

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

DEPARTMENT: Parks and Recreation

AGENDA DATE: September 5, 2006

CONTACT PERSON/PHONE: Norman C. Merrifield (915) 541-4910

DISTRICT(S) AFFECTED: All Districts

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.

A resolution authorizing the City Manager to sign a five year Department of Parks and Recreation Parks Restroom contract with Texas Industries for the Blind and Handicapped (TIBH) and Border TM Industries, Inc. for the cleaning of the permanent restrooms in City Parks.

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 City of El Paso has contracted with TIBH and Border TM Industries, Inc. (known as TaskMasters) for a number of years to clean restrooms in City parks. City Council extended the previous contract for one year until August 31, 2006, in order that a new schedule for each park could be developed, with all new parks included, and pending the adoption of the 2006/2007 budget.

PRIOR COUNCIL ACTION:

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

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?

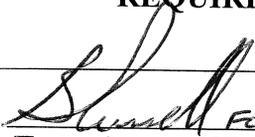
This contract is for a five year period, pending annual funding availability. The budget for this contract, in the amount of \$83,395.20 and covering the period of September 5, 2006 to August 31, 2007 is included in the Parks and Recreation 2006/2007 budget submission. Payment to Taskmasters for each subsequent year increases approximately 3%.

BOARD / COMMISSION ACTION:

Enter appropriate comments or 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

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 among the City of El Paso and Texas Industries for the Blind and Handicapped, Inc. ("TIBH"), and Border TM Industries, Inc., to provide for maintenance services at restrooms for the City's Department of Parks and Recreation.

ADOPTED this _____ day of _____, 2006.

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

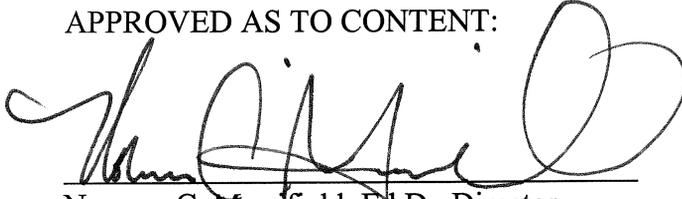
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



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

CITY PARKS RESTROOMS MAINTENANCE CONTRACT

This Contract is entered into for the effective dates of **September 5, 2006, through August 31, 2011**, 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 restroom care services for certain City properties managed by the City's Parks and Recreation 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 Parks Operations Manager, or designee, and Contractors shall agree on an appropriate

daily schedule for the Services provided for herein. Failing to reach an agreement, the Parks

Operations Manager's determination shall control. Such schedule may be revised periodically by the Parks Operations Manager or designee as needed because of climate or other conditions. Further, the Parks Operations 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 **September 5, 2006**, and shall terminate on **August 31, 2011**.

3. **Consideration.** The City shall pay TIBH \$442,756.46 for the period from September 1, 2006 through August 31, 2011 as follows:

September 5, 2006 through August 31, 2007:	\$83,395.20
September 1, 2007 through August 31, 2008:	\$85,897.06
September 1, 2008 through August 31, 2009:	\$88,473.97
September 1, 2009 through August 31, 2010	\$91,128.19
September 1, 2010 through August 31, 2011:	\$93,862.04

or such other sums as determined pursuant to Appendix "B" when locations shown on Appendix "A" are administratively added or deleted by the Parks Operations Manager 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.

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 Parks and Recreations (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, 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.** Border TM Industries, Inc. shall carry public liability insurance in the minimum amount of \$250,000 for death or personal injury to any one person, \$500,000 for death or personal injury to more than one person in any one accident and \$100,000 for property damage.

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 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 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 shall, once authorized in writing by the Parks Operations Manager 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 in Appendix "B" 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
Department of Parks & Recreation
#2 Civic Center Plaza
El Paso, Texas 79901-1196

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.
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 _____, 2006.

CITY OF EL PASO

Joyce A. Wilson,
City Manager

APPROVED AS TO FORM:



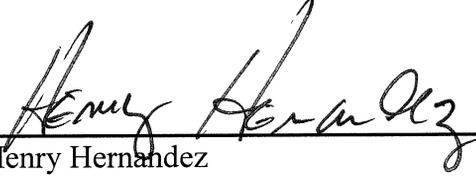
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



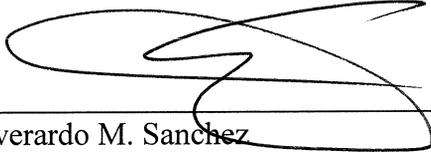
Norman C. Merrifield, Ed.D., Director
Parks and Recreation Department

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



Henry Hernandez
Marketing Sales Representative

BORDER TM INDUSTRIES, INC.



