

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

DEPARTMENT: PARKS & RECREATION DEPARTMENT

AGENDA DATE: MAY 3, 2005/CONSENT

CONTACT PERSON/PHONE: DR. NORMAN C. MERRIFIELD, DIRECTOR

DISTRICT(S) AFFECTED: Citywide

SUBJECT:

Park site maintenance contract between Texas Industries for the Blind and Handicapped, a private non-profit corporation and the certifying party Border TM and the City of El Paso's Park and Recreation Department.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This contract will provide mowing services to the Parks Department for Parks smaller than two (2) acres.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

As required by state law and charter, a

Yes

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Funding Parks General Fund – 51010262/502221 – Grounds Keeping and Horticultural Contracts

BOARD / COMMISSION ACTION:

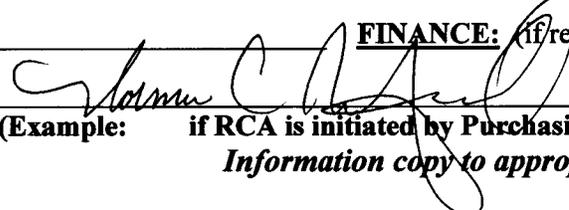
Enter appropriate comments or N/A

N/A

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

LEGAL: (if required) _____ **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

WHEREAS, the City of El Paso have previously contracted the Border TM Industries, Inc., an employment corporation for individuals with mental disabilities, to provide services to the citizens of the City of El Paso; and

WHEREAS, Texas Industries for the Blind and Handicapped, a private non-profit corporation and certifying party, is responsible for coordinating programs for the visually impaired and handicapped; and

WHEREAS, the CITY has a need for parksite maintenance in various parks within the city limits; and

WHEREAS, Border TM Industries, Inc. and Texas Industries for the Blind and Handicapped are able to provide parksite maintenance for the mutual benefit of its clients and the City of El Paso; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Parksite Maintenance Contract between the City of El Paso, Texas Industries for the Blind and Handicapped and Border TM, Industries, Inc., to provide for parksite maintenance services for the City's Parks and Recreation Department.

ADOPTED this the _____ day of _____, 2005.

THE CITY OF EL PASO

ATTEST:

Joe Wardy, Mayor

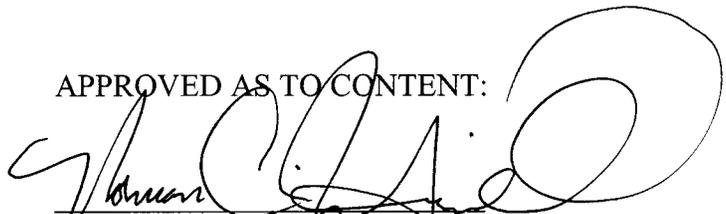
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Jennifer F. Callan
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman C. Merrifield
Director, Parks & Recreation Dept.

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

This Parksites Maintenance Contract (“Contract”) is made this the ____ day of _____, 2005, 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, and BORDER TM INDUSTRIES, INC.(hereinafter collectively referred to as “Contractors”).

WHEREAS, the CITY have previously contracted the Border TM Industries, Inc. (“BORDER TM”), an employment corporation for individuals with mental disabilities, 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, BORDER TM is able to provide such Services for the mutual benefit of its clients and the CITY; and

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 |
| Attachment “B” | Mowing Schedule |

2.0 CONTRACTUAL RELATIONSHIP

2.1 The CITY hereby agrees to retain the CONTRACTORS and the CONTRACTORS agree to perform the Services set forth below in Section 3.0 of 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-CONTRACTORSs.

(A) 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.

(B) 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 for the parks, further described in **Attachment "A."** The CONTRACTORS understand and agree that ground maintenance for the parks described in **Attachment "A"** shall consist of the following: (a) litter pick-up in turf area before mowing; (b) mowing; (c) weed trimming through out the park and around playground equipment areas; (d) clean-up of clippings around building entrances, sidewalks and shelters; (e) removal of uncultivated grass and weeds from rock and/or bark landscaping; (f) weed trimming at the curb and gutter areas in the parking lots and adjacent streets; and (g) cleaning of all equipment after mowing or trimming to prevent spreading of weed seed.

