AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Resolution; To Lease, Purchase and/or Finance Cate

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Resolution to Lease, Purchase and/or Finance Caterpillar Motor Grader

Fiscal Impact:

Submitted by: Laura Seymour **Submitter's Email Address:** lseymour@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 4/3/17

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 4/3/2017 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/3/2017

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: DCM Report

Agenda Date: 4/4/2017

Revised April 2015

BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO

RESOLUTION NO. 2017-_____

A RESOLUTION TO LEASE, PURCHASE AND/OR FINANCE CATERPILLAR EQUIPMENT

WHEREAS, the laws of the State of Colorado (the "State") authorize Gunnison County, a duly organized political subdivision of the State (the "County"), acting by and through the Board of County Commissioners of Gunnison County, Colorado (the "Board"), to purchase, acquire and lease personal property for the benefit of the County and its inhabitants and to enter into and necessary contracts; and

WHEREAS, the County wants to lease, purchase and/or finance equipment ("Equipment") from Caterpillar Financial Services Corporation and/or an authorized Caterpillar dealer ("Caterpillar") by entering into that certain Sales Agreement, dated August 26, 2016 (the "Agreement") with Caterpillar; and

WHEREAS, a copy of the Agreement has been presented to the Board at this April 4, 2017 meeting.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Gunnison County, Colorado that (i) the Agreement, including all schedules and exhibits attached to the Agreement, is approved in substantially the form presented at the meeting, with any Approved Changes (as defined below), (ii) the County enters into the Agreement with Caterpillar and (iii) the Agreement is adopted as a binding obligation of the County; and

That Matthew Birnie, County Manager, is authorized, directed and empowered to (i) sign—or ratify-- and deliver to Caterpillar, and its successors and assigns, the Agreement and any related documents, and (ii) take or cause to be taken, all actions he deems necessary or advisable to acquire the Equipment, including the signing—or ratification-- and delivery of the Agreement and related documents; and

That the Clerk of the Board is authorized to attest to this Resolution and affix the seal of the Board to the Agreement, this Resolution, and any related documents; and

That nothing in this Resolution, the Agreement, or any other document imposes a pecuniary liability or change upon the general credit of the County or against its taxing power, except to the extent that the payments payable under the Agreement are special limited obligations of the County as provided in the Agreement; and

That a breach of this Resolution, the Agreement or any related document will not impose any pecuniary liability upon the County or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Agreement are special limited obligations of the County as provided in the Agreement; and that the authority granted by this Resolution will apply equally and with the same effect to the successors in office of the Authorized Persons.

INTRODUCED by Commissioner _____, seconded by Commissioner _____, and adopted this _____ day of _____, 2017.

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY, COLORADO

_____
Phil Chamberland, Chairperson

_____
Jonathan Houck, Commissioner

Attest:

_____
John Messner, Commissioner

_____
Deputy County Clerk

SALES AGREEMENT

DATE Aug 26, 2016
QUOTE# 154554

Aurora, Colorado, Albuquerque, New Mexico, El Paso, Texas

SOLD TO

PURCHASER: GUNNISON COUNTY [redacted]
STREET ADDRESS: 200 EAST VIRGINIA AVE
CITY/STATE: GUNNISON, CO — COUNTY: GUNNISON CO
POSTAL CODE: 81230 — PHONE NO.: 970 641 0044
CUSTOMER CONTACT: EQUIPMENT LEE PARTCH — PHONE NO. 970 641 0044
PRODUCT SUPPORT LEE PARTCH — PHONE NO. 970 641 0044
INDUSTRY CODE: COUNTY GOVERNMENT (841) — PRINCIPAL WORK CODE:

SHIP TO

<SAME>

Ownership Customer #	Invoice Customer #	Sales Tax Exemption # (If applicable)	Customer PO Number	Ship Via
38624		98-02498		Grand Junction

TERMS

PAYMENT TERMS: (All terms and payments are subject to Finance Company - OAC approval)

NET PAYMENT ON RECEIPT OF INVOICE ☐ | NET ON DELIVERY ☐ | FINANCIAL SERVICES ☐ CSC ☑ LEASE

CASH WITH ORDER	$0.00	BALANCE TO FINANCE	$159,443.00	CONTRACT INTEREST RATE	2.70	NOTES:	
PAYMENT PERIOD	MONTHLY	PAYMENT AMOUNT	$2,058.76	NUMBER OF PAYMENTS	20	OPTIONAL BUY-OUT	$138,480.00

