City of Austin

Purchasing Office
P.O. Box 1088, Austin, TX 78767

May 29, 2019

Garrett Olson
Tennant Sales and Services Company
701 Lilac Dr.
Minneapolis, MN 55422
Garrett.Olson@tennantco.com

Dear Garrett:

The City of Austin City approved the execution of a contract with your company for Repair Services in accordance with the referenced solicitation.

Responsible Department:	Fleet Services
Department Contact Person:	Ruben Cantu
Department Contact Email Address:	Ruben.Cantu3@austintexas.gov 1190 Hargrave, Austin, TX 78702
Department Contact Telephone:	512-974-1532
Project Name:	Tennant Repair Services
Contractor Name:	Tennant Sales and Services Company
Contract Number:	MA 7800 NS190000026
Contract Period:	May 29, 2019 to May 28, 2020 (Initial term)
Dollar Amount	$21,840.00 per term, not to exceed $109,200.00
Extension Options:	4 (four)
Requisition Number:	RQM 7800 19030100347

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

DeJuan Brown
Procurement Specialist II
City of Austin
Purchasing Office

CONTRACT BETWEEN THE CITY OF AUSTIN
AND
TENNANT SALES AND SERVICE COMPANY
For
TENNANT REPAIR SERVICES
CONTRACT NUMBER: MA 7800-NS190000026

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Tennant Company ("Contractor"), having offices at 701 N. Lilac Drive, Minneapolis, MN, 55440.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Garrett Olson, Phone: (763) 540-1200, Email Address: Garrett.Olson@tennantco.com. The City's Contract Manager for the engagement shall be Ruben Cantu, Phone: (512) 974-1532, Email Address: Ruben.Cantu3@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 In order to accomplish the work described herein, the Contractor shall perform the tasks as outlined in, Exhibit C - Scope of Work.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid for the initial Contract term of 24-months an amount not-to-exceed $43,680 for all fees and expenses, and three, 12-month extension options not to exceed $21,840 per option.

3.2 **Economic Price Adjustment.**

3.2.1. **Price Adjustments.** Prices shown in this Contract shall remain firm for the first 12-month period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed five percent (5%) for any single line item and in no event

shall the total amount of the contract be automatically adjusted as a result of the change in one or more line item made pursuant to this provision. Prices for product or services unaffected by verifiable cost trends shall not be subject to adjustment.

3.2.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

3.2.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

3.2.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).

3.2.4.1.2 **Base Price.** Initial price quoted, proposed and/or contracted per unit of measure.

3.2.4.1.3 **Adjusted Price.** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.

3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.

3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

3.2.4.2.2 If the referenced index is no longer available shift up to the next higher category index.

3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or $ of Base Price: 100%	
Database Name: CPI	
Series ID: CUUR000SETD	
☒ Not Seasonally Adjusted	☐ Seasonally Adjusted
Geographical Area: U. S. City Average	
Description of Series ID: Motor vehicle maintenance and repair	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: Repair Services	

3.2.5 **Calculation.** Price adjustment will be calculated as follows:

3.2.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

3.2.6 If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

3.3 **Invoices.**

3.3.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department**. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Fleet Services
Attn:	Accounts Payable
Address	1190 Hargrave Street
City, State, Zip Code	Austin, TX 78702

3.3.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.3.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 **Payment.**

3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.4.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.5 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 **Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 24 months and may be extended thereafter for up to 3 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 This is a 24 month Contract. Prices are firm for the first twelve (12) months.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default

by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance**: The following insurance requirements apply.

5.1.1 **General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are $500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of $500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are $100,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.6 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 **Warranty – Price.**

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the

location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 **Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF**

THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:	To the Contractor:
City of Austin, Purchasing Office	Tennant Sales and Service Company
ATTN: DeJuan Brown, Procurement Specialist II	ATTN: Garrett Olson, Contract Manager
P O Box 1088	701 N. Lilac Drive,
Austin, TX 78767	Minneapolis, MN, 55440

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City

shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the

Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 **Subcontractors.**

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays.** The following holidays are observed by the City:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Prohibition of Boycott Israel Verification.** Pursuant to Texas Government Code §2270.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract.

i. does not "boycott Israel"; and
ii. will not "boycott Israel" during the term of this Contract.