(A) The CONTRACTORS understands and acknowledges that the parks, described in **Attachment "A,"** includes 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.

(B) Litter Pick-Up. The CONTRACTORS understand and agree that they shall pick-up any litter that may be laying around the park site prior to mowing the lawn, including but not limited to areas in and around the playground equipment, sidewalks, building and shelter entrances, open areas and athletic fields.

(B-1) The CITY shall provide dumpsters in appropriate locations for trash and debris from clean-up work. The CITY shall also provide liners for the trash cans.

(C) Mowing. The CONTRACTORS understand and agree that they shall mow the parks, described in **Attachment "A,"** for a total of twenty-nine (29) cuts each year of this Contract, as further described in **Attachment "B."** The CONTRACTORS agree to perform the mowing Services, described in **Attachments "A" and "B,"** during the workweek, which is Monday through Friday, between the hours of 6:00 a.m. to 5:00 p.m. No cutting will be done on weekends, unless prior approval is obtained in writing from the Park Operations Manager.

(C-1) All mowing and trimming shall be uniform in cutting height. Grass height shall be mowed at two (2) inch maximum on all athletic fields and other designated areas.

(C-2) All grass clippings shall be mulched in place and not be collected. Mower type shall be a fine cut flail type with mulching decks or rotary with mulching decks whereby any discharge shall not travel further than four (4) feet and must meet all safety and licensing requirements. All walks and gutters shall be swept or blown clear of grass clippings after each mowing.

(C-3) The CONTRACTORS acknowledge and warrant that they will not exceed the recommended manufacture cutting speed of the mowing or trimming equipment used to perform the Services outlined in this Contract. The CONTRACTORS also warrant that the speed shall not compromise the quality, height of cut and the safety of the public.

(D) Weed Trimming. The CONTRACTORS understand and agree that they shall perform weed trimming of the parks, described in **Attachment "A,"** at the same time the given park is mowed, as described in **Attachment "B,"** to achieve a uniform height in accordance with the mowing height of two (2) inches. Weed trimming shall be performed around trees, signs, fences, park structures, benches, trees, bushes, plants and any other obstacles. The CONTRACTORS understand and agree that all weed trimming shall be done carefully around plants, trees, and bushes so as not to cause damage to the bark, stems or root systems of the plants, trees or bushes.

3.2 Time Schedule for Performing Services. The Parks Operation Manager, or designee and the CONTRACTORS shall agree upon a time schedule for the Services to be performed at each park, described in **Attachment "A" and Attachment "B."** Such schedule may be revised periodically by the Parks Operation Manager or designee as needed because of climate, ground or other conditions.

3.3 Term of Contract. This Contract shall become effective on **May 4, 2005,** 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 period 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 May 4, 2010.

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 the sum of ONE HUNDRED ONE THOUSAND NINE HUNDRED FORTY FIVE AND 45/100 DOLLARS (\$101,945.45) for the twenty-nine (29) cuts to be performed by CONTRACTORS each year of this Contract.

4.2 Payments. Payment to TIBH, on behalf of BORDER TM, shall be made on a monthly basis. The BORDER TM shall bill the CITY on or by the 25th day of each month for the services performed at each park, described in **Attachments "A" and "B."** The CITY shall make payments upon presentation of the CONTRACTORS' detailed invoice and upon the CITY's written approval.

(A) 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.

(B) Discounts will be taken from the date of receipt of Services or date of invoice whichever is later.

(C) 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.

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

(A) 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 Default. The CITY shall have the right to cancel for default all or any part of the undelivered portion of this Contract if the CONTRACTORS breaches any of the terms hereof including warranties of the CONTRACTORS or if the CONTRACTORS becomes insolvent or commits acts of bankruptcy and fails to cure or commence to diligently prosecute to cure any such breach **within thirty (30) days of receipt of written notice by CITY** alleging such breach. Such right of cancellation is in addition to and not in lieu of any other remedies that the CITY may have in law or equity.

