

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

DEPARTMENT: Environmental Services

AGENDA DATE: April 23, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Kurt Fenstermacher, Interim Director (915) 621-6892

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign a Contract among the City of El Paso and TIBH Industries, Inc. ("TIBH"), and Border TM Industries, Inc. d/b/a Xceed Resources, to provide litter control services for the City's Department of Environmental Services.

BACKGROUND / DISCUSSION:

The proposed contract will provide the following litter control services for the City's Greater El Paso Landfill located at 2300 Darrington Road and the McCombs Landfill located at 13600 McCombs Road as needed. Services include the pick-up of litter within the permitted landfill areas, including but not limited to along fences, access roads, entrances and drainage ditches. The contract will become effective May 1, 2013 through April 30, 2016.

PRIOR COUNCIL ACTION:

May 18, 2010

AMOUNT AND SOURCE OF FUNDING:

\$413,105.84

Fund 3100 Dept 334 Division 34130 Acct 522150

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(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 be authorized to sign a City Landfill Litter Control Contract among the City of El Paso and TIBH Industries, Inc. ("TIBH"), and Border™ Industries, Inc. d/b/a Xceed Resources to provide litter control services for the City's Department of Environmental Services.

ADOPTED this _____ day of _____, 2013.

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

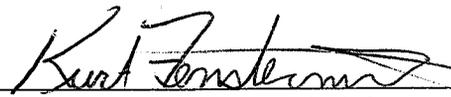
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Kurt Fenstermacher, Interim Director
Environmental Services Department

CITY LANDFILL LITTER CONTROL CONTRACT

This Contract is entered into for the effective dates of May 1, 2013 through April 30, 2016 between the **CITY OF EL PASO**, a home rule municipal corporation, hereinafter referred to as the "City," and both **TIBH INDUSTRIES, INC. ("TIBH")**, a private non-profit corporation and the certifying party, and **BORDER TM INDUSTRIES, INC., d/b/a Xceed Resources ("Xceed")** (TIBH and Xceed together, the "**Contractor**"), to provide specified litter control services for certain properties managed by the City of El Paso Department of Environmental Services (the "Department").

WITNESSETH:

WHEREAS, the City has previously contracted with BorderTM Industries, Inc. (now Xceed Resources) a corporation offering employment for individuals with mental disabilities, for provision of services to the citizens of El Paso; and

WHEREAS, TIBH is a private non-profit corporation responsible for coordinating programs and employment opportunities for the visually impaired and the disabled; and

WHEREAS, the City has a need for the litter control services outlined in this Contract; and

WHEREAS, Xceed Resources is able to provide such services for the mutual benefit of its workers and such services benefit the health and safety of the community and thus fulfill a public purpose for the City;

NOW, THEREFORE, it is hereby agreed by the parties as follows:

1. **Scope of Services**. Contractor shall provide the following litter control services (the "Services") for the City's Greater El Paso Landfill located at 2300 Darrington Road and the McCombs Landfill located at 13600 McCombs Road, El Paso, Texas 79924, as needed.

1.1 **Duties**

1.1.1 The Services include the pick-up of litter from within the permitted landfill area (Permit No. MSW-2284 and MSW-1482 (collectively known as the "Sites")), including but not limited to along fences, access roads, entrances and drainage ditches. The windblown waste and litter shall be returned to the Sites' active working face for disposal.

1.1.2 Contractor shall also pick up litter from along public access roads and rights of way serving the Sites for a distance of two miles in either direction from the Sites' entrance. This will not include Interstate Highway 10.

1.1.3 Contractor shall remove materials found on the pavement and shoulder of the entrance road at the Sites. The shoulder will be defined as 10 feet from where the pavement ends extending outward on both sides of the entrance road.

1.1.4 In addition to the above, Contractor may be required to assist with additional general maintenance activities as needed at the Sites, including weed removal, painting grid markers, and sediment removal.

1.1.5 At the completion of each day on which Services are rendered, Contractor will log its daily activities in the windblown waste and litter control logbook and other applicable log books, which are located in the scalehouse.

