

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 Holt Texas, LTD d/b/a Holt Caterpillar Rental Agreement for rental of equipment.

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

SUPPORT MATERIAL:

TIME: 5 min	ACTION ITEM: X
(Anticipated number of minutes needed to discuss item)	WORKSHOP
	CONSENT:
	EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY: X	IT DEPARTMENT:
AUDITOR:	PURCHASING DEPARTMENT:
PERSONNEL:	PUBLIC WORKS:
BUDGET COORDINATOR:	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 HOLT TEXAS, LTD. d/b/a HOLT CAT (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 Date 05/10/19
County Judge

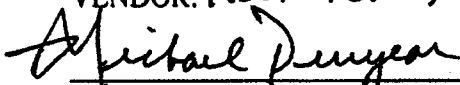
Attest:



County Clerk, Johnson County Date 05/10/19



VENDOR: HOLT TEXAS, LTD d/b/a HOLT CAT



Authorized Representative Date 4-30-19
Printed Name: MICHAEL PURYEAR
Title: GENERAL COUNSEL

HOLT



Agreement

Agreement #:

Lessor: HOLT TEXAS, LTD
HRS (254) 662-7373
1800 WEST LOOP 340,
WACO, TX 76712

Date Out:
Est. Date In:

Customer:
Bill to:

Ship To:

Ordered By:

Contact:
Phone:

Ship From:
Freight on Board

Written By:

F.O.B. Ship Pt:

Sales Rep:
Sales Rep #:

Ship Via:

Purchase Order:

Release #:

QTY DESCRIPTION	DAY	WEEK	4WEEK	TOTALS
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LOSS DAMAGE WAIVER: Customer Accepts Initials Here: _____
Customer Declines Initials Here: _____

RENTAL INSTALLMENTS

Rental Installment	_____
LDW	_____
Delivery Charge	_____
Subtotal	_____
Sales Tax	_____
TERP Tax	_____
Environmental Fees	_____
Other Charges	_____
TOTAL	_____
Rental Start Date	_____

Statement of Total Charge: (For Optional Loss Damage Waiver):

If the customer elects to purchase the Optional Loss Damage Waiver the total charged to the customer under this agreement shall be \$_____.

DISCLAIMER OF WARRANTIES AND WAIVER OF CLAIMS:

HOLT IS NOT A MANUFACTURER OF THE EQUIPMENT. ALTHOUGH HOLT MAY ADMINISTER WARRANTIES ISSUED BY THE MANUFACTURER. CUSTOMER ACKNOWLEDGES AND AGREES THAT: (1) ANY EXPRESS WARRANTIES BY THE MANUFACTURER FOR THE EQUIPMENT ARE NOT THE RESPONSIBILITY OF HOLT; AND (2) THE MANUFACTURER'S WARRANTY CONTAINS LIMITATIONS.

HOLT HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO CONDITION COMPLIANCE WITH SPECIFICATIONS OR REGULATIONS, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. HOLT IS NOT LIABLE FOR ANY DAMAGES (Weather ORDINARY, SPECIAL, OR PUNITIVE) ARISING FROM ANY FAILURE OF THE EQUIPMENT TO OPERATE OR THE FAULTY OPERATION OF THE EQUIPMENT, OR THE INSTALLATION, OPERATION, REPAIR, OR USE OF THE EQUIPMENT.

OTHER TERMS AND CONDITIONS

ADDITIONAL TERMS AND CONDITIONS AND CONDITIONS SET FORTH ON THE REVERSE SIDE, ONLINE, OR ATTACHED HERE TO (AS APPLICABLE) CONSTITUTE AN IMPORTANT PART OF THIS AGREEMENT AND ARE INCORPORATED HEREIN VERBATIM ALL PURPOSES. PLEASE REVIEW SUCH OTHER TERMS AND CONDITIONS BEFORE SIGNING THIS AGREEMENT.

THESE TERMS AND CONDITIONS SUPERSEDE ALL OTHER TERMS AND CONDITIONS PRESENTED BY OR TO CUSTOMER UNLESS PROVIDED IN A DOCUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BOTH PARTIES AND CONTAINING REFERENCE TO THIS SHORT TERM RENTAL AGREEMENT.

