

MAY 24 2021

Approved

**REQUEST FOR AGENDA PLACEMENT FORM**

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

**SUBMITTED BY:** Ralph McBroom

**TODAY'S DATE:** May 12, 2021

**DEPARTMENT:** Purchasing

**DEPARTMENT HEAD:** Ralph McBroom

**REQUESTED AGENDA DATE:** May 24, 2021

**SPECIFIC AGENDA WORDING:** Consider and approve Master Rental Agreement and Johnson County Contract Terms Addendum to Rental Contract and Kirby Smith Machinery Rental Agreement for rental of equipment.

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

**SUPPORT MATERIAL:**

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

**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**

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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 Kirby-Smith 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 May 1 2022 . 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 31<sup>st</sup> 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

5-24-21  
Date

Attest:

  
County Clerk, Johnson County



5-24-21  
Date

VENDOR:

*Chris Gylling*

\_\_\_\_\_  
Authorized Representative  
Printed Name: Chris Gylling  
Title: Governmental Sales representative

5/3/2021  
Date





Product	Description	
<b>Dozer</b>		
D31	78hp	
D37	89hp	
D39	105hp	
D39PX	105hp	
D51	130hp	
D51PX	130hp	
D61	168hp	
D61PX	168hp	
D65 Sigma/PAT	205hp	
D65WX PAT	205hp	
D65PX	205hp	
D85	264hp	
D185	354hp	
<b>Wheel Loader</b> *Additional		
TW40 non-cab		
TW65		
TW80		
WA200	2.6yd	
WA270	3.0yd	
WA320	3.7yd	
WA380	4.3yd	
WA430	4.8yd	
WA470	5.1yd	
WA480	6.0yd	
WA500	7.4yd	
<b>Excavator</b> *Additi		
TB108	5'6"	
TB216	6'7"	
PC35/TB235	10' 4"	
PC55/TB260	12' 6"	
PC88/TB290	19,300 lbs	
PC130	28,000 lbs	
PC138	32,000 lbs	
PC170	39,000 lbs	
PC210	50,000 lbs	
PC238	54,000 lbs	
PC240	55,000 lbs	
PC240SLF	62,000 lbs	
PC290	68,000 lbs	
PC290SLF	75,000 lbs	
PC308	73,000 lbs	
PC360	79,000 lbs	
PC390	90,000 lbs	
PC490	110,000 lbs	
PC680	133,000 lbs	
PC800	190,000 lbs	
<b>Hammer</b> *Hammer pricing only!		
GH3	Backhoe class 820ft lbs	
PH4	PC88 class 1064ft lbs	
GH4	PC88 class 1250ft lbs	
GH6	PC138 class 2000ft lbs	
GH7	PC170 class 2000ft lbs	
GH10	PC210 class 4000ft lbs	
GH12	PC290/308 class 5500ft lbs	
GH15	PC360 class 8000ft lbs	
GH18	PC490 class 12000ft lbs	
<b>Haul Truck</b>		
HM300	30 ton	
HM400	44 ton	
<b>Motor Grader</b>		
Leeboy 685/695	10' moldboard	
GD685	14' moldboard	
<b>Gradall</b>		
XL3100	41,500lbs	
XL3300	39,500lbs	
XL4100	49,500lbs	
D182	On Road Chassis	
<b>Aggregate Equipment</b> ****MUST CALL AGGREGATE		
MC110 Cone	Max 220 tons per hour	
MR110 Impactor	Max 350 tons per hour	
MR130 Impactor	Max 450 tons per hour	
MS19 classifier screen	Max 500 tons per hour	
MS21/ MS9531	Max 550 tons per hour	
<b>CONVEYOR</b>		
65' - 130'	Self Powered or Genset Req	
<b>Radial Stacker</b>		
<b>Terramac</b>		
RT-6	6 ton	
RT-9	9 ton	
RT-14	14 ton	

Product	Description	
RT-14R	14 ton rotator	
Air Curtin		
T-300		
Air Compressor		
185	185cfm/100 psi	
375HM	375cfm/200psi	
400HM	400cfm/200psi	
900	900cfm/150psi	
900/150	900-150cfm/500-350psi	
1800	1800cfm/150psi	
Light Tower		
NIGHT LITE PRO	4000 watt	
Pump		
CD100	4" - 750 gpm	
CD150	6" - 1,700 gpm	
GD225	8" - 3522 gpm	
HL100	4" - HighRate 925 gpm	
IBO50	3"X2" jet pump 350 gpm	
Broom		
BM250/BW250	3 wheel tow behind style	
350 Series	8" four wheel	
MK-1 Transfer	Transfer Sweeper	
310		
Formlin		
8042	8,000# - 42' reach	
10042	10,000# - 42' reach	
10054	10,000# - 54' reach	
1255	12,000# - 58' reach	
1644	16,000# - 44' reach	
Track Loader/Blid Steer		
T380	74hp 3005 ROC	
T16	65hp 2635B ROC	
T18	74hp 3010B ROC	
T10	74hp 3500B ROC	
TL12N & TL12V	111hp 4300-5555B ROC	
Mulcher		
STUMPERX	25"	
BM40 BXC Head	35" working width	
BH74 BSL Head	61" working width	
BH85 BSL Head	72" working width	
FTX125 W/BH85 head	125hp / 60 gpm / 72"	
FTX290 W/BH120 head	290hp / 101 gpm / 85"	
Reclaimor		
WR200/WR200XL	84" / 20" Depth	
WR240/WR240	84" / 20" Depth	
MIII		
W200		
W210		
Roller		
BMF500	24"-33"	
BH1208	84"	
BH1307	66"	
N11M12/3410	84"	
N161 CAB	84"	
Pneumatic Roller		
TRM90 915	68"	
GRW150	78"	
GRW250 / HP250	78"	
Double Drum Roller		
ND12	47"	
ND13	81"	
ND14	54"	
ND90	66"	
ND110	66"	
ND+110	66"	
ND12010	76"	
ND1201V	76"	
ND140	84"	
ND140VV4V	84"	
ND140V	84"	
Telescopic Boom		
400S		
460SJ		
600S		
Trailer		
TK110		
Water Trucks		
2000 WATER TRK	2000 gallon	
4000 WATER TRK	4000 gallon	
12007ANK	12,000 gallon water stand	





<b>HM300WT</b>	<b>6000 gallon</b>	
<b>HM400WT</b>	<b>8000-8700 gallon</b>	
<b>Pavement Maintenance</b>		
<b>Falcon 4 ton</b>	<b>Hotbox Asphalt Recycler</b>	
<b>Falcon 6 ton</b>	<b>Hotbox Asphalt Recycler</b>	
<b>Falcon 150</b>	<b>Tack Trailer</b>	
<b>Falcon 250</b>	<b>Tack Trailer</b>	