

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

AGENDA DATE: November 12, 2024
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Roberto Tinajero, International Bridges Director, (915) 212-7509
K. Nicole Cote, Managing Director of Purchasing & Strategic Sourcing (915) 212-1092

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 1 – Create an Environment Conducive to Strong sustainable Economic Development

SUBGOAL: 1.5 – Stimulate economic growth through transit and bridges integration

SUBJECT:

Request that the City Manager be authorized to sign a Landscaping Services Contract No 2025-0022 between the City of El Paso, WorkQuest, f/k/a TIBH Industries, Inc., a private non-profit corporation and the certifying party, and Border TM Industries, Inc. d/b/a Xceed Resources, the performing party, to provide landscaping services for the Department of International Bridges for a term of thirty-six (36) months from the effective date of the agreement and two (2) one-year option to extend, which may be exercised by the City Manager administratively. This is a service requirement contract at a currently estimated cost to the City of El Paso of \$128,841.78 for the initial term and an estimated \$89,939.26 if the option to extend is exercised.

BACKGROUND / DISCUSSION:

The agreement between the City of El Paso and WorkQuest f/k/a TIBH Industries, Inc., and Xceed Resources is to provide Landscaping services for the Stanton, Paso Del Norte, and Zaragoza International Bridges this includes but is not limited to providing all labor, materials, equipment, tools, and service required to provide full professional lawn/landscaping maintenance and upkeep. Property includes surrounding driveways, parking areas, sidewalks and streets inside and alongside area.

SELECTION SUMMARY:

This is a replacement contract and non-competitive procurement by a non-profit corporation and certifying party under Local Government General Exemption: Section 252.022 (13) services performed by blind or severely disabled persons.

CONTRACT VARIANCE:

The difference based in comparison to the previous contract is as follows: An Increase of \$20,153.46 for the initial term, which represents a 18.54% increase due to the current market conditions.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$128,841.78
Funding Source: IBD Operations
Account: 564-3300-64830-522260

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

2025-0022 Landscaping Services

PRIMARY DEPARTMENT: International Bridges
SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:



Roberto Tinajero, International Bridges Director

Project Form
Non-Competitive

*****Posting Language Below*****

Please place the following item on the Consent Agenda for the City Council of November 12, 2024.

Strategic Goal 1 - Create an Environment Conducive to Strong sustainable Economic Development

The linkage to the Strategic Plan is subsection: 1.5 Stimulate economic growth through transit and bridges integration

Award Summary:

Request that the City Manager be authorized to sign a Landscaping Services Contract No 2025-0022 between the City of El Paso, WorkQuest, f/k/a TIBH Industries, Inc., a private non-profit corporation and the certifying party, and Border TM Industries, Inc. d/b/a Xceed Resources, the performing party, to provide landscaping services for the Department of International Bridges for a term of thirty-six (36) months from the effective date of the agreement and two (2) one-year option to extend, which may be exercised by the City Manager administratively. This is a service requirement contract at a currently estimated cost to the City of El Paso of \$128,841.78 for the initial term and an estimated \$89,939.26 if the option to extend is exercised.

Contract Variance:

The difference based in comparison to the previous contract is as follows: An Increase of \$12,653.47 for the initial term, which represents a 11.64% increase due to the current market conditions.

Department:	International Bridges
Award to:	WorkQuest, f/k/a TIBH Industries, Inc., a private non-profit corporation and the certifying party, and Border TM Industries, d/b/a Xceed Resources, the performing party
City & State:	Austin, TX
Item(s):	All
Initial Term:	3 Years
Option Term:	Two, One Year
Total Contract Time:	5 Years
Annual Estimated Award:	\$42,947.26
Initial Term Estimated Award:	\$128,841.78
Option Term Estimated Award:	\$89,939.26
Total Estimated Award:	\$218,781.04
Account(s):	564-3300-64830-522260
Funding Source(s):	IBD Operations
District(s):	All

Non-Competitive Procurement under Local Government General Exemption: Section 252.022 (13) services performed by blind or severely disabled persons.

The Purchasing & Strategic Sourcing Department and International Bridges Department recommend award as indicated to WorkQuest, f/k/a TIBH Industries, Inc., a private non-profit corporation and the certifying party, and Border TM Industries, d/b/a Xceed Resources, the performing party under the exemption listed above.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

RESOLUTION

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

That the City Manager be authorized to sign a Landscaping Services Contract No 2025-0022 by and between the City of El Paso, WorkQuest, f/k/a TIBH Industries, Inc., a private non-profit corporation and the certifying party, and Border TM Industries, Inc. d/b/a Xceed Resources, the performing party, to provide landscaping services for the City's Department of International Bridges for a term of thirty-six (36) months from the effective date of the Agreement and two (2) one-year option to extend, which may be exercised by the City Manager administratively. This is a service requirement contract at a currently estimated cost to the City of El Paso of \$128,841.78 for the initial term and an estimated \$89,939.26 if the option to extend is exercised.