1.1.6 Contractor shall provide its own vehicles and equipment necessary to perform the work including, but not limited to a four-wheel drive stakebed truck, hand tools (shovels, rakes, picks and brooms), trash containers, and personal safety gear (high top steel toe work boots, gloves, safety vest, safety glasses, and dust mask).

1.1.7 Contractor shall provide the services between the hours of 7 a.m. and 4 p.m., Monday – Friday.

1.1.8 Contractor will observe all holidays observed at the Sites.

1.1.9 If the Sites are closed due to inclement weather, the Contractor's Supervisor will be notified and Contractor will be released at the time of closing.

1.1.10 Contractor shall provide a crew consisting of one (1) Supervisor and three (3) General Service Worker employees for a minimum of six (6) hours on-site each scheduled work day to provide the Services.

1.1.11 Contractor personnel shall participate in applicable landfill safety training provided by the City during their regular work schedule. Contractor personnel shall follow all landfill rules and policies. Contractor will be available upon request with additional personnel for special pick-ups, special events, or state inspections. The Department will provide two weeks notice of such events. Contractor will provide a proposal within the same fourteen (14) day period prior to the event. Contractor shall provide a proposal within 48 hours of the emergency and an emergency pick-up crew upon request by the Director, for such occasions as extreme weather events among other things.

1.2 The Director, or designee, and Contractor shall agree on an appropriate daily schedule for the Service provided for herein. Should the parties fail to reach an agreement on appropriate daily scheduling, the Director's determination shall control. Such schedule may be revised periodically by the Director or designee as needed because of climate conditions, ground conditions, or other conditions. Further, the Director may, in his sole discretion, add to or delete from the Sites and locations included herein.

2. **Term.** This Contract shall become effective on May 1, 2013 and shall terminate on April 30, 2016.

3. **Consideration.** The City shall pay TIBH the sum of

3.1 \$136,293.58 for the period of May 1, 2013 through April 30, 2014,

3.2 \$136,293.58 for the period of May 1, 2014 through April 30, 2015, and

3.3 \$140,518.68 for the period of May 1, 2015 through April 30, 2016, for non-emergency crews; and

3.4 \$74.88/hour for an emergency crew consisting of one (1) supervisor and three (3) of Contractor's clients, throughout the entire term of this Contract,

or such other sum as agreed to when additional services are authorized pursuant to Sections 1 and 16 herein. TIBH shall invoice the City on the 25th day of each month for services furnished between that date and the period covering the prior month's invoice. Upon verification and approval of such invoice, the City shall process and send payment to TIBH, which shall send the appropriate amount, within a reasonable time, to Xceed Resources as may be determined by TIBH and Xceed Resources.

3.1 A price adjustment equal to the increase in labor costs attributable to a federally mandated increase to the minimum wage shall be allowed when a written request for such adjustment is provided by Contractor to the City prior to termination of this Contract. The City may require documentation to substantiate any such price adjustment.

4. **Termination.** Either party may terminate this Contract if the other party has breached the Contract and fails to correct such breach for a period of thirty (30) days after receipt of written notice to correct the same. In addition, either party may terminate this Contract without cause upon thirty (30) days' written notice to the other party of the intention to terminate this Contract. In

addition, 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. All payments by the City under this Contract are payable only out of current City revenues.

5. **Independent Contractor.** Contractor shall instruct all of its employees as to work procedures and thoroughly acquaint each employee with their duties. City shall notify Contractor if any of Contractor's employees do not perform their duties as necessary to carry out Contractor's duties under this Contract. Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and Contractor's employees. Contractor shall be deemed at all times to be an independent contractor. In carrying out the terms of this Contract, Contractor shall select its own employees and such employees shall be and act under the exclusive and complete supervision and control of Contractor.

6. **Property Damage.** Contractor shall promptly notify the Director of any damage or vandalized City equipment or materials that Contractor discovers at the Sites. Contractor shall additionally reimburse City for any property damage caused by anyone under Contractor's employ.

7. **Safety.** Contractor shall train its employees or subcontractors in safety procedures and all crews shall have a Contractor's staff supervisor with them. Contractor shall provide first aid kits and fire extinguishers for all of its vehicles. Crews shall use safety vests and traffic cones when working in or near streets.

