

**STATE USE CONTRACT BETWEEN**  
**CITY OF SAN MARCOS AND EASTER SEALS CENTRAL TEXAS**  
**THROUGH TIBH INDUSTRIES, INC.**

This Contract for vegetation and litter control is entered into by and between the City, the City of San Marcos, “City” and the Contractor, Easter Seals – Central Texas “Contractor”, based upon negotiated price and specifications and certified by TIBH Industries, Inc., as a contract under the provisions of Chapter 122 of the Human Resources Code.

**AGREEMENT**

In consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

**ARTICLE 1. CONTRACTING PARTIES**

City: City of San Marcos, Texas, “City”  
Contractor: Easter Seals – Central Texas, “Contractor”  
Certifying Party: TIBH Industries, Inc.

**ARTICLE 2. CONTRACT PERIOD**

The contract period for this Agreement begins on October 1, 2018, and will end on September 30, 2019.

**ARTICLE 3. SERVICES TO BE PERFORMED**

The Contractor will perform the following services:

Services To Be Performed	Annual Cycles
a) Downtown alleys – mow, trim, and litter pickup	12
b) San Marcos Consolidated School District Right of Way (“ROW”) – mow, trim, and litter pickup	12
c) City wide alleys/ROW (exclusive of the downtown alleys) – mow, trim, and litter pickup	6
d) City lots – mow, trim, and litter pickup	12
e) Craddock Avenue medians – mow, trim, and litter pickup	12
f) City Property behind Sam’s Club/Davis Lane – mow	4
g) City wide drainage/easement – mow, trim, and litter pickup	5
h) City wide flower beds (billed by the man hour as requested)	
i) Athletic fields – mow and trim	66
j) Downtown sweeping (billed by the man hour as requested)	
k) Downtown trash receptacles – empty all trash and recycle cans (4 days per week)	52
l) Litter pickup at Rio Vista Dam and Capes Dam (billed by the man hour as requested)	
m) San Marcos roadway area litter pickup (per acre)	24
n) McCarty Lane – mow, trim, litter pickup, and flower bed	12
o) Wonder World Drive – mow, trim, and litter pickup	4

p) Interstate Highway 35 (inside city limits) – mow, trim, and litter pickup	10
q) Neighborhood Parks – mow, trim, and litter pickup	18
r) Five Mile Dam Complex – 56 cycles of mowing soccer fields	56
s) Five Mile Dam Complex - mow, trim maintain flower beds	24
t) Blanco Shoals – 6 cycles of mowing	6

The Contractor will observe all safety requirements established by the Texas Department of Transportation during the pick-up process. In addition, the Contractor will haul all trash to the City's facility on River Road and will provide all necessary equipment to accomplish its services. In those areas that require the use of a mower, the height of the blades will be set at a maximum of two (2) to three (3) inches. For those areas requiring the use of weed-eaters, the Contractor will strive to maintain a uniform height of approximately four (4) inches. In addition, the Contractor will chip all wooded material at the City's compost site and make use of the existing roll-off container provided by the City. These services are to be performed in locations identified by the City. The Contractor will perform all services in accordance with the descriptions contained in this Agreement and as further detailed in Attachment A. The schedule for work identified in this Agreement is tentative. Should the City wish to modify this schedule, the Contractor will adjust the schedule to meet the City's needs.

#### **ARTICLE 4. CONTRACT AMOUNT**

The total amount to be paid by the City to the Contractor for services under this contract will be the annual sum of \$1,125,843.63, in accordance with **Attachment A**. Should the Contractor be required to haul materials to a disposal location other than the City's compost site, the City will be billed at a rate of \$16.50 per cubic yard.

#### **ARTICLE 5. PAYMENT FOR SERVICES**

The City will pay TIBH Industries, Inc., as assignee and servicing agent of the Contractor's interest in the payment under this contract (as directed) for goods and services received. Upon receipt of a proper invoice or voucher submitted by TIBH Industries, Inc., such payment will be made within thirty (30) calendar days from receipt of same.

Payment by the City to TIBH Industries, Inc., as assignee to the Contractor will be based upon bills presented monthly, with billing based upon the actual performance of the specified work by location.

#### **ARTICLE 6. TERMINATION**

This Agreement may be terminated under any one of the following conditions:

- a) By mutual agreement and consent of both parties.
- b) By the City giving written notice to the Contractor and the Certifying Party as a consequence of failure by the Contractor to satisfactorily perform the services and obligations set forth in this Agreement, with proper allowances being made for circumstances beyond the control of the Contractor.
- c) By either party upon thirty (30) calendar days written notice to the other.

