

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Environmental Services
AGENDA DATE: May 1, 2007
CONTACT PERSON/PHONE: Ellen A. Smyth, P.E., (915) 621-6719
DISTRICT (S) AFFECTED: County

SUBJECT:

Approve a City Landfill Litter Control Contract with Texas Industries for the Blind and Handicapped, Inc. ("TIBH")

BACKGROUND / DISCUSSION:

The proposed contract is for three years. The contractor will pick up litter from the perimeter of the active phase of the Clint Landfill, litter found outside the fence, or debris found on the Main Street, Monday through Friday.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

\$100,430.97 for the period of May 1, 2007 through April 30, 2008;
\$103,443.90 for the period of May 1, 2008 through 2009
\$106,547.22 for the period of May 1, 2009 through 2010;
Acct. #502215-34-010296-40403

BOARD / COMMISSION ACTION:

N/A

CITY CLERK DEPT.
07 APR 23 AM 11:56

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

LEGAL: (if required) Josette Flores

FINANCE: (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

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 Texas Industries for the Blind and Handicapped, Inc. ("TIBH"), and Border TM Industries, Inc., to provide litter control services for the City's Environmental Services Department.

ADOPTED this _____ day of _____, 2007.

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

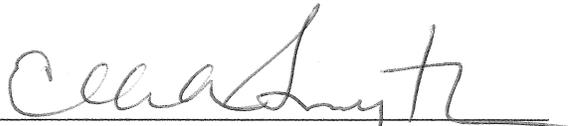
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Environmental Services Department

CITY CLERK DEPT. 1
07 APR 23 AM 11:55

CITY LANDFILL LITTER CONTROL CONTRACT

This Contract is entered into for the effective dates of **May 1, 2007 through April 30, 2010**, between the **CITY OF EL PASO**, a home rule municipal corporation, hereinafter referred to as the "City," and both **TEXAS INDUSTRIES FOR THE BLIND AND HANDICAPPED, INC.** ("TIBH"), a private non-profit corporation and the certifying party, and **BORDER TM INDUSTRIES, INC.**, (together, "**the Contractors**"), to provide specified litter control services for certain properties managed by the City of El Paso Environmental Services Department (the "Department").

WITNESSETH:

WHEREAS, the City has previously contracted with Border TM Industries, Inc. 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 services outlined in this Contract; and

WHEREAS, Border TM Industries, Inc. is able to provide such services for the mutual benefit of its workers and such services fulfill a public purpose for the City;

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

1. **Scope of Services**. Contractors shall provide the following litter control services (the "Service") for the City, at the locations designated in Appendix "A".

1.1 **Duties**

1.1.1 Contractors will pick up litter from the perimeter of the active phase of the landfill. Currently, the active phase is Phase I (See Appendix "B"). This

- includes litter and debris found in drainage ditches, service roads, backstops, and fence.
- 1.1.2 Any litter found outside the fence on the adjacent property to the north and east sides of Permit #2284 boundaries will be also be picked up by Contractors.
 - 1.1.3 Any litter or debris found on Main Street, which is the entrance road (see Appendix "B"), starting at the gate opening by Darrington Road to and around the Scalehouse and entrance gate to Permit #2284 (see Appendix "B" showing the physical boundaries of Permit #2284) will be picked up by the Contractors. Contractors will be responsible for material on pavement and shoulder of the entrance road. 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 Contractors will log in daily clean-ups in the logbook that is located in the Scalehouse at the completion of each day.
 - 1.1.5 The Department will provide trash bags. The Department will count trash bags and/or weigh all trash that was picked up as a quality assurance measure. In addition, Contractors will clean their areas of responsibility in accordance with the Texas Administrative Code as it applies to a Municipal Solid Waste landfill (i.e., if the Texas Commission on Environmental Quality (TCEQ) deems the litter control inadequate or ineffective, Contractors will make changes or adjustments to put the landfill back into compliance with TCEQ regulations without any additional charges to the Department).
 - 1.1.6 Contractors will work Monday through Friday.
 - 1.1.7 Contractors will observe all holidays observed by landfill staff.
 - 1.1.8 The Department may elect to amend this Contract to include Saturday or Sunday. Should such election occur, Contractors will be given two weeks notice and will provide a proposal to perform the requested services to the Department within the same fourteen (14) day period.
 - 1.1.9 Contractors 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. Contractors will provide a proposal within the same fourteen (14) day period.
 - 1.1.10 Contractors will not report for work if it is raining or snowing at opening time at the landfill, 7 A.M. Contractors will report to work under any windy conditions, subject to the Landfill Manager's determination of unsafe working conditions. Should any previously scheduled Service time be postponed because of inclement weather as determined by the Landfill Manager, Contractors will provide a make-up schedule for that unfulfilled time for the Landfill Manager's approval within three (3) days of such postponement.