8. **Insurance and Indemnification Provisions.** Contractor agrees to provide the following as a condition of the Contract:

8.1 **LIABILITY INSURANCE.** Contractor shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum

~~amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause.~~

8.1.1 Contractor is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this Contract.

8.1.2 Contractor shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Contractor, its officers, agents, servants or employees.

8.1.3 No Service shall be provided by the City until Contractor files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk and the Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to

keep the policy in full force and effect throughout the term of this Contract shall be grounds for cancellation of this Contract.

8.2 **INDEMNITY**. As a condition of this Contract, Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Contractor will not indemnify for any act done by an employee or official of the City. Without modifying the conditions precedent for preserving defenses, asserting claims 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 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 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 Contractor's property from any cause.

9. **Workmanship.** All work shall be done in a good and workmanlike manner. The Director or designee shall notify Contractor if the work does not comply with such standards. Any disagreements concerning performance shall be resolved by the Director.

10. **Compliance with Laws and Ordinances.** Contractor shall at all times observe and comply with all federal, state and local laws, ordinances and regulations which in any manner affect the Contract or the work and to the extent allowed by law, shall indemnify and save and hold harmless the City against all claims arising from the violation of any such laws, ordinances and regulations whether by the Contractor or its employees or clients.

11. **Venue and Law.** For the purposes of determining the place of the Contract and the law governing the same, this Contract is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue for all purposes shall be in the courts of El Paso County, Texas.

12. **Severability.** Every provision of this Contract is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

13. **Entire Agreement.** This Contract constitutes and expresses the entire agreement between the parties regarding the scope of services specified. It shall not be amended or modified except by a written instrument signed by all parties. The parties have entered into other agreements which are not affected or modified by this Contract.

14. **Assignment.** This Contract shall not be assigned without the prior written consent of all of the parties.

15. **Binding Agreement.** The individual signing this Contract acknowledges that he or she is authorized to do so, and said individual further warrants that he or she is authorized to commit and bind Contractor to the terms and conditions of this Contract.

16. **Notices.** All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City: City of El Paso
ATTN: City Manager
PO Box 1890
El Paso, Texas 79950-1890

with copy to: City of El Paso
ATTN: Director
Environmental Services Department
7968 San Paulo
El Paso, Texas 79907

TIBH: Henry Hernandez, Marketing Sales Representative
TIBH Industries, Inc.
5503 Grissom Road, Suite 103
San Antonio, Texas 78238

XCEED RESOURCES: Everardo M. Sanchez, Executive Director
Xceed Resources
5310 El Paso Drive
El Paso, Texas 79905

or to such other addresses as the parties may designate to each other in writing from time to time.

17. **Texas Tort Claims Act.** Contractor expressly agrees that, in all things relating to this Contract, the City is performing a governmental function, as defined by the Texas Tort Claims Act. Contractor further expressly agree that every act or omission of the City which, in any way pertains to or arises out of this Contract falls within the definition of a governmental function.

(signatures follow on next page)

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Contract on the _____ day of _____, 2013.

CITY OF EL PASO

Joyce A. Wilson,
City Manager

APPROVED AS TO FORM:



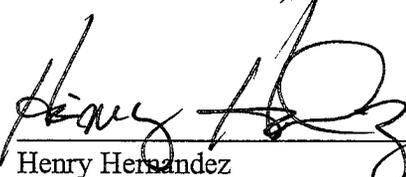
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



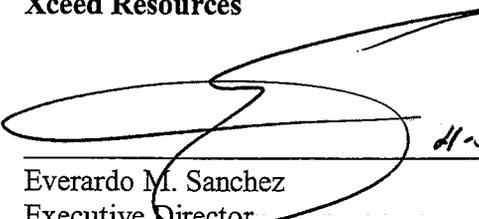
Kurt Fenstermacher, Interim Director
Environmental Services Department

TIBH INDUSTRIES, INC.

 4/8/2013

Henry Hernandez
Marketing Sales Representative

**BORDER TM INDUSTRIES, INC. d/b/a
Xceed Resources**

 4-5-2013

Everardo M. Sanchez
Executive Director