#### **ARTICLE 7. REMEDIES**

Violation or breach of contract terms by the Contractor will be grounds for termination of this Agreement, and any increased costs arising from the Contractor's default, breach of contract, or violation

of terms will be paid by the Contractor. This Agreement will not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and will be cumulative.

#### **ARTICLE 8. SUBLETTING**

The Contractor will not sublet or transfer any portion of its responsibilities and obligations under this Agreement unless specifically authorized to do so in writing by the City.

#### **ARTICLE 9. SUCCESSORS AND ASSIGNS**

The Contractor will not assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the City.

#### **ARTICLE 10. LEGAL CONSTRUCTION**

In the event that any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions thereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

#### **ARTICLE 11. GOVERNING LAWS AND VENUE**

This Agreement will be construed under and in accordance with the laws of the State of Texas. Any legal actions regarding the parties' obligations and any matters whatsoever arising from this Agreement will be filed and maintained in Hays County, Texas.

#### **ARTICLE 12. PRIOR AGREEMENTS SUPERSEDED**

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting to this subject matter.

#### **ARTICLE 13. FUNDING OUT**

As applicable to this Agreement, the Contractor understands that funds for the payment for work performed by the Contractor under this Agreement have been provided through the City's budget approved by the City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The City cannot guarantee the availability of funds and enters into this Agreement only to the extent such funds are made available. The Contractor acknowledges and agrees that it will have no recourse against the City for its failure to appropriate funds for the purposes for this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the City extends from October 1<sup>st</sup> of each calendar year to September 30<sup>th</sup> of the following calendar year.

#### **ARTICLE 14. INSURANCE AND INDEMNITY**

The Contractor will hold harmless, indemnify, and defend the City and its employees, agents, officers, and servants from any and all lawsuits, claims, demands, and causes of action of any kind arising from the negligent or intentional acts, errors, or omissions of the Contractor, its officers, employees, or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City in favor or any party, including the

amounts of any damages or awards resulting from claims, demands, and causes of action for personal injuries, death, or damages to property.

The Contractor will procure and maintain, at its expense, insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by the Contractor or its agents, subcontractors, or employees. Before commencing the work, the Contractor will furnish to the City a certificate or certificates in a form satisfactory to the City showing that the Contractor has complied with this paragraph. All certificates will provide that the policy will not be changed or cancelled until at least thirty (30) calendar days written notice will have been given to the City. Commercial general liability insurance and motor vehicle insurance will be written with the City of San Marcos, Texas, as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance: In accordance with the provisions of the Workers' Compensation Act of the State of Texas.

Liability Insurance: (1) Commercial general liability insurance with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate; and (2) motor vehicle liability insurance in an amount not less than \$1,000,000 for injuries to any one person, \$1,000,000 on account of any one accident, and in an amount of not less than \$1,000,000 for property damage.

The stated limits of insurance required by this Paragraph are **minimum only** and it will be the Contractor's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Contractor from compliance with these requirements.

## ARTICLE 15. NOTICE TO PARTIES

Notice to be effective under this contract must be in writing and received by the party against whom it is to operate. Notice is received by a party as follows: (1) when it is delivered to the party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address specified in this Article 15 and signed on behalf of the party; or (3) three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the party's address specified in this Article 15. Any party may change its address by providing notice of such change in accordance with the requirements of this Article 15.

The City's address is as follows:

Rodney Cobb, Executive Director  
**Community Services**  
City of San Marcos  
630 East Hopkins Street  
San Marcos, Texas 78666

Office of the Purchasing Manager  
Finance Division  
630 East Hopkins Street  
San Marcos, Texas 78666

The Contractor's address is as follows:

Richard Fogelson, Senior Director of Paid Job Training  
Easter Seals Central Texas  
8505 Cross Park  
Austin, Texas 78754

The Certifying Party's address is as follows:

Abby Monk, Regional Marketing Manager  
TIBH Industries, Inc.  
1011 East 53 ½ Street  
Austin, Texas 78751

#### **ARTICLE 16. MISCELLANEOUS**

Each individual signing this contract on behalf of a party warrants that he or she is legally authorized to do so and that the party is legally authorized to perform the obligations undertaken.

This Agreement represents the entire Agreement of the parties, and an amendment to it is not effective for any purpose unless in writing and signed by all parties.

This contract is binding on and inures to the benefit of the parties' successors in interest.