THIS AGREEMENT IS SUBJECT TO TERMS AND CONDITIONS ATTACHED

Date: _____

Date: _____

ORDER RECEIVED BY HOLT REPRESENTATIVE NAME

CUSTOMER

By: _____
SIGNATURE

By: _____
SIGNATURE

TITLE

PRINTED NAME AND TITLE

ADDITIONAL RENTAL TERMS AND CONDITIONS

1. **RENT AND OTHER PAYMENTS:** Customer shall pay Holt Texas, LTD.. ("Holt") each rental installment on or before each succeeding Payment Date, without demand, deduction or offset. "Customer" is identified on the front side hereof and includes any of its representatives, agents, officers, or employees and anyone signing this Contract on their behalf. If Customer defaults in the payment of any sum of money to be paid under this Agreement, Customer shall pay HOLT, as additional rent, interest on such unpaid sum from its due date to the date of payment at the Maximum Rate.
2. **AGREEMENT:** This Agreement becomes binding on HOLT only upon HOLT's execution of this Agreement. Customer shall inspect the Equipment immediately upon its receipt, and shall be conclusively deemed to have accepted the Equipment in good and operating condition unless the Customer promptly notifies HOLT of any defects, in writing and via telephone. HOLT shall have the right, at its option, to either repair or replace the Equipment, or terminate this Agreement, in which event the Equipment shall be returned to HOLT. Delays in delivery shall be excused if caused by any cause beyond the reasonable control of HOLT.
3. **TITLE:** Title to the Equipment shall at all times remain in HOLT. Customer, at its expenses, shall protect and defend the title of HOLT and keep it free of all claims and liens. All replacements, repairs, improvements, alterations, substitutions and additions shall constitute accessions to the Equipment and title thereto shall vest in HOLT, at all times the Equipment will remain the personal property of HOLT.
4. **LOCATION OF EQUIPMENT:** Customer shall not remove the Equipment from the location set forth on the front page of this Agreement, without HOLT's written consent. Customer represents that the Equipment will not be affixed to any real estate or other goods so as to become fixtures on such real estate or accessions to other goods.
5. **USE:** Customer agrees that HOLT has no control over the manner in which the equipment is operated during the Rental Period by Customer or any third party that Customer implicitly or explicitly permits. Customer warrants that: (1) prior to each use, Customer has or will inspect the Equipment to confirm that it is in good working condition, without defects, includes readable decals and operating and safety instructions and is suitable for Customer's intended use; (2) any apparent agent at the location listed by Customer for delivery is authorized to accept delivery of the Equipment; (3) The Equipment will at all times be used and operated solely in the conduct of Customer's business and not for personal, family or household use, and in accordance with the operation, use and/or instructional materials supplied to Customer; (4) Customer will comply with all applicable laws, acts, rules, regulations and orders affecting the Equipment or use thereof and shall be responsible for obtaining all authorizations, licenses, and certifications to operate the Equipment; (5) the Equipment will be used solely for the purpose for which it was designed and intended, and will not be abused; and, (6) Customer will only allow skilled operators trained in use of the Equipment to operate the Equipment. Customer shall operate the Equipment with reasonable care and diligence and use reasonable precautions to prevent loss, damage, or injury; (7) Customer will notify HOLT as quickly as possible if owner/user's manual is not provided with machine. HOLT hereby disclaims any liability related to the use of the machine by Customer if Customer fails to notify HOLT that the owners'/users' manual was not provided prior to Customer's use of the machine.
