

AGENDA PLACEMENT FORM

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

Date: 02/19/2024

Meeting Date: 02/26/2024

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>

February 26, 2024

Description:

Consider and Approval with authorization for County Judge to sign Master Rental Agreement and Johnson County Terms addendum to Rental Contract for National Tank and Equipment LLC.

(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: 3 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**



NATIONAL TANK & EQUIPMENT

4128 COUNTY RD 616
ALVARADO, TX 76009
830-294-0125

Remit To:

P O BOX 4318
DEPT # 707
HOUSTON, TX 77210-4318
888-213-7950

Customer: 9900019

UNCOLLECTED CASH - 19
4128 COUNTY ROAD 616
ALVARADO, TX 76009

RESERVATION

Job Site:

JOHNSON COUNTY BUFFALO CREEK
1301 OLD FOAMY RD
CLEBURNE, TX 76033

C#: 318-525-6829 J#: 318-525-6829

Sales Rep: JEFF SWANEY

Contract #.. 289712
Contract dt. 2/15/24
Date out.... 2/19/24 7:00 AM
Est return.. 3/18/24 7:00 AM
Job Loc..... BUFFALO CREEK CLEBURNE TEXAS
Job No..... BUFFALO CREEK
P.O. #..... TBD
Ordered By.. RICK BAILEY
Terms..... Net 30 Days
Written by.. JEFFREY SWANEY

Qty	Equipment #	Min	Day	Week	4 Week	Amount
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2	12" VAC ASSIST - DIESEL 1001012 S-DUAL 8"MCL D-12"FLANGE BFLY VALVES ON SUCTION PORTS	445.00		1334.00	4000.00	8000.00
2	STRAINERS (ALL SIZES) STRAINERS USED ON SUCTION LINE TO FILTER DEBRIS IN WATER 12"	5.00	5.00	15.00	45.00	90.00
8	12X20 COMPOSITE-FLANGED (CS) 80FT OF SUCTION PER PUMP	34.00		100.00	300.00	2400.00
12	12X50 LAYFLAT DISCHARGE-VICTA 300 FT PER PUMP	32.00		94.00	280.00	3360.00

SALES ITEMS:

Qty	Item number	Price	Unit
1	DEL DELIVERY 2-6-22-26-24	1250.000	EA
1	PKU PICKUP	1250.000	EA
1	ENV ENVIRONMENTAL FEE	346.250	EA
1	TDS TEXAS DIESEL SURCHARGE	120.000	EA

IF THE EQUIPMENT DOES NOT WORK PROPERLY, NOTIFY THE OFFICE AT ONCE
CUSTOMER IS RESPONSIBLE FOR REFUELING, DAMAGES AND REPAIRS (Customer Initials):

X 2/26/2024 Christopher Boedeker, County Judge

CUSTOMER SIGNATURE

DATE

NAME PRINTED

DELIVERED BY

DATE

*** I hereby acknowledge receipt of equipment subject to the stated terms on both sides of this agreement which I have read ***



NATIONAL TANK & EQUIPMENT

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ALVARADO, TX 76009
830-294-0125

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SALES	ITEMS:	Price	Unit
Qty	Item number		
1	HEIT	11.200	EA
	HEAVY EQUIPMENT INVENTORY TAX		

Sub-total:	16827.45
Tax:	1377.45
Invoice Total:	18204.90

IF THE EQUIPMENT DOES NOT WORK PROPERLY, NOTIFY THE OFFICE AT ONCE
CUSTOMER IS RESPONSIBLE FOR REFUELING, DAMAGES AND REPAIRS (Customer Initials): CB

X

CUSTOMER SIGNATURE

DATE

Christopher Boedeker, County Judge

NAME PRINTED

DELIVERED BY

DATE

*** I hereby acknowledge receipt of equipment subject to the stated terms on both sides of this agreement which I have read ***

National Tank & Equipment, LLC TERMS & CONDITIONS EQUIPMENT RENTAL

RENTAL PERIOD. The rental period shall commence on the date of shipment of the Equipment covered by this Agreement from the point of shipment and shall continue until the Equipment is returned to National Tank & Equipment, LLC, (hereinafter NTE) receiving point or such other location as NTE may designate in writing.

1. LOADING AND TRANSPORTATION. The CUSTOMER shall be responsible for the cost of transporting the Equipment to the CUSTOMER'S receiving point and shall unload the Equipment upon its return to NTE receiving point, and shall pay all demurrage charges incurred at the shipping and receiving points. The CUSTOMER shall pay all shipping expenses from the original point of shipment to CUSTOMER'S receiving point and all return shipping expenses to NTE receiving point as NTE shall designate in writing.

2. RECALLING AND RETURNING NOTICE. NTE may recall any or all Equipment upon thirty (30) days written notice to the CUSTOMER and the CUSTOMER may return any or all Equipment upon like notice to NTE.

3. PAYMENT. CUSTOMER agrees to pay NTE the rental rates set forth in the order attached hereto. If any payment is not tendered when due, CUSTOMER agrees to pay a late charge from the date such payment becomes due of one and one-half percent (1.5%) per month, or the highest legally permitted rate, whichever is less, on any balance past due, together with all costs (including, but not limited to, attorney's fees) incurred by NTE to collect overdue amounts.

4. INSPECTION. Before the Equipment is loaded for shipment to CUSTOMER'S receiving point, the CUSTOMER may require an inspection thereof by a qualified inspector. If the CUSTOMER does not inspect the Equipment before it is loaded or transit, the CUSTOMER is conclusively deemed to have accepted that the equipment is in good running order without broken or worn out parts and in a clean and unmarred condition. NTE shall have the right at any time to enter the premises occupied by the Equipment and shall be given free access thereto and afforded necessary facilities for the purpose of the inspection.

5. DAMAGE TO EQUIPMENT. CUSTOMER shall be liable to NTE for all loss or damage to the Equipment in its possession.

6. INDEMNIFICATION. CUSTOMER shall indemnify, defend and hold harmless NTE against any and all loss, expense, liability or penalty which may arise out of any act or omission of CUSTOMER, CUSTOMER'S employees, agents, assigns, subcontractors or any third party not employed by or under the control of NTE arising out of the operation, handling, maintenance or transportation of the Equipment.

7. INSURANCE. CUSTOMER shall, at its own expense, (i) maintain public liability and property insurance to protect the CUSTOMER and NTE against damage to property or persons from the operation, handling or transportation of the said equipment during the rental period, (ii) insure the Equipment for the loss by fire, theft, damage or other risk of loss customarily insured against on equipment such as the Equipment, (iii) maintain marine insurance on marine equipment and (iv) maintain such other insurance as may be requested by NTE. All of such insurance shall be maintained in amounts satisfactory to NTE. Upon request, CUSTOMER shall provide NTE with proof of any such insurance.

8. TERMINATION OF THIS AGREEMENT. Should the CUSTOMER (i) fail to make payment in accordance with the terms of the Agreement and such failure shall continue for a period of five (5) days, (ii) become bankrupt, become insolvent or make an assignment for the benefit of its creditors, (iii) fail to maintain and/or operate or to return the Equipment as provided by this agreement, (iv) fail to maintain the insurance required herein or (v) violate any material provision hereof, NTE may, after three (3) days notice in writing of such event terminate this agreement, take possession of the Equipment, wherever it may be found without becoming liable for damages or for trespass, and, in addition to any other remedies NTE may recover all rental due together with any damages for injury to the Equipment and all expenses incurred in returning and repossessing the Equipment.

9. TAXES AND FEES. CUSTOMER shall pay all personal property taxes, license fees, and registration fees which may now or hereafter be imposed upon the possession, lease or use of the Equipment. CUSTOMER shall promptly notify NTE of the receipt of any tax notices, tax reports or inquiries or notices from taxing or other authorities concerning tax, fees or assessments.

10. AIR QUALITY. CUSTOMER shall comply with all laws, rules, and regulations with regard to the operation of the Equipment under any local, state or Federal Air Quality Legislation.

11. OWNERSHIP AND ENCUMBRANCES. Title to and ownership of the Equipment is, and shall at all times remain with NTE, and CUSTOMER shall have no right, title or interest therein, or thereto except the right of possession and use of the Equipment pursuant to the terms of the Agreement. CUSTOMER shall not remove or deface any plate or marking on the Equipment identifying NTE as the owner of the Equipment or the manufacturer's serial number. The Equipment is, and shall at all times remain personal property notwithstanding its use or manner of attachment to any other personal or real property. CUSTOMER shall keep the Equipment free and clear of any and all levies, liens, security interests and encumbrances of any kind and shall give NTE prompt notice of any attachment or judicial process affecting the Equipment.

12. LIABILITY LIMITATION. Under no circumstances shall NTE be held liable for any special, indirect, incidental, or consequential damages. The contract price shall be the limit to NTE liability, whether founded in contract, statute, or tort (including negligence), arising out of, or resulting from (i) the Agreement or the performance or breach thereof, (ii) the design, manufacture, delivery, sale, repair, replacement, or the use of any Equipment, or (iii) the furnishing of any service.

