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

DEPARTMENT: **Environmental Services**

AGENDA DATE: **December 21, 2010**

CONTACT PERSON NAME AND PHONE NUMBER: **Ellen A. Smyth, P.E., Director (915) 621-6719**

DISTRICT(S) AFFECTED: **All**

SUBJECT:

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

BACKGROUND / DISCUSSION:

The proposed contract will provide clean up services of paved and non-paved alleys, lots and parkways at rear of double-frontage lots. The contract will become effective January 2, 2011 through August 31, 2011.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

$214,863.84
Fund 40403 Dept 34010281 Acct 502215 Class 34000

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

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

ADOPTED this _____ day of_____, 2010.

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

LITTER CONTROL CONTRACT

This Contract is entered into as of December __, 2010 between the **CITY OF EL PASO**, a Texas home rule municipal corporation, hereinafter referred to as the **"City,"** and both **TIBH INDUSTRIES, INC. ("TIBH")**, a private non-profit corporation and the certifying party, and **BORDER TM INDUSTRIES, INC.** d/b/a **Xceed Resources "("Xceed")**, ((TIBH and Xceed together, the **"Contractors"**), to provide specified litter control services for certain properties as requested by the City of El Paso Department of Environmental Services (the "Department").

WITNESSETH:

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

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

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

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

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

1. **Definitions**.

   1.1 **"Alley"** means a public way intended for secondary access and service to the rear or side of a property, and not intended for general traffic circulation.

   1.2 **"Director"** means the director of the Department.

   1.3 **"Double frontage lot"** means any lot having frontage on two streets which are nonintersecting or which intersect at an angle of less than or equal to seventy degrees with reference to the lot, as distinguished from a corner lot.

1.4 **"Garbage"** means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

1.5 **"Hazardous waste"** means any solid waste identified or listed as a hazardous waste by the administrator of the U.S. Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 *et seq.,* as amended or any successor federal statute or implementing regulation.

1.6 **"Household hazardous waste"** means household materials such as paints, pesticides, oils, cleaners, solvents, batteries, polishes and similar products that could be hazardous to the environment if used, stored, or disposed of improperly. If placed in the trash, these wastes may injure sanitation workers; if poured onto the ground or into waterways, they may contaminate drinking-water supplies.

1.7 **"Litter"** means "garbage," "refuse" and "rubbish" as defined herein and all other waste material.

1.8 **"Lot"** means a parcel of land having frontage upon an accessway and either shown on a plat of record or described by metes and bounds, where access may be provided through a private easement in a commercial unit development.

1.9 **"Parkway"** means the area of a street that lies between the right-of-way line and the face of the curb line.

1.6 **"Rubbish"** and **"Refuse"** mean nonputrescible solid wastes (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

1.7 **"Solid waste"** means garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) Solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;

(B) Soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;

(C) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended; or

(D) Recyclables.

2. **Scope of Services**. Contractors shall provide the following litter control services (the "Service") for the City, on an as-needed basis as requested by the Department.

2.1 **Duties**

2.1.1 Contractors will clean up alleys, lots and rear parkways of double-frontage lots, and perform related duties as requested by the Department. (See Appendix "A").

2.1.2 Contractors shall provide the Department a daily log or status update of all cleanups.

2.1.3 The Department will monitor clean-up by Contractors as a quality assurance measure.

2.1.4 Contractors will work Monday through Friday, from 7:00 AM till 2:00 PM., which includes travel time to the location where the Service shall be rendered.

2.1.5 Contractors will observe all holidays observed by City staff.

2.1.6 The Department may elect to amend this Contract to include Saturday or Sunday. Should such election occur, Contractors will be given a one-week notice and will provide a proposal to perform the requested services to the Department within the same seven (7) day period.

2.1.7 Contractors will be available upon request with additional personnel for special pick-ups or special events. The Department will provide a one-week notice of such events. Contractors will provide a proposal within the same seven (7) day period.