1.2 The Landfill Manager, or designee, and Contractors shall agree on an appropriate daily schedule for the Service provided for herein. Failing to reach an agreement, the Landfill Manager's determination shall control. Such schedule may be revised periodically by the Landfill Manager or designee as needed because of climate conditions, ground conditions, or other conditions. Further, the Landfill Manager may, in his sole discretion, add to or delete from the sites and locations shown on Appendix "A".

2. **Term.** This Contract shall become effective on May 1, 2007, and shall terminate on April 30, 2010.

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

- \$ 100,430.97 for the period of May 1, 2007, through April 30, 2008;
- \$ 103,443.90 for the period of May 1, 2008, through April 30, 2009;
- \$ 106,547.22 for the period of May 1, 2009, through April 30, 2010;

or such other sum as determined pursuant to Appendix "A" when locations shown on Appendix "A" are administratively added or deleted by the Landfill Manager as authorized pursuant to Section 1 & Section 18 herein. BORDER TM INDUSTRIES, INC. 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 BORDER TM INDUSTRIES, INC. as may be determined by TIBH and BORDER TM INDUSTRIES, INC.

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.

Upon termination of this Contract for any reason, Contractors shall return any and all equipment and materials provided by the City by and through the Department in good usable order, allowing for ordinary wear and tear.

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

6. **Property Damage.** Contractors shall promptly notify the Director of the Department (the "Director") of any damage or vandalized equipment or materials that Contractors discover at the locations noted in Appendix "A". Contractors shall additionally reimburse City for any property damage caused by anyone under their employ.

7. **Trash.** The City will provide dumpsters in appropriate locations for trash and debris from cleanup work, and provide liners for trash cans as required.

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

9. **Insurance and Indemnification Provisions.** Contractors agree to provide the following as a condition of the Contract:

9.1 **LIABILITY INSURANCE.** Contractors 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.

9.1.1 Because the Contract is solely for the benefit of Contractors and recognizing that the City taxpayers should not incur any additional costs beyond the contracted amount, Contractors are 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.

9.1.2 Contractors 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 Contractors, its officers, agents, servants or employees.

9.1.3 No Service shall be provided by the City until Contractors file a copy of the policy or certificate of liability insurance as herein set forth with the

City Clerk, the City Attorney's Office, 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.

9.2 **INDEMNITY.** As a condition of this Contract, Contractors or their 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. Contractors will not indemnify for any act alleged to have been 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 Contractors every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractors 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 Contractors 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. Contractors will pay all judgments in actions defended by Contractors pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of

payment by Contractors, 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 Contractors' property from any cause.

10. **Workmanship.** All work shall be done in a good and workmanlike manner. The City's Landfill 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 Director.

12. **Compliance with Laws and Ordinances.** Contractors 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 Contractors or their employees or clients.

13. **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.

14. **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.

15. **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.

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

17. **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 Contractors to the terms and conditions of this Contract.

18. **Additional Maintenance Locations**. Additional Service locations may be administratively added after execution of this Contract. Such additional locations shall, once authorized in writing by the Landfill Manager and accepted by TIBH as to location and the Scope of Services as described herein in Section 1, become subject to all terms and conditions of this Contract to specifically include, but not to be limited to, the consideration provision in Section 3 and the duties under Section 1 herein. Individual locations may be removed for any reason upon providing 30 days written notice to TIBH.

19. **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
2 Civic Center Plaza
El Paso, Texas 79901-1196

with copy to: City of El Paso
ATTN: Director
Environmental Services Department
7969 San Paulo
El Paso, Texas 79907

Texas Industries for the Blind & Handicapped: Henry Hernandez, Marketing Sales Representative
Texas Industries for the Blind and Handicapped, Inc.
5503 Grissom Road, Suite 103
San Antonio, Texas 78238

Border TM Industries, Inc: Everardo Sanchez, Executive Director
Border TM Industries, Inc.

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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.

20. **Texas Tort Claims Act.** Partner 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. Partner further expressly agrees 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.

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CITY LANDFILL LITTER CONTROL CONTRACT

CITY CLERK DEPT.

07 APR 23 AM 11:57

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Contract on the _____ day of _____, 2007.

