

RESOLUTION

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

That the City Manager be authorized to sign Contract 2024-0016 On Call Median Maintenance by and between the City of El Paso and both 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 specified cleaning and maintenance services for certain properties managed by the City of El Paso's Environmental Services Department for a term of one (1) year 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 \$1,253,102.64 for the initial term and an estimated \$2,887,791.90 if the option to extend is exercised.

APPROVED this 7 day of NOVEMBER, 2023.



ATTEST:

Laura D. Prine
Laura D. Prine
City Clerk

CITY OF EL PASO:
Oscar Leeser
Oscar Leeser
Mayor

APPROVED AS TO FORM:
Evy A. Sotelo
Evy A. Sotelo
Assistant City Attorney

APPROVED AS TO FORM:
K. Nicole Cote
K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:
Nicholas N. Ybarra
Nicholas N. Ybarra, Director
Environmental Services Department

ON CALL MEDIAN MAINTENANCE CONTRACT

This Citywide Litter Control Contract is made this 7 day of NOVEMBER, 2023, by and between the **CITY OF EL PASO**, a home rule municipal corporation (hereinafter referred to as the "City"), and both **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 ("XCEED")**, the performing party (hereinafter "**the Contractor**"), to provide maintenance service on various City and State ROW medians managed by the City of El Paso's Environmental Services.

WITNESSETH:

WHEREAS, the City is in need of maintenance service on various City and State ROW medians managed by the City of El Paso's Environmental Services Department; and

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

WHEREAS, the Contractor is certified by WorkQuest 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. **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:

1.1 **Exhibit A:** Scope of Services

2. **Term.** This Contract is for a term of thirty-six (36) months. This Contract shall become effective on **November 7, 2023**, and initial term shall end on **November 6, 2024**.

2.1 **Option to Extend.** City, at its sole discretion, may exercise an option to extend the term of this Agreement, for a two (2) one-year option to extend, which may be exercised by the City Manager administratively, by giving Contractor written notice prior to the expiration of the original term of this Agreement.

4. **Consideration.** The City shall pay WorkQuest the sum of \$1,253,102.64 for the period from November 7, 2023 through November 7, 2024: (\$1,377,162.90 for option year 1; \$1,510,629.00 for option year 2), to be paid in monthly payments, as set forth in more detail in **Exhibit D** (Annual Contract Pricing by Service Chart), attached hereto and incorporated herein for all purposes.

The cost for additional, non-scheduled or emergency work shall be billed as detailed in **Exhibit D** (Non-Scheduled Work fee chart) dependent on the service requested. 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 WorkQuest and Xceed.

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 relevant Department (the "Director") of any damage or vandalized plants or materials that Contractor discovers on the property. Contractor shall additionally reimburse City for any property damage caused by anyone under their employment.

8. **Trash.** The City will provide dumpsters in appropriate locations for trash and debris from cleanup work. The Contractor will provide liners/trash bags for trash cans as required.

9. **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 comply with Municipal Code Section 12.30 and the Texas Manual of Uniform Traffic Safety.

10. **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.

11. **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).**

12. **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.

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.

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 WorkQuest to the terms and conditions of this Contract.

19. **Additional Maintenance Locations.** Additional cleaning and maintenance locations may be administratively added after execution of this Contract. Such additional locations shall, once authorized in writing by the City's designee (department head) and accepted by Contractor and WorkQuest as to location and the maintenance schedules described herein, become subject to all terms and conditions of this Contract to specifically include, but not to be limited to, the Consideration provision and the Schedules of Duties set forth herein. Individual locations may be removed for any reason upon the City providing Contractor and Workquest thirty (30) days written notice of the request to remove, together with a statement of the reason the specific location is being removed.

20. **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
300 N. Campbell
El Paso, Texas 79901

with copy to: City of El Paso
ATTN: Director
Environmental Services Department
7968 San Paulo
El Paso, Texas 79907

WorkQuest: Henry Hernandez, Marketing Manager
WorkQuest f/k/a TIBH Industries, Inc.
5503 Grissom Road, Suite 103
San Antonio, Texas, 78238

Border TM Industries, Inc.: Everardo Sanchez, Executive Director
Border TM Industries, Inc.
d/b/a 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.

