

REQUEST FOR AGENDA PLACEMENT FORM

MAR 26 2018

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Ralph McBroom

TODAY'S DATE: March 15, 2018

DEPARTMENT: Purchasing

DEPARTMENT HEAD: Ralph McBroom

REQUESTED AGENDA DATE: March 26, 2018

SPECIFIC AGENDA WORDING: Consider and approve Master Rental Agreement and Johnson County Contract Terms Addendum to Rental Contract and Star Tractor's Rental Agreement for rental of equipment.

PERSON(S) TO PRESENT ITEM: Ralph McBroom C.P.M.

SUPPORT MATERIAL: (See attached)

TIME: 5 min

(Anticipated number of minutes needed to discuss item)

ACTION ITEM: X

WORKSHOP

CONSENT:

EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY: X

AUDITOR:

PERSONNEL:

BUDGET COORDINATOR:

IT DEPARTMENT:

PURCHASING DEPARTMENT:

PUBLIC WORKS:

OTHER:

*****This Section to be completed by County Judge's Office*****

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____ Date _____

**MASTER RENTAL AGREEMENT AND
JOHNSON COUNTY CONTRACT TERMS
ADDENDUM TO RENTAL CONTRACT**

This Master Rental Agreement And Johnson County Contract Terms Addendum to Rental Contract, (hereinafter referred to as the "AGREEMENT") is between **Johnson County, Texas**, a political subdivision of the State of Texas, (hereinafter referred to as "COUNTY"), and STAR TRACTOR, LTD. (hereinafter referred to as "VENDOR"), collectively referred to as the "PARTIES", and is a master rental agreement and an addendum to the Rental Contract of Vendor between the Parties for the rental of equipment and together this AGREEMENT and the Rental Contract shall constitute the entire and complete contract between the Parties.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree and understand as follows:

1. This Agreement is to apply to each and every Rental Contract for the rental of equipment by County from Vendor after the date this Agreement is approved by the Parties and shall continue to be effective until APRIL 30TH 2019. A signed copy of this Agreement shall be attached to and become part of each Rental Contract between the Parties as though said copy of this Agreement were an original. In the event a signed copy of this Agreement is not attached to a Rental Contract, the Parties agree that the terms and conditions of the Agreement will apply to the Rental Contract as though said Agreement had been attached.
2. This Agreement is to clarify, limit, modify or delete terms and provisions of the Rental Contract and in the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of those contractual provisions tendered to Johnson County in the Rental Contract, this Agreement shall control and amend the contractual provisions of the Rental Contract and any provisions in the Rental Contract to the contrary are hereby deleted.
3. This Agreement is being executed in order to facilitate County being able to rent equipment from Vendor on an "as needed" basis and that when a representative of County signs the Rental Contract upon taking possession of the equipment, the representative of County is acknowledging the tender or delivery of Vendor's equipment, the rate to be charged and the time period of the rental; however, the representative of County is not agreeing to or binding the County to any terms and conditions that conflict with this Agreement.
4. Each Rental Contract with a signed copy of this Agreement attached will be an effective agreement between the Parties upon the Purchasing Agent of County issuing a Purchase Order for the rental of equipment listed on the Rental Contract and a representative of County signing the said Rental Contract.

5. Either Party may cancel this Agreement by providing written notice to the other Party thirty (30) days prior to cancellation.
6. This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement will be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision in the Rental Contract stating that County agrees to waive any right to trial by jury is hereby deleted.
7. Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision in the Rental Contract to the contrary is hereby deleted.
8. Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term in the Rental Contract which provides for such a claim is hereby deleted.
9. Under the Texas Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references in the Rental Contract of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.
10. County is a political subdivision of the State of Texas, and therefore has certain governmental/sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said insurance coverage is limited to the statutory maximum limits of the Texas Tort Claims Act (Chapter 101, Texas Civil Practice and Remedies Code); therefore, any provisions in the Rental Contract requiring County to provide and maintain any insurance in excess of the statutory maximum limits are hereby deleted.
11. County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled; therefore any provisions in the Rental Contract to the contrary are hereby deleted.
12. County will provide property insurance covering the replacement (fair market value) cost of the equipment rented and will provide Vendor with a certificate of insurance.
13. County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions in the Rental Contract to the contrary are hereby deleted.

14. County does not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provisions in the Rental Contract to the contrary are hereby deleted.
15. County does not agree to waive any rights and remedies available to County under the Texas Deceptive Trade Practices-Consumer Protection Act; therefore, any provisions in the Rental Contract to the contrary are hereby deleted.
16. Except for a heavy equipment tax, County does not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Rental Contract, the equipment or its use; therefore, any provisions in the Rental Contract to the contrary are hereby deleted.
17. Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:
 - a. the date the governmental entity receives the goods under the contract;
 - b. the date the performance of the service under the contract is completed; or
 - c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions in the Rental Contract to the contrary are hereby deleted.

18. To the extent, if any, that any provision in this Agreement is in conflict with Chapter 552 of the Texas Government Code (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act.
19. Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused their authorized representative to execute this Agreement. Each representative whose signature appears

on this Agreement represents and does hereby certify that they have the authority to enter into this Agreement for their represented Party.