CITY OF EL PASO

Joyce A. Wilson,
City Manager

APPROVED AS TO FORM:



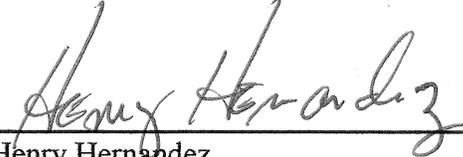
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



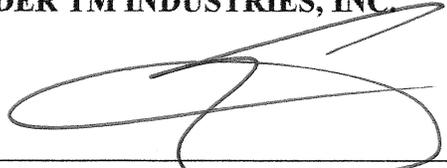
Ellen A. Smyth, P.E., Director
Environmental Services Department

TEXAS INDUSTRIES FOR THE BLIND AND HANDICAPPED, INC.



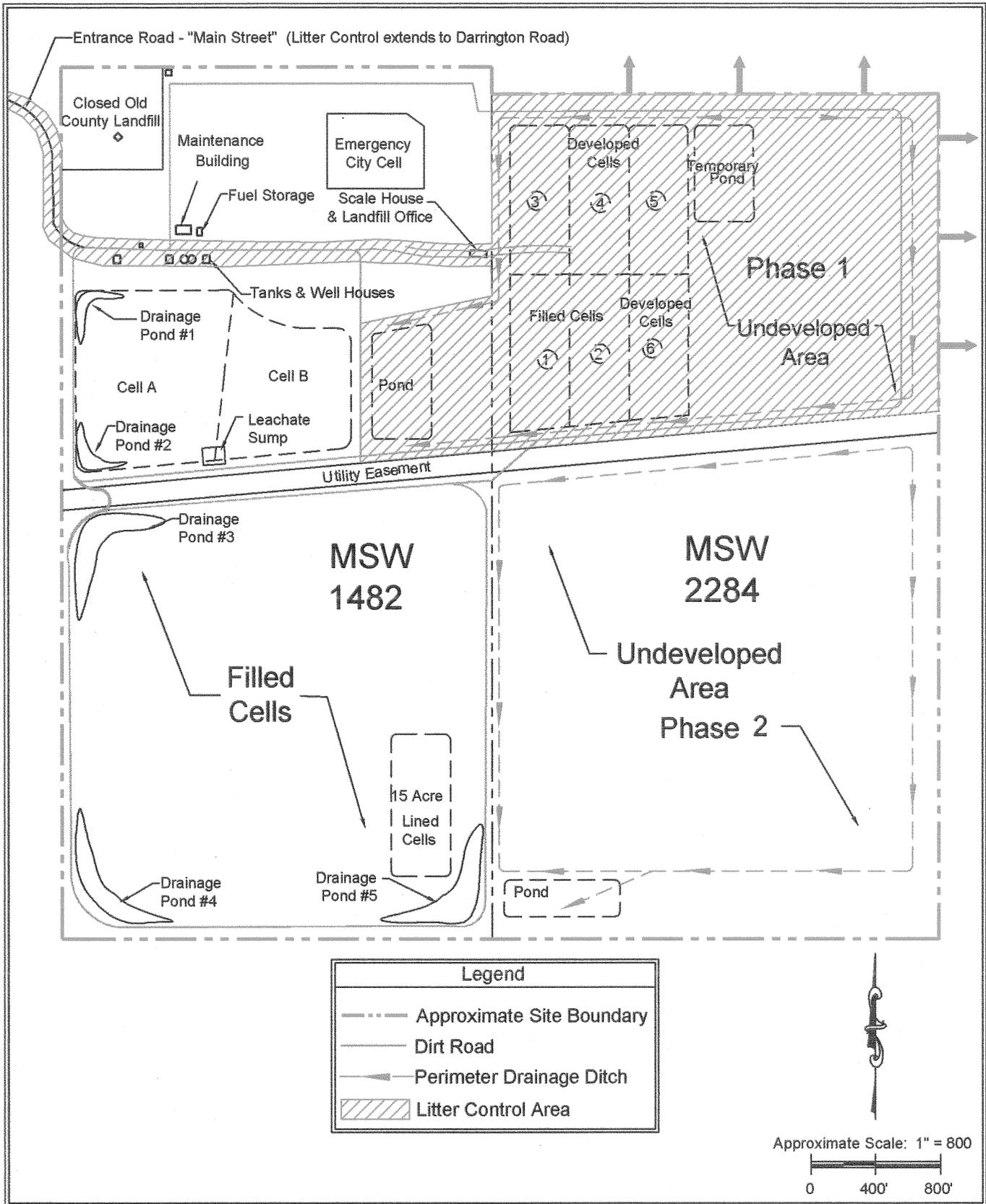
Henry Hernandez,
Marketing Sales Representative

BORDER TM INDUSTRIES, INC.



Everardo M. Sanchez, Executive Director

APPENDIX "A"



Clint Landfill
 2300 Darrington Road
 EL Paso County, Texas

Exhibit "A"

Environmental Services
 7969 San Paulo (915) 621-6700
 Drawing by: _____
 Checked by: _____