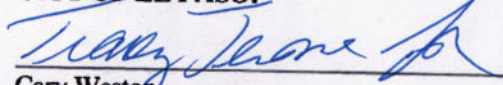
21. **Texas Tort Claims Act.** Partner expressly agrees that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. Partner further expressly agrees that every act or omission of the City which, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

(ALL SIGNATURES FOLLOW ON NEXT PAGE)

**CITYWIDE LITTER CONTROL CONTRACT
SIGNATURE PAGE**

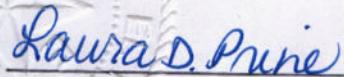
IN WITNESS WHEREOF, the parties have executed this Agreement on the 7 day of NOVEMBER, 2023.

CITY OF EL PASO:

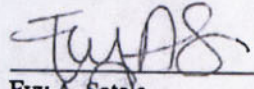

Cary Weston
Interim City Manager



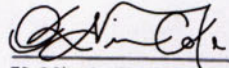
ATTEST:


Laura D. Prime
City Clerk

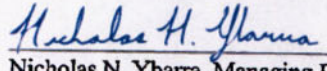
APPROVED AS TO FORM:


Evy A. Sotelo
Assistant City Attorney

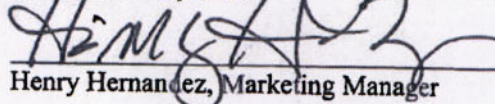
APPROVED AS TO FORM:


K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

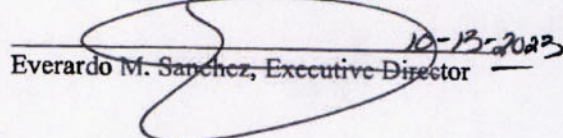
APPROVED AS TO CONTENT:


Nicholas N. Ybarra, Managing Director
Environmental Services Department

**WORKQUEST F/K/A TISH
INDUSTRIES, INC.**


Henry Hernandez, Marketing Manager

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


Everardo M. Sanchez, Executive Director

(Exhibits on the following pages)

EXHIBIT "A"

SCOPE OF SERVICES

Provide maintenance service on various City and State ROW medians. Maintenance activity includes:

- Cleaning of trash and debris Pruning of trees, bushes and shrubs
- Weed removal including application of pre/post herbicide spray
- All necessary Traffic Control
- Proper disposal of debris, trash, and plant material at a Solid Waste permitted landfill
- Provide all labor, supplies, materials, and equipment necessary to complete tasks
- Medians shall be left in a clean and safe condition in order to provide safe right-of-way for traveling public. Maintenance activities shall follow City standards, City arborist and Transportation Division Manager recommendations, and other methods provided by City officials.

Specifications

1. The following requirements will be performed on as needed basis. Upon completion of cleaning tasked medians, a notification to the Environmental Services Department (ESD) Designee shall be sent via e-mail, phone call or in person. Maintenance areas may include, but are not limited to, medians, parkway, curb and gutter, roundabouts, traffic circles, triangles, and trails.
2. The Contractor shall pick-up all liter within the defined Maintenance Areas, inclusive of trash, Plant Liter (Dead plant material, such as leaves, bark, needles, pine cones, twigs etc.), cans, glass or plastic bottles, boxes, signs (garage sale signs etc.), and all debris (bulky items, construction materials, large rock up to 50 lbs., etc.). Contractor shall pick up trash and place new trash bag in any trash container(s) located on any maintenance area. Such task should be performed the day maintenance area is scheduled for service. All debris/waste shall become the property of the contractor and shall be disposed of in an acceptable disposal location and in compliance with all federal, state, and city rules and regulations. No debris shall be purposely thrown into the street roadway. The successful contractor may choose the clean-up method(s) that is appropriate according to City of El Paso Environmental Services Department (ESD) requirements and contract documents
3. Contractor must submit a work schedule for approval to the ESD Department designee, which dictates the days in which the contractor plans to do any maintenance activities on any maintenance areas awarded to them. Schedule shall only include maintenance area locations approved by the ESD Department designee. Prior to commencement of maintenance activities, the ESD Department designee can approve or disapprove and modify such schedules. Once schedule has been approved the Contractor may request and submit any proposed changes to the schedule for review and approval to ESD Department designee. These changes will go in to effect within fourteen (14) calendar days upon approval. Contractor shall submit report identifying and explaining task activities that were not completed prior to 6:00 am next working day.