DESCRIPTION OF EQUIPMENT ORDERED / PURCHASED

MAKE: CATERPILLAR — MODEL: 140M3 BR — YEAR: 2017 — NEW ☑ USED ☐
STOCK NUMBER: 446594G — SERIAL NUMBER: TBD — SMU: TBA

140M3 MOTOR GRADER	TIRES,14.0R24 MX XGLA2 * G2 MP	WING, 144" RIPPER SNOW
LANE 3 ORDER	ARTICULATION GUARD	MG Inserts (60)
GLOBAL ARRANGEMENT,LOW AMBIENT	COOLANT, 50/50, -35C (-31F)	Amber on Left / Blue on right
MOLDBOARD, 14' PLUS	LANGUAGE, ENGLISH	Replace Ripper Valve with Float Valve
RIPPER/SCARIFIER	DECALS, ENGLISH (U.S.)	
COLD WEATHER PLUS PACKAGE	SNOW ARRANGEMENT	
ACCUMULATORS, BLADE LIFT	CAMERA, REAR VISION	
PRECLEANER, SY-KLONE	MIRRORS, OUTSIDE HEATED 24V	
DRAIN, GRAVITY, ENGINE OIL	GUARD, TRANSMISSION	
BASE + 5 (WM,WT,DA1,FL,RIP)	HEATER, ENGINE COOLANT, 120V	
STARTER, ELEC, EXTREME DUTY	MOUNTING, FRONT LIFT	
CAB, PLUS (STANDARD GLASS)	ROLL ON-ROLL OFF	
CAB, PLUS (INTERIOR)	CONTROLS, PERFORMANCE BUNDLE	
SEAT BELT	ANTIFREEZE WINDSHIELD WASHER	
PRODUCT LINK, SATELLITE PLE631	PLOW, 144" HYD REV SNOW (QC)	

TRADE-IN EQUIPMENT

MODEL:	140H - CATERPILLAR(AA)	YEAR:	2001	SN.:	2ZK05846
PAYOUT TO:		AMOUNT:		PAID BY:	Customer
MODEL:	D7H - CATERPILLAR(AA)	YEAR:	1995	SN.:	5BF0517
PAYOUT TO:		AMOUNT:		PAID BY:	Customer
MODEL:		YEAR:		SN.:	
PAYOUT TO:		AMOUNT:		PAID BY:	
MODEL:		YEAR:		SN.:	
PAYOUT TO:		AMOUNT:		PAID BY:	

SELL PRICE	$305,293.00
LESS GROSS TRADE ALLOWANCE	($146,700.00)
SUBTOTAL	$158,593.00
DOCUMENT FEE	$300.00
DELIVERY TO GUNNISON, CO	$550.00
TOTAL AFTER TAX BALANCE	$159,443.00

ALL TRADES-INS ARE SUBJECT TO EQUIPMENT BEING IN "AS INSPECTED CONDITION" BY VENDOR AT TIME OF DELIVERY OF REPLACEMENT MACHINE PURCHASE ABOVE.

PURCHASER HEREBY SELLS THE TRADE-IN EQUIPMENT DESCRIBED ABOVE TO THE VENDOR AND WARRANTS IT TO BE FREE AND CLEAR OF ALL CLAIMS, LIENS, MORTGAGES AND SECURITY INTEREST EXCEPT AS SHOWN ABOVE.

☑ CATERPILLAR EQUIPMENT WARRANTY & COVERAGE — INITIAL MC

The customer acknowledges that he has received a copy of the Wagner Equipment Co./Caterpillar Warranty and has read and understood said warranty. Scheduled oil sampling (S.O.S.) is mandatory with this warranty. The customer is responsible for taking oil samples at designated intervals from all power train components and failure to do so may result in voiding the warranty.
Warranty applicable including expiration date where necessary:
12 Months Unlimited Hours, Parts and Labor (Travel Time included for the first 6 months)
Governmental 5 year / 5000 Hour Premier Extended Coverage Plan

☐ ALLIED WARRANTY & COVERAGE — SIGNATURE

☐ USED EQUIPMENT COVERAGE — INITIAL

All used equipment is sold as is, with all faults. EXCEPT FOR THE FOLLOWING LIMITED WARRANTY SET FORTH HERE, IF ANY, WAGNER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WHETHER OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE. WAGNER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. Customer acknowledges that it is required to fully examine the used equipment and hereby assumes the risks of any defects which examination ought to reveal.

Warranty applicable:

CSA:
NOTES:

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE

WAGNER EQUIPMENT CO.

ORDER RECEIVED BY: Kevin Boggs — REPRESENTATIVE

DATE APPROVED AND ACCEPTED ON: 9/21/16

PURCHASER: GUNNISON COUNTY [redacted]

BY Marlene D. Crosby — SIGNATURE

TERMS AND CONDITIONS (COLORADO, NEW MEXICO OR TEXAS)

1. METHODS OF ACCEPTANCE and TERMS OF AGREEMENT: This Machine Sales Order ("MSO") is an offer for the sale of the equipment and attachments described on the face hereof (referred to herein generally as "equipment" and "goods" interchangeably) to Customer under the terms and conditions specified herein. This offer may be accepted by**(1)** the execution of this MSO by a representative of Customer or **(2)** Customer's verbal or written authorizations or conduct consistent with prior course of dealing between the parts authorizing WAGNER to take action to fulfill this order, or **(3)** the commencement of manufacture or shipment of the goods or services specified in this Order, whichever of the foregoing first occurs. Acceptance of this offer is limited to the express terms stated in this Order. Any proposal in Buyer's acceptance for additional or different terms or any attempt by Customer to vary in any degree any of the terms or any attempt by Customer to vary in any degree any of the terms of this offer is objected to and hereby rejected, but such proposals shall not operate as a rejection of this offer, unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods or services, but shall be deemed a material alteration of this Order and this offer shall be deemed accepted by Seller without said additional or different terms. Once accepted, this Order shall constitute the entire agreement between WAGNER and Customer. WAGNER is not bound by any representation or agreements, express, or implied, oral or otherwise, which are not stated within this agreement or contained in a separate writing supplementing this agreement and signed by authorized agents of both WAGNER and Customer.

