

AGENDA PLACEMENT FORM

(Submission Deadline – Monday, 5:00 PM before Regular Court Meetings)

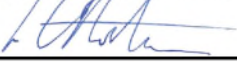
Date: 1/10/2024

Meeting Date: 1/22/2024

Submitted By: Lance Anderson

Department: Purchasing

Signature of Elected Official/Department Head:



Court Decision: <small>This section to be completed by County Judge's Office</small>

<p>January 22, 2024</p>

Description:

Consider and approve Master Rental Agreement and Johnson County Contract
Terms Addendum to Rental Contract and Bobcat of North Texas Rental
Agreement for rental of equipment.

(May attach additional sheets if necessary)

Person to Present: Lance Anderson

(Presenter must be present for the item unless the item is on the Consent Agenda)

Supporting Documentation: (check one) PUBLIC CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

Estimated Length of Presentation: 5 minutes

Session Requested: (check one)

Action Item Consent Workshop Executive Other _____

Check All Departments That Have Been Notified:

County Attorney IT Purchasing Auditor

Personnel Public Works Facilities Management

Other Department/Official (list) Precinct 1

**Please List All External Persons Who Need a Copy of Signed Documents
In Your Submission Email**

**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 BOBCAT OF NORTH TEXAS (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 DECEMBER 31ST 2024. 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:

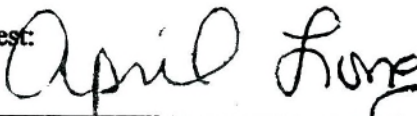
JOHNSON COUNTY:



Christopher Boedeker
County Judge

1-22-24

Date

Attest: 

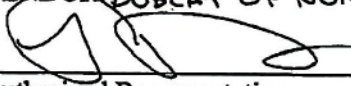
April Long
County Clerk



1-22-24

Date

VENDOR: ~~BOBCAT~~ BOBCAT OF NORTH TEXAS



Authorized Representative
Printed Name: RYAN PETERSON
Title: OPERATION'S MANAGER

Date

TERMS AND CONDITIONS OF RENTAL CONTRACT

For good and valuable consideration, you and Berry Companies, Inc., a Kansas corporation (hereinafter, "BCI") agree as follows:

