to reduce the total number of cycles due to conditions.

3.1.3.9 MOWING STANDARDS. The cutting height of all turfgrass will be 1.50 inches to 2.00 inches, as determined by Park Superintendent. No more than 1/3 of the leaf blade may be removed at one time. Clumps and piles of clippings will be removed or mowed over again to have an acceptable appearance.

#### 3.1.4 **CONTRACTOR RESPONSIBILITIES**

3.1.4.1 PERMITS AND LICENSES. Contractor shall obtain and pay for any and all permits and licenses required to fulfill this contract.

3.1.4.2 COMMUNICATION. Contractor shall provide at least one of the following to enable prompt communications: answering service, telephone answering machine, fax machine, pager, etc. The contractor or his designee shall respond to communications request from the Park Superintendent within two (2) hours during the normal working hours of 7:00 am – 4:00 pm, Monday through Friday.

3.1.4.3 HAZARDOUS CONDITIONS/DAMAGE. Contractor is required to notify the Park Superintendent, or their designee, within one hour of observing any hazardous conditions and/or damaged city property. Contractor is responsible for any damage done to plant material or other property as a result of mowing operations. Contractor will be responsible for repair or replacement of all trees, shrubs, and the bark of the trees. Contractor will be responsible for any damage done to private property (cars, plants, structures, etc.).

3.1.4.4 SUPERVISION. Contractor shall provide a designated supervisor of all work crews at all times. Personal supervision is not required provided that communication equipment or other means are provided that enable the work crew to communicate with the Contractor at all times. Each work crew shall also have a designated person on the

work site that has the authority, and ability to communicate effectively in English, to respond to inquiries from the department about work details or priorities.

- 3.1.4.5 NO DISCRIMINATION. As a condition of this contract, Contractor covenants and agrees that it will take all necessary actions to ensure, in connection with any work under this contract, that Contractor, its associates and employees, will not discriminate in its treatment or employment of any individuals on the grounds of race, color, religion, national origin, age, sex, or physical handicap unrelated to job performance, either directly or through contractual or other arrangements.
- 3.1.4.6 Contractor shall keep, retain and safeguard, all records relating to this contract for work performed hereunder for a minimum period of two (2) years from final contract completion, with full access allowed to authorized representatives of the city upon request, for purposes of evaluating compliance with the provisions of the contract.
- 3.1.4.7 PARK SUPERINTENDENT. Contractor shall work closely with the Park Superintendent. The Park Superintendent is the city department's representative responsible for the mowing and litter removal and who monitors the Contractor's performance for that section, which includes seeing that the work is conducted in a safe manner, inspection of completed work and the administration of the contract for that section.
- 3.1.4.8 PAY FOR WORK COMPLETED. Contractor will only be paid for the work actually completed.
- 3.1.4.9 INCLEMENT WEATHER. In the event of inclement weather such as, wet or rainy weather when the condition of the soil is such that rutting of property will not allow mowing of grass to be accomplished satisfactorily, the Contractor may be allotted additional time. **It is the responsibility of the Contractor to notify the Park Superintendent when unable to timely complete the approved work schedule due to such condition and notify when the completion can be expected.** Expected completion date must be acceptable to the Park Superintendent, or their designee.
- 3.1.4.10 SAFETY DEVICES/DRESS. Contractor and employees shall display at least one of the following warning devices: warning signs, safety vest, flashers, flags, etc; and shall wear Proper Protective Equipment, in order to ensure both the employee and public safety. Contractor and employees must wear a shirt at all

times during performance of the Services. A uniform is preferred, but not required.

3.1.4.11 **EQUIPMENT OPERATION SAFETY.** Contractor shall comply with all equipment manufacturer's operating and safety instructions.

3.1.4.12 **UNSAFE PRACTICES NOT PERMITTED.** Contractor will not permit unsafe practices. Unsafe practices include but are not limited to: using inappropriate equipment for the job, operating with one arm of a bat wing mower raised with blades exposed and spinning, removing chains or other safety devices from equipment, traveling with an operator sitting in the back of a pickup truck with the tailgate lowered and operating mowing equipment at excessive speed.

