

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

DEPARTMENT: General Services

AGENDA DATE: August 30, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Stuart Ed, General Services Director, (915) 621-6822

DISTRICT(S) AFFECTED: ALL

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Approve a resolution agreement between The City of El Paso and Texas Industries for the Blind and Handicapped, Inc (TIBH) DBA Exceed Resources (Border TM Industries, Inc) to provide specified restroom care services and maintenance for certain City properties managed by the General Services Department. This is a one (1) year contract totaling \$90,000.00.

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?

The agreement between the City of El Paso and TIBH DBA Exceed Resources is to enable restroom cleaning and maintenance services that will be provided by TIBH for fifteen (15) permanent restrooms located in Parks throughout the City. The City has previously contracted and has current contracts with TIBH who is a private, non-profit corporation offering employment for individuals with mental disabilities, the visually impaired and the disabled. This agreement will allow for the enhancement of these restrooms as well as improving the image of the parks in which they are located and the City as a whole. Local business is being supported.

PRIOR COUNCIL ACTION:

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

Yes. City council approved a similar contract in 2006.

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?

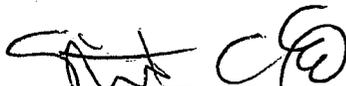
31010359-50221-01101-32021 - Land Mgmt - Horticultural Contracts – General Fund

BOARD / COMMISSION ACTION:

Enter appropriate comments or 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 Parks Restrooms Maintenance Contract by and between the City of El Paso and Texas Industries for the Blind and Handicapped, Inc. ("TIBH"), and Border TM Industries, Inc. d/b/a Xceed Resources, to provide for maintenance services at restrooms for the City's Department of General Services.

ADOPTED this _____ day of _____, 2011.

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

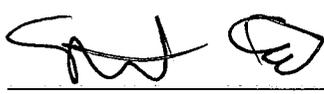
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Elizabeth M. Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT:



Stuart Ed, Director
General Services Department

CITY PARKS RESTROOMS MAINTENANCE CONTRACT

This City Parks Restrooms Maintenance Contract is made this ___ day of August, 2011 by and 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. D/B/A XCEED RESOURCES (BORDER TM INDUSTRIES, INC.)**, (together, "**the Contractors**"), to provide specified restroom care services for certain City properties managed by the City's General Services 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 restroom care services for the City at locations identified in Appendix "A":

Duties:

- 1.1 Restrooms - Monday through Sunday - inspect at least once per day, clean and disinfect as required each day of each week, and provide all cleaning materials and toilet tissue (the "Services").

The City's Land Management Superintendent, or designee, and Contractors shall agree on an appropriate daily schedule for the Services provided for herein. Failing to reach an agreement, the City's Land Management Superintendent's determination shall control. Such schedule may be revised periodically by the City's Land Management Superintendent or designee as needed because of climate or other conditions. Further, the City's Land Management Superintendent 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 **September 1, 2011**, and shall terminate on **August 31, 2012**.

2.1 **Option to Extend.** City, at its sole discretion, may exercise an option to extend the term of this Agreement by two years, one year at a time, by giving Contractors written notice prior to the expiration of the original term of this Agreement.

3. **Consideration.** The City shall pay TIBH \$90,000.00 for the period from September 1, 2011 through August 31, 2012, or such other sums as the parties shall agree should the locations shown on Appendix "A" be administratively added to or deleted by the City's Land Management Superintendent as authorized pursuant to Section 1 and Section 18 herein. BORDER TM INDUSTRIES, INC. shall invoice the City on the 25th day of each month for Services. Upon verification and approval of such billing, 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.

Should the City exercises its option to extend this Agreement pursuant to Section 2.1 herein, the City shall pay TIBH an annual sum of \$90,000.00.

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 ten (10) 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 agreement of the Parties as reduced to writing. 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 its Department of General Services (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. The 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 plants or materials that Contractors discover on the property. 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.

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.** Border TM Industries, Inc. shall carry public liability insurance with a minimum one million dollar (\$1,000,000.00) limit, per occurrence, for death, personal injury and property damage, with a minimum one million dollar (\$1,000,000.00) general aggregate limit. These amounts are not a limitation upon the Contractors' agreement to indemnify and hold the City harmless.

The policy shall be carried by an insurance company authorized to do business in the State of Texas. The policy shall be in a form acceptable to the City and shall be for the protection of the City as well as Border TM Industries, Inc. The City shall be named as an additional insured. A copy of the policy or certificate of insurance shall be filed with the City Clerk. The policy shall provide that it cannot be canceled or the amount of coverage reduced without thirty (30) days written notice to the City.