1. As used herein, "P.1" means the first page or "face" of this Contract; "Contract" means P.1 together with these Terms and Conditions of Rental Contract, "§" means a numbered Section of this Contract; "Rented Item(s)" or "Item(s)" means the item(s) provided to you, as identified on P.1 (including the "Instructions" referenced in § 5); "Site" means the delivery or use address set forth on P.1; "Customer," "Lessee," "you" and "your" mean the customer or "Lessee" identified on P.1, and "Lessor," "we," "us" and "our" mean BCI.
2. You agree to rent from BCI and BCI agrees to rent to you the Rented Item(s) for the period(s) specified on P.1 (the "Term"). You agree to pay us our stated rental rate(s) (the "Rent"), together with any other charges accruing hereunder, without proration, reduction or setoff, until all Rented Item(s) is/are returned to and accepted by BCI. Unless otherwise specifically agreed in writing by BCI, all rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per calendar day, 40 hours per 7-day period, and 160 hours per 28-day period, and otherwise in accordance with the terms hereof and the "Instructions" referenced in § 5. You agree to pay additional prorated rent and all other applicable charges and costs for late returns and overuse. No allowance will be made for weekends, holidays, time in transit or any other period of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless otherwise specifically agreed in writing by BCI, you: (a) are required to pay to BCI: (i) the Estimated Rent specified on P.1 in advance of the Term (the "Prepayment"); and (ii) any additional amounts coming due hereunder upon demand; and (b) agree that: (i) BCI may deduct any amount you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; (iii) no Prepayment will be deemed a limit of your liability to BCI; and (iv) all Prepayments are **NON-REFUNDABLE**. Anything remaining with, in or on any Rented Item(s) upon return will, at our option, be deemed surrendered and abandoned.
3. If we agree to deliver and/or retrieve any Item(s), you agree to: (a) pay our regular charge(s) therefor, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site. We will not be responsible for delay(s) caused by the acts or omissions of any other parties, including providers of other equipment or services ("Other Providers") for which you hereby release and agree to hold harmless BCI. If you are not present upon delivery and/or retrieval of any Item(s), you agree to accept the statements of BCI's representatives and third-party delivery personnel regarding the same (including status, condition, quality, utility, freedom from defects, and quantities).
4. Except with respect to Item(s) BCI rents from one or more third-party owner(s) (each, a "TPO") and re-rents to you (each, a "Re-Rented Item"), BCI owns and will retain title to all Rented Items at all times. Your only right with respect to the Rented Item(s) (including Re-Rented Items) is to use it/them in full compliance with this Contract during the Term. **You shall not permit the taking or existence of any lien, claim or encumbrance on any such Item. You shall not transfer, sublease or assign any Rented Item or this Contract without the prior written consent of BCI (in its sole discretion).** BCI may sell and/or assign all or any part of its interests in the Rented Item(s) and/or this Contract, in which event, you agree to attorney to the assignee, and that such assignee shall not be responsible for, any pre-existing obligations or liabilities of BCI.
5. Upon your execution of this Contract (or upon later delivery of the Item(s), unless you immediately reject it/them), you represent, warrant, acknowledge and agree that: (a) each Item: (i) is in good repair and operating condition and is in all ways acceptable to you; (ii) is appropriate for your purposes; and (iii) was selected (not based on any recommendation by BCI), carefully examined and inspected solely by you; and (b) you: (i) have received, read and understood all training, instructions, user manuals, maintenance requirements, and other information, if any (including without limitation, all applicable EPA, OSHA, DOT, FMCSA, ASME, ASSE, IEEE, IBC, and/or ANSI Standards) regarding the proper and safe transportation, installation, fueling, use, maintenance and storage of such Item(s) (collectively, "Instructions"); (ii) will fully comply therewith (**including without limitation, Tier 4, silica dust and ELD requirements**); (iii) have been made aware of the need to use all recommended and required safety equipment; (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will give any required notice(s) to, and obtain all necessary licenses, permits, authorizations and approvals from, the appropriate governmental authorities; (vi) will ensure the Site is reasonably clean, safe and secure; (vii) will advise all local utilities and cable companies, and clearly mark all underground lines and utilities, before using any Item(s) to dig or disturb the ground surface (**Call 811** at least 3 full business days in advance); (viii) will immediately cease using any Item that breaks down, malfunctions or proves defective (a "Malfunction"); and (ix) will ensure

that all others comply with this § 5. You agree to notify BCI immediately if any of the above statements should prove incorrect or misleading at any time.

6. **WARNINGS: POWERED TOOLS AND EQUIPMENT, INCLUDING VEHICLES, FORKLIFTS, EXCAVATORS, LOADERS AND OTHER ITEMS USED FOR DIGGING, LIFTING, CUTTING, LOADING, TRANSPORTATION, TOWING AND/OR HAULING, CAN BE DANGEROUS AND SHOULD BE SERVICED, MAINTAINED, REPAIRED AND USED WITH GREAT CARE, ONLY FOR THEIR INTENDED PURPOSE(S), AND ONLY BY PROPERLY QUALIFIED, INSTRUCTED, TRAINED, FAMILIARIZED, AND IF APPLICABLE, LICENSED, ADULTS.** YOU AGREE TO PROVIDE ANY AND ALL NECESSARY FAMILIARIZATION, TRAINING, INSTRUCTIONS AND WARNINGS TO ALL USERS, OPERATORS AND OCCUPANTS OF THE RENTED ITEM(S), and ensure that each such Item is used safely and only: (a) for its Intended purpose(s); (b) within its rated capacity; (c) unless otherwise specifically agreed by BCI on a case-by case basis, at the Site; (d) **BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED AND/OR LICENSED ADULTS;** and (e) otherwise in full compliance with the Instructions as well as all applicable laws, rules and regulations, at all times.
7. You agree to protect, properly maintain and care for each Rented Item at all times, keep it safely and securely stored and locked when not in use, and return it to BCI on time, clean and otherwise in good order, condition and repair, properly serviced and maintained, and if applicable, full of the appropriate fuel, fluid and lubricants. You will not, nor will you permit anyone else to: (i) abuse, misuse, overuse, remove from the Site, conceal, repair, modify, damage or destroy any Rented Item; (ii) violate any applicable law, policy of insurance or warranty; (iii) use any Item(s) to store, move or otherwise operate or deal with or in any flammable, explosive, noxious, caustic, corrosive, radioactive or otherwise hazardous substances or circumstances; or (iv) take possession of or exercise control over any Rented Item without our prior written consent (which may be granted, conditioned or withheld in our sole discretion). If you fail to fully and timely comply with this § 7, then in addition to your other obligations arising under this Contract, you will pay BCI: (a) Rent for each succeeding full rental period until all such Item(s) have been returned or replaced as required; and (b) all costs