3.1.4.13 **SCHEDULE & SCOPE OF WORK.** If unforeseen circumstances would cause a change in the mowing schedule Contractor shall provide Superintendent with a revised schedule for approval.

### 3.1.5 **FAILURE TO COMPLY**

If the Contractor fails to perform per the specifications:

3.1.5.1 **CONTRACTOR** will be notified by telephone and by email.

3.1.5.2 From the time of the telephone notification, the Contractor has 36 hours to perform the needed work.

3.1.5.3 At the end of the 36 hour grace period the area(s) in question will be inspected:

3.1.5.3.1 If necessary corrections have not been completed, written notification will be given by certified mail of the failure and that the City will have the work completed. Contractor will reimburse City for any cost above the agreed amount.

3.2 Time Schedule for Performing Services. The Parks assigned representative and the CONTRACTORS shall agree upon a time schedule for the Services to be performed at each park, described in **Attachment "A"**. Such schedule may be revised periodically by agreement with the Park Superintendent and contractor as needed because of climate, ground or other conditions. CONTRACTOR shall provide 29 to 31 cuts per year during the mowing season.

3.3 Term of Contract. This Contract shall become effective on \_\_\_\_\_, 2010, and shall be for a primary term of three (3) years from that date. Said Contract shall

automatically be extended for two additional one (1) year periods under the same price, terms and conditions, unless terminated as hereinafter provided in Section 5.0 of this Contract. In no event shall this Contract extend beyond \_\_\_\_\_, 2015.

#### 4.0 CONSIDERATION AND PAYMENTS

4.1 Consideration. As consideration for the performance of the Services outlined above in this Contract, the CITY shall pay TIBH, on behalf of the CONTRACTORS according to the total cost per cut/cycle listed on Attachment "A", not to exceed the sum of TWO HUNDRED FIVE THOUSAND DOLLARS and NO/100 (\$205,000.00) for up to thirty-one (31) cuts to be performed by CONTRACTOR each year of this Contract.

4.2 Payments. The Contractor shall submit a detailed invoice to the CITY on or by the 25<sup>th</sup> day of each month for the services performed that month at each park described in **Attachments "A"**. The CITY shall make payment according to its regular practice.

4.2.1 The invoices submitted by the CONTRACTORS shall be itemized and transportation charges, if any, shall be listed separately. Invoices shall reflect the Contract number and the Purchase Order number.

4.2.2 The CITY's obligation is payable only and solely from funds available for the Services outlined in this Contract. Lack of funds shall render this Contract null and void to the extent funds are not available.

4.2.3 TIBH understands and warrants that it shall send the appropriate amount, within a reasonable time, to BORDER TM as determined by and between TIBH and BORDER TM.

#### 5.0 TERMINATION. This Contract may be terminated as provided herein.

5.1 Termination by City for Convenience. It is mutually understood and agreed by the CONTRACTORS and the CITY that the CITY may terminate this Contract at any time, in whole or in part for the convenience of the CITY, upon **thirty (30) consecutive calendar days** written notice.

5.1.1 It is also understood and agreed that upon such notice of termination, the CONTRACTORS shall cease the performance of services under this Contract. Upon such termination, the CONTRACTORS shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the CITY's notice of termination. In the event the CITY terminates this CONTRACT for cause, CONTRACTORS shall be entitled to compensation for services performed and approved expenses incurred, prior to the termination. Nothing contained herein, or elsewhere in this Contract shall require the CITY to pay for any services that are not in compliance with the terms of this Contract and its attachments.

5.2 Termination by City for Cause. The City may terminate this Contract in the event of default by Contractor and a failure by Contractor to cure such default after receiving notice thereof. Should such a default occur, the City may deliver a written notice to Contractor describing the default and the proposed date of termination. Such date may not be sooner than the tenth (10<sup>th</sup>) day following receipt of the notice. If Contractor fails to cure such default prior to the proposed date of termination, then the City may terminate Contractor's performance under this Contract as of such date.

