

Master Purchase Order

DO NOT INVOICE TO THIS ADDRESS		Master Purchase Order No.		SC-00003388	
City & County of Denver		Date:	10/10/2018	Revision No.	
Purchasing Division		Payment Terms	Net 30	Ordinance	(as applicable)
201 West Colfax Avenue, Dept. 304		Freight Terms	DESTINATION		
Denver, CO 80202		Ship Via	Best Way		
United States		Buyer:	Brenda Hannu		
Phone: 720-913-8100 Fax: 720-913-8101		Phone:	720-913-8118		

PS Vendor ID: DENVR0000000261 Phone: 303-320-1270 Fax: 303-355-8250 Email: dmelchior@lljohnson.com

LL Johnson Distributing Company, Inc.

4700 Holly Street

Denver, CO 80216

Attn: Dan Melchior

Colorado Secretary of State ID: 19871413524

U.S. Federal SAM Registry Verification Date: 09/20/2018

Ship To: Multiple City Agencies

Bill To: As Specified By Agency

1. Goods/Services:

Pattlen Enterprises (dba LL Johnson Distributing Company, Inc.), a Corporation in the State of Colorado, ("Vendor") shall provide the goods, and any services related thereto, identified and described on attached **Exhibit A**, to the City and County of Denver, a Colorado municipal corporation (the "City"), all in accordance with the terms and conditions of this Master Purchase Order.

2. Ordering:

The City shall purchase one or more of the goods/services by issuing a written purchase order(s) or similar appropriate written document ("Order"), each of which will be deemed incorporated into this Agreement for purposes of such Order only.

3. Pricing:

The pricing/rates for the goods/services is contained on **Exhibit A** and shall be held firm for the term of this Master Purchase Order.

4. Term:

The term of this Agreement shall run from date of City signature to and including October 5, 2021. It is also a specific provision of this proposal that the City and the vendor may mutually agree to renew and continue the contract or agreement consummated under this proposal for additional periods of one year at the same terms and conditions. However, no more than two (2) yearly extensions shall be made to the original agreement.

5. Non-Exclusive:

This Master Purchase Order is non-exclusive. City does not guarantee any minimum purchase other than as provided herein.

6. Inspection and Acceptance:

City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or (3) reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Master Purchase Order. Vendor shall perform all services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services.

7. Shipping, Taxes and Other Credits and Charges:

All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Master Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all notices necessary and incidental to the fulfillment of this Master Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by D.R.M.C. § 20-107, et seq. The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. Vendor shall pay all sales and use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.

8. Risk of Loss:

Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.

9. Invoice:

Each invoice shall include: (i) the Purchase Order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v) an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.

10. Payment:

Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, et seq. after City accepts the goods/services. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for aggregate payments under this Master Purchase Order in excess of Eight Million Dollars (\$8,000,000.00). The Vendor acknowledges that any goods/services provided beyond those specifically described in **Exhibit A** are performed at Contractor's risk and without authorization from the City. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Master Purchase Order, encumbered by the City after receipt of Vendor's invoice and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Master Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Master Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may setoff against any payments due to Vendor any claims and/or credits it may have against Vendor under this Master Purchase Order.

11. Amendments/Changes:

Only the Executive Director of General Services or his/her delegate is authorized to change or amend this Master Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Master Purchase Order to exceed the amount appropriated and encumbered for this Master Purchase Order is expressly prohibited and of no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. The Vendor has no authority to bind City on any contractual matters.

12. Warranty:

Vendor warrants and guarantees to City that all goods furnished under this Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used and that any professional services associated with the goods, or stand alone professional services under \$10,000, shall be performed in a workmanlike and professional manner with the degree of skill and judgment normally exercised by recognized professionals performing services of the same or substantially similar nature. For any goods or services which are, or become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall at no expense to City, at City's election and to City's satisfaction, either remedy any and all defects or replace the defective goods within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.

13. Indemnification/Limitation of Liability:

Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Master Purchase Order or that are caused by or the result of any act or omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost for those goods/services that have been accepted by City under this Master Purchase Order. Notwithstanding anything contained in this Master Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, et seq.

