

APR 27 2020

REQUEST FOR AGENDA PLACEMENT FORM

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

Approved

SUBMITTED BY: Ralph McBroom

TODAY'S DATE: April 16, 2020

DEPARTMENT: Purchasing

DEPARTMENT HEAD: Ralph McBroom

REQUESTED AGENDA DATE: April 27, 2020

SPECIFIC AGENDA WORDING: Consider and approve Master Rental Agreement and Johnson County Contract Terms Addendum to Rental Contract and R.B Everett & Company 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 R. B. Everett & Company (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 20 21. 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
Date 04/27/2020

Attest:


County Clerk, Johnson County
Date 04/27/2020



VENDOR: R. B. Everett & Company


Authorized Representative
Printed Name: Dean Henderson
Title: Vice President
Date 4/6/20

Construction Equipment
Sales • Service • Rentals

R. B.

Everett

& Company

P. O. Box 7300 * Pasadena, TX 77508
281-991-8161 (Phone) or 281-991-5967 (Fax)

RENTAL - AGREEMENT

TERMS AND CONDITIONS

R. B. Everett & Company, 8211 Red Bluff Rd., Pasadena, TX 77507, (Us/We), and
_____, (You/Your).

R. B. Everett & Company agrees to rent to You (whether currently on Rent and/or all future Rentals) subject to the conditions listed below:

1. The rented equipment is R. B. Everett & Company's property and is rented to you subject to this agreement for rental charges.
2. You agree that you are satisfied with the instructions given by Us in the proper and safe manner of using the rented equipment or that you are familiar with operation and told Us that you were. You further agree that the rented equipment will only be used at the address designated and that only for the purpose for which the rented equipment was manufactured and intended. Subleasing or improper use is prohibited. You must read and understand all manuals, written operation instructions and warnings as supplied for the equipment.
3. You are responsible for the use of the rented equipment. You assume all risks inherent in the operation and use of the rented equipment and agree to assume the entire responsibility for the defense of, and to pay, indemnify and hold Us harmless from, and hereby release Us from, any and all claims for damage to property or bodily injury (including death) resulting from the use, operation, or possession of the rented equipment whether or not it be claimed or found that such damage or injury resulted in whole or in part from R. B. Everett & Company's negligence, from the defective condition of the rented equipment or from any cause. You agree that no warranties expressed or implied including merchantability or fitness for a particular purpose has been made in connection with the equipment rented.
4. You agree to furnish Us with written proof of insurance coverage on the equipment, for not less than the fair market value, during the term of the Rental. We require a copy of the policy and/or certificate that names Us as its assignee, as loss payee. Customer is responsible for full risk (theft, heavy damage, fire, etc.) insurance coverage, plus liability and must supply documentation.
5. All maintenance which may be required on this equipment, while in the hands of You, will be paid by You.
6. Failure by You to make any payment hereunder when due shall constitute an event of default. Failure of Us to exercise our remedies upon default by You, shall not constitute a waiver of such default or of subsequent default by You.
7. In case of default of any of the terms of this agreement, You agree to reassemble the equipment and return the equipment promptly to Us at Your expense. You agree to pay all expenses incidental to such removal. You agree to pay reasonable attorney's fees in case of default in payment herein provided it becomes necessary for Us to place same in the hands of an attorney for collection.
8. You agree to indemnify Us against all loss, damage, expense and penalty arising from any action on account of personal injury, death, a default under the contract, or damage to property of any character whatsoever occasioned by the operation, handling or transportation of this equipment during the existence of the rental.

9. You acknowledge that prior to taking the rental equipment, you examined it, saw it in operation (if appropriate), and are aware of its condition and that it is in good condition. It is your responsibility to return this rented equipment to Us in the same condition, except for ordinary wear and tear.
10. From the time the equipment is rented out until it is returned, You are responsible for it. If the rented equipment is lost, stolen, or damaged under any circumstances while rented, regardless of fault, You shall be responsible for all charges including labor costs to replace or repair the equipment. If the equipment is returned not clean, a cleaning charge will be imposed. **FAILURE TO RETURN RENTED PROPERTY UNDER THE TERMS ON THIS CONTRACT MAY SUBJECT THE RENTER TO CRIMINAL PROSECUTION.**
11. You agree immediately to discontinue the attempt to use the rented equipment should it at any time become unsafe or in a state of disrepair and will immediately (one hour or less) notify Us of the facts. We agree to make the equipment operable within a reasonable time or provide you with a like item if available or make adjustments on the rental charges. This provision does not relieve you from any obligations imposed by other paragraphs. In all events, We shall not be responsible for any injury or damage, including consequential damage, resulting from failure or defect of a rented item.
12. You are responsible for rental charges from the time the equipment is "Out" until it is returned. Return the equipment promptly, clean, and in good condition. You and Your representative, agent, or principal shall be responsible for and shall pay Us all charges hereunder. All final charges are due upon return of the equipment and on demand. If the rental charges are charged to someone other than the Renter, the Renter represents he/she is the agent of such party and has the right to charge this rental; the Renter nevertheless will remain liable for the charges and for the other obligations and responsibilities of the Renter hereunder. If the rental charges are not paid within 10 days of their due date, R. B. Everett & Company, at its discretion may recalculate all charges on a daily rental rate basis. Rental charges are based upon single "shift" use of no more than 8 hours in one day, 40 hours in one week, or 160 hours in a 4-week period. Use of the equipment in excess of single "shift" shall result in additional charges proportionate to the extra hours of use.
13. You agree to pay attorney fees, collection fees, court costs and any other expenses incurred in collecting any charges under this agreement, in retaking the rental equipment or otherwise in enforcing the terms of this contract.
14. This paper represents our entire agreement, and there are no collateral, oral, or other agreements outstanding. None of R. B. Everett & Company's rights may be changed and no termination of this contract may be made except in writing signed by Us and made a part of this agreement.
15. **YOU AGREE THAT THERE ARE NO EXPRESS WARRANTIES UNLESS THEY APPEAR IN WRITING BY US AND THERE ARE NO IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE RENTAL OF THIS EQUIPMENT.**

IN WITNESS WHEREOF, the said parties have hereunder affixed their signatures this _____ day of _____, 20____.

 By: _____
 Title: _____

R. B. EVERETT & COMPANY
 By: _____
 Dean Henderson
 Title: Vice President