IN WITNESS WHEREOF, the parties have signed duplicate originals of this Agreement as follows:

THE UNDERSIGNED PARTIES do hereby certify that (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected parties of Local and State Government, and (2) the services, goods on contract are not supplied by Section 21 of Article XVI of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder.

The undersigned signatory for the Contractor hereby represents and warrants that he or she is an officer of the organization for which he or she has executed this contract, and that such officer has full and complete authority to enter into this contract on behalf of the Contractor, and the Contractor has legal authority to perform the activities provided for herein.

**CONTRACTOR:**  
EASTER SEALS CENTRAL TEXAS

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name, Title

City further certifies that it has authority to contract for the above services by authority granted by Chapter 122, Human Resources Code.

**CITY OF SAN MARCOS, TEXAS**

By: \_\_\_\_\_  
City Manager

The undersigned signatory for the Certifying Party hereby represents and warrants that he or she is an officer of the organization for which he or she has executed this contract, and that such officer has full and complete authority to enter into this contract on behalf of the Certifying Party, and the Certifying Party has legal authority to perform the activities provided for herein.

**CERTIFYING PARTY:**  
**TIBH INDUSTRIES, INC.**

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name, Title

## ATTACHMENT A



315 East St. Elmo  
Austin, Texas 78745  
(512) 440-7819

8505 Cross Park Drive  
Austin, TX 78754  
(512) 615-6800

1770 Redwood Road  
San Marcos, TX 78666  
(512) 392-5062

August 8, 2018

Mr. Oscar Hairell  
Asst. Director of Comm. Services-Fleet, Transit, Fac. | Parks and Recreation  
401 E Hopkins, San Marcos, TX 78666

RE: FY2019 Vegetation Control, Debris Removal and Landscape Maintenance Contract.

Dear Mr. Hairell:

We would like to submit our proposed Vegetation Control, Debris Removal and Landscape Maintenance Contract for the upcoming FY2019 service contract.

Incidental modifications include additional square footage to be cut with reel mowers on the soccer fields at 5 Mile Dam Park, but also a corresponding reduction in non-playing area square footage at the same location. This allows for better coverage of the playing fields without unduly increasing costs.

We are asking for a minimal 1.4% rate increase in the FY2019 proposal resulting in a requested increase of only \$15,604.97, from \$1,110,238.67 to \$1,125,843.63. As with other organizations, we continue to see operating costs rise due to insurance rates, rising wages and increasing equipment maintenance and acquisition expenses. Despite these increasing operating costs we attempted to keep the contract increase to a minimum.

Should you have any questions or need additional information, please feel free to contact Abby Monk with TIBH at (512) 451-8145, William Smeeton or myself at (512) 440-7819.

Sincerely,

Richard Fogelson  
Senior Director of Paid Job Training  
Easterseals Central Texas



**VEGETATION CONTROL, DEBRIS REMOVAL, AND LANDSCAPE MAINTENANCE  
FOR SAN MARCOS FY2019 portion of contract**

Description	Cycles	PROPOSED		FY2019 Total	
		Square Feet	Proposed Rate	Total Amt	
<b>Downtown Alleys</b> mow, trim, and litter pickup	12	176,208.00	\$ 0.00474	\$	10,022.71
<b>SMCISD ROW's</b> mow, trim, and litter pickup	12	220,656.20	\$ 0.00474	\$	12,550.92
<b>City Wide Alleys/ROW's</b> -- mow, trim and litter pickup	6	7,157,318.40	\$ 0.00474	\$	203,554.14
<b>City lots</b> -- mow, trim and litter pickup	12	283,184.00	\$ 0.00474	\$	16,107.51
<b>Craddock Medians</b> -- mow, trim, and litter pickup	12	104,999.50	\$ 0.00474	\$	5,972.37
<b>City Property behind Sam's Club/ Davis Lane Mow</b>	4	(acre) 44.4	\$ 16.97	\$	3,013.87
<b>City Wide drainage / easement</b> mow, trim and litter pickup	5	4,213,021.00	\$ 0.01683	\$	354,525.72
<b>City Wide Flowerbeds</b> (billed by the man-hour)		900.00	\$ 19.50	\$	17,550.00
<b>Athletic Fields</b> mow and trim	66	989506.00	\$ 0.000541	\$	35,331.30
<b>Downtown Sweeping</b> (billed by the man-hour)		2316.5	\$ 16.90	\$	39,148.85
<b>Downtown Trash</b> recepticals (empty all trash and recyle cans)	52	(4 days week)	\$ 414.00	\$	21,528.00
<b>Litter pickup @ Rio Vista &amp; Capes Dam</b> (billed by the M/H)		3,181.81	\$ 23.20	\$	73,817.99
<b>S.M. Roadway area litter</b> pickup (acre)	24	(acre) 354.38	\$ 9.00	\$	76,546.78
<b>McCarty Lane</b> -- mow, trim, and litter pickup, flowerbed	12	430000.00	\$ 0.00365	\$	18,834.00
<b>Wonder World</b> -- mow, trim, and litter pickup	4	1610400.00	\$ 0.00365	\$	23,511.84
<b>IH35</b> -- mow/trim city limits	10	12310435.00	0.00066	\$	81,248.87
<b>Neighborhood Parks</b> -- mow, trim, and litter pickup	18		\$ 4,170.00	\$	75,060.00
<b>Soccer Fields 5 mile Dam</b>	56		\$ 597.00	\$	33,432.00
<b>non playing area 5 mile Dam</b>	24		\$ 680.45	\$	16,330.80
<b>Blanco Sholes</b>	6		\$ 1,292.66	\$	7,755.96
			<b>FY2019 Total</b>	\$	1,125,843.63
			<b>FY2019 total</b>	\$	1,110,238.66
			<b>increase</b>	\$	15,604.97