14. Termination:

City may terminate this Master Purchase Order, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.

15. Interference:

Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Master Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.

16. Venue, Choice of Law and Disputes:

Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive

Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C. § 56-106. Director of Purchasing shall render the final determination.

17. Assignment/No Third Party Beneficiary:

Vendor shall not assign or subcontract any of its rights or obligations under this Master Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Master Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Master Purchase Order is intended solely for the benefit of City and Vendor with no third party beneficiaries

18. Notice:

Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.

19. Compliance With Laws:

Vendor shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules, regulations and executive orders related to its performance under this Master Purchase Order. City may immediately terminate this Master Purchase Order, in whole or in part, if Vendor or an employee is convicted, plead nolo contendere, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.

20. Insurance:

Vendor shall secure, before delivery of any goods/services, the following insurance covering all operations, goods and services provided to City. Vendor shall keep the required insurance coverage in force at all times during the term of the Master Purchase Order, or any extension thereof, during any warranty period, and for three (3) years after termination of this Master Purchase Order. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, City must be notified by Vendor. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Master Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of Vendor. Risk Management reserves the right to require additional policies and/or limits based on agreement scope of work. Vendor shall provide a copy of this Master Purchase Order to its insurance agent or broker. Vendor may not commence services or work relating to the Master Purchase Order prior to placement of coverage. Contractor certifies that the attached certificate of insurance attached to the Master Purchase Order documents, preferably an ACORD certificate, complies with all insurance requirements of this Master Purchase Order. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Master Purchase Order shall not act as a waiver of Vendor's breach of this Master Purchase Order or any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements. Vendor's insurer shall name as Additional Insured to its Commercial General Liability and Business Auto Liability policies the City and County of Denver, its elected and appointed officials, employees and volunteers. Vendor's insurer shall waive subrogation rights against the City. All sub-contractors and sub-consultants (including independent contractors, suppliers or other entities providing goods/services required by this Master Purchase Order) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Vendor. Vendor shall include all such entities as insureds under its policies or shall ensure that they all maintain the required coverages. Vendor shall provide proof of insurance for all such entities upon request by City. For Worker's Compensation Insurance, Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor expressly represents to City, as a material representation upon which City is relying, that none of the Vendor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Master Purchase Order, and that any such rejections previously effected, have been revoked. Vendor shall maintain Commercial General Liability coverage with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Vendor shall maintain Business Auto Liability coverage with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-hired vehicles used in performing services under this Master Purchase Order. For Commercial General Liability coverage, the policy must provide the following: (i) That this Master Purchase Order is an Insured Contract under the policy; (ii) Defense costs in excess of policy limits; (iii) A severability of interests, separation of insureds or cross liability provision; and (iv) A provision that coverage is non-contributory with other coverage or self-insurance provided by City. For claims-made coverage, the retroactive date must be on or before the first date when any goods or services were provided to City. Vendor must advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits

have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

21. Severability:

If any provision of this Master Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.

22. Survival:

All terms and conditions of this Master Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period. Bonds shall survive as long as any warranty period.

23. No Construction Against Drafting Party:

No provision of this Master Purchase Order shall be construed against the drafter.

24. Status of Vendor/Ownership of Work Product:

Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, software, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction.

25. Records and Audits:

Vendor shall maintain for three (3) years after final payment hereunder, all pertinent books, documents, papers and records of Vendor involving transactions related to this Master Purchase Order, and City shall have the right to inspect and copy the same.

26. Remedies/Waiver:

No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.

27. No Discrimination in Employment:

Vendor shall not refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor shall insert the foregoing provision in any subcontracts hereunder.

28. Use, Possession or Sale of Alcohol or Drugs:

Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Master Purchase Order or barring Vendor from City facilities or from participating in City operations.

29. Conflict of Interest:

No employee of City shall have any personal or beneficial interest in the goods/services described in this Master Purchase Order; and Vendor shall not hire or contract for services any employee or officer of City which would be in violation of City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

30. Advertising and Public Disclosure:

The Vendor shall not include any reference to the Master Purchase Order or to services performed or goods purchased pursuant to the Master Purchase Order in any of the Vendor's advertising or public relations materials without first obtaining the written approval of the Director of Purchasing.