C. The Principal Artist's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

7.28 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.29 **Incorporation of Documents. Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.30 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.30.1 any exceptions to the Offer accepted in writing by the City;

7.30.2 the Supplemental Purchase Terms and Conditions;

7.30.3 the Standard Purchase Terms and Conditions;

7.30.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

TENNANT SALES AND SERVICE COMPANY	CITY OF AUSTIN
By: _____ Signature	By: _____ Signature
Name: Garrett Olson Printed Name	Name: DeJuan Brown Printed Name
Title: Contract and Bid Administrator	Title: Procurement Specialist II
Date: 5/29/2019	Date: 5/29/2019

List of Exhibits

Exhibit A	Tenant Sales and Service Company Pricing Agreement
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Scope of Work, Section 0500

EXHIBIT "A" - PRICING SHEET
CITY OF AUSTIN ("CITY") - FLEET SERVICES
REPAIR SERVICES WITH ASSOCIATED PARTS FOR TENNANT EQUIPMENT

Solicitation No.:

Special Instructions: A price of '0' (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A blank section will be interpreted by the City that the responder does not wish to price that item.

SECTION 1 -- HOURLY LABOR RATE

Contractor must guarantee to hold prices firm for each twelve (12) month period and any revision to the Labor Rate may only be adjusted using the Economic Price Adjustment - Specified Parts and/or Services provision in Section 3 of the contract.

LINE ITEM	DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1.1	**LABOR RATE PER HOUR FOR REPAIR SERVICES** (Normal business hours as specified in Section 0500)	140	HOUR	$90.00	$ 12,600.00

SECTION 2 - OTHER SERVICES

LINE ITEM	DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
2.1	**FLAT FEE FOR SERVICE CALL**	20	EA	$95.00	$ 1,900.00
2.2	**FLAT FEE FOR EXPEDITED SERVICES**	10	EA	$150.00	$ 1,500.00
2.3	**FLAT FEE FOR ROUND TRIP DELIVERY OF CITY EQUIPMENT**	10	EA	$150.00	$ 1,500.00

TOTAL EXTENDED PRICE FOR SECTIONS 1 AND 2 :	**$ 17,500.00**

SECTION 3 -- CONFIRMATION OF REQUIREMENTS

3.1	Do the service technicians have three years of hands-on experience in the last five years?	**X YES** ○ **NO**
3.2	Is your Company able to provide expedited repairs?	**X YES** ○ **NO**

DELIVERY TERMS: FOB Destination, Freight Pre-paid and Allowed

DELIVERY METHOD: COMMON CARRIER ____X_____ VENDOR STAFF _____

COMPANY NAME: Tennant Sales and Service Company

EXHIBIT B
CITY of AUSTIN
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

(1) Not to engage in any discriminatory employment practice defined in this chapter.

(2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.

(3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.

(4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.

(5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.

(6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.

(7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of $2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 29 day of May, 2019

CONTRACTOR Tennant Sales and Service Company

Authorized Signature 

Title Contract and Bid Administrator

EXHIBIT C
SCOPE OF WORK 0500

1. **PURPOSE**

The City of Austin (City) seeks to establish a contract with a qualified Contractor to provide repair services for Tennant equipment and services on an as-needed basis. The intent of this contract is to provide non-warranty repair services, however the Contractor shall be authorized by the manufacturer to provide warranty repair services.

The Contract will be utilized by the City's Fleet Services Department. The City reserves the right to allow other City Departments to utilize the Contract.

Any requirements or services that have been omitted from this scope of work that are clearly necessary or in conformance shall be considered a requirement although not directly specified or called for in the scope of work.

2. **DEFINITIONS**

2.1 Repair: to return or restore a broken, damaged, or failed part, vehicle, or piece of equipment to an acceptable operating or usable condition or state.

2.2 Service Center: any City facility where vehicles and equipment are repaired or serviced.

2.3 Expedited Services: when the City requests priority repair services for City-owned vehicles and/or equipment.

3. **CONTRACTOR QUALIFICATIONS**

The Contractor shall:

3.1 Have a minimum of three (3) consecutive years of experience providing parts and repair services within the last five (5) years to municipalities or organizations similar in size and scope to the City.

