

MAY 10 2019

Approved

REQUEST FOR AGENDA PLACEMENT FORM

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

SUBMITTED BY: Ralph McBroom

TODAY'S DATE: April 30, 2019

DEPARTMENT: Purchasing

DEPARTMENT HEAD: Ralph McBroom

REQUESTED AGENDA DATE: May 10, 2019

SPECIFIC AGENDA WORDING: Consider and approve Master Rental Agreement and Johnson County Contract Terms Addendum to Rental Contract and Bane Machinery, Inc. Rental Agreement for rental of equipment.

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

SUPPORT MATERIAL:

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 Base Machinery, Inc. (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 30 2020. 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

05/10/19
Date

Attest:



County Clerk, Johnson County



05/10/19
Date

VENDOR:

Bone Machinery, Inc.
Authorized Representative
Printed Name: Emily Barnett
Title: Rental Assistant Manager

Jan. 18, 2019
Date

Bane Machinery, Inc. (Lessor)
 2449 Manana Dr
 Dallas, TX 75220
 Phone: (214) 352-2468
 Fax: (214) 352-2460

George P. Bane Inc. (Lessor)
 3402 NNE Loop 323 PO Box 75712
 Tyler, TX 75712 Tyler, TX 75708
 Phone: (903) 597-6641
 Fax: (903) 593-0519

Bane Machinery Fort Worth, L.P. (Lessor)
 10505 North Freeway P.O. Box 77859
 Ft. Worth, TX 76177 Ft. Worth, TX 76177
 Phone: (817) 847-5894
 Fax: (817) 232-3382



RENTAL CONTRACT

CUSTOMER INFORMATION:

Customer Name: _____ Customer Number: _____

Purchase/Job#:		Date:	
Lessee:		Contact Name:	
Address:		Contact Phone:	
City:		Fax:	
State:		Main Phone:	
Zip:		Email:	

Job Site Location: _____

DESCRIPTION OF EQUIPMENT	BILLING INFORMATION
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Stock:		1 Week:	
Make:		Rental Rate:	
Model:		Delivery:	
Hours Out:		Pick Up:	
Serial:		Haul Charge:	
Year:		Total:	

DESCRIPTION OF ATTACHMENT(S)

Stock	Make	Model	Serial

ADDITIONAL RENTAL INFORMATION	
Rental Start Date:	_____
Guaranteed Rental Period:	1 week
1 st Payment Due:	Net 30 Days
INSURANCE INFORMATION	
Insurance Certificate Provided:	YES <input type="checkbox"/> NO <input type="checkbox"/>
Purchase Loss Damage Waiver (LDW)	YES <input type="checkbox"/> NO <input type="checkbox"/>
LDW Amount (if no insurance) 15% Rental Rate Listed Above	
Equipment Amount:	_____

Rental rates are based on an 8 hour date, 40 hour week and 160 hours 4-week period. Machine to be returned in the same condition as received except for normal wear. Lessee is responsible for daily maintenance, preventive maintenance, general servicing and care while machine is on rent. Equipment must be returned full of fuel or will be charged for fueling. Current diesel cost is \$ 6.50 per gallon. Current fuel cost per gallon for (D.E.F.) diesel exhaust fluid is \$ 15.00 per gallon.
CUSTOMER IS RESPONSIBLE FOR REVIEWING OPERATORS MANUAL FOR RE-FUELING REQUIREMENTS OF MACHINE RENTED.
 NOTE: LOSS OF MACHINE PERFORMANCE AND FAILURE RESULT IF D.E.F. TANK RUNS EMPTY OR IMPROPER FLUID HAS BEEN ADDED, DAMAGES AS A RESULT WILL BE CUSTOMERS REPONSIBILITY.

