

MAY 28 2019

Approved

REQUEST FOR AGENDA PLACEMENT FORM

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

SUBMITTED BY: Ralph McBroom

TODAY'S DATE: May 15, 2019

DEPARTMENT: Purchasing

DEPARTMENT HEAD: Ralph McBroom

REQUESTED AGENDA DATE: May 28, 2019

SPECIFIC AGENDA WORDING: Consider approval of Master Rental Agreement and Johnson County Contract Terms Addendum to Rental Contract with A.B.S Rentals, Inc. and A.B.S Rentals, Inc. Rental Agreement for rental of equipment.

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

SUPPORT MATERIAL: (See attached)

TIME: 5 min	ACTION ITEM: X
(Anticipated number of minutes needed to discuss item)	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 A.B.S Rentals 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 May 31 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:

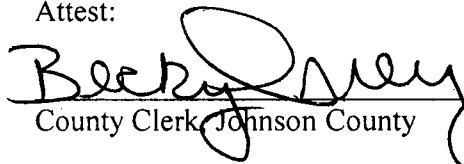


Roger Harmon
County Judge

May 28, 2019

Date

Attest:



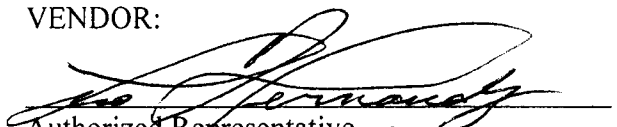
County Clerk, Johnson County



May 28, 2019

Date

VENDOR:



Authorized Representative

Printed Name: Leo Hernandez

Title: President

ABS RENTAL INC

5-15-19

Date

Lessor the following personal property equipment and articles, hereinafter collectively referred to as "Equipment," and subject to the following terms and conditions:

- a. That the above listed equipment has been received by Lessee.
- b. Lessee agrees that he has been afforded an opportunity to carefully inspect and test the equipment being rented. Lessee additionally acknowledges that he has been given the right to further inspect and test said equipment prior to leaving the Lessor's premises. Upon Lessee's removing the equipment from the premises of the Lessor or upon the Lessee's accepting delivery of the equipment from the Lessor, it shall be conclusively presumed that Lessee has, in fact examined the equipment and has found it to be in good working order and accepts said equipment in an "as is" condition.
- c. That upon termination of this lease agreement the Lessee shall immediately return the rented equipment and all attachments and parts belonging thereto, to the place of business of said Lessor the A.B.S. Rentals, Inc. in same condition as received, ordinary wear and tear and depreciation excepted, and Lessee further agrees to pay for any damage resulting from said equipment while same is in Lessee's possession or under Lessee's control, actual or constructive.
- d. It is understood and agreed that said equipment is leased to Lessee by Lessor and will be used by the Lessee at the designated address for the stated period and solely for the purpose for which said equipment was manufactured and intended. It is further understood and agreed that said equipment will not be removed from the address herein listed for use at any other address without the express consent of the Lessor.
- e. In the event the Lessee desires to extend this lease beyond the expiration date originally agreed upon, it is understood and agreed that the Lessee shall immediately notify the Lessor of said desire and obtain Lessor's express approval and terms for said extension. Lessee agrees that if any of said equipment is lost, stolen or accidentally destroyed, Lessee will immediately notify Lessor of same and will furnish Lessor with proper affidavits, satisfactory to Lessor, covering the facts of such loss, theft or accidental destruction. The Lessee agrees that he shall be responsible for and pay the rental rate provided for herein for any such lost, stolen or accidentally destroyed equipment from the date of occurrence of said loss, theft or accidental destruction until Lessor is notified of such loss, theft or accidental destruction as provided for herein.
- f. **WARNING!** Failure to return said equipment can, in certain circumstances, be considered a theft, resulting in a criminal prosecution. Failure to return such acquired equipment on demand may constitute an act of theft and may be prosecuted under all applicable statutes whether or not said equipment is subsequently recovered. Lessor, at Lessor's sole discretion may report property stolen if held five (5) days beyond "Due In" date. Lessor at Lessor's sole discretion, may revert all charges to the daily rate if any monthly statement or invoice is not promptly paid. Lessor will not refund on any item out over thirty (30) minutes. Lessor will extend credit for like amount on any item providing Lessee uses this credit within a period of fifteen (15) days from the out date of contract.
- g. In the event of any breach of this lease by Lessee, or failure of Lessee to pay any rental or any other charge when due or insolvency or bankruptcy of Lessee, or failure of Lessee to perform any promise, agreement, covenant, or condition on Lessee's part, Lessor or his agent shall be permitted, and they are hereby authorized to go to Lessee's or any other person's property and retake the leased equipment without giving Lessee notice and without legal process. Lessee does hereby grant unto Lessor or Lessor's agent permission to come onto any property wherein said equipment is located for the purpose of retaking it except that the Lessor shall not enter on the Lessee's premises unlawfully or commit any breach of the peace in possession of the goods. Lessee further agrees to pay any and all costs and expenses incurred by the retaking of said equipment from any party or from any location.
- h. The exact manner in which this equipment will be used in the trade or occupation of the user and the qualifications or lack of qualifications of the user and the equipment or lack of equipment of the user are beyond the control of the Lessor. Lessor, therefore, expressly disclaims any responsibility for Lessee's compliance or failure to comply with O.S.H.A. and/or any other governmental safety or health regulations or standards.
- i. The operation of any leased vehicular equipment by any driver under 21 years of age is strictly prohibited.
- j. Lessee agrees to pay interest at the highest rate permitted by law or at the rate of eighteen percent (18%) per annum, whichever is lesser upon all delinquent accounts, and further agrees to pay upon demand, all reasonable collection costs and attorney fees incurred in collection of this account.
- k. The rental rate starts when equipment leaves the Lessor's facility and stops when it is returned to such facility. No allowance is made for Saturdays, Sundays, holidays or time in transit or for any period of time said equipment is not in use when in Lessee's possession.
- l. Rates on those items that have time clocks are based on one six-hour shift in a twenty-four hour period.