6. **REPAIRS AND MAINTENANCE:** Except for repair costs covered by an express HOLT or manufacturer warranty, if any, Customer, at its expense shall: (1) keep the Equipment in good working order, (2) pay all costs, expenses, fees and charges incurred in connection with the use or operation of the Equipment including, but not limited to maintenance, storage and servicing, and pay HOLT, upon demand, its regular charges for any parts or labor furnished in making any repairs. Customer's maintenance obligations shall include, but not be limited to, the performance of all daily maintenance recommended in applicable manufacturer operation, lubrication and/or maintenance guides ("Daily Maintenance"). In connection with the performance of Daily Maintenance, Customer shall (i) be responsible for all cleaning of the Equipment as required for maintenance, including but not limited to removal of brush or debris from undercarriage, belly pans, radiator and engine compartment; (ii) be responsible for notifying HOLT of any unusual noises or problems with respect to the Equipment; and (iii) be responsible for making the Equipment available for maintenance and inspection by HOLT.
7. **Taxes:** Customer shall pay all taxes, fees, assessments and other governmental charges of any kind or character on or relating to the Equipment.
8. **LOSS AND DAMAGE:** Customer assumes all risk of, and shall be solely responsible for, all damage and loss to the Equipment from any cause whatsoever, whether or not such loss or damage was or was not the result of customer's negligence or lack of care, or could have been covered by insurance. The Agreement shall not terminate and there shall be no abatement, reduction, suspension or deferment of Rental Installments for any reason, including damage to or loss of the Equipment. Customer shall promptly give HOLT written and telephone notice of any loss or damage, describing in detail the cause and the extent of such loss or damage. Customer shall notify appropriate law enforcement authorities within two (2) hours of discovery of theft or vandalism. HOLT shall not be liable and Customer waives any claim it might have (i) for injury to Customer's business or any loss of income therefrom; (ii) for damage to the property of Customer, or (iii) for injury to the person of Customer or Customer's agents, representatives and employees or caused in any way by the Equipment. HOLT will not be responsible for sums spent by customer in an attempt to recover the rented machine. Customer should immediately contact HOLT and HOLT will attempt to recover the machine.
9. **INDEMNITY:** TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER INDEMNIFIES, RELEASES AND HOLDS HOLT HARMLESS, AND AT HOLT'S REQUEST, DEFENDS HOLT (WITH COUNSEL APPROVED BY HOLT) ITS PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS FROM AND AGAINST ANY AND ALL CLAIM, EXPENSE, CAUSE OF ACTION, DAMAGE, LIABILITY, COST, PENALTY, TAX, ASSESSMENT, CHARGE, PUNITIVE DAMAGE OR EXPENSE BY REASON OF ANY ACT OR OMISSION OF CUSTOMER OR ITS EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, AFFILIATES OR INVITEES.
10. **Insurance:** Customer agrees to provide HOLT with a certificate of insurance providing evidence of these coverages: Equipment Insurance with HOLT listed as Loss Payee, General Liability and Automobile Liability, each with limits of at least \$1,000,000 Per Occurrence, with HOLT as Additional Insured, and with Waivers of Subrogation in favor of HOLT, Workers Compensation including Employer's Liability with limits of at least \$1,000,000 and with Waiver of Subrogation in favor of HOLT.
11. **LOSS DAMAGE WAIVER ("LDW"):** If HOLT offers LDW and Customer purchases the LDW, then Customer will still be required to provide all other insurance coverages as listed above. HOLT agrees that Customer's financial responsibility shall be limited to \$10,000 for costs resulting from damage, loss or theft of the Equipment. The LDW shall not apply in the event of Theft unless the Customer reports the theft to appropriate law enforcement authorities within 2 hours of discovery and provides a copy of the police report to HOLT as soon as practicable. The LDW shall not apply with respect to: (i) overturn, rollover, or upset, (ii) undercarriage wear in excess of 5% per month, (iii) rubber tire wear in excess of 5% per month, or tire cuts and abrasions, or (iv) damage, loss or theft resulting from improper or unsafe operation, improper care, improper storage, damage intentionally caused by the Customer or Customer's employees, damage that results from the Customer's willful or wanton misconduct, or improper precautions to secure the Equipment. HOLT and Customer acknowledge that nothing in this Agreement is intended to be construed as creating an insurer/insured relationship between HOLT and Customer. HOLT shall be under no obligation to accept Customer's Certificate of Insurance in lieu of the LDW if provided by the Customer after the first day or rental period, and even if accepted by HOLT, Customer shall not be entitled to any refund of LDW charges accrued prior thereto