## 2019 San Marcos Contract Changes

### Amendments to FY2018 Contract

<b>City Wide Flowerbeds</b>			
Price increase of \$1.07 per man hour to \$19.50	for a net increase to contract of	\$	<b>963.00</b>
<b>Downtown Sweeping</b>			
Price increase of \$0.49 per man hour to \$16.90	for a net increase to contract of	\$	<b>1,135.08</b>
<b>Down Town Trash and Recycle Containers</b>			
Number of receptacles has increased.			
increased rate from \$394 to \$414 per week (4 cycles week)	for a net increase to contract of	\$	<b>1,040.00</b>
<b>Litter @ Rio Vista and Capes Dam changes</b>			
Price increase of \$0.37 per man hour to \$23.20	for a net increase to contract of	\$	<b>1,177.27</b>
<b>Downtown Alleys, SMCISD, City Wide Alleys and ROW's, City Lots, and Cradock Medians</b>			
increased rate from \$0.00464 to \$0.00474 cents a square foot.	for a net increase to contract of	\$	<b>5,236.46</b>
<b>Sports Fields</b>			
increase amount of footage cut for the soccer playing area @ 5 mile Dam, while decreasing the footage of non playing area			
	for a net increase to contract of	\$	<b>1,816.62</b>
Baseball and Softball fields			
increase rate from 0.000525 to 0.000541 cents a square foot.	for a net increase to contract of	\$	<b>1,044.92</b>
<b>property behind Sam's club &amp; Davis Ln</b>			
increase rate from 16.48 to 16.97 acre	for a net increase to contract of	\$	<b>87.02</b>
<b>McCarty Lane</b>			
increase rate from 0.00360 to 0.00365 cents a square foot	for a net increase to contract of	\$	<b>258.00</b>
<b>Neighborhood Parks</b>			
increase rate \$5.00 per park for a total of \$125.00 increase per cycle	for a net increase to contract of	\$	<b>2,250.00</b>
<b>IH35 mowing</b>			
increase rate from 0.00065777 to 0.00066 cents a square foot	for a net increase to contract of	\$	<b>274.52</b>
<b>Wonder World</b>			
increase rate from 0.00360 to 0.00365 cents per square foot.	for a net increase to contract of	\$	<b>322.08</b>
<b>All Other parts of the contract remain the same as 2018</b>			
<b>Total Increase to 2019 Contract</b>		<b>\$</b>	<b>15,604.97</b>

## **Downtown Sweeping 2019**

We will run the tenant sweepers or blow the sidewalks and parking areas around the square (only) 4 days a week (Monday, Tuesday, Thursday, and Friday). We will also clean trash from the Flower Beds and empty ash trays.

We will clean and blow to the street for the Sweeper to clean up: all trash and debris along curbs and sidewalks in an expanded area.

**Area A** consists of a 4 block area bordered by Hopkins on the South, University on the North, Guadalupe on the West, and Edward Gary on the East. This area will be cleaned on Mondays and Thursdays

**Area B** consists of a 4 block area including a sq. block west of the Square bordered by Hopkins/ Fredericksburg/San Antonio/ Guadalupe, another sq. block east of the Square bordered by Hopkins/LBJ/San Antonio/Edward Gary, and a 2 sq. block area bordered by San Antonio/ Guadalupe/ MLK/ LBJ. This area will be cleaned on Tuesdays and Fridays.