- m. It is understood and agreed by and between the said Lessee and Lessor that the Lessee will immediately discontinue the use of any said equipment should said equipment, at any time, while in the Lessee's possession or under Lessee's control, become unsafe or in a state of disrepair, and will immediately notify Lessor of said facts and the Lessor, in consideration of the mutual covenants herein contained, agrees that Lessor will, with reasonable dispatch after receiving said notice, replace said equipment with other equipment in good working condition.
- n. Lessor's failure, at any time, to require strict performance by Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter or with any other provisions hereof. Waiver of any default shall not waive any other default. Lessor's rights hereunder are cumulative and are not alternative. No representations, warranties, promises, guarantees or agreements, oral or written, express or implied, have been made by Lessor with respect to this lease of equipment, except as expressly provided herein. This lease represents the entire agreement between the parties hereto and may not be amended except by the express consent of the Lessee and Lessor or their representatives.
- o. Lessor shall provide an automotive liability insurance policy for the benefit of Lessee with limits of coverage equal to in excess of statutory requirements for public liability and property damage. Said insurance shall be excess insurance over and any other liability insurance coverage available to Lessee, applicable after coverage under such other available insurance. **THIRD PARTY PROTECTION.** Anyone authorized by this agreement to drive vehicle is covered by an automobile liability insurance policy AGAINST LIABILITY TO THIRD PARTIES ONLY (NOT INCLUDED TO EXTENT PERMITTED BY LAW, ANY OF SUCH DRIVER'S FAMILY MEMBERS RELATED BY BLOOD, MARRIAGE, OR ADOPTION RESIDING IN THEIR HOUSEHOLD), for bodily injury, death or property damage caused by or arising from use or operation of vehicle as permitted by this agreement. The amount of coverage provided under the agreement is equal to the minimum financial responsibility limits established by the Financial Responsibility law or other applicable statute ("Statutory Limits") of the state or other jurisdiction in which vehicle was rented. Protection hereunder shall automatically conform to basic requirements of any mandatory "No Fault" law which may be applicable. This coverage shall be excess over any other collectible insurance available to the Lessee.
- p. Lessee shall indemnify and hold harmless from all fines, penalties, forfeitures, and disabilities arising from use of the rented vehicle and imposed by any federal, state, county and municipal statute and law or insurance policy provision.
- q. Lessee shall immediately report any accident to Lessor and deliver to Lessor or its insurer, if so wanted by Lessor, every process, pleading, notice or paper of any kind received by Lessee or any driver of the vehicle relating to any claim, suit or proceeding connected with any accident or event involving the vehicle. Neither Lessee nor any driver of the vehicle shall aid or abet the assertion of any such claim, suit or proceeding and shall cooperate fully with Lessor and its insurer in investigating and defending the same.
- r. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all losses, liabilities, damages, injuries, claims, demands, cost and expenses, arising out of or connected with the possession or use of the vehicle during the rental term (except those covered by the insurance provided herein by Lessor).
- s. Lessor shall not be liable for loss or damage of any property of Lessee or any other person which may have been in or on the vehicle either before or after the return to Lessor whether or not related to the negligence of Lessor or its agents, servants or employees. Lessee shall assume all risk of such loss or damage, waive all claims therefor against Lessor and defend, indemnify and hold Lessor harmless from all claims arising out of such loss or damage.
- t. If any clause, provision or paragraph of this agreement is found to be invalid or unenforceable for any reason, it shall not affect the validity or enforceability of the remainder of this agreement and this agreement shall be governed by the laws of the State of Texas.
- u. **DISCLAIMER OF WARRANTIES: LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE EQUIPMENT'S MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. LESSEE'S SOLE REMEDY FOR ANY FAILURE OF, OR DEFECT IN EQUIPMENT, SHALL BE THE TERMINATION OF THE RENTAL CHARGES AT THE TIME OF FAILURE, PROVIDED THE EQUIPMENT IS RETURNED TO LESSOR'S TAKING WITHIN 24 HOURS FROM THE TIME OF DEFECT. LESSOR SHALL NOT BE RESPONSIBLE TO LESSEE OR ANY AGENT OR EMPLOYEE OF LESSEE OR TO ANY OTHER PARTY FOR ANY LOSS, DAMAGE OR INJURY OF ANY AND EVERY NATURE WHATSOEVER, INCLUDING ANY SPECIAL OF CONSEQUENTIAL DAMAGES CAUSED BY, RESULTING FROM, OR IN ANY WAY CONNECTED WITH THE RENTAL OF SAID EQUIPMENT, THE OPERATION OR USE OF SAID AND ALL COSTS, EXPENSES, CLAIMS OR JUDGMENTS, INCLUDING REASONABLE ATTORNEY FEES, INVESTIGATION COSTS, DEFENSE EXPENSES AND COURT COSTS, FOR OR ON ACCOUNT OF ANY PERSONAL INJURIES OR PROPERTY DAMAGE SUSTAINED BY ANYONE. WHILE LESSEE HAS POSSESSION, CUSTODY OR CONTROL OF THE LEASED EQUIPMENT, ARISING OUT OF THE USE OR MISUSE OF THE EQUIPMENT HEREIN LEASED OR ARISING OUT OF ANY DEFECT IN THE DESIGN OR MANUFACTURE OF SAID EQUIPMENT, OR ARISING OUT OF THE LESSOR'S NEGLIGENCE OR FAILURE TO WARN OR FROM ANY OTHER CAUSE OR CONTRIBUTING CAUSE.**
- v. **THE LESSEE WILL NOT DISPOSE OF ANY EXPENDABLE EQUIPMENT OR ITEMS (SUCH AS OIL) IN VIOLATION OF ANY STATE OR FEDERAL REGULATIONS OR IN VIOLATION OF ANY LAWS RELATING TO THE ENVIRONMENTAL PROTECTION AGENCY OF THE STATE OR FEDERAL GOVERNMENT.**