10. **INDEMNITY.** IT IS AN EXPRESS CONDITION OF THIS CONTRACT THAT THE CITY, ITS ELECTED OFFICIALS AND ITS OFFICERS, AGENTS AND EMPLOYEES SHALL BE FREE FROM ANY AND ALL CLAIMS, DEBTS, DEMANDS LIABILITIES OR CAUSES OF ACTION OF EVERY KIND OR CHARACTER, WHETHER IN LAW OR EQUITY, BY REASON OF ANY DEATH, INJURY OR DAMAGE TO ANY PERSON OR PERSONS OR DAMAGE OR DESTRUCTION OF

PROPERTY OR LOSS OF USE THEREOF, WHETHER IT BE THE PERSON OR PROPERTY OF THE CONTRACTORS, THEIR AGENTS OR EMPLOYEES, OR OF ANY THIRD PERSONS, CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CONTRACTORS, THEIR OFFICERS, AGENTS, OR EMPLOYEES, IN THE CONDUCT OF THE CONTRACTORS' OPERATIONS AUTHORIZED HEREIN. THE CONTRACTORS HEREBY COVENANT AND AGREE TO INDEMNIFY AND TO SAVE AND HOLD HARMLESS THE CITY, ITS ELECTED OFFICIALS AND ITS OFFICERS, AGENTS AND EMPLOYEES AGAINST AND FROM ANY AND ALL SUCH CLAIMS, DEMANDS, DEBTS, LIABILITIES AND CAUSES OF ACTION (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS).

11. **Workmanship.** All work shall be done in a good and workmanlike manner. The City's Land Management Superintendent 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 locations may be administratively added after execution of this Contract. Such additional locations, once authorized in writing by the Land Management Superintendent and accepted by TIBH, shall become subject to all terms and conditions of this Contract to specifically include, but not be limited to, the Consideration provision and the Duties described herein. Individual locations may be removed for any reason upon forwarding to TIBH five business days written notice of request to remove together with a statement of the reason the specific location is being removed 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
General Services Department
Municipal Services Center
1059 Lafayette Drive
El Paso, Texas 79907

TIBH: 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.
d/b/a Xceed Resources: Everardo Sanchez, Executive Director
Border TM Industries, Inc.
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 Agreement, 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 Agreement falls within the definition of a governmental function.

(ALL SIGNATURES FOLLOW ON NEXT PAGE)

CITY PARKS RESTROOMS MAINTENANCE CONTRACT

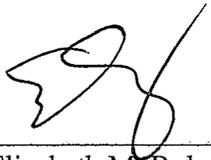
SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of August, 2011.

CITY OF EL PASO

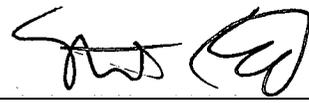
Joyce A. Wilson, City Manager

APPROVED AS TO FORM:



Elizabeth M. Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT:

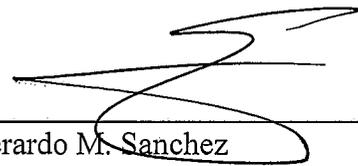


Stuart Ed, Director
General Services Department

**TEXAS INDUSTRIES FOR THE BLIND
AND HANDICAPPED, INC.**

Henry Hernandez
Marketing Sales Representative

**BORDER TM INDUSTRIES, INC.
D/B/A XCEED RESOURCES**



Everardo M. Sanchez
Executive Director

APPENDIX "A"

Park	District	Classification	# of Permanent RR	Notes	Address
Blackie Chesher	6	Regional	1		1100 N. Zaragoza
Capistrano	6	Community	1		8700 Padilla
Delta	8	Neighborhood	1		4321 Delta
Eastwood	5	Community	1	1 is on exterior of Rec Ctr	3110 Parkwood
Irwin J. Lambka	1	Neighborhood	1		6600 Cloudview
Lionel Forti	6	Community	1		Giles and Phoenix
Marty Robbins	3	Community	2	1 is on exterior of Rec Ctr, 1 near parking area and fields	11600 Vista Del Sol
Modesto Gomez	8	Community	1		Edna
Northeast Regional	4	Regional	1		11270 McCombs
Ponder	3	Community	1		7500 Burgess
Sue Young	4	Community	1		9730 Diana
Westside Comm	1	Community	1		7400 High Ridge
Westside Sports	1	Community	2	1 at main concession area, 1 at Phase II fields	Isela Rubalcava
			15		