2.TIME OF DELIVERY and SHIPPING: Orders for equipment are processed in the order of their acceptance by WAGNER and WAGNER will use its reasonable efforts to deliver the equipment to You on the scheduled delivery date on the face hereof. However, shipping and delivery dates are acknowledged to be estimates only and dependent upon many factors outside of WAGNER's control including, but not limited to, the manufacturer's production schedule, material and labor shortages, shipping delays and various other unrelating factors. WAGNER is not liable for delays or damages caused by delays in delivery or shipment of the equipment, unless stated on the face of this order to the contrary. You are responsible for all freight, shipping, loading and unloading costs.

3. To secure Customer's obligations under this agreement and to secure all of Customer's present or future debts, obligations or liabilities of whatever nature to WAGNER, Customer grants to WAGNER a security interest in the goods described on the reverse side hereof, together with any attachments or accessions thereto and proceeds from the sale or lease thereof. Customer agrees to deliver to WAGNER, properly executed, any certificate of title or other document or instrument required by WAGNER to protect WAGNER's security interest as created in this paragraph. Customer also authorizes WAGNER to file financing statement(s) with respect to the security interest granted herein.

4. Risk of loss of the goods shall pass to Customer as soon as the goods are properly loaded on the carrier. WAGNER's responsibility for shipment ceases upon delivery of the goods to a transportation company. Customer shall carry such fire and other insurance as necessary to protect its interest and the interest of WAGNER. Any claim by Customer for shortage in shipment shall be made within fifteen (15) days after receipt of the shipment. It is specifically agreed that the risk of loss shall not be altered by the fact that the conduct of either party hereto may constitute a default or breech. The shortage in shipment notice must be in writing within fifteen (15) days and further, shortage in shipment is not deemed to constitute a nonconformity

5. Any notices pertaining to rejection or claims of nonconformity must be made in writing specifying in detail Customer's objections and such notices must be delivered within ten (10) days after delivery of the goods. It is agreed that in the event of rejection, Customer may in no event resell the goods, even in the absence of instructions from WAGNER, and Customer will store the goods or reship the goods to WAGNER. Should Customer sell the goods, such sale shall be deemed an unequivocal acceptance of the goods. If Customer accepts goods tendered under this agreement, such acceptance shall be final and irrevocable; no attempted revocation shall have any effect whatsoever.

6. No right or interest in this agreement shall be assigned by Customer without the written permission of WAGNER, and no delegation of any obligation owed or of the performance of any obligation by Customer shall be made without written permission of WAGNER. Any attempted assignment or delegation by Customer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

7. WAGNER shall have all rights and remedies provided in the Uniform Commercial Code and in any other document executed in connection with this agreement. Customer agrees to pay all costs incurred by WAGNER in enforcing this agreement or any of is provisions, including without limitation reasonable attorney's fees and costs and all costs of reclaiming the goods, whether or not legal action is commenced. In the event the goods are reclaimed, Customer agrees that WAGNER may bid on the goods and that a commercially reasonable price for said reclaimed goods , a public sale , may be determined by WAGNER based upon current national auction values, market trends relating to supply and demand, and related factor, for goods of similar type and condition.

8.CANCELLATION/TERMINATION: This Order may be canceled by Customer only with WAGNER's written consent and then only upon such terms as will protect Seller from any loss. This Order may be cancelled by WAGNER in the event of any default by Customer or in the event Customer fails, upon WAGNER's request, to provide reasonable assurances of future performance.

9.PERMISSIBLE VARIATIONS: All goods shall be subject to the standard manufacturing and commercial variation and practices of the Manufacturer of the goods of WAGNER, In the event of shipment of non-conforming goods, WAGNER shall be given a reasonable opportunity to replace the goods with those which conform to the order.

10.FORCE MAJEURE: a) WAGNER shall not be responsible or liable for any delay or failure to deliver any or all of the goods and/or performance of the services of such delay or failure is caused by any act of God, fire, flood, inclement weather, explosion, war, insurrection, riot, embargo, statute, ordinance, regulation or order of any government or agent thereof, shortage of labor, material fuel, supplies or transportation, strike or other labor dispute, or any other cause, contingency, occurrence or circumstance of any nature, whether or not similar to those herein before specified beyond WAGNER's control, which prevents, hinders or interferes with manufacture, assembly or delivery of the goods or performance of the services. Any such cause, contingency, occurrence or circumstances shall release WAGNER from performance of its obligations hereunder.

11. VENUE: Venue for any and all disputes between the parties will be in state court located in Adams County, Colorado. Purchaser hereby expressly consents to jurisdiction in Adams County, Colorado and waives any objection based on inconvenient forum and any right to remove any legal action from the court originally acquiring jurisdiction.

WS2.702.1

INITIAL HERE dmc