5.2.1 By way of example and in no way limitation, the following events shall be deemed events of default:

5.2.1.1 Failure of Contractor to perform or observe any of the obligations, covenants, agreements, and conditions required to be performed or observed under this Contract; and

5.2.1.2 The dissolution or liquidation of Contractor; the filing of a voluntary petition in bankruptcy by Contractor; the adjudication of Contractor as a Bankrupt; an assignment for the benefit of creditors by Contractor; the entry into an agreement of composition with its creditors by Contractor; the approval by a court of competent jurisdiction of any petition or other pleading in any action seeking reorganization, arrangement, adjustment, or composition of or in respect of Contractor under the Federal Bankruptcy Act or any similar State or Federal law; or the appointment of a receiver, trustee or other similar official for Contractor or its property.

5.2.2 Upon termination for cause, Contractor shall discontinue all service under this Contract and cancel all orders and subcontracts chargeable to this Contract. Contractor shall submit an invoice showing in detail the services performed under this Contract to the date of termination. The City shall pay Contractor only for services which were actually performed under this Contract and not previously paid.

5.3 Additional Remedies. If the Director determines that any condition or action or inaction of Contractor poses an immediate threat to the health or safety of any person or to any property interest, the Director may give written notice to Contractor of such determination giving a reasonable opportunity to cure the action, inaction or condition which shall be at least twenty-four (24) hours. If Contractor has not cured such default within the time stated in the notice, the City shall have the right to terminate the Contract immediately and obtain like services as necessary to preserve or protect the affected health, safety or property interests from another vendor in substitution for those due from Contractor at a cost determined by reasonable informal procurement procedures. The City may recover the difference between the cost of substitute services and the Contract price as damages, deducting any such damages from any sums otherwise due and owing to Contractor. Failure of the City to obtain substitute services and charge Contractor under this clause shall not be a bar to any other remedy.

5.4 Termination by Contractor for the City's Default. If the City fails to perform any of its duties under this Contract, Contractor may deliver a written notice to the Director describing

such default, specifying the provisions of the Contract under which Contractor considers the City to be in default and setting forth a date of termination not sooner than sixty (60) days following receipt of the notice. If prior to the date of termination the City cures such default, the termination shall be ineffective. If the City fails to cure such default prior to the date of termination, Contractor may terminate its performance under this Contract as of such date.

5.5 General Termination Provisions. This Contract may be terminated at any time by mutual written agreement of the parties. In addition, this Contract shall automatically terminate if the City Council of the City of El Paso fails to appropriate or budget money for the payment of the services under this Contract. In such event and upon expiration, termination, or cancellation of this Contract, Contractor shall be permitted ten (10) days within which to remove Contractor-owned equipment and materials from City's premises and Contractor shall account for and return all equipment and materials provided by City in good usable order, allowing for ordinary wear and tear.

5.6 Time of Performance Termination – Force Majeure. The Services shall be undertaken and completed as appropriate to carry out the purposes of this Contract. Except as otherwise provided, neither party shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Contract caused by *Force Majeure*.

5.6.1 The term *Force Majeure* as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. By reason of *Force Majeure*, if either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract then such party shall give notice and full particulars of such *Force Majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such *Force Majeure*, shall be suspended for only **thirty (30) days** during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

5.7 Termination Due to a Lack of Funds. The awarding of this Contract is dependent upon the availability of funding. In the event that funds do not become available, the Contract may be terminated or the scope of services may be amended. A **thirty (30) day** written notice will be given to the CONTRACTORS and there shall be no penalty nor removal charges incurred by the CITY.

5.8 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Contract.

5.8.1 Upon termination of this Contract, all duties and obligations of the CITY and the CONTRACTORS shall cease upon termination or expiration of this Contract, except that all provisions of this Contract that expressly or impliedly contemplate or require payment or performance after the expiration or termination of this Contract shall survive such expiration or termination. Any unpaid obligation due and owing, by either party, as of the date of termination, shall continue to be due and payable.

## 6.0 INDEMNIFICATION

**6.1 CONTRACTOR OR ITS INSURER AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF CONTRACTOR'S ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF CONTRACTOR OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF CONTRACTOR, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST CITY BY REASON OF ANY SUCH CLAIM, CONTRACTOR, UPON RECEIPT OF WRITTEN NOTICE FROM CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO CITY. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.**

**7.0 INSURANCE AND INDEMNIFICATION PROVISIONS.** For the duration of this contract and any extension hereof, Contractor shall carry in a solvent company authorized to do business in Texas, public liability insurance a) covering contractor and its employees in the amount of \$1,000,000.00 and b) for the protection of the general public and the City in the amount of \$1,000,000.00 per occurrence for bodily injury or wrongful death and \$1,000,000.00 per occurrence for property damage.

