

RESOLUTION NO. 1305

RESOLUTION APPROVING AN AGREEMENT WITH BIG TEN RENTALS, INC. IN THE AMOUNT OF \$1,526.80 FOR STAGE AND TENT RENTAL DURING THE 2015 HOOVER'S HOMETOWN DAYS CELEBRATION ON SATURDAY AUGUST 8, 2015.

WHEREAS, the City's premier event of the year is Hoover's Hometown Days; and

WHEREAS, the City of West Branch is organizing entertainment on a stage located on Main Street as part of the 2015 Hoover's Hometown Days Celebration; and

WHEREAS, the budget for Hoover's Hometown Days 2015 includes funding for rental of a stage and tent located on Main Street; and

WHEREAS, the Big Ten Rental, Inc. has submitted a proposed service agreement to provide said services, which include set-up and take-down of the stage and tent on Saturday August 8, 2015, in the amount of \$1,526.80; and

WHEREAS, it is now necessary to approve said agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa that the aforementioned agreement with Big Ten Rentals, Inc. is hereby approved. Further, the Mayor is directed to execute the agreement on behalf of the City.

Passed and approved this 4th day of May, 2015.



Mark Worrell, Mayor

ATTEST:



Matt Muckler, City Administrator/Clerk

TERMS AND CONDITIONS OF RENTAL CONTRACT

- (1) For good and valuable consideration, you and Big Ten Rentals, Inc. agree as follows: As used in this Contract, "Page 1" refers to the first page or "face" of this Contract; "Contract" means Page 1 together with these Terms and Conditions of Rental Contract; "Rented Item(s)" or "Item(s)" means the items rented or sold to you, as identified on Page 1 (including any "Instructions" provided per the terms of Section 5 below); "Customer," "Lessee," "you" and "your" mean the customer or "Lessee" identified on Page 1, and "BTR," "Lessor," "We," "us" and "our" mean Big Ten Rentals Incorporated, an Iowa corporation d/b/a "Big Ten Rentals, Inc." "Contract" means Page 1 together with these Terms and Conditions of Rental Contract;
- (2) You agree to rent the Rented Item(s) from BTR for the period(s) specified on Page 1 (the "Term"), and to pay 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 BTR. Except only as otherwise specifically agreed in writing by BTR, all rental rates are for normal use of the Rented Item(s) on: (a) a single-shift basis during the Term, not exceeding 8 hours per day, 40 hours per week, and/or 160 hours per 4-week period with respect to equipment and tools, and (b) a single-day/single-event basis with respect to party and special events-related items (e.g., tents, inflatables, tables, chairs, and other special events items). The Rent will be increased for overtime, overuse and late returns, as well as misuse. 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"). You agree: (a) to pay BTR: (i) the Estimated Rent, together with any deposit specified on Page 1 (or if none, 35% of the Estimated Rent) at least 8 days prior to commencement of the Term (the "Prepayment"); and (ii) any additional amounts coming due hereunder upon demand; and (b) that: (i) BTR 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 hereunder; and (iv) all Prepayments are **NON-REFUNDABLE** unless otherwise specifically agreed by BTR in writing. Anything remaining with, in or on any Rented Item(s) upon return will, at our option, be deemed surrendered and abandoned, and will become the property of BTR.
- (3) You will ensure that each item is used safely and only: (a) for its intended purpose(s); (b) within its rated capacity; (c) at the address set forth on Page 1 (the "Site"); (d) by properly qualified, certified, and if required, licensed, operators; and (e) otherwise in full compliance with the Instructions, as well as all applicable laws, rules and regulations, at all times. You will not, nor will you permit anyone else to: (i) abuse, misuse, overuse, remove, conceal, repair, modify, damage or destroy any Rented Item; (ii) violate any applicable policy of insurance or warranty; or (iii) take possession of or exercise control over any Rented Item without our prior consent, granted, conditioned or withheld in our sole discretion.