31. No Employment of Illegal Aliens to Perform Work Under The Agreement:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The Contractor certifies that:

- (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Contractor also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
- (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

- (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S. or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

32. FEDERAL PROVISIONS:

Where the source of the funds, directly or indirectly for this Purchase Order is the Federal Government, the Vendor agrees to the applicable provisions set out below. The Vendor shall be responsible for determining which terms are applicable to its products and/or services.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). **DAVIS-BACON ACT COMPLIANCE** Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 3148 to 3148) as supplemented by Department of Labor regulations (29 CFR part 5). **ANTI-KICKBACK ACT COMPLIANCE** Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). **CONTRACT WORK HOURS AND SAFETY STANDARDS** Contractor agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT** Contractor agrees to comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. **CLEAN AIR AND WATER REQUIREMENTS** Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et. seq.), and the Clean Water Act (33 U.S.C. 1251 et. seq.). Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to the appropriate EPA regional office. **ENERGY CONSERVATION REQUIREMENTS** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6201) **NO SUSPENSION OR DEBARMENT** Contractor certifies that neither it nor its Principals or any of its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency. **BYRD ANTI-LOBBYING**. If the Maximum Contract Amount exceeds \$100,000, the Contractor must complete and submit to the City a required certification form provided by the City certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract grant of any other award covered by 31 U.S.C. 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

This Master Purchase Order is acknowledged and agreed to by:

Vendor Name: LL Johnson Distributing Company
(Company Name)

By: Dan Melchior
(Authorized Signature)

Print Name: DAN MELCHIOR

Title: V. P. & GEN. MGR.

Date: 10-10-18

City & County of Denver, Purchasing Division

By: Brenda Hannu

Print Name: Brenda Hannu

Title: Senior Buyer

Date: 10/10/2018

EXHIBIT "A"

Vendor: LL Johnson Distributing Company

Master Purchase Order No.: SC-00003388

It is recommended that you use your Master Purchase Order No. SC-00003388, in all future correspondence and/or other communications.

Description of the goods, and services related thereto, being purchased and pricing:

I. EQUIPMENT SERVICE AND TRAINING CONSIDERATIONS:

- a. The vendor shall continually train their technicians (in-house and factory) to service/repair City equipment purchased under this solicitation as required.
- b. The vendor's local service manager will provide technical service and support to the City; in his/her absence the regional service manager will substitute.
- c. The vendor will provide to the City a general preventive maintenance service seminar for the initial 2019 delivery of equipment on a day, time, and location mutually agreed upon by the City and the vendor at NO CHARGE.
 - 1) The vendor shall provide comparable training for additional equipment that is purchased subsequently by the City for the duration of this agreement at NO CHARGE.
- d. Vendor/Manufacturer shall allow City personnel to perform site visits, as necessary, to each local vendor location, or identifiable equivalent, to see the repair area as well as observe and discuss directly with the manufacturer, how accessories/attachments are installed/ removed from out front rotary units, specifically, as well as any other accessories and/or attachments on purchased equipment.
- e. When a machine cannot be reasonably repaired at a City location and must be taken to the vendor's place of business, the vendor shall pick up City equipment for Warranty and Non-Warranty Service at NO CHARGE.
- f. The vendor will provide to the City loaner equipment when City equipment repair timeline exceeds 48 hours/ 2 Business Days at NO CHARGE until the repaired City equipment is returned.
- g. Vendor shall forward equipment technical bulletins and recall notices to the City.
- h. Vendor will provide One (1) Service / Maintenance / Repair Manual 'at NO CHARGE' per piece of equipment type per applicable facility for each model delivered in both digital and paper format.