7.1 With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

Notices and Certificates required by this clause shall be provided to:

The City of El Paso  
Financial Services Department - Purchasing Division  
2 Civic Center Plaza  
El Paso, Texas 79901-1196  
Attn: Deniese Baisley, Purchasing Analyst

**Failure to submit insurance certification may result in contract cancellation.**

7.2 **WORKER'S COMPENSATION.** For the duration of this contract and any extension hereof, Contactor shall carry Worker's Compensation and Employers' Liability Insurance in the amount required by Texas law: \$500,000.00. The policy must be endorsed to include a waiver of subrogation in favor of the city. Any termination, cancellation, or non-renewal of worker's compensation insurance coverage for the Contractor shall be a material breach of this Contract.

7.3 If at any time during the life of the contract or any extension, the Contractor fails to maintain the required insurance in full force and effect; all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate the contract.

**8. GENERAL PROVISIONS**

8.1 Contractors' Quality of Work. The CONTRACTORS shall perform all Services under this Contract in a good and workmanlike manner. The CITY's Parks Operations Manager or designee shall notify CONTRACTORS' officials if the work does not comply with such standards. Any disagreements concerning performance shall be resolved by the CITY's Director of Parks and Recreation Department.

8.2 Safety. CONTRACTORS acknowledge and warrant that they shall train their employees, agents, representatives or clients in safety procedures. CONTRACTORS further acknowledge and warrant that all crews shall have a CONTRACTORS' staff supervisor with them at all times that the Services are being performed under this Contract.

8.2.1 The CONTRACTORS understands and agrees to provide first aid kits and fire extinguishers for all crew vehicles. The CONTRACTORS further understand and

agree that all crews shall use safety vests and traffic cones when working in or near streets.

8.2.2 CONTRACTORS shall comply with all applicable laws, ordinances and regulations and shall encourage its employees, agents and representatives to comply with all applicable laws, ordinances and regulations. CONTRACTORS shall exercise every precaution for the safety of public and private property and persons

8.2.3 The CONTRACTORS shall instruct all of their employees, agents and representatives as to the work procedures and thoroughly acquaint each employee with his or her duties. The CITY shall notify the CONTRACTORS if any of the CONTRACTORS' employee(s) does not perform his or her duties as necessary to carry out the CONTRACTORS' duties and responsibilities under this Contract.

8.3 Inspections. The CITY shall have the right to perform, or cause to be performed inspections of all places where work is undertaken in connection with this Contract.

8.4 Right to Assurance. Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given **within five (5) calendar days**, the demanding party may treat this failure as an anticipatory repudiation of the contract.

8.5 Assignment. Neither party may assign its rights or obligations under this Contract, including but not limited to (a) any interest in the proceeds of the contract, (b) any proceeds of claims arising from the contract or (c) any claims or causes of action arising out of the project, without the prior written consent of the other party hereto. Any attempted assignment or delegation by either party shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

8.6 Survival. Each party shall remain obligated to the other under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of this Contract, including but not limited to the Indemnification provisions hereof.

8.7 Amendment and Waiver. The parties may amend this Contract at any time by mutual consent. Unless otherwise provided herein, this Contract may be amended only by written instrument duly executed on behalf of the CITY (by authority by the City Council) and CONTRACTORS. No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

8.8 Advertising by Contractors. The CONTRACTORS shall not advertise without the CITY's prior consent, the fact that the CITY has entered into this contract, or as an accurate description to third parties of the work and consulting activities of CONTRACTORS.

8.9 Complete Agreement. This Contract, together with the Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Contract. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Contract confers no rights on any person(s) or business entity(s) that is not a party hereto. This Contract shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Contract.