(A) Default shall occur if a party fails to observe or perform any of its duties under this Contract. Should such a default occur, the injured party may deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such proposed date of termination may not be sooner than the 30th day following receipt of the notice. The injured party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures or diligently and continuously prosecutes to cure such default, then the proposed termination shall be ineffective. If the defaulting party fails to cure or diligently and continuously prosecutes to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this Contract as of such date. In the event of such termination, the 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.

5.3 Termination for Breach. In the event CONTRACTORS violate any of the terms of this Contract, the CITY may terminate the Contract without notice. In the event of such termination, the 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.

5.4 Termination by Mutual Consent. The parties may terminate this Contract by mutual consent upon such terms as they may agree in writing.

5.5 Termination by Either Party. It is further understood and agreed by the CONTRACTORS and the CITY that either party may terminate this Contract in whole or in part.

(A) Such termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Contract, and through on fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for

which the termination is being sought; (b) a minimum of **ten (10) consecutive calendar days** to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination. However, the CITY retains the right to immediately terminate this Contract for default if the CONTRACTORS violates any local, state or federal laws, rules or regulations that relate to the performance of this Contract. In the event of termination by the CITY pursuant to this subsection, 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.

5.6 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*.

(A) 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.

(A) 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 CONTRACTORS UNDERSTAND AND AGREE THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF THE CONTRACTORS, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES IN RENDERING THE SERVICES UNDER THIS CONTRACT.

(A) 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 CONTRACTORS every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein.

(B) In addition, CONTRACTORS shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTORS known to CONTRACTORS related to or arising out of CONTRACTORS's activities under this Contract.

(C) CONTRACTORS understand and agree that it 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 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.

(D) CONTRACTORS understand and agree that it will pay all final judgments establishing liability of the CITY 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.

(E) The CITY, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving CONTRACTORS of any of its obligations under this paragraph.

7.0 INSURANCE

7.1 BORDER TM, on behalf of CONTRACTORS, understands and warrants that it shall provide liability insurance coverage in no less than the following amounts: \$250,000 per individual per occurrence for personal injury; \$500,000 per occurrence for personal injury for more than one person; \$100,000 for property damage (including damage to the facilities and the premises) for the term of this Contract.

7.2 BORDER TM, on behalf of CONTRACTORS, agrees to obtain an insurance policy that includes the CITY, as owner of the premises, as an additional named insured. A copy of the insurance policy, or certificate, issued by an insurance company authorized and licensed to do business in the State of Texas and reflecting the coverage required by the Contract, shall be furnished to the Parks Operation Manager before the performance of the Services outlined in this Contract. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Contract.

8.0 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.

(A) The CONTRACTORS understands and agrees to provide a 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.

(B) 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

(C) 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: Mayor's Office
Two Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

COPY TO: Parks and Recreation Department
Two Civic Center Plaza, 6th Floor
El Paso, Texas 79901-1196

Purchasing Department
Attn: Ms. Rebeca Silva
P.O. Box 1919
El Paso, Texas 79999-1919

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 the Next Page)

Executed this _____ day of _____, 2005.

CITY OF EL PASO

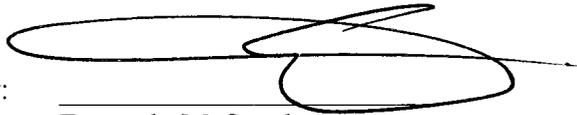
Joyce Wilson
City Manager

CONTRACTORS:

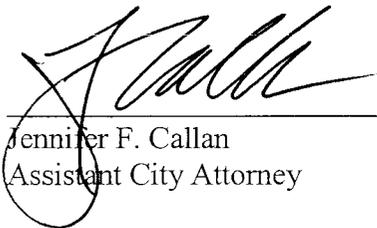
TEXAS INDUSTRIES FOR THE
BLIND & HANDICAPPED (TIBH)

BORDER TM INDUSTRIES, INC.