II. PARTS AND COMPONENT CONSIDERATIONS:

A. STANDARD CITY PARTS AND COMPONENT DELIVERY PROTOCOL:

- (a) Vendor is required to maintain adequate local inventories to cover normal usage by agencies (primarily Golf and/or Parks) of the City.
- (b) Vendor can accommodate 2-3-day delivery service by UPS or TORO 48-hour program, FOB Destination (from time of order), with a UPS charge. Orders placed by 2:00 PM will be shipped the same day. City will pay all delivery costs for expedited next day requests. Vendor may choose to personally deliver items, at no cost to City, so long as the part or supply is delivered within 3 days of a placed order. City may, at its own choosing, pick up parts and supplies from Vendor's local place of business. Special order, non-stock items must be returned within 30 days for full credit, otherwise a 20% restock fee will be charged.

- (c) Parks and Golf Operating Hours.
 - 1. Parks normal business hours for parts delivery are 6:00 AM to 3:30 PM.
 - 2. Golf normal business hours are 6:00 AM to 1:30 PM with availability to drop parts at golf shops between 8:00 AM to 5:00 PM.
- (d) The vendor shall collaborate with Denver Golf and Parks for their specific delivery requirements.
- (e) Deliveries of items not at vendor location that require shipment from outside the Denver Metro Area are anticipated within 48 hours (Monday through Friday excluding holidays) from the time the order. The City will be responsible for the ground freight cost for shipments within 48-hours from the manufacturer.
- (f) In the event an order cannot be delivered within the timelines above; the vendor shall contact the agency within two (2) hours of the initial City request and communicate the anticipated lead-time and/or other update.
- (g) The vendor is to accommodate expedited delivery requests by City agencies as required; the City shall only compensate the vendor for balance of expedited freight costs versus standard delivery costs. The City reserves the right to request the vendor use the City's FedEx or UPS account number if the costs are less than the vendor may charge.
- (h) The City shall not compensate the vendor for expedited freight costs for those items specifically identified by each agency, in writing, that the vendor is to routinely stock for that agency.
- (i) Continual shortages and expedite requirements on the part of the City due to the vendor's inventory shortages may result in termination of Master Purchase Order agreement (see Section IV for Liquidated Damages).
- (j) Vendor will allow the City to pick up parts within two (2) business hours after an order has been placed-when required.

B. PRODUCT RETURN PROTOCOL

- (a) Agencies shall receive full credit for any parts/components, still in the original packaging, returned within 30 days of initial order, otherwise a 20% restock fee will be charged.
- (b) Vendor shall contact each using agency within thirty days of agreement initiation to collaborate in relation to return parts/ components protocol(s).

C. PARTS AND COMPONENT WARRANTY

Vendor warrants and guarantees to City that parts and components furnished under the agreement shall be free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used. For any goods furnished under the agreement which become defective within twelve (12) months (unless otherwise specified*) after date of receipt by City, Vendor shall either, at City's election and to City's satisfaction, remedy all defects or replace the defective goods at no expense to City within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for all warranty work, regardless of third party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.

*Warranty for replacement parts is 90 days

III. SOFTWARE:

Vendor will provide equipment management software, access to online software training and available upgrades as part of the five-year term of this agreement at NO CHARGE. Software should include, at a minimum, modules for Equipment Management Inventory, Maintenance/Work Orders, Scheduled Maintenance and Parts Inventory. Standard reports from machinery may include hours on task, gas or fuel efficiency and any other standard reports as identified.

IV. LIQUIDATED DAMAGES:

If the vendor fails to deliver the supplies or perform the services within the time specified in his/her purchase order or contractual agreement, or any extension thereof, the actual damages to the City for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the vendor shall pay to the City as fixed, agreed and liquidated damages for each calendar day of delay, the amount of \$50/day for large equipment and \$10/day for smaller equipment. The City may terminate this purchase order or contractual agreement in whole or in part as provided in the "Default" provision. In that event, the vendor shall be liable for such liquidated damages accruing until such time as the City may reasonably obtain delivery or performance of similar supplies and services. The vendor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the vendor.

V. WARRANTY GUARANTEE:

Vendor shall be fully responsible for all warranty work, regardless of whether or not manufacturers of equipment, and/or its component parts, provide the actual warranty coverage. In addition, vendor shall have or establish a single, local source that will accomplish or coordinate any necessary warranty work. Vendor shall respond to requests for warranty assistance within twenty-four (24) hours.