Provide a current insurance certificate to include equipment coverage in accordance to the "General Conditions on Rental" Lessee agrees to general conditions of rental: Initial: _____

LESSEE'S SIGNATURE: _____	DATE: _____
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CUSTOMER RESPONSIBLE TO MAINTAIN CURRENT PROOF OF INSURANCE AT ALL TIMES TO AVOID LDW CHARGE: By signing this contract, customer understands to loss, destruction or damage to rented equipment is the renter's responsibility. The purchase of Loss Damage Waiver (LDW) is not mandatory and may be declined if proof of acceptable coverage is provided. Purchase of LDW will cover the renter's responsibility for loss or damage to rented equipment resulting from covered perils (literature provided upon request) during the

LESSEE SIGNATURE: _____	DATE: _____
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period of the rental agreement, subject to deductible, terms-conditions and exclusions as stated in the contract. NOTE: MISUSE AND/OR ABUSE OF EQUIPMENT ARE NOT COVERED UNDER LDW AND WILL BE THE FINANCIAL RESPONSIBILITY OF THE RENTER. **LDW DEDUCTIBLE: \$1,000.00**

GENERAL CONDITIONS OF RENTAL

THE LESSEE OF LISTED RENTAL EQUIPMENT AGREES:

To accept full responsibility and liability for any and all damages to listed equipment due to improper operation, maintenance, and/or lubrication, freezing, fire, theft, windstorm, hailstorm, flood, riot, insurrection, strike, explosion, collision, upset damages while being transported, loaded or unloaded, or for any causes whatsoever other than wear and tear.

To return all equipment and accessories to Lessor's warehouse in as good condition as when received, ordinary wear and tear accepted.

To pay for repairs or replacements of all parts damaged by misuse, or for all other extraordinary damage done.

Any tire puncture, cuts or slashes are the responsibility of said Lessee to be repaired or replaced to its original condition as in good condition as when received, ordinary wear and tear accepted.

Instruction manuals are included with all leased equipment and intended for use by Lessee and his employees to govern the safe operation of equipment. Lessee and any person who works for him and uses the equipment, agree to operate machinery in accordance with the instruction manual.

To notify Lessor if this equipment, or any portion thereof, is in use for more than 8 hours in one day, 40 hours in one week, or 160 hours in a four-week period, and to pay Lessor a pro rate portion of the applicable rental rate for the extra use of the equipment.

To indemnify Lessor against all loss, damage expense and penalty arising from any action on account of personal injury or damage to property of any character whatsoever occasioned by the operations, handling or transportation of the equipment during the existence of this lease or rental.

To hold Lessor free and harmless for all taxes and other public or private charges against or upon listed equipment, whatsoever and wherever levied, due to its use beyond the limits of Lessor's County.

To comply with and conform to all laws, ordinances and regulations relating to the possession, use or maintenance of listed equipment and save Lessor harmless against actual or asserted violations, and pay all costs and expenses of every character occasioned by or arising out of such use.

Lessee shall not assign this lease or sublease, sell, mortgage or create a security interest in the equipment without the written consent of Lessor and title to the equipment shall at all times remain vested in Lessor.

To keep Lessor advised at all times as to the location and condition of listed equipment.

Not commit or permit any act whereby listed equipment or any part thereof shall or may be seized, taken in execution, attached, removed, destroyed or injured.

In case of default of any of the terms of this agreement, Lessor their agents or servants, may at its options enter the premises where said equipment may be found and remove same therefrom, without notice, or demand, and without being guilty of any trespass or wrong. Lessor is not liable for any damage because of such removal of equipment, and Lessee agrees to pay all expenses incidental to said removal. In case of default in payment whereby it becomes necessary for Lessor to place the account in the hands of an attorney for collections, lessee agrees to pay actual or reasonable costs, whichever may be greater, as a collection charge.

Lessor's County (Dallas (BMI), Tarrant (BMFW), Smith (GPB), being the origin of this Lease, any and all disputes arising hereunder shall be settled or attempted to be settled only in Lessor's County (Dallas (BMI), Tarrant (BMFW), Smith (GPB)) whether such settlement be arrived at or be attempted by negotiation, litigation or otherwise.

Lessor gives no warranty against patent or latent defects in material, workmanship, or capacity, nor warrants that said equipment will meet the requirements of any law, rules, specifications or contracts which provide for specific machinery or apparatus or special methods, excluding warranties for all equipment of merchantability and fitness for particular purpose. All equipment is deemed used equipment and is leased on an "as is, where is" basis. Any salesperson and/or any other employee of Lessor making oral or written statements about the equipment described in this lease do not constitute warranties and will not be relied upon by the Lessee and are not a part of this Lease.

LESSEE SIGNATURE:

DATE: