

# ADAIR COUNTY COMMISSION MINUTES

## WEDNESDAY, AUGUST 5, 2015

### 3RD DAY JULY ADJOURNED

The Adair County Commission convened at 8:30 a.m. on August 5, 2015 in the Courthouse at Kirksville. All Commissioners were present.

At 10:00 a.m., the Commission met with Adair County Road and Bridge Supervisor, Isaiah Curtis; Chris Akrigh of Altofer Equipment; and Matt Bartell of Equipment Financing to finalize the purchase agreement for a CAT 316 E L Excavator – Serial #DZW01733. The purchase agreement was originally entered into on June 3, 2015. The purchase price was \$204,755 with a trade-in valued at \$49,765 leaving a balance due of \$155,000. The County will provide a down payment of \$80,000 and will enter into a lease agreement to finance the remaining \$75,000 with an interest rate of by making three annual payments of \$26,669.71 beginning in August, 2016. The County has no plans at this time to pursue the purchase of a backhoe.

The Commission spent the rest of the day attending to County business.

The Adair County Commission adjourned at 4:00 p.m. on August 5, 2015.

#### IN REF. ORDER NO 5 Lease Agreement for CAT 316 E L Excavator – Serial #DZW01733

**CAT**  
Financial

Governmental Lease-Purchase Agreement  
Transaction Number 2697108

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**LESSOR ("we", "us", or "our"):**  
CATERPILLAR FINANCIAL SERVICES CORPORATION  
2120 West End Avenue  
Nashville, TN 37202

**LESSEE ("you" or "your"):**  
ADAIR COUNTY  
105 W. Washington St.  
Kirksville, MO 63501

In reliance on your selection of the equipment described below (each a "Unit"), we have agreed to acquire and lease the Units to you, subject to the terms of this Lease. Until this Lease has been signed by our duly authorized representative, it will constitute an offer by you to enter into this Lease with us on the terms stated herein.

**2. DESCRIPTION OF THE UNITS**

DESCRIPTION OF UNITS Whether the Unit is new or used, the model number, the manufacturer, and the model name	SERIAL/VIN Unique ID number for the Unit	ANNUAL LEASE PAYMENT This is due per	FINAL LEASE PAYMENT Enter data marked with asterisk in section 3	DELIVERY DATE Enter data marked with asterisk in section 3
(1) New 316E Hydraulic Excavator	DZ091733	\$26,669.71	\$26,669.71	

**3. TERMS AND CONDITIONS**

**3. Lease Payments: Current Expense** You will pay us the lease payments, including the final lease payment and both (collectively, the "Lease Payments"). Lease Payments will be paid by you to us as follows: a first payment of \$26,669.71 will be paid in arrears and the balance of the Lease Payments is payable in 2 successive annual payments of which the first payment is in the amount of \$26,669.71 each, and the last payment is in the amount of \$26,669.71 plus all other amounts then owing under this Lease, with the first Lease Payment due one year after the date that we sign this Lease and subsequent Lease Payments due on a like date of each year thereafter until paid in full. A portion of each Lease Payment constitutes interest and the balance of each Lease Payment is payment of principal. The Lease Payments will be due without demand. You will pay the Lease Payments to us at Caterpillar Financial Services Corporation, Box 73269, Dallas, TX 75273-0699 or such other location that we designate in writing. Your obligations, including your obligation to pay the Lease Payments due in any fiscal year, will constitute a current expense of yours for each fiscal year and will not constitute an indebtedness of yours within the meaning of the constitution and laws of the State in which you are located (the "State"). Nothing in this Agreement will constitute a pledge by you of any thing or other property, other than moneys lawfully appropriated from time to time for the payment of the "Payments" (as defined in the last sentence of this Section) owing under this Agreement. You agree that, except as provided in Section 7, your duties and liabilities under this Agreement and any associated documents are absolute and unconditional. Your payment and performance obligations are not subject to cancellation, reduction, or abatement for any reason. You agree to settle all claims, defenses, setoffs, counterclaims and other disputes to which you may be a party, the manufacturer of the Unit, or any other third party directly with the Supplier, the manufacturer or the third party as the case may be. You will not assert, allege or make any such claim, defense, setoff, counterclaim or other dispute against us or with respect to the payments due us under this Agreement, as used in this Agreement. "Payments" will mean the Lease Payments and any other amounts required to be paid by you.

The portion of the Lease Payments constituting principal will bear interest (computed on the basis of actual days elapsed in a 360 day year) at the rate of 3.25% per annum.

**4. Late Charges** If we do not receive a Payment on the date it is due, you will pay to us, on demand, a late payment charge equal to the lesser of five percent (5%) of such Payment or the highest charge allowed by law.

**5. Security Interest** To secure your obligations under this Agreement, you grant us a continuing first priority security interest in each Unit (including any Additions/Options), including all accessories, accessories and optional features (whether or not installed on such Units) and all substitutions, replacements, additions, and accessories, and the proceeds of all the foregoing, including, but not limited to, proceeds in the form of chattel paper. You authorize the filing of such financing statements and will, at your expense, do any act and execute, acknowledge, deliver, file, register and record any document which we deem desirable to protect our security interest in each Unit and our rights and benefits under this Agreement. You, at your expense, will protect and defend our security interest in the Units and will keep the Units free and clear of any and all claims, liens, encumbrances and all processes (whether or not perfected).

**6. Disclaimer of Warranties** WE HAVE NOT MADE AND DO NOT MAKE ANY WARRANTY, REPRESENTATION OR COVENANT OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE UNITS, AS TO USE, YOUR LEASE AND PURCHASE OF THE UNITS WILL BE ON AN "AS IS" AND "WHERE IS" BASIS AND "WITH ALL FAULTS". Nothing in this Agreement is intended to limit, waive, abrogate or otherwise modify any rights, claims, or causes of action that you may have against any person or entity other than us.

**7. Non-Appropriation** You have an immediate need for, and expect to make immediate use of, the Units. This need is not temporary or expected to diminish during the term of this Agreement. To that end, you agree, to the extent permitted by law, to include in your budget for the current and each successive fiscal year during the term of this Agreement, a sufficient amount to permit you to discharge your obligations under this Agreement. Notwithstanding any provision of this Agreement to the contrary, we and you agree that, in the event that prior to the commencement of any of your fiscal years you do not have sufficient funds appropriated to make the Payments due under this Agreement for such fiscal year, you will have the option of terminating this Agreement as of the end of the commencement of such fiscal year by giving us sixty (60) days prior written notice of your intent to terminate. No later than the last day of the last fiscal year for which appropriations were made for the Payments (the "Return Date"), you will

return to us all of the Units, at your sole expense. In accordance with Section 14, and this Agreement will terminate on the Return Date without penalty or expense to you, and you will not be obligated to pay the Lease Payments beyond such fiscal year, provided that you will pay all Payments for which moneys have been appropriated or are otherwise available, and provided further, that you will pay monthly to month rent at the rate set by us for each month or part of any month that you fail to return the Units.

**8. Title Warranty** You will, at all times, do and perform all acts and things necessary and within your control to ensure that the interest conveyed by the Lease Payments will, for the purposes of Federal income taxation, be excluded from your gross income. You will not permit or cause your obligations under this Agreement to be guaranteed by the Federal Government or any branch or instrumentality of the Federal Government. You will use the Units for the purpose of performing one or more of your governmental functions consistent with the scope of your authority and not in any trade or business carried on by a person other than you. You will report this Agreement to the Internal Revenue Service by filing Form 8085G, 8085C or 8038, as applicable. Failure to do so will cause this Agreement to terminate. You agree that if the appropriate form is not filed, the interest rate payable under this Agreement will be raised to the equipment lease interest rate. If the use, possession or acquisition of the Units is determined to be subject to taxation, you will pay when due all taxes and governmental charges assessed or levied against or with respect to the Units.

**9. Assignment** You may not, without our prior written consent, by operation of law or otherwise, assign, transfer, pledge, hypothecate or otherwise dispose of your right, title and interest in and to this Agreement and the Units, and/or grant or assign a security interest in this Agreement and the Units, in whole or in part. We may transfer, file, assign, pledge, hypothecate, or otherwise dispose of our right, title and interest in and to this Agreement and the Units, and/or grant or assign a security interest in this Agreement and/or the Units, in whole or in part.

**10. Indemnity** To the extent permitted by law, you assume liability for, agree to and do indemnify, protect and hold harmless as our employees, officers, directors and agents from and against any and all liabilities, obligations, losses, damages, fines, claims, demands, penalties, actions, costs and expenses (including reasonable attorney's fees, if whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by you or us), operation, ownership, selection, delivery, storage, leasing or return of any Unit, regardless of where, how and by whom operated, or any failure on your part to accept the Units or otherwise to perform or comply with any conditions of this Agreement.