3.2 Be a manufacturer authorized parts dealer/reseller for the specified vehicles/equipment.

3.3 Comply with all Federal, State, and local codes, rules, and regulations concerning safety requirements.

4. **CONTRACTOR'S RESPONSIBILITIES**

4.1 **General**

The Contractor shall:

4.1.1 Provide a single point of contact and relevant contact information (name, phone number, fax, email, etc.) for receiving orders from the City within five (5) working days of request by the City, or at a time mutually agreed to between the Contractor and the Contract Manager.

4.1.1.1 An authorized City representative will contact the Contractor by e-mail, fax, or telephone to place an order for parts or requesting repair services.

4.1.2 Be responsible for any and all damage to City vehicles, equipment, or property by the Contractor's representative actions.

4.1.2.1 If damage occurs, Contractor shall notify the Contract Manager immediately.

4.1.2.2 The Contractor shall repair any damage to the satisfaction of the City, at no cost to the City. The City may however, at its sole discretion, elect to make repairs or replacements of damaged property and deduct the cost from any payments owed to Contractor or to recover costs if no payments are owed.

4.1.3 Notify the Contract Manager of recall notices, warranty replacements, safety notices, or any applicable notice regarding all City purchased parts within two (2) weeks of publication.

4.1.4 Provide a report for a City department of all parts or repair services performed for a specified timeframe (monthly, yearly, etc.) within five (5) working days upon request by an authorized City representative of the department, or at a time mutually agreed to between the Contractor and the authorized City representative. The report shall be in a sortable electronic or other City-approved format.

4.1.4.1 For repair services, the report shall itemize the repair date, requesting Service Center, type of repair, cost for labor (including hours and rates), description and cost for parts, total cost of repair, and the repaired vehicle or equipment identification number (license plate, VIN or unit number).

4.2 **Repair Services**

The Contractor shall:

4.2.1 Provide all labor, parts, equipment, materials, tools, supervision, and transportation required to perform the specified repairs according to the manufacturer's recommended repair techniques and standards.

4.2.2 Perform all repair services on the Fleet Service Center premises unless authorized by City representative.

4.2.3 Diagnose the vehicle for repair and provide a written estimate to the requesting authorized City representative within two (2) working days, or at a time mutually agreed to between the Contractor and authorized City representative. The written cost estimate shall include:

4.2.3.1 The vehicle or equipment identification number (license plate, VIN or unit number)

4.2.3.2 Description of the cause of failure

4.2.3.3 Description of the correction or repair needed to fix the failure

4.2.3.4 The estimated labor hours and projected cost based on labor rate offered

4.2.3.5 Description of the parts needed to make the repair and associated cost

4.2.3.6 The total cost to complete the repair services

4.2.3.7 The expected amount of time needed for the Contractor to complete the repair

4.2.4 Not proceed with repairs until after receiving written authorization (e.g. email) and a unique delivery order from an authorized City representative based on the written estimate provided by the Contractor. The Contractor shall not proceed with repairs based on verbal authorizations and assumes all liability and responsibility for repairs performed based on such verbal authorizations.

4.2.5 Notify the requesting authorized City representative of any hidden damage discovered that increases the original estimate provide to the City. The Contractor shall submit a new estimate that identifies any additional cost, material, and time added based on the hidden damage to the requesting authorized City representative for written approval and an updated delivery order before proceeding with the repairs.

4.2.6 Complete the repair within the timeframe specified in the estimate. If the Contractor cannot complete the repair within the estimated timeframe, the Contractor shall request an extension in writing (e.g. email) that includes the reason for the extension and the date repairs will be completed to the requesting City representative. The requesting City representative will provide the Contractor with a written (e.g. email) approval or denial of the extension request.

4.2.7 Understand that the City may inspect and/or test the vehicle/equipment within two (2) working days of receipt of the repaired vehicle to ensure the repair was completed in a satisfactory manner.

4.2.7.1 If the City detects deficiencies in the repair, the City will reject the receipt of the vehicle/equipment and the Contractor shall correct the deficiencies in the repair at its own expense, which shall include picking up and returning the vehicle/equipment if applicable.

4.2.7.2 The City reserves the right to conduct any tests or inspections deemed necessary to confirm repairs and parts conform to the vehicle/equipment manufacturer's specifications. The inspections completed by the City will not relieve the Contractor of its obligation to ensure all repairs, articles, materials, and parts are consistent with the vehicle/equipment manufacturer's specifications, and are fit for their intended use.

