

JAN 10 2022

Approved

REQUEST FOR AGENDA PLACEMENT FORM

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

SUBMITTED BY: Ralph McBroom

TODAY'S DATE: January 3, 2022

DEPARTMENT: Purchasing

DEPARTMENT HEAD: Ralph McBroom

REQUESTED AGENDA DATE: January 10, 2022

SPECIFIC AGENDA WORDING: Consideration and approval of Master Agreement and Johnson County Contract Terms Addendum to Delivery Ticket between Johnson County and Cleburne Welding & Industrial Supply for the rental of equipment.

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

SUPPORT MATERIAL: (See attached)

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 AGREEMENT AND
JOHNSON COUNTY CONTRACT TERMS
ADDENDUM TO DELIVERY TICKET**

This Master Agreement And Johnson County Contract Terms Addendum to Delivery Ticket, (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 **Cleburne Welding & Industrial Supply** (hereinafter referred to as "VENDOR"), collectively referred to as the "PARTIES", and is a master agreement and an addendum to the Delivery Ticket of Vendor between the Parties for the rental of equipment and together this AGREEMENT and the Delivery Ticket 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 Delivery Ticket 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 1 / 01 2023. A signed copy of this Agreement shall be attached to and become part of each Delivery Ticket 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 Delivery Ticket, the Parties agree that the terms and conditions of the Agreement will apply to the Delivery Ticket as though said Agreement had been attached.
2. This Agreement is to clarify, limit, modify or delete terms and provisions of the Delivery Ticket 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 Delivery Ticket, this Agreement shall control and amend the contractual provisions of the Delivery Ticket and any provisions in the Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket and a representative of County signing the said Delivery Ticket.

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 Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket 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 Delivery Ticket, the equipment or its use; therefore, any provisions in the Delivery Ticket 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 Delivery Ticket 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

1-10-2022
Date

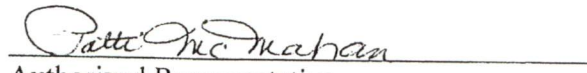
Attest:


County Clerk, Johnson County



1-10-2022
Date

VENDOR:


Authorized Representative
Printed Name: Patti McMahon
Title: Corporate Operations Manager

12/06/21
Date