Everardo M. Sanchez
Executive Director

APPENDIX "A"

APPENDIX "A"

RESTROOMS Sept 2006 – Aug 2007

PARK	ADDRESS	COST/PER SERVICE
CENTRAL AREA:		
DELTA PARK	4321 DELTA	
MODESTO GOMEZ PARK	4600 EDNA	
MEMORIAL RESERVE	3100 COPPER	
EASTSIDE AREA:		
EASTWOOD/ALBUM PARK REC CTR.	3001 PARKWAY	
MARTY ROBBINS PARK/REC CTR	11600 VISTA DEL SOL	
MARTY ROBBINS FREE STANDING RESTROOMS	11600 VISTA DEL SOL	
DICK SHINAUT PORTABLES	11701 RUFUS BRIJALBA	
LOWER VALLEY AREA:		
BLACKIE CHESHER PARK	100 N. ZARAGOSA	
HACIENDA PARK	7735 PHOENIX AVENUE	
CAPISTRANO PARK	8700 PADILLA	
NORTHEAST AREA:		
SUE YOUNG PARK/CIVIC LDRS. PK	9730 DIANA	
LOGAN PARK RESERVE	5500 BYRON	
NORTHEAST REGIONAL PARK	11270 MCCOMBS	
WESTSIDE AREA:		
CLOUDVIEW PARK	6600 CLOUDVIEW DRIVE	
WESTSIDE PARK	7400 HIGH RIDGE	
WESTSIDE SOCCER COMPLEX	Transmountain Community College	
VALLEY CREEK	GOMEZ ROAD	FUTURE

APPENDIX “B”

APPENDIX "B"

	P/REST	1ST YEAR	P/REST	2ND YEAR	P/REST	3 RD YEAR	P/REST	4TH YEAR	P/REST	5TH YEAR	
		Sept 2006 - Aug 2007		Sept 2007-Aug 2008		Sept 2008- Aug 2009		Sept 2009- Aug 2010		Sept 2010-Aug 2011	
BLACKIE CHESHER	\$27.36	\$9,986.40	\$28.18	\$10,285.70	\$29.03	\$10,595.95	\$29.90	\$10,913.50	\$30.78	\$11,234.70	
CAPRISTANO PARK	\$9.12	\$3,328.80	\$9.39	\$3,427.35	\$9.67	\$3,529.55	\$9.96	\$3,635.40	\$10.26	\$3,744.90	
CLOUDVIEW	\$9.12	\$3,328.80	\$9.39	\$3,427.35	\$9.67	\$3,529.55	\$9.96	\$3,635.40	\$10.26	\$3,744.90	
DELTA	\$13.68	\$4,993.20	\$14.09	\$5,142.85	\$14.51	\$5,296.15	\$14.95	\$5,456.75	\$15.40	\$5,621.00	
HACIENDA HEIGHTS	\$9.12	\$3,328.80	\$9.39	\$3,427.35	\$9.67	\$3,529.55	\$9.96	\$3,635.40	\$10.26	\$3,744.90	
MARTY ROBBINS	\$13.68	\$4,993.20	\$14.09	\$5,142.85	\$14.51	\$5,296.15	\$14.95	\$5,456.75	\$15.40	\$5,621.00	
MODESTO	\$12.16	\$4,438.40	\$12.52	\$4,569.80	\$12.90	\$4,708.50	\$13.29	\$4,850.85	\$13.69	\$4,996.85	
SUE YOUNG	\$12.16	\$4,438.40	\$12.52	\$4,569.80	\$12.90	\$4,708.50	\$13.29	\$4,850.85	\$13.69	\$4,996.85	
DICK SHINAUT	\$7.60	\$2,774.00	\$7.83	\$2,857.95	\$8.06	\$2,941.90	\$8.30	\$2,774.00	\$8.55	\$3,120.75	
WESTSIDE	\$6.08	\$2,219.20	\$6.26	\$2,284.90	\$6.45	\$2,354.25	\$6.64	\$2,423.60	\$6.84	\$2,496.60	May-07

EASTWOOD REC.	\$27.36	\$9,986.40	\$28.18	\$10,285.70	\$29.03	\$10,595.95	\$29.90	\$10,913.50	\$30.78	\$11,234.70	
WESTSIDE SOCCER	\$27.36	\$9,986.40	\$28.18	\$10,285.70	\$29.03	\$10,595.95	\$29.90	\$10,913.50	\$30.78	\$11,234.70	Dec-06
N.E. REGIONAL	\$27.36	\$9,986.40	\$28.18	\$10,285.70	\$29.03	\$10,595.95	\$29.90	\$10,913.50	\$30.78	\$11,234.70	
MEMORIAL RESERVE	\$9.12	\$3,328.80	\$9.39	\$3,427.35	\$9.67	\$3,529.55	\$9.96	\$3,635.40	\$10.26	\$3,744.90	
MARTY ROBBINS REC	\$9.12	\$3,328.80	\$9.39	\$3,427.35	\$9.67	\$3,529.55	\$9.96	\$3,635.40	\$10.26	\$3,744.90	
LOGAN PARK	\$9.12	\$3,328.80	\$9.39	\$3,427.35	\$9.67	\$3,529.55	\$9.96	\$3,635.40	\$10.26	\$3,744.90	
VALLEY CREEK	\$3.04	\$1,109.60	\$3.13	\$1,142.45	\$3.22	\$1,175.30	\$3.32	\$1,211.80	\$3.42	\$1,248.30	
TOTALS	\$229.52	\$83,774.80	\$239.50	\$87,417.50	\$246.69	\$90,041.85	\$254.10	\$92,491.00	\$261.67	\$95,509.55	