Also, all parking areas along Hutchison between CM Allen and Guadalupe, Hopkins between Fredericksburg and LBJ, San Antonio between Fredericksburg and LBJ, MLK between Guadalupe and LBJ, Guadalupe between San Antonio and University, LBJ between MLK and University will be cleaned weekly. Grant Harris parking lot, and City Park Plaza parking will be cleaned with the City sweeper as needed.

The City is billed at the rate of \$16.90 per man hour for this work.

**Total price will be \$39,148.85**

## **Down Town Trash Receptacles**

Empty all Trash and recycle containers in the Downtown area 4 times a week (Monday, Wednesday, Friday, and Saturday)

**Total price for this service will be \$103.50 per cycle, 4 cycles a week, or \$21,528.00 per year**

# San Marcos Parks Locations 2019

PARK	ADDRESS	PRICE PER CUT
Paul Pena	1209 Crystal River Parkway	\$265.00
El Camino Real	401 Cottonwood	\$245.00
El Camino Soccer	Capistrano Dr.	\$45.00
Veterans Park	320 Mariposa	\$315.00
Victory Gardens	300 Roosevelt St.	\$95.00
Willow Springs Pk	Ellis Street	\$165.00
Dunbar Park	801 W. MLK	\$395.00
Franklin Sq. Pk	N Bishop	\$345.00
Purgatory Natural area	Wonder World Dr.	\$315.00 *
Ring Tail Natural Area	1804 Old RR 12	\$165.00 *
Schulle Canyon	1420 Alamo	\$55.00 *
Blanco Shoals	1201 E River Ridge	\$95.00 *
Clock Tower	W River Ridge	\$245.00
Reyes Park	116 Lockwood	\$115.00
Conway Park	506 Bliss Ln.	\$115.00
Swift Memorial Park	200 Monterrey	\$95.00
Eddy Durham Park	214 Centre	\$95.00
Jaycees Park	1906 Lancaster	\$280.00
Mill Street Park	215 Mill St	\$165.00
Haynes Street	Haynes Street	\$25.00
Stokes Park	Cape Road @ River	\$185.00
Spring lake	Lime Kiln Rd.	\$145.00 *
Hillside Ranch 2	Holland @ LBJ	\$45.00 *
Old Train Station	MLK @ LBJ	\$95.00
Top Part Purg N A	Wonder World Dr.	\$65.00 *

\* indicates entrance only)

**\$4170.00**



**315 East St. Elmo  
Austin, Texas 78745  
(512) 440-7819**

**8505 Cross Park Drive  
Austin, TX 78754  
(512) 615-6800**

**1770 Redwood Road  
San Marcos, TX 78666  
(512) 392-5062**

**August 8, 2018**

**SMCISD ROW's**

Hernandez Elementary – Stagecoach

Miller Middle School – Foxtail Run

Miller Trace

**SAN MARCOS LITTER AREA's**

1 – RR12 (Rodgers street to City limits)

2 – Hunter Rd (Dixon street to City Limits)

3 – Wonder World Drive West (Hunter Rd to IH 35)

4 – Wonder World Drive East (Hospital to Hwy 123)

5 – Hwy 123 (Wonder World Dr to IH 35)

6 – Hwy 80 (River Rd to Hwy 21)

7 – Post Rd (Out Post Apt to Aquarena Springs Dr)

8 – IH 35 within San Marcos City Limits

**MCCARTY LANE**

East of IH 35 to Old Bastrop Road

**WONDER WORLD DRIVE**

North of Hunter Road to City Limits



## City Lots

**104 Knox**

**208 Knox**

**218 Knox**

**217 MLK**

**607 Arizona**

**Community Gardens**

**Alamo Street Lot**

**Holland@Meadow Creek**

**11 Lots on Valley and Centre Streets**

### **11 Lots on Valley and Centre Streets**

**1** Fredrickburg @ Centre

**2** Comanche @ Centre

**3** Herndon @ Centre

**4 & 5** Centre @ Luck Alley (both sides)

**6** Valley @ Luck Alley

**7** Valley behind Mitchel Center

**8 & 9** Valley @Jackman (both sides of Street)

**10 & 11** Valley Street behind Tutles Lumber