8.10 Governing Law. This Contract shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.

8.11 Severability. All agreements and covenants contained in this Contract are severable. Should any term or provision of this agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this agreement should be valid and binding and have full force and effect as if the invalid portion had not been included

8.12 Venue. For the purpose of determining place of this Contract and the law governing the same, this Contract is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

8.13 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address prescribed in the preamble of this Contract or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY:	City of El Paso Attention: City Manager Two Civic Center Plaza, 10 <sup>th</sup> Floor El Paso, Texas 79901-1196
COPY TO:	Parks and Recreation Director Two Civic Center Plaza, 6 <sup>th</sup> Floor El Paso, Texas 79901-1196

COPY TO: Financial Services Department/Purchasing Division  
Attn: Deniese Baisley  
2 Civic Center Plaza, 7<sup>th</sup> Floor  
El Paso, Texas 79901-1196

CONTRACTORS: Texas Industries for the Blind & Handicapped  
Attn: Henry Hernandez  
5503 Grissom Rd, Suite 103  
San Antonio, Texas 78238

Border TM Industries, Inc.  
Attn: Everardo M. Sanchez  
5310 El Paso Drive  
El Paso, Texas 79905

8.14 Equipment. All equipment used by CONTRACTORS shall be maintained in satisfactory working condition. Equipment used shall not be used in any manner that may cause injury to any persons or to the property of the CITY or third parties. Further, CONTRACTORS understand and agree that the CITY is not and will not be responsible for the safety and security of any equipment or other materials used by the CONTRACTORS in the performance of the Services outlined in this Contract, nor will the CITY be responsible for any damage to any equipment or materials used in the performance of Services outlined in this Contract.

8.15 Warranty of Capacity to Execute Contract. The person signing this Contract on behalf of the TIBH and BORDER TM warrant that he/she has the authority to do so and to bind the TIBH and BORDER TM to this Contract and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Contract in its entirety (including any and all Attachments); understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

*(signatures follow on next page)*

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF EL PASO

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

CONTRACTORS:

TEXAS INDUSTRIES FOR THE  
BLIND & HANDICAPPED (TIBH)

BORDER TM INDUSTRIES, INC.

\_\_\_\_\_  
Henry Hernandez  
Title: \_\_\_\_\_

\_\_\_\_\_  
Everardo M. Sanchez  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kristen L. Choi  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Nanette L. Srpéjkal, Director  
Parks & Recreation Department