ADOPTED this _____ day of _____, 2024.

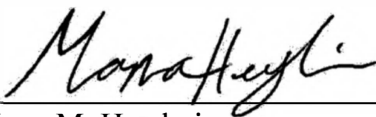
CITY OF EL PASO:

Oscar Leoser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



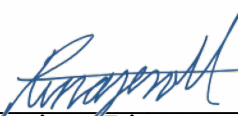
Mona M. Heydarian
Assistant City Attorney

APPROVED AS TO CONTENT:



K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:



Roberto Tinajero, Director
Department of International Bridges

CITY LANDSCAPING SERVICE CONTRACT

This City Landscaping Service Contract No. 2025-0022 ("**Contract**") is made this ____ day of _____, 2024, by and between the **CITY OF EL PASO**, a home rule municipal corporation (hereinafter referred to as the "**City**" or "**Party**"), and both WorkQuest f/k/a **TIBH INDUSTRIES, INC.** (referred as either "**WorkQuest**", "**TIBH**" or "**Party**"), a private non-profit corporation and the certifying party, and **BORDER TM INDUSTRIES, INC. D/B/A XCEED RESOURCES** ("**Xceed**" or "**Party**"), the performing party (WorkQuest and Xceed together "**the Contractor**"), to provide specified litter control services for certain properties manage by the City of El Paso Department of Environmental Services. Collectively all entities under this Contract shall be referred to as ("**Parties**").

WITNESSETH:

WHEREAS, the City of El Paso is in need of litter control services for certain properties managed by the City of El Paso's Department of International Bridges (the "**Department**"); and

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

WHEREAS, the Contractor is certified by TIBH as providing employment for individuals with severe disabilities and/or blindness; and

WHEREAS, Contractor is able to provide the needed services for the mutual benefit of its workers and the City; and

WHEREAS, the City has determined that it is in the best interest of the citizens of El Paso to employ severely disabled and/or blind citizens to perform the services outlined in this Contract; and

WHEREAS, the competitive bidding requirements of the Texas Local Government Code Section 252.021 do not apply to this Contract, pursuant to and in compliance with Section 252.022(a)(13) of the Texas Local Government Code and Chapter 122 of the Texas Human Resources Code.

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

1. **Definitions.**

- 1.1 Paso Del Norte – Property and bridge located at 1000 S. Santa Fe, El Paso, TX 79901
- 1.2 Stanton – Property and bridge located at 1001 S. Stanton, El Paso, TX 79901
- 1.3 Zaragoza – Property and bridge located at 791 S. Zaragoza, El Paso, TX 79907
- 1.4 Treat – Use of any form of remedy to relieve shrubs and plants of disease and/or infestation.
- 1.5 Toll Lane – Each vehicle lane, 30 feet prior to and 30 feet after tollbooth.
- 1.6 Pedestrian Pathway/walkways – Each sidewalk where the public is crossing by foot, 30 feet prior to and 30 feet after tollbooth.

2. Scope of Services. Contractor shall provide the following cleaning and maintenance services (the “Services”) for the City as set forth in following exhibits, attached hereto and incorporated herein for all purposes:

2.1 Exhibit A: Scope of Services for the International Bridge Department.

3. Term. This Contract commences upon written approval of the Purchasing & Strategic Sourcing Department in accordance of Section 12 of this Contract and expires 36 months from the date of such written approval.

3.1 Option to Extend. City, at its sole discretion, may exercise an option to extend the term of this Agreement, for two (2) additional one-year terms, by giving Contractor written notice prior to the expiration of the original term of this Agreement.

4. Consideration. The City shall pay TIBH the sum of \$128,841.78 for the period from November 14, 2024 through November 13, 2027: \$42,947.26 for year 1; \$42,947.26 for year 2; and \$42,947.26 for year 3, to be paid in monthly payments, as set forth in more detail in Exhibit B, attached hereto and incorporated herein for all purposes.

The cost for additional, non-scheduled or emergency work shall be billed at the hourly rate per crew as detailed in **Exhibit B**. Such additional work shall be done only at the City's direction and with the written agreement of the Parties. Xceed shall provide details of the additional, non-scheduled work in its monthly invoice.

Xceed shall issue a draft of its monthly invoice to the City on or about the 1st of the month. Upon verification and approval of such draft invoice, the City will notify Xceed and Xceed will submit the invoice to WorkQuest. WorkQuest will then submit the approved invoice to the City and the payment will be processed and sent to WorkQuest, which shall send the appropriate amount, within a reasonable time, to Xceed as may be determined by TIBH and Xceed.