- (4) 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, free of defects, and is in all ways acceptable to you; (ii) is appropriate for your purposes; and (iii) was selected solely by you, not based on any recommendation by BTR; and (b) you: (i) have received, read and understood all training, instructions, user manuals, maintenance requirements, and other information, if any (including all applicable FPA, OSHA, NFPA, ASSE, 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 with the same (including EPA Tier 4 regulations); (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 governmental authorities; (vi) will timely obtain all necessary licenses, authorizations and approvals; (vii) will ensure all underground utilities are clearly marked before driving stakes or using any Item(s) to disturb the ground surface (call 811 or 800-292-8989, or go to <www.lowaonecall.org>, at least 48 hours in advance); (viii) will immediately cease using any Item that breaks down, malfunctions or proves defective (a "Malfunction"); (ix) will create and post in a conspicuous place an OSHA-compliant EVACUATION PLAN for all rented tents; and (x) will ensure that all others comply with this Section.
- (5) You will protect each Rented Item at all times, keep it safely and securely stored and locked when not in use, and return it to BTR 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. If you fail to do so, you will pay BTR: (a) Rent for each succeeding full rental period until all Rented Item(s) have been returned or replaced as required; and (b) any and all costs and expenses, both direct and indirect, BTR may incur in connection with your failure to do so.
- (6) If we agree to deliver and/or retrieve any Item(s), you will: (a) pay our regular charge(s) for such service(s), and for time spent awaiting access to the Site; (b) be present for delivery and retrieval; and (c) ensure our personnel have timely and adequate 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 indemnify and hold harmless BTR. If you are not present upon delivery and/or retrieval of any Item(s), you agree to accept the statements of our representatives regarding the same (including status, condition and quantities).
- (7) Certain (typically special events) items may be delivered on pallets, or in crates, cartons or boxes, and may be stacked, bagged, racked, folded, rolled and/or strapped ("Packed"). Upon return, you will ensure that all such Rented Items are properly Packed. YOU AGREE NOT TO PACK ANY RENTED ITEM UNLESS IT IS COMPLETELY DRY. PACKING WET OR DAMP RENTED ITEMS MAY RESULT IN MOLD OR MILDEW, FOR WHICH YOU WILL BE LIABLE.
- (8) In the event of a Malfunction, you will immediately notify BTR, and provided the Malfunction did not result from your breach of this Contract, we will, at our option: (a) repair the subject Rented Item; (b) provide you with a comparable item as soon as possible; or (c) return the unused portion of the Rent and cancel this Contract. The foregoing remedy is **EXCLUSIVE**. BTR will have no other obligation(s) regarding Malfunctions, all of which you hereby waive.
- (9) BTR owns and will retain title to all Rented Items at all times. Your only right with respect to such Item(s) is to use it/them in full compliance with this Contract during the Term. You will not permit the taking or existence of any lien, claim or encumbrance on any Rented Item.
- (10) You may not transfer, sublease or assign any Rented Item(s) or this Contract without BTR's prior written consent. BTR 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 will attorn to the assignee, and such assignee shall not be responsible for, any pre-existing obligations or liabilities of BTR.
- (11) You will maintain all insurance BTR deems necessary, including (unless we waive it), at least: (a) commercial general liability insurance with minimum limits of \$1,000,000 USD per occurrence; and (b) "all-risk" or inland marine insurance (or the equivalent), covering all loss of, and damage to, the Rented Item(s) (including while in transit) for the full (new) replacement value thereof; (c) Hired Auto liability insurance with limits of not less than \$1,000,000 USD per occurrence; and (d) host liquor liability insurance. All such policies shall be primary; shall name BTR as an additional insured and loss payee; shall be primary and non-contributory, and shall waive subrogation against BTR.
- (12) If and only if you have elected to purchase the Optional Damage Waiver (set forth on Page 1, if available) and paid the Damage Waiver Fee prior to commencement of the Term, you will have no liability to BTR for physical damage to covered Rented Item(s), except that you will remain liable in all events for: (a) loss of damage caused in whole or in part by: (i) your breach of any provision of this Contract; (ii) theft or other failure to return Rented Item(s); (iii) misuse and/or abuse; (iv) vandalism and malicious mischief; (v) use of alcohol or drugs; and (b) all repair/replacement costs exceeding \$500 with respect to rented trailers. DAMAGE WAIVER IS NOT INSURANCE, NOR IS IT A WARRANTY. Your insurance will continue to apply for our benefit and will remain primary (we will be subrogated to your rights under such policy). You agree to assign to BTR all of your rights thereunder and to take all actions necessary to assist us in recovering from your insurer for all damages covered by Damage Waiver.
- (13) **WARNINGS:** (A) TENTS, INFLATABLES, LAWN & GARDEN EQUIPMENT, LIFTS, SAWS, PRESSURE WASHERS, SEWER SNAKES, AND EQUIPMENT USED FOR LIFTING, LOADING, HAMMERING, STAPLING, CUTTING, BORING, CHIPPING EDGING, SANDING, GRINDING, COMPACTING, DIGGING, NAILING, WELDING, SPRAYING, HEATING, COOKING, TOWING, AND/OR HAULING IS/ARE **INHERENTLY DANGEROUS** AND SHOULD BE USED, MOVED, MAINTAINED AND REPAIRED WITH GREAT CARE ONLY BY PROPERLY QUALIFIED, INSTRUCTED, AND IF APPLICABLE, LICENSED, INDIVIDUALS; AND (B) TENTS, INFLATABLES, AND OTHER TEMPORARY STRUCTURES MAY MOVE, LEAK, COLLAPSE, OVERTURN OR CATCH FIRE, PARTICULARLY DURING HAZARDOUS WEATHER (e.g., rain, snow, sleet, hail and winds over 25 mph). If hazardous weather occurs or threatens, you will: (a) cause all persons to discontinue using and EVACUATE the Rented Item(s); (b) protect such Item(s); and (c) permit BTR to delay delivery, installation AND/OR USE of, or dismantle and/or retrieve ANY of SUCH Item(s) (without obligating us to do so). TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, **YOU ASSUME ALL RISKS ASSOCIATED WITH THE RENTED ITEM(S).**
- (14) BTR IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE RENTED ITEM(S). ALL SUCH ITEMS ARE PROVIDED **"AS-IS"**. ACCORDINGLY, EXCEPT ONLY TO THE EXTENT OTHERWISE REQUIRED BY APPLICABLE LAW, **BTR MAKES NO WARRANTY**, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, CAPACITY, FREEDOM FROM DEFECTS OR WORKMANLIKE PERFORMANCE) REGARDING ANY ITEM(S) OR SERVICE(S) PROVIDED BY OR AT THE DIRECTION OF BTR, NOR DOES BTR MAKE ANY WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU WAIVE. NO DESCRIPTIONS OR ADVERTISEMENTS BY BTR CONSTITUTE REPRESENTATIONS OR WARRANTIES BY BTR TO THE MAXIMUM EXTENT PERMITTED UNDER LAW. YOU: (A) ASSUME ALL RISK OF INJURY, LOSS, DAMAGE, DESTRUCTION AND ENVIRONMENTAL CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH ALL ITEM(S) AND SERVICE(S) REFERENCED HEREIN, INCLUDING WITHOUT LIMITATION, ANY AND ALL LIABILITIES, CLAIMS AND DAMAGES ARISING FROM OR IN CONNECTION WITH THE PROVISION, SELECTION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, STORAGE, MAINTENANCE, REPAIR AND/OR RETAKING OF ANY SUCH ITEM(S) OR SERVICE(S), WHETHER OR NOT YOUR FAULT; AND (B) YOU HEREBY RELEASE AND DISCHARGE BTR FROM AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS BTR AND ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, OWNERS, REPRESENTATIVES, INSURERS, SUBROGEEES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES) ARISING FROM OR ASSOCIATED WITH ANY AND/OR ALL OF SUCH ITEM(S) AND/OR SERVICES. You waive all rights, remedies, claims, damages and setoffs conferred upon you under applicable law (including the Uniform Commercial Code), as well as all incidental, consequential, special, and punitive damages, against BTR. Your duties hereunder are UNCONDITIONAL.
- (15) This Contract, and any Addenda BTR provides, represent the entire agreement between you and BTR, superseding all other agreements and representations (including BTR's website and advertising). The terms of this Contract are severable. If any provision hereof is deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be deleted, and the remainder of this Contract will remain valid and in full force and effect. Time is of the essence. BTR may, without notice or liability to you, inspect any Rented Item(s) at any time. If any performance required by BTR is rendered impractical as a result of any act or omission of any Other Provider(s) or any "Act of God" (e.g., any fact or circumstance beyond BTR's reasonable control), BTR will be excused from such performance. You waive all statutes of limitations regarding BTR's rights and remedies. All amounts due from you hereunder but not timely paid will bear interest at the highest rate permitted under applicable law until paid. You grant to BTR a perpetual, paid-up, royalty-free license to create, edit, display, and distribute photos and videos of the Rented Item(s) at your event, publicly or privately, as we deem appropriate. You authorize BTR to submit all amounts coming due hereunder for payment on your debit or credit card and hereby waive all claims to the contrary. You agree to pay BTR the maximum lawful charge for any check you write which is returned unpaid. This Contract cannot be further amended or extended except in a writing signed by both you and BTR. BTR's maximum liability in connection with this Contract is limited to the amount(s) actually paid by you hereunder. You will pay: (a) BTR's attorneys' fees and other costs of enforcing this Contract, and (b) all taxes (including all sales and use taxes), fines, fees, assessments and other charges related to each Item. Neither BTR's exercise, nor its failure or delay in the exercise, of any rights or remedies will constitute an election of remedies or a waiver of any right or remedy BTR may have.
- (16) Any Item(s) sold to you ("Sale Items"), as provided on Page 1 are provided **"AS-IS"** and **"WITH ALL FAULTS"** and are subject to the terms of this Contract (modified as necessary to apply to sales). All Item(s) not specifically identified as Sale Items on Page 1 will be deemed to be "Rented Item(s)."
- (17) If you or any guarantor: (a) fail to fully and timely comply with this Contract; (b) provide any incorrect or misleading information to us; (c) become insolvent or (d) die or cease conducting business, or if any Rented Item(s) shall be lost, damaged or destroyed during the Term (subject, however, to Section 12 hereof), you will be in default, whereupon, to the maximum extent permitted under applicable law, BTR may without notice or liability to you: (i) terminate your rental; (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 hereby indemnify and hold harmless BTR); (iv) perform your obligations on your behalf, without being obligated to do so; (v) purchase replacement Item(s) as necessary; (vi) recover from you and/or any guarantor our associated direct and indirect damages, costs and expenses (including Rent for the remainder of the Term and attorneys' fees); and/or (vii) pursue any other rights and/or remedies available hereunder, at law or in equity.
- (18) This Contract allocates to you the risk of injury, loss of, or damage to, persons or property arising in connection with the Item(s), and that allocation is reflected in a reduced Rent (or purchase price, as applicable). This Contract will be deemed to apply not only to all Item(s) identified on Page 1, but also to all other items you obtain from BTR at any time in the future (except only as otherwise agreed by BTR). This Contract (a) has been carefully and thoroughly reviewed, and specifically negotiated by each the parties hereto (each waiving any and all claims regarding its enforcement or authorship, including without limitation, any preference in its interpretation or enforcement, as well as any right to claim it constitutes an "adhesion contract"); and (b) shall be interpreted under the laws of the State of Iowa. Proper venue for any and all legal proceedings commenced in connection herewith shall lie solely and exclusively in the federal and state courts located in or nearest to Johnson County, Iowa, and you hereby consent and submit to such jurisdiction and venue. Digital, electronic, photocopied or facsimiled signatures on this Contract will be enforceable as originals.
- (19) WARNING: FAILURE TO RETURN RENTED ITEM(S) CAN, IN CERTAIN CIRCUMSTANCES, BE CONSIDERED THEFT, RESULTING CIVIL PENALTY(IES) AND/OR CRIMINAL PROSECUTION. See Iowa Code §714.1, et seq.**