By: 
Henry Hernandez
Title: SALES MARKETING REP

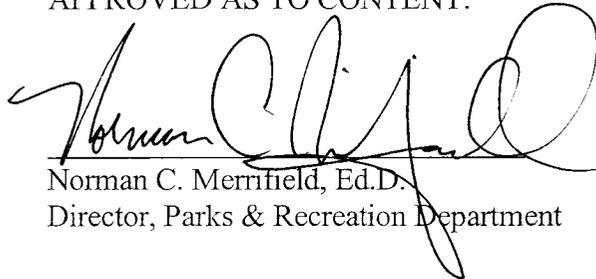
By: 
Everardo M. Sanchez
Title: Executive Director

APPROVED AS TO FORM:



Jennifer F. Callan
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman C. Merrifield, Ed.D.
Director, Parks & Recreation Department

ATTACHMENT “A”

PARKS RECREATION DEPARTMENT
MOWING LOCATIONS & MAINTENANCE LOCATIONS
2005

| PARK | ADDRESS | TURF | COST PER WK. | COST PER 29 cs |
|--------------------------|---------------------|------|--------------|----------------|
| 1. Boys Club Park | 811 S. Florence St. | 1.5 | \$125.81 | \$3,648.49 |
| 2. Chihuahuita | 400 Charles | 0.57 | \$47.81 | \$1,386.49 |
| 3. Estrella - Rivera | 3200 Rivera Ave. | 0.62 | \$52.00 | \$1,508.00 |
| 4. Marcos B. Armijo | 710 E. Seventh Ave. | 1.54 | \$129.16 | \$3,745.64 |
| 5. Mary Webb | 3401 E. Missouri | 1.72 | \$144.26 | \$4,183.54 |
| 6. Mesa Terrace | 1221 Selden Dr. | 0.77 | \$64.58 | \$1,872.82 |
| 7. Pera-Luna | 3300 Pera Ave. | 0.63 | \$52.84 | \$1,532.36 |
| 8. Roger Brown Ballfield | 1200 Alabama Ave. | 1 | \$83.87 | \$2,432.23 |
| 9. Tula Irrobali | 601 S. Park St. | 1.75 | \$146.77 | \$4,256.33 |
| 9 | | 10.1 | \$847.10 | \$24,565.90 |

| PARK | ADDRESS | TURF | COST PER WK. | COST PER YR. |
|------------------------------|------------------------|------|--------------|--------------|
| 1. San Jacinto Plaza | 111 Mills St. | 0.77 | \$64.58 | \$1,872.82 |
| 2. Paseo De Los Heroes | Eight St.-Florence St. | 1.2 | \$100.64 | \$2,918.56 |
| 3. Memorial Sr. Center | 1800 Byron St. | 0.4 | \$33.55 | \$972.95 |
| 4. Firefighters Memorial | 316 W. Overland | 0.1 | \$8.39 | \$243.31 |
| 5. Union Plaza | 117 Anthony St. | 0.2 | \$16.77 | \$486.33 |
| 6. Leona Ford Washington Ctr | 3400 Missouri | 0.3 | \$25.16 | \$729.64 |
| 7. Calendar Park | 401 E. San Antonio | 0.01 | \$0.84 | \$24.36 |
| 8. South El Paso Sr. Center | 600 S. Ochoa | 0.01 | \$0.84 | \$24.36 |
| 9. Hilos de Plata Sr. Center | | 0.1 | \$8.39 | \$243.31 |
| 10. Sacramento Sr. Center | 3100 Jefferson | 0.1 | \$8.39 | \$243.31 |
| 10 | | 3.19 | \$267.55 | \$7,758.95 |