Should the City exercise its option to extend this Agreement pursuant to Section 3 herein, the Year 4 & 5 annual payment/consideration of \$89,939.26 will continue, as will the Year 4 & 5 non-scheduled work fees (per hour/crew).

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, Contractor shall return any and all equipment and materials provided by the City in good usable order, allowing for ordinary wear and tear.

6. Independent Contractor. WorkQuest and Xceed shall instruct all of their employees as to work procedures and thoroughly acquaint each employee with their duties. City shall notify WorkQuest and Xceed if any of Xceed employees do not perform their duties as

necessary to carry out Contractor's duties under this Contract. Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and the Contractor's employees. WorkQuest and Xceed shall be deemed at all times to be independent contractors. In carrying out the terms of this Contract, WorkQuest and Xceed shall select their own employees and such employees shall be and act under the exclusive and complete supervision and control of WorkQuest and Xceed, respectively.

7. **Property Damage.** Contractor shall promptly notify the Director of the Environmental Services Department (the "Director") or designee of any damage or vandalized City equipment or materials that Contractor discovers at the Sites. Contractor shall additionally reimburse City for any property damage caused by anyone under their employ.

8. **Safety.** Contractor shall train their employees or subcontractors in safety procedures and all crews shall have a Contractor's staff supervisor with them. Contractor 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.** Contractor 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 two million dollar (\$2,000,000.00) general aggregate limit. Contractor shall carry Workers' Compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. Additionally, Contractor shall carry comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit. These amounts are not a limitation upon the Contractor's 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 Contractor. 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 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 CONTRACTOR, ITS AGENTS OR EMPLOYEES, OR OF ANY THIRD PERSONS, CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ITS OFFICERS, AGENTS, OR EMPLOYEES; IN THE CONDUCT OF THE CONTRACTOR'S OPERATIONS AUTHORIZED HEREIN. THE CONTRACTOR HEREBY COVENANTS AND AGREES 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 Contractor's officials if the work does not comply with such standards. Any disagreements concerning performance shall be resolved by the Director.

12. Bonds and other performance security. Contractor shall provide performance bond and labor payment bonds as set forth in Exhibit "C". Contractor shall not commence any work under this Contract until the Contractor has provided the City the Performance and Payment Labor bonds and the Purchasing & Strategic Sourcing Department has approved such bonds by written notice to the Contractor. The Contractor shall ensure that the Performance and Payment Labor bonds remain valid during the entire term of this Contract. If the Contractor fails to provide the Performance and Payment Labor bonds or if such bonds are not valid at any time under the term of his Contract, then the City may withhold payments under this Contract. Notwithstanding anything to the contrary, the Contractor's failure to provide Performance and Labor Payment bonds as required in this section is considered a material breach to this Contract.

13. Compliance with Laws and Ordinances. Contractor 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 Contractor or its employees or clients.

14. 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.

15. 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.

16. 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.

17. Assignment. This Contract shall not be assigned without the prior written consent of all of the Parties.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement on the ____ day of _____, 2024.

CITY OF EL PASO

Dionne Mack
City Manager

APPROVED AS TO FORM:

Mona M. Heydari
Assistant City Attorney

APPROVED AS TO CONTENT:

K. Nicole Cote
K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

WORKQUEST

APPROVED AS TO CONTENT:

Roberto Tijero, Director
Department of International Bridges

Name: **HENRY HERNANDEZ**
Title: **REGIONAL MARKETING MGR**

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

Name: **Everardo M. Sanchez**
Executive Director 10/22/2024

Title: _____

Date: _____

18. Binding Agreement. The individuals signing this Contract acknowledge that he or she is authorized to do so, and said individual further warrants that he or she is authorized to commit and bind Contractor and TIBH to the terms and conditions of this Contract.

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 Dionne Mack 300 N. Campbell El Paso, Texas 79901
With copy to:	City of El Paso ATTN: Director Department of International Bridges Roberto Tinajero El Paso, Texas
WorkQuest:	Regional Marketing Manager ATTN: <u>Henry Hernandez</u> 5503 Grissom Rd. Ste. 103 San Antonio, TX 78238
Border TM Industries, Inc. d/b/a Xceed Resources:	Executive Director ATTN: <u>Everardo M. Sanchez</u> 201 B. N. Clark El Paso, TX 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. Contractor 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. Contractor 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.

EXHIBIT A
SCOPE OF SERVICES

Landscaping services for Stanton, Paso Del Norte, and Zaragoza International Bridges includes but is not limited to providing all labor, materials, equipment, tools, and service required to provide full professional lawn/landscaping maintenance and upkeep. Property includes surrounding driveways, parking areas, sidewalks and streets inside and alongside area.