and expenses BCI may incur in connection with such failure.

8. In the event of a Malfunction (as defined in § 5), you will immediately notify BCI, and provided such Malfunction did not result from or in connection with any wrongful or negligent act or omission (including any breach of this Contract) by you or anyone you permit to use or otherwise deal with any Rented Item(s), BCI will, at its sole option: (a) repair the Malfunctioning Item; (b) provide you with a comparable item; or (c) return the unused portion of the Rent for the Malfunctioning Item and cancel this Contract. The foregoing remedies are **EXCLUSIVE**. BCI will have no other obligation(s) regarding Malfunctions, all of which you hereby waive.
9. You agree to maintain all insurance we may require (acknowledging that BCI may not carry insurance on the Rented Item(s)), including without limitation: (a) liability insurance with minimum limits of \$1,000,000 per occurrence; (b) property damage/inland marine insurance covering all Rented Items for the full (new) replacement cost thereof; (c) for all automobiles and trailers included with/in the Rented Item(s), hired auto physical damage insurance for its/their actual cash value and hired auto liability insurance with minimum limits of \$1,000,000; and (e) to the extent required by law, workers' compensation or employer's liability insurance. You will ensure that such policies: (i) name BCI as an additional insured and loss payee; (ii) are primary and noncontributory; (iii) include severability of interest's clauses; (iv) include such other provisions as BCI, in its sole discretion, may require; and (v) cannot be cancelled during the Term. You irrevocably appoint as your agent and attorney-in-fact to submit claims and receive payments thereon
10. **BCI IS NOT THE MANUFACTURER OR DESIGNER of any Rented Item(s),** all of which are provided **"AS-IS"**. **NEITHER BCI NOR ANY TPO MAKES ANY WARRANTY, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND/OR GOOD AND WORKMANLIKE PERFORMANCE,** as well as any warranty(ies) arising from course of dealing, course of performance and/or usage of trade) regarding any Item(s) or Service(s)

provided by or at the direction of BCI OR ANY TPO, nor does BCI OR ANY TPO make any warranty against **INTERFERENCE OR INFRINGEMENT**, all of which warranties you hereby waive. **NO DESCRIPTIONS, DEPICTIONS, SPECIFICATIONS, MODELS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY BCI OR ANY TPO.**

11. **INDEMNITY/HOLD HARMLESS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU HEREBY: (A) ASSUME ALL RISK OF PERSONAL INJURY, LOSS, PROPERTY DAMAGE, DESTRUCTION AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING WITHOUT LIMITATION, ANY AND ALL LIABILITIES, CLAIMS AND DAMAGES ARISING IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, STORAGE, SERVICING, MAINTENANCE, REPAIR AND/OR RETAKING OF ANY SUCH ITEM(S) AND/OR SERVICE(S), HOWEVER ARISING (COLLECTIVELY, "RISKS"); (B) RELEASE AND DISCHARGE BCI AND EACH TPO FROM**, and except only to the extent prohibited by applicable law (e.g., any sovereign or governmental immunity act or statute), **AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS BCI, EACH TPO, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, INSURERS, SUBROGEEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS FOR, FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES) ARISING FROM OR IN CONNECTION WITH SUCH RISKS AND/OR ANY BREACH BY YOU, YOUR AGENTS, EMPLOYEES AND/OR CONTRACTORS OF THIS CONTRACT; and (C) WAIVE all rights and remedies under the Uniform Commercial Code, as well as all incidental, consequential, special, and punitive damages, against BCI and each TPO.**