| PARK | ADDRESS | TURF | COST PER WK. | COST PER YR. |
|-------------------------|--------------------------|------|--------------|--------------|
| 1. Suffolk | 3255 Suffolk Rd. | 0.9 | \$75.48 | \$2,188.92 |
| 2. Tyrone | 3301 Tyrone Rd. | 1 | \$83.87 | \$2,432.23 |
| 3. Indial Heights | 3209 White Bird | 0.1 | \$8.39 | \$243.31 |
| 4. Indian Ridge | Indial Ridge 9 | 1 | \$83.87 | \$2,432.23 |
| 5. Hawkins Pool | 1500 Hawkins | 0.25 | \$20.97 | \$608.13 |
| 6. Multi-Purpose Center | 9031 Viscount Blvd. | 0.2 | \$16.77 | \$486.33 |
| 7. Normandy | 6300 Normandy | 0.1 | \$8.39 | \$243.31 |
| 8. Stanton Heights | 11520 Edwards James Ave. | 1.4 | \$117.42 | \$3,405.18 |
| 9. Cork | 3327 Cork Dr. | 1.22 | \$102.32 | \$2,967.28 |
| 10. Marty Robbins | 11600 Vista Del Sol | 0.1 | \$8.39 | \$243.31 |
| 11. McArthur | 738 Gerald | 1 | \$83.87 | \$2,432.23 |
| 11 | | 7.27 | \$609.74 | \$17,682.46 |

| PARK | ADDRESS | TURF | COST PER WK. | COST PER YR. |
|-----------------------------|-------------------------|------|--------------|--------------|
| 1. Pecan Grove | 9130 Sweet Acacia Lane | 0.45 | \$37.74 | \$1,094.46 |
| 2. Green Lilac | 1016 Green Lilac Circle | 0.8 | \$67.10 | \$1,945.90 |
| 3. Pavo Real Pool-Pic Area | 9301 Alameda | 0.4 | \$33.55 | \$972.95 |
| 4. Shower Pool-Pic Area | 8100 Independence | 0.5 | \$41.94 | \$1,216.26 |
| 5. Hacienda Pool - Pic area | 1225 Giles | 0.3 | \$25.16 | \$729.64 |
| 5 | | 2.45 | \$205 | \$5,959.21 |

| PARK | ADDRESS | TURF | COST PER WK. | COST PER YR. |
|-----------------------|---------------|------|--------------|--------------|
| 1. Logan Reserve | | 0.7 | \$58.71 | \$1,702.59 |
| 2. Nations Tobin Pool | 8831 Railroad | 0.5 | \$41.94 | \$1,216.26 |
| 2 | | 1.2 | \$100.65 | \$2,918.85 |

| PARK | ADDRESS | TURF | COST PER WK. | COST PER YR. |
|----------------------------|-------------------------|------|--------------|--------------|
| 1. Dunn | 1501 N. El Paso St. | 0.57 | \$47.81 | \$1,386.49 |
| 2. Sunsets heights | 631 Stewart Ct. | 0.5 | \$41.94 | \$1,216.26 |
| 3. Grace Chope | 535 W. Missouri Ave. | 0.7 | \$58.71 | \$1,702.59 |
| 4. Houston | 900 Montana Ave. | 1.4 | \$117.42 | \$3,405.18 |
| 5. Mundy | 500 Porfirio Diaz St. | 1.6 | \$134.19 | \$3,891.51 |
| 6. Cleveland Sq. Complex | 510 N. Santa Fe. St. | 0.18 | \$15.10 | \$437.90 |
| 7. Caruso | 720 Prospect St. | 0.1 | \$8.39 | \$243.31 |
| 8. Doniphan | 1800 W. Paisano Dr. | 0.4 | \$33.55 | \$972.95 |
| 9. Tom Lea (upper) | 900 Rim Rd. | 0.48 | \$40.26 | \$1,167.54 |
| 10. River Park West Unit 1 | 713 Dakota River Ave. | 1.02 | \$85.55 | \$2,408.95 |
| 11. River Park West Unit 3 | Esmeralda Armendariz A. | 2 | \$167.74 | \$4,864.46 |
| 12. Aletha | 901 Aletha Park Ave. | 1.7 | \$142.58 | \$4,134.82 |
| 13. Zach White Field | 4320 River Bend Dr. | 1.6 | \$134.19 | \$3,891.51 |
| 14. Little River | 5857 Sixta | 0.25 | \$20.97 | \$608.13 |
| 15. Franklin Hills | Franklin Hills Dr. | 1 | \$83.87 | \$2,432.23 |
| 16. Borderland | 6327 Modesto | 1 | \$83.87 | \$2,432.23 |
| 16 | | 14.5 | \$1,216.14 | \$35,276.48 |

1,201.76 34,851.04

| PARK | ADDRESS | NO TURF | COST PER WK. | COST PER YR. |
|--------------------------|----------------|---------|--------------|--------------|
| 1. Old Sacramento | Sacramento | 0.1 | \$8.39 | \$243.31 |
| 2. Eastwood Rec. Ctr.Ld. | 3110 Parkwood | 0.5 | \$41.94 | \$1,216.26 |
| 3. Pedestrian Plaza | 110 Candelaria | 0.1 | \$8.39 | \$243.31 |
| 4. Nolan Richardson Rec. | 4435 Maxwell | 2.5 | \$209.68 | \$6,080.72 |
| | | 3.2 | \$268.40 | \$7,783.60 |

53 Worksites
4 Worksites

38.71 acres
3.2 acres

\$101,945.45

\$83.87 @ acre

\$101,945.45 for 29 cycles / 6 months

ATTACHMENT “B”

MOWINGSCHEDULE

| MONTH | YEAR 2005 | YEAR 2006 | YEAR 2007 | OPTIONAL YEAR 2008 | OPTIONAL YEAR 2009 |
|------------|--|--|---|--------------------------|--------------------------|
| MARCH | 28 TH - 31 ST (1 Cut) | 20 th - 24 th (1 Cut) | 19 th - 23 rd (1 cut) | | |
| APRIL | 11 th - 15 th 25 th - 29 th (2 cuts) | 3 rd - 7 th 17 - 21 st (2 cuts) | 9 th - 13 th 23 rd - 27 th (2 cuts) | | |
| MAY | 9 th - 13 th 23 rd - 27 th 30 th - 3 rd (3 cuts) | 1 st - 5 th 15 th - 19 th 29 th - 2 nd (3 cuts) | 14 th - 18 th 21 st - 25 th 28 th - 1 st (3cuts) | | |
| JUNE | 6 th - 10 th 13 th - 17 th 20 th - 24 th 27 th - 1 st (4 cuts) | 5 th - 9 th 12 th - 16 th 19 th - 23 rd 26 th - 30 th (4 cuts) | 4 th - 8 th 11 th - 15 th 18 th - 22 nd 25 th - 29 th (4 cuts) | | |
| JULY | 4 th - 8 th 11 th - 15 th 18 th - 22 nd 25 th - 29 th (4 cuts) | 3 rd - 7 th 10 th - 14 th 17 th - 21 st 24 th - 28 th 31 st - 4 th (5 cuts) | 2 nd - 6 th 9 th - 13 th 26 th - 20 th 23 rd - 27 th 30 th - 3 rd (5 cuts) | | |
| AUGUST | 1 st - 5 th 8 th - 12 th 15 th - 19 th 22 nd - 26 th 29 th - 2 nd (5 cuts) | 7 th - 11 th 14 th - 18 th 21 st - 25 th 28 th - 1 st (4 cuts) | 6 th - 10 th 13 th - 17 th 20 th - 24 th 27 th - 31 st (4 cuts) | | |
| SEPTEMBER | 5 th - 9 th 12 th - 16 th 19 th - 23 rd 26 th - 30 th (4 cuts) | 4 th - 8 th 11 th - 15 th 18 th - 22 nd 25 th - 29 th (4 cuts) | 3 rd - 7 th 10 th - 14 th 17 th - 21 st 24 th - 28 th (4 cuts) | | |
| OCTOBER | 3 rd - 7 th 10 th - 14 th 17 th - 21 st 24 th - 28 th 31 st - 4 th (5 cuts) | 2 nd - 6 th 9 th - 13 th 16 th - 20 th 23 rd - 27 th 30 th - 3 rd (5 cuts) | 1 st - 5 th 8 th - 12 th 15 th - 19 th 22 nd - 26 th 29 th - 2 nd (5 cuts) | | |
| NOVEMBER | 14 th - 18 th (1 Cut) | 13 th - 17 th (1 Cut) | 19 th - 23 rd (1 cut) | | |
| TOTAL CUTS | 29 | 29 | 29 | 29 | 29 |