4. Maintenance area quantities may be modified by ESD designee in order to accommodate any additions/deletions in medians. Contractor will be notified in advance of any change in the maintenance area quantities.
5. The Contractor shall be responsible for damage to City's property due to maintenance activities including but not limited to equipment, trees, shrubs, plants, landscaping irrigation system, signage, guard rails, concrete elements, public art, concrete infrastructure elements etc.
6. The contractor shall be responsible to report to the ESD Department designee any out of the ordinary or detrimental conditions to the health and/or safety of the maintenance area including, but not limited to: broken curb and gutter, cracked or broken stamped concrete, sink holes and potholes next to the maintained areas. Any damage, safety concerns, vandalism or irrigation equipment problems shall be reported immediately and an inspection with designee shall be scheduled at least one day in advance.
7. The Maintenance Area shall be cleaned of any unwanted grass or weed growth. Contractor shall remove all grass and weeds by root or herbicide. All grasses or unwanted vegetation higher than 3" shall be pulled out from the ground; all efforts should be made to remove the root system of the grass or vegetation. Unwanted grasses or vegetation less than 3" shall be treated with herbicide and must be removed after full kill is achieved. Any damage that is incurred to sprinklers, drip system or such, and to the general landscaping material (plants, rock, screening and/or weed barrier material) be restored to its original condition or better.
8. Whenever herbicide is to be utilized within maintenance area(s), the contractor shall fill out and submit the TDA Q527 from Texas Department of Agriculture Pesticide Applicator Record sheet to ESD Department designee. No substitute forms will be accepted. The latest form can be found at <http://www.texasagriculture.gov/Portals/0/forms/PEST/Applicator/Pesticide%20Applicator%20Recordkeeping%20Form.pdf>.
9. The Contractor shall be a Texas Department of Agriculture licensed pesticide applicator and adhere to all Texas Department of Agriculture rules and regulations; license shall remain current throughout the contract term. Herbicides must be applied as per all Federal, State, City or other local rules and regulations.
10. Contractor shall use care and diligence when spraying in landscaped locations. Any damage done to landscape locations as a result of the contractor shall be repaired/replaced at contractor's expense.
11. Herbicide must have a minimum concentration of 41% Glyphosate and be a mix of pre and post emergent. The ratio of the mix shall be determined by the contractor and approved by ESD Designee.
12. The Contractor shall provide herbicide MSDS information sheets to ESD Department designee before the herbicide may be applied.
13. Contractor's vehicle shall at all-time have the company information such as name, address and any license information visible.
14. Traffic Control shall be in compliance with Municipal Code (section 12.30) and the Texas Manual of Uniform Traffic Control Devices (TMUTCD). State Rights of Way maintained by the City must conform to requirements outlined in the TMUTCD for State Rights of Way, in particular the correct use of a Truck Mounted Attenuator (TMA). Texas Department of Transportation (TxDOT) permit required and copy shall be submitted with ESD application.

15. Contractor shall not park work vehicles on Maintenance Areas including over the curb and sidewalk.
16. All pruning shall be done in accordance with ANSI A300 industry standards, Policy and Standards Manual for the Care of Trees and Shrubs in the City of El Paso, City Ordinance Chapter 18.46, 18.47, and Chapter 9.11. Contractor shall provide pruning to remove any branches from trees and shrubs. Contractor shall provide pruning to remove any branches from trees and shrubs that would interfere with or hinder the flow of traffic or the grounds maintenance operation as directed by ESD designee. The limbs growing towards the lanes of traffic shall be pruned to a height of 13'6". Areas abutting sidewalk shall have a minimum height of 8'. Trees that are not impeding on traffic or sidewalks shall have a minimum clearance of 5'-6' from the ground. Additional pruning of trees or shrubs to comply with line of sight requirements, removal of deadwood or for aesthetic reasons shall be performed by contractor on an as needed basis or as directed by Street and Maintenance designee. Less than 2" caliper (suckers or waterspouts) shall be removed on an as needed basis and shall be disposed in an acceptable and in compliance with all federal, state, and city rules and regulations.
17. Tree Topping. No Public Tree shall be topped. Topping is not an acceptable pruning practice. Trees severely damaged by storms or other causes, where other pruning practices are impractical may be crown reduced where necessary to protect health safety and welfare.
18. Leaves dropped from the trees are to be picked up by the contractor and disposed in an acceptable and in compliance with all federal, state, and city rules and regulations.
19. Light restoration as needed for all medians