12. If and *only if*, we have offered, and you have elected to purchase our **OPTIONAL RENTAL PROTECTION PLAN ("RPP")** and paid the RPP fee set forth on Page 1, prior to commencement of the Term, then with respect *solely* to Item(s) covered by RPP ("Covered Items"), your liability to BCI for physical damage to such Covered Items will be limited to the extent set forth in our "Rental Protection Plan Guide," a copy of which you (a) acknowledge you have received and carefully reviewed; and (b) agree to honor and be bound by. **RPP IS NOT INSURANCE, NOR IS IT A WARRANTY.**

13. Your duties hereunder are unconditional. If you: (a) fail to fully and timely pay or perform any of your obligations arising under, or otherwise fail to fully and timely comply with any provision of, this Contract; (b) provide any incorrect or misleading information to BCI; (c) become insolvent; or (d) die or cease conducting business, or if any Rented Item(s) shall be lost, damaged or destroyed, you will be in default under this Contract, whereupon, BCI may with or without notice (and without liability to you), to the maximum extent permitted under applicable law: (i) terminate your rental of the Rented Item(s); (ii) seek relief from any automatic stay; (iii) recover, lock or disable the Rented Item(s) without being guilty of trespass or other transgression (for which you agree to indemnify, defend and hold harmless BCI); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement item(s); (vi) recover from you our associated direct and indirect damages, losses, costs and expenses (including without limitation, Rent for the remainder of the Term, interest and attorneys' fees); and/or (vii) pursue any other rights and/or remedies available hereunder, at law and/or in equity, all of which shall be cumulative.

14. To the maximum extent permitted under applicable law, you hereby ratify, acknowledge, confirm, and grant to BCI: (a) a lien on all real and personal property improved with and/or attached to any Rented Item(s), or on which any Rented Item(s) may be located or used; and (b) a claim on any payment bond provided in connection therewith. We may, without notice or liability to you, remotely monitor (which may include the use of GPS, telematics and other electronic surveillance) and/or inspect any Rented Item(s) at any time, and all information and data thereby obtained will be the sole and exclusive property of BCI. If any performance required of BCI is delayed or rendered impractical as a result of any act or omission of any Other Provider(s) or

any "Act of God" (any event, fact or circumstance beyond our reasonable control), we will be excused from such performance. All amounts due hereunder but not timely paid will bear interest at the highest rate permitted under applicable law until paid. You authorize BCI to charge all amounts due and coming due hereunder to any debit or credit card(s) you provide.

You agree to pay BCI the maximum lawful charge for any check you write which is returned unpaid. No legal action shall be maintained by you against BCI unless: (a) written notice of your claim is delivered to BCI within 30 days after the event complained of first becomes known to you; and (b) such action is commenced in a court of competent jurisdiction within one year after your cause of action accrues. In any event, **BCI's maximum liability in connection with this Contract is limited to the amount(s) actually paid by you hereunder.** You agree to pay all taxes (including all sales, use, transfer, value added, environmental and other taxes), fines, fees, assessments and other charges related to each item. In the event any legal action is commenced in connection with this Contract, if BCI is the prevailing party, BCI will be entitled to recover its costs and expenses associated therewith (including without limitation, reasonable attorneys' fees and expenses) from you. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available hereunder or in connection herewith will constitute an election of remedies or a waiver of any right or remedy we may have, all of which shall be cumulative.