2.1.8 Contractors will not report for work if it is raining or snowing at starting time, 7 A.M., and the El Paso Independent School District has cancelled classes for the day. Contractors will report to work under any windy conditions, subject to the Director's determination of unsafe working conditions. Should any previously scheduled Service time be postponed because of inclement weather as determined by the Director, Contractors will provide a make-up schedule for that unfulfilled time for the Director's approval within three (3) days of such postponement. All make-up time must be completed prior to the termination of this Contract. If make-up work is to occur on a Saturday or Sunday, no amendment to this Contract shall be required.

2.1.9 Bulk and heavy items shall be handled as described in Appendix A.

2.1.10 Hazardous waste must be reported to the Department as described in Appendix A.

2.2 The Director, or designee, and Contractors shall agree on an appropriate daily schedule for the Service provided for herein. Failing to reach an agreement, the Director's determination shall control. Such schedule may be revised periodically by the Director or designee as needed because of climate conditions, ground conditions, or other conditions.

3. **Term**. This Contract shall become effective on January 2, 2011 and shall terminate on August 31, 2011. The City Manager is hereby authorized to extend the services discussed in this Contract on the same terms on a month-to-month basis until December 31, 2011.

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

- **$214,863.84** for period of January 2, 2011, through August 31, 2011;

for the eight month period for 2 crews, each consisting of one (1) working supervisor and three (3) ground maintenance attendants; or such other sum (not to exceed an increased consideration of $50,000 through December 31, 2011) as determined by the parties when duties are added or deleted by the Director as described in Subsections 2.1.1, 2.1.6 and 2.1.7. Xceed shall invoice the City on the 25th day of each month for services furnished between that date and the period covering the prior month's invoice. Upon verification and approval of such invoice, the City shall process and send payment to TIBH, which shall send the appropriate amount, within a reasonable time, to Xceed as may be determined by TIBH and Xceed.

- In the event the City requests an additional crew during the term of this Contract, the City shall pay TIBH the sum of $13,428.99 per month for each additional crew, each consisting of one (1) working supervisor and three (3) ground maintenance attendants, and the parties shall adhere to the invoicing process described in the immediately preceding paragraph.

- In the event the City requests an extension beyond the original eight month term of this Contract, the City shall pay TIBH the sum of $17,905.32 per month for each additional month through December 31, 2011, and the parties shall adhere to the invoicing process described in this Section 4.

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

5. **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.

6. **Independent Contractor**. TIBH and Xceed shall instruct all of their employees as to work procedures and thoroughly acquaint each employee with their duties. City shall notify TIBH and Xceed if any of TIBH or Xceed 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 Xceed shall be deemed at all times to be independent contractors. In carrying out the terms of this Contract, TIBH and Xceed shall select their own employees and such employees shall be and act under the exclusive and complete supervision and control of Contractors.

7. **Property Damage.** Contractors shall promptly notify the Director of any damage or vandalized City 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.

8. Litter Disposal. Contractor shall collect the litter and have it available to the City as described in Appendix A. The City, in turn, shall accept the litter collected by the Contractor at a City-owned landfill and shall pay the City's standard landfill fee.

9. **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.

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

10.1 **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.

10.1.1 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.

10.1.2 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.

10.1.3 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 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.

10.2 **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.

11. **Workmanship.** All work shall be done in a good and workmanlike manner. The Director 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 Services.** Additional Services necessitating the use of one or two additional crews may be administratively added after execution of this Contract. Such additional Services shall, once authorized in writing by the Director and accepted by TIBH as to location and the Scope of Services as described herein in Section 2, become subject to all terms and conditions of this Contract to specifically include, but not to be limited to, the consideration provision in Section 4 and the duties under Section 2 herein.