Once a week

1. Prune & Trim trees, all landscaping shrubbery, plant material that has become a hazard in all surrounding areas to include blocking driver's line of vision, pedestrian pathways, etc.
2. Inspect and treat trees, shrubbery, plants, as needed, for disease and insect infestations
3. Check and maintain irrigation systems for leaks, breaks, and malfunction, repair, efficient water application reducing overspray, and eliminating all runoff from leaving the planted areas.
4. Pressure washing of following areas on an as needed basis:
 - a. Driveways, parking areas, sidewalks, walkways, patios, benches, outdoor furniture, toll lanes, and all surrounding areas.
5. Remove weeds, chewing gum, dust, dirt, mud, etc. from planters, gardens, pedestrian pathways, sidewalks and surrounding areas.
6. Remove and dispose of trash, debris, broken, damaged, & dry plant material.

EXHIBIT “B”
Contract Pricing

Landscaping Services - City's Greater El Paso International Bridges

Item Description	Approx. Qty.	Price/Month	Annual Price
Year 1	12	\$3,370.61	\$40,447.26
Year 1 Bonding	1		\$2,500.00
Year 1 Annual Price (2024 - 2025)			\$42,947.26
Year 2	12	\$3,370.61	\$40,447.26
Year 2 Bonding	1		\$2,500.00
Year 2 Annual Price (2025 - 2026)			\$42,947.26
Year 3	12	\$3,370.61	\$40,447.26
Year 3 Bonding	1		\$2,500.00
Year 3 Annual Price (2026 - 2027)			\$42,947.26
Year 4 & 5 (Two-year Extension)	12	\$3,539.14	\$42,469.63
Year 4 & 5 Bonding	1		\$2,500.00
Year 4 Annual Price (2027 - 2029)			\$44,969.63

Emergency Pickup Crew	Hourly Rate	\$143.00
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Mr. Everardo (Eddie) Sanchez of Border TM Industries, Inc. dba Xceed Resources is submitting the quote below to continue to provide cleaning and maintenance services for the City's review and consideration. The new contract/agreement will be a three-year contract with a two-year extension.

EXHIBIT “C”

Payment and Performance Bonds and Contractor Termination

KEY DEFINITIONS	
<i>Payment Bonds</i>	A Promise of a surety assuring payment to all persons supplying labor or materials in the prosecution of the work provided for in the contract.
<i>Performance Bonds</i>	A promise of a Surety, sometimes referred to as a "completion bond" to assure the City that once the contract is awarded, the contractor will perform its obligations under the contract. If a contractor fails to perform its obligations under the contract the surety company which issued the bond is obligated to fulfil the term of the contract at no additional cost the City.
<i>Responsibility</i>	The status of contractor determining that it has the capacity: tenacity and perseverance to perform a contract.
<i>Sourcing</i>	The process of selecting a contractor through competitive procurement or negotiation.
<i>Termination for Default</i>	<p>The exercise of the government right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.</p> <p>Typical causes are if the contractor fails to (i) deliver goods or services within the time specified; (ii) perform any other provision of the contractor (insurance lapse); (iii) make sufficient progress, If the failure endangers performance of the contract.</p>
<i>Termination for Convenience</i>	The exercise of the government's right to completely or partially terminate a contract when it is the government 's best interest.

PAYMENT & PERFORMANCE BONDS
The amount of the bonding requirement to equal four (4) month value of the contract.
<p>Example: The amount of the contract is awarded for \$120,000 annually. The monthly cost would be billed at \$10,000 per month. ($\\$120,000 / 12 =$ monthly cost) The bonding requirement would be 4 months X \$10,000 = \$40,000 Formula: Annual Contract Amount /12 = Monthly Cost X 4 = Bonding Requirement</p>

CONTRACTOR TERMINATION
There are two classifications for default termination, Level One and Level Two.
<p><i>Level One</i> - Contractors terminated for default and the City has to engage the surety company to complete the contract. A Level One default would result in a contractor remaining the non-responsible designation for three years from the date of the termination. Said contractor would be placed on the "ineligible Source List" for three years.</p>

Level Two - Contractors which are terminated for default due to their inability to obtain the appropriate level of bonding. A Level Two default would result in a contractor having the non-responsible designation for one year or until they provide written confirmation from a surety company; that the contractor's bonding capacity has been increased or said contractor has obtained bonding to reinstate the condition for which they were terminated.

Annual Contract Amount	Monthly Cost (Annual Amount/12)	Bonding Requirement (Monthly Cost x 4)
\$ 40,447.26	\$ 3,370.61	\$ 13,482.44