4.2.8 Be responsible for the risk of loss or damage to all vehicles/equipment and parts in the care, custody, and control of the Contractor until accepted by an authorized City representative.

4.2.9 Return all non-usable cores to the requesting authorized City representative upon completion of each repair, if requested by the City. The Contractor shall not charge a fee for usable cores removed from a City vehicle/equipment repaired at the Contractor's facility.

4.2.10 Provide any parts removed in the repair of the vehicle/equipment for verification purposes upon request by an authorized City representative.

4.2.11 Properly recycle and/or dispose of hazardous waste, including used and contaminated lubricants and filters, in accordance with all applicable laws, rules and regulations to ensure the highest level of safety to the environment and public health at no additional cost to the City.

4.2.11.1 The Contractor shall provide the manifest ticket for hazardous materials or other proof of proper disposal on request within ten (10) working days of the request of an authorized City representative, or at a time mutually agreed to between the Contractor and authorized City representative.

4.2.12 Provide a 12-month labor warranty for all repair services. The Contractor shall provide a copy of the labor warranty to the requesting authorized City representative with each delivery, or within five (5) working days of request by an authorized City representative.

4.3 **Parts (for Repair Services)**

4.3.1 General

The Contractor shall:

4.3.1.1 Provide new OEM parts for the specified vehicles/equipment, except for core components on renewed assemblies, which meet all applicable federal, state and local requirements for quality and safety.

4.3.1.1.1 Used, factory seconds, shopworn, demonstrator, prototype, and discontinued parts or materials are not acceptable.

4.3.1.1.2 Remanufactured or rebuilt parts may be used if new parts are not available or if the City requests them in writing (e.g. email).

4.3.1.2 Seek approval from an authorized City representative in writing (e.g., email) to use non-OEM, rebuilt, or remanufactured parts, if new OEM parts are not available. The non-OEM parts shall meet or exceed the manufacturer's specification for the original OEM parts.

4.3.1.3 Have an adequate parts inventory 95% of the time to complete repairs and fill part orders within the timeframe stipulated in this Scope of Work.

4.3.1.4 Provide a minimum of a 12-month warranty or the standard period as provided by the manufacturer, whichever is for the greatest length of time, for defects in material and workmanship.

4.3.1.4.1 The warranty period for all parts shall start when the part is installed on the City vehicle/equipment as evidenced by the Contractor's invoice for repair services or City work order.

4.3.1.4.2 This warranty shall provide for replacement parts and shall include pick up and return of the vehicle or equipment, removal of the defective part and installation of the replacement part at no additional cost.

4.3.1.5 Guaranty that the parts provided shall not void any existing manufacturer's warranty for City vehicles/equipment.

4.3.1.6 Provide a copy of the manufacturer's parts warranty within five (5) working days of request by an authorized City representative.

4.4 **Expedited Services**

The Contractor shall:

4.4.1 Provide Expedited Services when requested by an authorized City representative. The Contractor may assess a flat dollar amount per vehicle/equipment repair for Expedited Services as specified in Section 0600 - Bid Sheet.

4.4.2 Not charge the City additional fees for repair services performed during the Contractor's off-shift hours.

4.4.2.1 The Contractor shall note Expedited Services on the invoice when authorized by the City.

4.4.3 Provide an emergency point of contact and relevant contact information (name, cell and office phone numbers, email, etc.) who is on-call 24 hours daily including weekends and holidays to the Contract Manager upon request by the City, or at a time mutually agreed to between the Contractor and the Contract Manager. The Contractor shall notify the Contract Manager of any changes to the emergency point of contact.

5. **CITY REQUIREMENTS**

The City will:

5.1 Provide the Contractor with name(s) of personnel authorized to order repair services within one month of Contract effective date.

5.2 Contact the Contractor by e-mail, fax, or telephone to when requesting repair services.

5.3 Test and/or inspect all repairs during the term of the Contract. The City reserves the right to conduct any tests or inspections deemed necessary to ensure repairs and parts conform to the vehicle/equipment manufacturer's specifications. Inspections completed by the City will not relieve the Contractor of its obligation to ensure all repairs, articles, materials, and parts are consistent with the vehicle or equipment manufacturer's specifications, and are fit for their intended use.