1820 BOYRUM STREET
 IOWA CITY, IA 52240
 www.bigtenrentals.com
 319-337-7368 Phone
 319-351-1221 Fax

Status: Reservation

Contract #: 10695

Event Beg: Sat 8/ 8/2015 8:00AM
 Event End: Sat 8/ 8/2015 6:00PM
 Operator: Ruby Heck

Customer #: 16675

City of West Branch

319-643-7100 Phone

Main Street
 PO Box 786
 WEST BRANCH, IA 52358

Job Descr: Hoover Home Town Festival

****DELIVERY/PU DATES ARE NOT CONFIRMED. ****

Ordered By: Leslie - 319-643-5888

Salesman: Ruby Heck Phone: 319-337-7368 E-Mail: manager@bigtenrentals.com

Delivery and Pickup

Delivery : Sat 8/ 8/2015

Contact: Leslie

Pickup Date: Sat 8/ 8/2015

Phone: 319-643-5888

Location: Corner of Main St and Downey

Used at Address: 103 N. Downey ; WEST BRANCH, IA 52358

Delivery Notes: Street being closed at 3AM. Would like the stage to be set up by 8am and the tent set up by 9am. Both need to be down after 6pm on Sat.

Leslie- it was explained to me that it might be case where we will have to setup and take down this stage the same day, however I was not given any times. He was going to check to see if we could set up on friday and take down on sunday but I understand that this will be going on a street. We generally do not do setup and take downs on Friday/Saturday during the summer because it is our busiest time of the year. You will see a set up after hours fee on the quote. We can remove this if we can at least set up on Friday and take down on Sunday.
 Will send check on May 4th.

Qty	Key	Items	Replacement Cost	Status	Event End Date	Price
Stage for Band						
		8'x20'x3'				
1	ST-Pkg8x20	Staging Package 8x20	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$240.00
		1day \$240.00 1week \$0.00				
5	ST-Sec 4x8	Staging Secoa 4x8 Alum Frame Black Pt	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$0.00
		1day \$56.00 1week \$56.00				
1	Note StageOutsid	Note: Stage to be Erected Outdoors	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$0.00
		Will we need to cart the equipment to a backyard, or over a lawn or up stairs?: on street What is the height at front/Center?: 36'				
1	Note StageHt63	Note: Ht between 36"-56". Dual Structure	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$0.00
3	Linen SktBI13x48	Stage Skirt Black Pleated 13'x48"& Clips	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$39.00
		1day \$13.00 1week \$13.00 Skirting is calculated to cover the front and both sides. Please inform your salesperson if you would like back skirted.				
3	TB-700-00	Linen - Skirt Clips Unit of 13	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$0.00
1	ST-Step5	Stairs - Adjustable 36"-54" with railing	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$50.00
		1day \$50.00 1week \$150.00 4weeks \$600.00 Each set of stairs requires (2) Large "C" clamps with attached wooden blocks.				
3	ST-Sec Rail 8	Stage Secoa Railing Aluminum 8'	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$75.00
		1day \$25.00				
1	ST-Sec Rail 4	Stage Secoa Railing Aluminum 4'	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$25.00
		1day \$25.00				
Tent						
1	T3-20x40-1pc	Frame Top 20x40 Twin Tube	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$399.00
		1day \$399.00 1week \$399.00 4weeks \$997.50				
6	Weight H20-55	Water Barrel 55 gallon w/ ratchet straps	\$0.00 each	Reserved	Sat 8/ 8/2015 6:00:00PM	\$60.00
		1day \$10.00 Does the customer have a water source nearby?: yes Customer must have a water source NEARBY.				
1	Labor Staging	Labor Set up - Staging		Selling		\$75.00
		Going on the street				
1	52358	Delivery / Pickup		Selling		\$125.00
1	Labor AfterHrs	Setup & Strike - After Hours Charges		Selling		\$300.00
		Requesting set up by 8am				

Qty	Key	Items	Replacement Cost	Status	Event End Date	Price
1	Labor TentFr20	Labor Set up 20-wide Frame Tents		Selling		\$50.00

Rental Contract

... Big Ten requires at minimum 72 hour window for Deliveries and Pickups. The delivery and pickup times on the contract are just a reference and not actual time of services. We will call you to confirm your actual delivery and pickup times. Additional labor fees might be added if we don't have direct access to the delivery and pickup site and/or no one is there when we deliver/pickup the items and need to return to the site at a later time ...
 ... Customer must call "Iowa One Call" (811) if any items are to be staked ...
 ... Into the ground,

A 35% Non-Refundable deposit is due at the time of reservation. Balances must be paid in full 8 days before delivery will be scheduled. A finance charge of 1.5% monthly will be charged on all unpaid balances. An open credit card will be kept on file for any and all additional charges resulting from: damage, items kept longer than the agreed upon rental period, delinquent payments, cleaning fees, other fees and/or for the purchase of nonreturned items.

Cancelations can be made anytime 1 week prior to the reservation with only the loss of the 35% deposit. Cancelations made after will be subject to full contract payment.

Prompt return of your rentals saves you money. All time is charged including Saturday, Sunday and holidays.

Signature: 

 City of West Branch

Rental:	\$888.00
Damage Waiver:	\$88.80
Sales:	\$425.00
Delivery Charge:	\$125.00
Subtotal:	\$1,526.80
Cedar:	\$0.00
Total:	\$1,526.80
Paid:	\$0.00
Amount Due:	\$1,526.80