Vendor understands that golf and parks equipment oil change intervals may be based on laboratory analysis rather than manufacturer recommended hour intervals. Break-in oil changes will be done according to manufacturer recommendations. The City will use lubricants that meet or exceed manufacturer recommendations. Vendor agrees that using oil testing to determine oil change intervals does not void any written or implied warranties. If there is a dispute on a warranty claim related to oil change intervals, the vendor shall request in writing and the City will provide the specified equipment's oil change tests and maintenance records.

VI. VENDOR PERFORMANCE MANAGEMENT:

Vendor will communicate and measure their performance to the City by providing surveys with mutually agreed upon criteria. Vendor will meet with City management to discuss improvements in relation to the survey and any additional metrics. Vendor will also participate in additional meetings as required by City.

VII. PRICING**A. Equipment Procured by Purchase Order Considerations**

If it is deemed to be in the best interest of the City, the City will submit to the awarded vendors(s) a City Purchase Order(s.)

B. Strategic Long Term Service, Equipment, and Parts/Component Pricing Considerations

(a) Shall be Awarded per City Master Purchase Order Agreement

(b) Hourly Service rates (to be used on an as needed basis) shall be held firm for the duration of the Master Purchase Order Agreement term and any extensions.

- (c) Proposed Price Percentage Adjustment rates for Equipment, Engines (Specific and General), Accessories, and Parts/Components shall be firmed and fixed for the term of the Master Purchase Order and any extensions (as applicable.)
- (d) In the event the market price on any item is reduced during the period of the Master Purchase Order Agreement, the successful vendor for that item shall reduce the proposal price to the City accordingly.

C. SERVICE RATES: (FIXED)

Applicable to the Repair and Maintenance of City Equipment purchased under this solicitation.

Standard Shop Rate- Repair to completed within 120 hours of initial drop off.	Hourly Rate: \$110.00
Expedited Shop Rate- Repair completed within 48 hours of initial drop off.	Hourly Rate: \$110.00
Field Rate- Vendor technician to arrive within 8 hours of City call/request; repair completed within 24 hours of technician arrival.	Hourly Rate: \$120.00

D. DISCOUNT OFF FUTURE PURCHASES

Applicable to future purchases of equipment, parts and accessories.

Percentage Discount off the future purchase of Equipment (includes equipment not named in this proposal)	25%
Percentage Discount off the future purchases of Parts and Accessories	0%*
Percentage Discount off the future purchase of other Catalogue Items in product line	10%

*Note: 80% of Toro's parts sales are in a category called Performance Parts. These parts are already discounted every day from 10-30%.

E. PROCUREMENT CARD PRICING: ACCESSORIES AND PARTS/COMPONENTS

The vendor cannot offer a separate pricing structure or charge an additional fee(s) for procurement card purchases.

F. PRICING UPDATES:

- (a) Applicable to Master Purchase Order Agreement(s) only.
- (b) Applies to additional future equipment, parts and components purchases.
- (c) Price list(s) changes/ updates will be allowed to go in effect only if preceded by a 30-calendar day written notice by the vendor to the City.
- (d) Vendors will be allowed to submit price list changes only once in any one 180-day time period.

- (e) Vendor cover letter and pricing lists must be dated, signed, and submitted to Purchasing and the Department of Parks and Recreation.

VIII. ADDED PURCHASE INCENTIVE

- (a) When the City purchases \$3,000,000.00 in equipment, LL Johnson Distributing Company will offer a new Outcross vehicle, valued at \$70,000.00, at no charge. For an additional purchase of \$2,500,000.00 in equipment, primarily Toro products, LL Johnson will offer a second free standard Outcross vehicle. City agrees not to exceed two free Outcross units under the term of the agreement.
- (b) If Parks and Golf (combined) make an initial purchase (delivery spring 2019) of at least \$3,500,000 worth of equipment, LL Johnson will provide and install wireless hour meters on all products that come with standard hour meters purchased and delivered during the term of the agreement, at no additional charge. The City would be responsible to purchase all base stations and pay LL Johnson for ancillary costs such as installation and optimization of base station.