15. You acknowledge that the Rented Item(s) is/are held by BCI primarily for sale. At any time during the Term, BCI may substitute for the Rented Item(s) any other item(s) that perform(s) substantially the same function as the Rented Item(s), where after (subject to subsequent similar substitutions), the item(s) so provided will be deemed the "Rented Item(s)" referenced in this Contract for the balance of the Term. You agree to fully and timely cooperate with all substitution notices received from BCI (by among other things, providing revised insurance certificates and such other documents as may be requested by BCI).
16. Any Item(s) sold to you ("Sale Items"), as provided on P.1 are provided "AS-IS" and "WITH ALL FAULTS,"

- and are subject to the terms of this Contract (modified as necessary to address sales). All item(s) not specifically identified as Sale Items on P.1 will be deemed to be "Rented Item(s)."
17. This Contract, our RPP Guide and any other document(s) provided by BCI (each of which is incorporated herein), represent the entire agreement between you and BCI, superseding all other oral and written agreements and representations, including BCI's website and advertising. The terms of this Contract are severable. If any provision hereof shall be deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be modified to the minimum extent necessary to make such provision valid and enforceable, or if no such modification shall be possible, deleted, and in either such event, the remainder of this Contract will remain valid and in full force and effect. This Contract cannot otherwise be amended or extended except in a writing signed by BCI. Time is of the essence. There are no third party beneficiaries hereto, other than the TPO(s), if any (each of whom shall be deemed an intended third-party beneficiary of your agreements hereunder, as applicable). **This Contract will be deemed to apply not only to all Item(s) identified on P.1, but also to all other items you obtain from BCI at any time** (except only as otherwise agreed by BCI). You agree that this Contract: (a) is fair and reasonable under the circumstances; and (b) shall be interpreted under the laws of the State (with proper venue for any and all associated civil lawsuits and legal proceedings lying solely and exclusively in the federal, state, county and local courts located in or nearest to) the BCI location from which you obtained the Item(s) (unless waived by BCI). You consent and submit to such jurisdiction and venue and waive all claims that such venue lies in an inconvenient forum. Digital, electronic, photocopied and facsimiled signatures and initials included on this Contract shall be deemed originals.
 19. **WARNING:** Obtaining or exerting unauthorized control over property or services of another, with intent to deprive the owner of the use thereof without the owner's consent may be deemed theft, subjecting the violator to **CRIMINAL PROSECUTION** in addition to **CIVIL PENALTIES.**

I have rented from Berry Companies, Inc., a Kansas Corporation (hereinafter referred to as "BCI," "Lessor," "we," "us" and/or "our"), one or more item(s) ("Rented Item(s)", the use of which may generate and/or result in exposure to respirable crystalline silica ("Silica Dust") and/or asbestos, under the terms of the Rental Contract I have executed with BCI (the "Rental Contract") identified below.

I am aware that: (a) Asbestos and Silica Dust are considered "toxic substances" or "harmful physical agents" ("Hazmat") meaning that exposure to it/them (whether by direct use or by indirect exposure such as through exposure to such dust that has settled on equipment) may result in illnesses such as kidney disease, chronic obstructive pulmonary disease ("COPD"), mesothelioma/lung cancer, asbestosis, silicosis and/or other respiratory and related illnesses; and that (b) Occupational Safety & Health Administration ("OSHA") guidelines (including 29 U.S.C. §§ 1910.1053, 1926.1153, and 1928, et. seq., and their respective successor provision(s)), require certain actions by employers.

WE STRONGLY RECOMMEND THE USE OF PERSONAL PROTECTIVE EQUIPMENT ("PPE"), INCLUDING RESPIRATORS, WHEN WORKING WITH THE RENTED ITEM(S) (Note: OSHA requires use of respirators in many cases when items such as handheld power saws, walk-behind saws, drills, chippers, jackhammers and grinders are used. Refer to the applicable OSHA publication(s) cited below for additional information). The standards also require **DECONTAMINATION** of all Rented Item(s) that has/have been exposed to Hazmat.

OPTION TO PURCHASE: Lessee is hereby granted the option("Option") to purchase the Item(s) identified below (the "optioned Item" for the applicable purchase price set forth below and to the right of the Optioned Item (the "Option Exercised Price").