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:



Roger Harmon
County Judge

3/26/18
Date

Attest:



County Clerk, Johnson County



3/26/18
Date

VENDOR:

Tony Larson
Authorized Representative
Printed Name: TONY LARSON
Title: MANAGER

3/6/2018
Date

ADDITIONAL TERMS AND CONDITIONS OR RENTAL AGREEMENT

1. **LESSOR'S OBLIGATION:** All rental equipment shall be in good operating condition at the time furnished by the LESSOR. Acceptance of equipment by the LESSEE will constitute acknowledgement that the equipment was furnished in good, safe, and serviceable condition unless STAR TRACTOR is notified to the contrary in writing within three (3) days following the receipt of the equipment.
2. **TRANSPORTATION EXPENSES:** Unless otherwise stated, all transportation expenses from, or to, the place of business of LESSOR shall be paid by the LESSEE.
3. **LESSEE'S OBLIGATION TO REPAIR AND MAINTAIN:**

LESSEE shall, at LESSEE'S expense, supply all fuel, lubricants, repair parts, labor, and all other items necessary to operate the equipment and to maintain it in good operating condition during the term of this Rental Agreement. The equipment shall be returned in the same condition as when received, except for normal wear. If the equipment, when returned to the LESSOR, is in need of repair, or is in a damaged and worn condition (including damage and wear to tires), not attributed to normal wear, LESSEE shall be obligated to pay LESSOR the reasonable costs of the repairs and, in addition, the LESSEE shall be obligated to continue the payment of rental, at the amount herein stated, for the amount of time reasonably necessary to repair LESSOR'S equipment and to restore it to a good, safe, and serviceable condition, LESSEE agrees that any repairs and labor furnished by STAR TRACTOR, shall be charged to and paid by LESSEE at STAR TRACTOR'S established prices plus any local, county, or state tax, for similar repairs, parts, or accessories, in force at the time same are supplied.
4. **LESSEE'S RESPONSIBILITY FOR LOSS:**

LESSEE is responsible for the rented equipment at all times while it is in the possession, custody, or control of LESSEE and all risks of loss shall be borne by LESSEE, whether such loss is caused by the negligence of LESSEE, abuse, fire, theft, accident, acts of God, or any casualty of any nature whatsoever, it being the intent of LESSOR and LESSEE that LESSEE shall bear any loss resulting from the loss or damage to said equipment, whether or not LESSEE was in any way at fault.
5. **(a) INSURANCE:** LESSEE shall provide the following physical damage insurance coverage on the rented equipment to LESSOR:
\$1000.00 deductible – all risks – contractor's equipment floater with the loss payable clause in favor of STAR TRACTOR.
LESSEE shall, in such event, furnish certificate of insurance coverage to LESSOR, which coverage shall be through existing policies owned by LESSEE, or through any insurance company authorized to do business in the State of Texas.
(b) LESSEE shall promptly pay all taxes and assessments of the equipment (including but not limited to any federal, state and local taxes).
6. **INDEMNITY:** LESSEE shall indemnify LESSOR against, and hold LESSOR harmless from all claims, actions, proceedings, costs, damages, and liability, including attorneys' fees and investigation expenses incurred in the defense of any said claims, arising out of, or connected with, or resulting from the equipment, including without limitation, the manufacture, selection, delivery, possession, use, maintenance, operation, and return thereof.
7. **DISCLAIMER OF ALL WARRANTIES** LESSOR MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE EQUIPMENT RENTED AND HEREBY DISCLAIMS THE SAME. There are no oral or written promises, terms, conditions, representations, or warranties, of any nature whatsoever, expressed, or implied, concerning the herein described equipment.
8. **LIMITATION OF LESSOR'S LIABILITY:**

In the event the rental equipment is not in good operating condition at the time furnished by LESSOR, and LESSOR is notified thereof within the time stated in paragraph 1, LESSOR shall refund a pro rata part of the rental charge until the equipment is placed in good operating condition by the LESSOR. Such right to obtain a refund of rental shall constitute LESSEE'S sole and exclusive remedy and LESSEE hereby agrees that no other remedy, (including, but not limited to, claims for INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, OR ANY CAUSE, LOSS, ACTION, CLAIM, OR DAMAGE WHATSOEVER, INCLUDING LOSS OF TIME, OR INJURY TO PERSON, OR PROPERTY, OR ANY OTHER CONSEQUENTIAL DAMAGE OR INCIDENTAL OR ECONOMIC LOSS) shall be available to LESSEE.
9. **DEFAULT BY LESSEE AND ATTORNEY'S FEES:**

If LESSEE shall make default in punctually paying any rental, or if LESSEE shall breach any other term, covenant, or condition in this Rental Agreement, then and in any such event, LESSOR shall have the right to take immediate possession of the said equipment and for such purposes LESSOR may enter upon any premises where said equipment may be and with or without notice to its intention to retake the same, without being liable to any suit or action or proceeding by LESSEE. Upon LESSOR'S retaking possession of the said equipment, this Rental Agreement shall thenceforth terminate without prejudice to LESSOR'S right to recover for rental accrued to the time LESSOR takes possession under the provisions of paragraph 3 above. LESSEE agrees to pay the reasonable expenses incurred by LESSOR for attorneys' fees and court costs in connection with the enforcement of any obligations of LESSEE, or the collection of any monies owed by LESSEE, under the terms of this Agreement.
10. **APPLICABLE LAW VENUE:** The construction, enforcement, interpretation and validity of this Agreement shall be governed by the laws of the State of Texas. The obligations of the parties are performable, and venue for any legal action arising out of this Agreement shall lie in Parker County, or Tarrant County, Texas (LESSOR'S discretion).