**ATTACHMENT "A"**

Site	Address	Area	Park Size	Area Mowed by TIBH/BTM	Cost per Acre	Total Cost per Cut/Cycle
Alethea	801 Stockwell	C	2.40	1.70	\$ 144.95	\$ 246.42
Armijo	701 E. 7th Ave	C	4.80	1.65	\$ 144.95	\$ 239.17
Borderland	6327 Modesta	NW	1.00	0.75	\$ 144.95	\$ 108.71
Boys Club	811 S. Florence	C	2.30	1.60	\$ 144.95	\$ 231.92
Calendar	401 E. San Antonio Ave.	C	0.21	0.18	\$ 144.95	\$ 26.09
Caruso	720 Caruso	C	0.18	0.10	\$ 144.95	\$ 14.50
Chihuahuita	400 Charles St.	C	1.15	0.75	\$ 144.95	\$ 108.71
Cleveland Square	510 N. Santa Fe	C	2.10	0.60	\$ 144.95	\$ 86.97
Cork	3327 Cork	E	1.22	1.15	\$ 144.95	\$ 166.69
Doniphan	1800 W. Paisano	W	1.33	0.40	\$ 144.95	\$ 57.98
Dunn	1501 N. El Paso	C	0.59	0.25	\$ 144.95	\$ 36.24
Eastwood	3110 Parkwood	E	47.04	1.00	\$ 144.95	\$ 144.95
Estrella Rivera	3200 Rivera	C	0.62	0.35	\$ 144.95	\$ 50.73
Firefighters Memorial	316 Overland	C	0.10	0.10	\$ 144.95	\$ 14.50
Grace Chope	535 W. Missouri	C	0.70	0.70	\$ 144.95	\$ 101.47
Green Lilac	1016 Green Lilac Circle	E	0.80	0.80	\$ 144.95	\$ 115.96
Lionel Forti	1225 Giles	MV	23.00	0.45	\$ 144.95	\$ 65.23
Hawkins Pool	1500 Hawkins	E	5.00	0.25	\$ 144.95	\$ 36.24
Hilos De Plata	4452 Delta	C	12.36	0.20	\$ 144.95	\$ 28.99
Houston	900 Montana	C	1.50	1.40	\$ 144.95	\$ 202.93
Indian Heights	3200 White Bird	E	0.10	0.10	\$ 144.95	\$ 14.50
Indian Ridge #9	3440 Pendleton	E	1.00	1.00	\$ 144.95	\$ 144.95
Leona Ford Washington	3400 E. Missouri	C	0.80	0.15	\$ 144.95	\$ 21.74
Little River	5857 Sixta	NW	0.92	0.70	\$ 144.95	\$ 101.47
Logan Reserve	5500 Byron	NE	2.78	0.75	\$ 144.95	\$ 108.71
Marty Robbins	11600 Vista Del Sol	E	31.00	0.15	\$ 144.95	\$ 21.74
Mary Webb	3401 E. Missouri	C	2.05	1.00	\$ 144.95	\$ 144.95
MacArthur	738 Gerald	E	1.60	1.00	\$ 144.95	\$ 144.95
Memorial	1701 Copia	C	45.00	0.50	\$ 144.95	\$ 72.48
Meas Terrace	1221 Selden Dr	C	1.63	0.80	\$ 144.95	\$ 115.96
Multi Purpose Ctr @ Vista del Valle	9031 Viscount	E	22.13	0.30	\$ 144.95	\$ 43.49
Mundy	500 Porfirio Diaz	C	1.60	1.60	\$ 144.95	\$ 231.92
Nations Tobin	8831 Railroad	NE	44.00	0.75	\$ 144.95	\$ 108.71
Nolan Richardson	4435 Maxwell	NE	2.50	2.35	\$ 144.95	\$ 340.63
Normandy	6300 Normandy	NE	0.10	0.10	\$ 144.95	\$ 14.50
Paseo De Los Heroes	601 E. 8th	C	2.00	1.25	\$ 144.95	\$ 181.19
Pavo Real	9301 Alameda	MV	20.00	0.40	\$ 144.95	\$ 57.98
Pecan Grove I	9130 Sweet Acacia	MV	0.45	0.20	\$ 144.95	\$ 28.99
Pecan Grove II	9100 Betel	MV	0.65	0.60	\$ 144.95	\$ 86.97

Ysleta Pedestrian Plaza	Alameda @ Candelaria	MV	1.60	0.10	\$ 144.95	\$ 14.50
Pera -Luna	3300 Pera	C	0.65	0.40	\$ 144.95	\$ 57.98
River Park West 1	713 Dakota River	NW	1.02	0.90	\$ 144.95	\$ 130.46
Esmeralda (River Park West 3)	720 Esmeralda Armendariz	NW	3.31	2.30	\$ 144.95	\$ 333.39
Roger Brown BF	1200 Alabama	C	1.10	1.00	\$ 144.95	\$ 144.95
Grandview	3100 Jefferson	C	15.00	0.25	\$ 144.95	\$ 36.24
San Jacinto Plaza	111 Mills	C	1.50	0.50	\$ 144.95	\$ 72.48
J.P. Shawver	9100 Independence	MV	40.90	1.00	\$ 144.95	\$ 144.95
South El Paso Sr. Ctr	600 S. Ochoa	C	1.00	0.10	\$ 144.95	\$ 14.50
Stanton Heights	11520 Edward James	E	2.00	1.40	\$ 144.95	\$ 202.93
Suffolk	3225 Suffolk	E	1.00	0.90	\$ 144.95	\$ 130.46
Sunset Heights	631 Stewart	C	1.15	0.60	\$ 144.95	\$ 86.97
Tom Lea Upper	900 Rim Rd	C	3.60	0.50	\$ 144.95	\$ 72.48
Tula Irraboli	601 S Park	C	2.00	1.25	\$ 144.95	\$ 181.19
Tyrone	3301 Tyrone	E	1.20	1.15	\$ 144.95	\$ 166.69
Union Plaza	117 Anthony	C	0.10	0.06	\$ 144.95	\$ 8.70
Marwood	4325 River Bend	NW	12.50	1.60	\$ 144.95	\$ 231.92
						\$ 6,100.95