Lessee may exercise the option only by delivering to BCI, at the address set forth above, written notice of Lessee's election to exercise such Option, along with the Option Exercise Price (in good funds) during the "Term" of the above referenced "Rental Contract" (herein so called).

TERM AND EXPIRATION: This Purchase Option and the Option referenced herein shall; (a) commence on the Effective Date, and, except only as may otherwise be separately agreed in writing by BCI: (b) shall be: (i) effective only during the rental "Term" set forth in the Rental Contract, and with respect to the Optioned Item(s); (ii) deemed expired, and no further force or effect upon the earliest to occur; (A) the expiration or termination of the Rental Contract. This document does NOT create a financing arrangement. Your Rental Contract continues to be an "operating" lease/rental for all purposes. Lesser shall remain the sole and exclusive owner of the Optioned Item unless and until Lessor separately conveys title to you. Without limiting the foregoing statements, BCI shall be authorized to place of public record one or more UCC-1 financing statements evidencing its interest in the Optioned Item(s).

ABANDONMENT: Your failure to (A) make full and timely payments of all amounts due and coming due under the rental contract; (B) fully and timely comply with each of your other obligations arising under or in connection with the rental contract and/or any other agreement with BCI; and/or (C) timely and properly exercise the option as provided in Section 1 at BCI's sole option, be deemed an abandonment by you, the lessee, of the option, in which events, such option shall immediately expire and be deemed null and void, terminated and of no further force or effect.

ASSIGNMENT: You shall not assign any of your rights, remedies or obligations arising hereunder or in connection herewith, without the prior written consent of BCI. Any attempted assignment in violation of this Section shall be void ab initio.

PURPOSE: You represent and warrant to BCI that the optioned Item(s) is rented, and if purchased (each, a "Purchased Item") will be purchased, **solely for a business or agricultural purpose and not for any personal, family, or household use.**

DEBIT AND CREDIT CARDS: By signing below, you: (a) agree that all charges due and coming due hereunder are subject to FINAL AUDIT by Berry Companies, Inc. ("BCI" or "Lessor"); and (b) authorize BCI to charge all amounts due and coming due under this Rental Contract (up to 150% of the new replacement value of the Item(s) Rented as identified above (hereinafter, "Rented Item(s)") to any and all debit or credit card(s) you provide.

TRAILERS: By signing below, you represent, warrant, acknowledge and agree that, with respect to all trailers included with/in the Rented Item(s), you shall: (a) carefully inspect all coupling mechanisms, chains, tongue jacks, doors, latches, tires, brakes, lights, signals, pins and tie-downs before each use; (b) secure, protect and regularly inspect all contents of, and refrain from overloading, such trailers; (c) exclude all illegal and/or hazardous substance(s); (d) comply with all laws, rules and regulations (including DOT and FMCSA requirements), and connect all lights and turn signals; (e) avoid confiscation, seizure, impounding and/or "booting"; (f) timely pay all tolls, taxes, fees, fines, and other charges; (g) maintain them in roadworthy condition; and (h) and do hereby waive all claims against Lessor for damage to motor vehicle(s) (including bumpers, hitches and mirrors), as well as all associated direct and indirect damages (see Page 2 hereof).

DROPOFFS: By signing below, you acknowledge that you: (a) have requested that Berry Companies, Inc. ("BCI" or "Lessor") deliver and/or retrieve the Rented Items at/to the location specified above (the "Site") in your absence; (b) have received all familiarization, training, instructions and warnings applicable to such Rented Item(s); (c) voluntarily assume all liability for such Items (including without limitation, all loss and/or damage thereto) from and after such delivery; and (d) agree to accept the statements of BCI's representatives regarding the status, condition, and quantity(ies) of such Rented Items and the Site as of the date and time of such delivery and retrieval (and waive and relinquish any and all claims to the contrary).

ADDENDUM TO RENTAL/SALES AGREEMENT AND RELEASE OF LIABILITY

The following additional terms and conditions will apply when a Customer ("Customer") rents or purchases one or more attachments (the "Attachments") for a Power Unit (the "Unit") from Berry Companies, Inc. or its subsidiary or division (collectively and individually as the "Company").