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
TIBH, Industries, Inc.:	Henry Hernandez, Marketing Sales Representative TIBH Industries, Inc. 5503 Grissom Road, Suite 103 San Antonio, Texas 78238
Xceed Resources:	Everardo M. Sanchez, Executive Director Xceed Resources 5310 El Paso Drive El Paso, Texas 79905

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

20. **Texas Tort Claims Act**. Contractors 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. Contractors further expressly agree that every act or omission of the City which, in any way, pertains to or arises out of this Contract falls within the definition of a governmental function.

CITY LANDFILL LITTER CONTROL CONTRACT

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Contract on the _____ day of _____, 2010.

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

TIBH INDUSTRIES, INC.

_____
Henry Hernandez,
Marketing Sales Representative

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

_____
Everardo M. Sanchez, Executive Director

APPENDIX "A"

PROPOSED SCOPE OF WORK
ALLEY CLEAN-UP

PAVED ALLEYS:

1. Remove and dispose of litter, as defined herein. By way of illustration only, and not to conflict with the definition appearing herein, litter includes matter not part of the alley, such as trash, garbage, scrap metals, paper, wood, plastic, glass products, animal remains, rubber products, tires, tire fragments, wood, auto parts, furniture, mattresses, household appliances, yard waste, branches and clippings.

2. Remove vegetation, including but not limited to bushes, small trees, grass, weeds and vines growing within the alley.

LOTS:

1. Remove and dispose of litter, as defined herein. By way of illustration only, and not to conflict with the definition appearing herein, litter includes matter not part of the lots, such as trash, garbage, scrap metals, paper, wood, plastic, glass products, animal remains, rubber products, tires, tire fragments, wood, auto parts, furniture, mattresses, household appliances, yard waste, branches and clippings.

2. Remove tall vegetation, including but not limited to grasses and weeds twelve inches in height or taller.

UNPAVED ALLEYS:

1. Remove and dispose of litter, as defined herein. By way of illustration only, and not to conflict with the definition appearing herein, litter includes matter not part of the alley, such as trash, garbage, scrap metals, paper, wood, plastic, glass products, animal remains, rubber products, tires, tire fragments, wood, auto parts, furniture, mattresses and household appliances.

2. Remove vegetation, including but not limited to bushes, small trees, grass, weeds and vines growing within the alley.

PARKWAYS AT REAR OF DOUBLE FRONTAGE LOTS:

1. Remove and dispose of litter, as defined herein. By way of illustration only, and not to conflict with the definition appearing herein, litter includes matter not part of the parkway, such as trash, garbage, scrap metals, paper, wood, plastic, glass products, animal remains, rubber products, tires, tire fragments, wood, auto parts, furniture, mattresses, household appliances, dirt piles, construction materials and large bulky items.

2. Remove unwanted vegetation, including but not limited to, weeds and tall grasses within the parkway.

BLOCKED ALLEYS:
All blocked alleys must be reported to the El Paso Police Department.

HOUSEHOLD HAZARDOUS WASTE:
All Household Hazardous Waste, regardless of quantities, must be reported to the Department of Environmental Services for proper identification and disposal.

HAZARDOUS WASTE:
All Hazardous Waste, regardless of quantities, must be reported to the Department of Environmental Services for proper identification and disposal.

DEAD ANIMALS:
Dead animals and animal decomposing carcasses shall be reported to Department of Environmental Services for proper disposal.

Dried up animal bones shall be considered trash.

DISPOSAL OF WASTE:
The Contractor shall transport the collected litter and solid waste to the City's designated deposit sites. The Department of Environmental Services will collect the solid waste from said designated sites and transport it to a City-owned landfill. The Contractor will spend the time equivalent to the travel time to the landfill cleaning alleys or lots. The Department of Environmental Services is authorized to accept those materials collected by Contractor pursuant to this Contract free of all otherwise applicable charges at the City-owned landfill.

BULKY AND HEAVY ITEMS:
Bulky or heavy items, including, but not limited to, vehicle engines and tree stumps weighing more than 150 LBS shall be reported to the Department of Environmental Services for proper disposal.