City of Austin Purchasing Office

Sole Source
Certificate of Exemption

DATE: 1/24/2018

DEPT: FLEET SERVICES DEPARTMENT

TO: Purchasing Officer or Designee

FROM: RUBEN CANTU

PURCHASING POC: DeJuan Brown

PHONE: 512-974-1532

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than $50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:
Link to Local Government Code

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☑ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?
- What is the municipal purpose that this procurement addresses or furthers?
- Why is the procurement a sole source?
- Has this procurement or a similar procurement been competitively solicited in the past?
- Why is the vendor the only viable solution?
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
- Is there a concern regarding warranty, compatibility, and/or routine safety?
- Are there territorial or geographic restrictions for the product distribution and sale?
- Are there other resellers, distributors, or dealers in the market?
- What other suppliers or products/services were considered?
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
- Is there a way to retrofit another brand? What is this estimated associated cost?
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
- **Prices were determined to be reasonable based on the following (select all that apply):**

☐ Prices are the same or similar to current City contract.
Notes: At a minimum, note the City of Austin contract number and title.

☐ Prices are the same or similar to current contract with another government.
Notes: At a minimum, note the contract number, title and government that created the contract.

☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).

☐ Prices are established by law or regulation.
Notes: At a minimum, note the legal or regulatory reference that established the prices.

☒ Other means of determining Price Reasonableness.
Notes: Repair services for Tennant Sweepers and Equipment is only available through Tennant Sales and Service Company as a sole source, therefore no reasonable price comparison is available.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

Place holder for department sole source description area

This request is for a master agreement for repair services and preventive maintenance for Tennant Sweepers and Equipment with Tennant Sales and Services Company located at 701 N. Lilac Drive, P.O. Box 1452, Minneapolis, MN 55440-1452; 763-540-1200. Tennant Sales and Service Company is the sole source for all Tennant Sweepers and Equipment repair services. Authorized distributors for Tennant Parts (Ferguson and Grainger) do not have the ability to provide repair services on Tennant Sweepers and Equipment. Repair services is handled directly by Tennant Sales and Service Company technicians. Tennant Field Service Technicians provides an onsite service, and are factory trained and fully insured.

The use of parts and service other than those from Tennant on Tennant products will void the warranties.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
   - ☐ Scope of Work or Statement of Work or Vendor Proposal
   - ☐ Vendor's Quote
   - ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
   - ☑ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why

4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

   (Vendor Name): Tenant Sales & Services Company for

   (Description of Procurement): Services for Tenant Equipment

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

   ☐ This is a one-time request for $_____

   ☑ This is a multi-term contract request for 24 (# months for base term) in the amount of $ 43,680.00 with 3 (# of renewal options) for $ 21,840.00 each for a total contract amount of $ 109,200.00 .

Recommended Certification — Originator — 3/1/19 Date

Approved Certification — Department Director or designee — 3/1/19 Date

Assistant City Manager / General Manager — Date
(procurements requiring Council approval)

Purchasing Office Review — Authorized Purchasing Office Staff — 4/18/19 Date

Purchasing Office Management Review — Purchasing Officer or designee — Date
(Procurements requiring Council approval)

701 N. Lilac Drive
P.O. Box 1452
Minneapolis, MN
55440-1452

T: 763.540.1200
F: 763.540.1437

December 21, 2018

City of Austin
Fleet Services Department
1190 Hargrave Street
Austin, TX 78702

RE: SOLE SOURCE

To Whom this May Concern,

Pursuant to your request, this will advise you that Tennant Company is the sole source for Tennant authorized equipment, parts and services sold directly by its wholly-owned subsidiary, Tennant Sales and Service Company.

Please note that Tennant Sales and Service Company and its authorized distributors are the sole source for Tennant authorized commercial and industrial parts and services. The use of parts and service other than those from Tennant on Tennant products will void the warranties.

The authorized distributors in your area are listed below. These distributors have the capability of providing parts, but do not have the ability to provide service. Service would be handled directly by Tennant Sales and Service Company technicians. Our Field Service Technicians provide onsite service, and are factory trained and fully insured.

Ferguson
13500 Immanuel Rd
Pflugerville, TX 78660

Grainger
6006 E Ben White Blvd
Austin, TX 78741

Should you have any questions regarding this matter, please contact us at your convenience.

Sincerely,



Garrett Olson
Contract and Bid Administrator
www.tennantco.com
.