1. Customer acknowledges that a Company representative has:
 - furnished Customer with an Operations and Maintenance Manual for the Attachments, which includes the importance of the Customer understanding the engine warning and monitoring system on the Unit and the Attachments;
 - furnished Customer with access to safety materials for the Attachments, if available, on or through <https://bobcatofnorthtexas.com/forestry-safety/>, which instructs the Customer on the proper operation and cleaning of the Unit and Attachments in order to reduce the risk of fire or other dangerous malfunctions; and
 - shown Customer the instructional signs and decals on the Unit and Attachments.
2. Customer warrants, represents, and agrees that Customer has received, viewed, read, understands, and will comply with, and will cause all persons operating the Attachments or Unit to read, view, understand, and comply with (a) the Operations and Maintenance Manual pertaining to the Attachments, (b) the applicable safety video for the Attachments, (c) all instructional signs and decals on the Unit and Attachments, (d) all Unit and Attachment warnings, codes, and monitoring systems, and (e) all of the instructions of Company's representative and Customer has had the opportunity to request and receive individual instruction on the proper operation, maintenance, and cleaning of the Unit and Attachments.
3. Customer hereby releases the Company and its directors, officers, agents, and employees from any claims, suits, damages of any type (including attorney's fees), or causes of action under any theory (including without limitation, contract, tort, strict liability, or negligence) now existing or hereafter arising, except those caused by the Company's sole negligence, arising from or involving in any way the Customer's operation, possession, or use of the Unit or Attachments or Customer's failure to properly maintain or clean the Unit or the Attachments or to otherwise follow any warnings or instructions set forth in the Operation and Maintenance Manual or other training and instruction materials included on the machinery or otherwise available. Customer further agrees to indemnify, defend, and hold the Company and its directors, officers, agents, and employees harmless from and pay Company for any claims, suits, damages of any type (including attorney's fees), or causes of action under any theory (including without limitation,



contract, tort, strict liability, or negligence) now existing or hereafter arising of a third party that involves in any way the Customer's operation, possession, or use of the Unit or Attachments or failure to properly maintain or clean the Unit or the Attachments or otherwise follow any warnings or instructions set forth in the Operation and Maintenance Manual or other training and instruction materials on the Unit or the Attachments or otherwise available.

4. The laws of the State of the location of the Company involved in the rental or sale transaction will apply.

Initial: X: _____

YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED AND THOROUGHLY INSPECTED EACH OF THE RENTED ITEM(S), ALL OF WHICH ARE COMPLETE AND IN GOOD ORDER, CONDITION AND REPAIR, PROPERLY FUNCTIONING, AND OTHERWISE IN ALL WAYS ACCEPTABLE TO YOU. This Is legally binding Contract. Important Terms and Conditions appear on this Page 1 and on the Reverse Side or Page 2 hereof. ANY DIFFERENT OR ADDITIONAL TERMS, WHETHER ORAL OR WRITTEN, ARE HEREBY OBJECTED TO, AND SHALL NOT BE ENFORCEABLE UNLESS SEPERATELY APPROVED IN WRITING BY BCI IMPORTANT, PLEASE READ CAREFULLY BEFORE SIGNING:

You, for yourself and for the "Customer / Lessee / Guarantor" acknowledge and agree that you have carefully reviewed. fully understand and agree to all of the terms and conditions set forth on the front and reverse side or Page 2) of this Contract. Our Rental Protection Plan (RPP) is OPTIONAL, and MAY BE DECLINED (see Section 12 on Page 2 of this contract), if you provide BCI proof of the property damage/inland marine insurance referenced in Section 9 of your Rental Contract. If you fail to pay the RPP Fee you will be responsible for all damage to the Rented Item(s), at the full (New) replacement value thereof
SIGNATURE OF / FOR CUSTOMER/ LESSEE / GUARANTOR:

X: _____

Name (Printed): _____ Date: _____