This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the heavy equipment. You do not have to purchase this coverage. Before deciding whether to purchase this loss damage waiver, you may consider whether your insurance policies afford you coverage for loss of or damage to the heavy equipment rented and the amount of the deductible you would pay under your policies.

12. **ASSIGNMENT AND SUBLEASE:** HOLT may assign any of its rights and obligations hereunder without notice, including, but not limited to, assignment of the HOLT equipment sale and/or trade-in purchase rights under this Agreement, if converted to a sale or trade-in purchase, to HLKE, Inc. No assignee of HOLT, including HLKE, Inc., as qualified intermediary or the assignee's officers, directors, agents, or employees, shall be obligated to perform any covenant, condition or obligation required to be performed by HOLT hereunder. However, in the event any assignee agrees to assume the obligations of HOLT, Customer agrees that HOLT shall be released from all further liability hereunder. Neither this Agreement nor any of Customer's rights hereunder shall be assignable by Customer without the prior written consent of HOLT. Customer agrees it will not rent or sublease any Equipment to others, without the prior, written consent of a HOLT manager. Customer shall ensure that its sub-lessees comply with all obligations of Customer in this Agreement.
13. **EVENTS OF DEFAULT:** Each of the following is an event of default under this Agreement: (1) Customer's failure to pay any Rental Installment or other sum payable to HOLT or any affiliate of HOLT when due, whether such indebtedness arises hereunder or otherwise; (2) Customer's ceasing to do business as a going concern, becoming insolvent, taking advantage of any law for the relief of debtors, making an assignment for the benefit of creditors or a filing under the U.S. Bankruptcy Code by or against Customer; (3) HOLT deems the Equipment in jeopardy or feels insecure with respect to: Customer's continued ability to make payments or, the value of the Equipment; or (4) Customer fails to perform any other obligation imposed on Customer under this or any other HOLT Agreement.
14. **REMEDIES ON DEFAULT:** In the event of any default by Customer, HOLT is entitled to any one or more of the following remedies, without any notice of default: (a) take possession of the Equipment or any other equipment, including enter premises where it's located; (b) terminate this Agreement; (c) seek specific performance or injunction or recover damages; (d) stop delivery of the Equipment or any other equipment; (e) without terminating this Agreement, HOLT may take possession of the Equipment and sell, relet or otherwise dispose of the Equipment as a secured party under UCC and deduct all expenses, costs, reasonable attorney's fees, and other charges incurred by HOLT; (f) Recover deficiency from Customer; and/or (g) perform by itself, or cause performance of, Customer's obligation, at Customer's cost. In no event shall HOLT be required to sell or relet the Equipment, nor required to rebate or pay back any gain or profit as a result of leasing the Equipment. HOLT's remedies hereunder shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity.
15. **RETURN:** Upon the expiration or earlier termination of this Agreement, Customer shall promptly return the Equipment to HOLT free and clear of all mortgages, liens, security interests, charges, encumbrances and claims, and in the same operating order, repair, condition and appearance as when received, ordinary wear and tear excepted. Customer shall make such return at its expense and risk, freight and insurance prepaid, to the destination specified by HOLT. In the event Customer remains in possession of the Equipment after the expiration or earlier termination hereof, Customer shall be a Lessee at Will, and all terms and conditions of the Agreement shall continue in full force and effect. If Equipment is returned dirty or damaged, Customer shall be responsible for excess cleaning and repair charges in an amount determined by HOLT.
16. **CUSTOMER'S WARRANTIES:** In addition to the other warranties contained herein, Customer warrants to HOLT that (i) if Customer is a corporation, limited liability company or limited partnership, Customer is duly organized and validly existing in good standing under the laws of the state in which it is organized and has duly authorized the execution, delivery and performance of this Agreement; and (ii) the Agreement has been duly and validly executed and delivered by Customer and constitutes a valid contract which is fully enforceable against Customer according to its terms.
17. **NOTICES:** All notices hereunder shall be in writing and shall be deemed delivered if delivered personally or mailed, by certified mail, return receipt requested, to the respective addresses of the parties set forth above or any other address designated by written notice.
18. **USURY:** This Agreement is a lease, and not a financing agreement or arrangement. However, if this Agreement shall ever be determined to be a financing agreement or arrangement involving the loan of monies, this paragraph shall apply. It being the intention of the parties to strictly conform to the applicable usury laws, all agreements between the Customer and HOLT, whether now existing or hereafter arising and whether written or oral are hereby expressly limited so that in no event, whether by reason of acceleration of the maturity of the obligations secured hereby or otherwise, shall the amount paid or agreed to be paid to HOLT for the use, forbearance, or detention of money hereunder or otherwise, exceed the maximum amount permissible under applicable law. If fulfillment of any provision or of any document evidencing or securing the obligations secured hereby shall involve exceeding the limits prescribed by law, then the obligation to be fulfilled shall be reduced to the legal limit; and if HOLT shall ever receive anything of value deemed interest under applicable law which would exceed interest at the highest lawful rate, an amount equal to any excessive interest shall be applied to the reduction of the principal amount owing hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof, such excess shall be refunded to the Customer. All sums paid or agreed to be paid to HOLT for the use, forbearance, or detention of the indebtedness of the Customer to HOLT hereof shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of such indebtedness so that the rate of interest on account of such indebtedness is uniform throughout the term thereof.
19. **MAXIMUM RATE:** "Maximum Rate" shall be the lesser of: 1) 1.5% per month (18% per annum); or 2) the highest non-usurious rate of interest allowed by Texas law.
20. **MISCELLANEOUS:** This Agreement may only be modified by a written agreement signed by HOLT but not to include a Customer's purchase order. Any terms in Customer's acceptance, purchase order or other documentation that are inconsistent with or in addition to this Agreement (except such additional terms which are required by law) shall be void and of no effect (any use or reference to Customer's purchase order or purchase number in any Rental Contract is for Customers convenience only). If any provision of this Agreement is hereafter held invalid or unenforceable, the remainder of the Agreement shall not be affected and the provisions are declared severable. If there is more than one Customer, the obligations of Customers hereunder are joint and several. Subject to the terms hereof, this Agreement shall be binding upon and inure to the benefit of HOLT and Customer and their respective personal representatives, successors and assigns. This Agreement shall be governed by the laws of Texas; each party hereby irrevocably consents to submit to the exclusive jurisdiction of the courts of the state of Texas in Bexar County, Texas
21. Right to a jury trial is hereby waived by all parties.
22. **ARBITRATION:** Parties agree to submit to binding arbitration for any dispute arising out of or relating to this transaction. Either party may initiate arbitration which shall be conducted in accordance with commercial arbitration rules of the American Arbitration Association, in San Antonio, Bexar County, Texas. Each party shall bear its own costs and attorney's fees unless the arbitrators award such fees to a party, each party shall share equally the cost of the arbitration.