13. SEVERABILITY. If any provision or provisions of this Agreement shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; and all other provisions will be interpreted and deemed modified so as to be enforceable to the extent allowed by law.

14. GOVERNING LAW AND CIVIL ACTION. This Agreement shall be governed by the laws of the State of Texas. Both parties agree that any civil action or lawsuit arising from the performance or non-performance of this Agreement, whether based upon contract, negligence, strict liability or otherwise, shall be commenced within two (2) years from the date such claim or cause of action arose.

15. AMENDMENTS. No Change, modification, amendment or waiver of any of the terms or conditions of this Agreement shall be binding upon the parties unless made in writing and duly executed by both parties hereto.

16. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all previous or contemporaneous statements, purchase orders, agreements, and representations (except those written representations expressly incorporated in this Agreement). There are no other agreements, understandings, or terms or conditions and neither party has relied upon any representation or warranty, express or implied, not contained in this Agreement.

17. ACCEPTANCE. If for any reason the CUSTOMER shall fail to return to NTE signed copies of this Agreement, any conduct by CUSTOMER which recognized the existence of a contract pertaining to the subject matter hereof shall constitute unqualified acceptance by CUSTOMER of the terms and conditions of this Agreement. The terms of this Agreement shall constitute the complete and exclusive statement of the Agreement between the parties hereto and may be modified only by written instrument executed by the authorized representatives of both parties. Any terms proposed by the CUSTOMER, including but not limited to the terms of the CUSTOMER'S purchase orders, which add to, vary from, or conflict with the terms are hereby objected to. This Agreement, whether used as an offer, acceptance of an offer, or a confirmation of a contract, is conditioned on and limited to its terms. By acceptance of the equipment or services described on the face of this Agreement, CUSTOMER assents to all its terms and conditions. Any reference by NTE to CUSTOMER'S purchase order is solely for the purposes of incorporating the description and specifications of the equipment and services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of this Agreement.

18. USE AND MAINTENANCE. CUSTOMER shall not use, operate, maintain or store the Equipment improperly, carelessly, or in violation of any applicable law or regulation or for any purpose other than in the conduct of CUSTOMER business. CUSTOMER shall not sublease the Equipment, permit the use of the Equipment by anyone other than CUSTOMER or change the use or location of the Equipment specified in the Agreement, without the prior written consent of NTE. CUSTOMER, at its own expense, shall maintain the Equipment in good operating order, repair and condition and shall perform maintenance at least as frequently as stated in the applicable operator's guide, service manual or maintenance guide. CUSTOMER shall not alter the Equipment or affix any accessory to it if doing so would impair its originally intended function or use or reduce its value. Any alteration or addition to the Equipment shall be the sole responsibility of and at the sole risk of the CUSTOMER.

Notwithstanding any provisions contained herein to the contrary: If the Equipment requires maintenance or repair while in CUSTOMER'S possession and (i) CUSTOMER elects to return the Equipment to NTE, NTE may provide for the replacement of the Equipment, if available, and CUSTOMER shall be responsible for all applicable transportation costs incurred by NTE in providing such replaced Equipment; or (ii) CUSTOMER requests that NTE perform the required maintenance, CUSTOMER shall be charged travel time, mileage, labor and parts associated with the such maintenance provided by NTE.

19. WARRANTY. NTE MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES OF THE CUSTOMER SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF ANY AND ALL OTHER REMEDIES INCLUDING, WITHOUT LIMITATION, INCIDENTAL OR CONSEQUENTIAL DAMAGES. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, REMEDIES OR THIS LIMITATION WILL BE BINDING UPON NTE UNLESS IN WRITING, SIGNED BY A DULY AUTHORIZED OFFICER OF NTE. CUSTOMER acknowledges and agrees that the Equipment rented hereunder is of a size, design and make selected by CUSTOMER and is suitable for CUSTOMER'S purposes. CUSTOMER expressly disclaims any reliance upon any statement or representations made by NTE.

**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 NATIONAL TANK & EQUIPMENT, LLC (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 February 26 2025. 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:

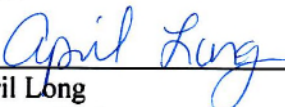
JOHNSON COUNTY:



Christopher Boedeker
County Judge

2/26/2024
Date

Attest:

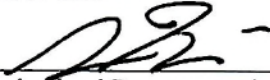


April Long
County Clerk



2/26/2024
Date

VENDOR: NATIONAL TANK & EQUIPMENT, LLC



Authorized Representative
Printed Name: GREG MILLER
Title: CONTROLLER

2/19/2024
Date