**11. Insurance; Loss and Damage** You bear the entire risk of loss, theft, destruction or damage to the Units from any cause whatsoever. No loss, theft, destruction or damage of the Units will release you of the obligation to make Lease Payments or to perform any obligation owing under this Agreement. You agree to keep the Units insured to protect all of our interests, at your expense, for such risks, in such amounts, in such forms and with such companies as we may require, including but not limited to fire and extended coverage insurance, theft and collision coverage, and personal liability and property damage liability insurance. Any insurance policies relating to loss or damage to the Units will name us as loss payee as primary insured and we will be named as insured on the policy. The replacement or repair of the Units or the satisfaction of the Payments due under this Agreement. You agree to use, operate and maintain the Units in accordance with all laws, regulations and ordinances and in accordance with the provisions of any policies of insurance covering the Units, and will not rent the Units or permit the Units to be used by anyone other than you. You agree to keep the Units in good repair, working order and condition and house the Units in suitable shelter, and to permit us or our designee to inspect the Units at any time and to otherwise protect our interests in the Units. If any Unit is customarily covered by a maintenance agreement by a party acceptable to us, we will furnish you with a maintenance agreement by a party acceptable to us.

**12. Default; Remedies** An "Event of Default" will occur if (a) you fail to pay any

Payment when due and such failure continues for ten (10) days after the due date for such Payment or (b) you fail to perform or observe any other covenant, condition, or obligation to be performed or observed by you under this Agreement and such failure is not cured within twenty (20) days after written notice of such failure from us. Upon an Event of Default, we will have all rights and remedies available under applicable law. In addition, we may declare all Lease Payments due or to become due during the fiscal year in which the Event of Default occurs to be immediately due and payable by you, and you may repossess the Units by giving us written notice to deliver the Units to us in the manner provided in Section 14, or to the extent you fail to do so within ten (10) days after receipt of such notice, and subject to all applicable laws, we may enter upon your premises and take possession of the Units. Further, if we repossess your obligations under any extended warranty agreement such as an Equipment Protection Plan, Extended Service Contract, Extended Warranty, Customer Service Agreement, Total Maintenance and Repair Agreement or similar agreement, we may cancel such extended warranty agreement on your behalf and receive the refund of the extended warranty agreement less that we incurred but had not received from you as of the date of the Event of Default.

**13. Miscellaneous** This Agreement may not be modified, amended, altered or changed except by a written agreement signed by you and us. In the event any provision of this Agreement is found invalid or unenforceable, the remaining provisions will remain in full force and effect. This Agreement, together with exhibits, constitutes the entire agreement between you and us and supersedes all prior and contemporaneous writings, understandings, agreements, understandings, documents and representations, oral or implied. Any terms and conditions of any purchase order or other documents submitted by you in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on us and will not apply to this Agreement. You agree that we may correct errors in this Agreement and fill in blanks including, for example, correcting or filling in serial numbers, VIN numbers, and dates. Any notices required to be given under this Agreement will be given to the parties in writing and by certified mail at the address provided in this Agreement, or to such other addresses as each party may substitute by notice to the other, which notice will be effective upon its receipt.

**14. Title; Return of Units** Notwithstanding our designation as "lessor," we do not own the Units. Legal title to the Units will be in you so long as an Event of Default has not occurred and you have not exercised your right of non-appropriation. In the event of Default occurs if you non-appropriated, full and unencumbered title to the Units will pass to us without the necessity of further action by the parties, and you will have no further interest in the Units. If we are entitled to obtain possession of any Units or if you are obligated at any time to return any Units, then (a) title to the Units will vest in us immediately, and (b) you will, at your expense, promptly deliver the Unit to us properly protected and in the condition required by Section 11. You will deliver the Unit, at our option, (i) to the nearest Caterpillar dealer selling equipment of the same type as the Unit or (ii) to a carrier of your choice and shipping the Unit, freight collect, to a destination designated by us. If the Unit is not in the condition required by Section 11, you must pay us, on demand, all costs and expenses incurred by us in bringing the Unit into the required condition. Until the Units are returned as required above, all terms of this Agreement will remain in full force and effect including, without limitation, your obligation to pay Lease Payments and to insure the Units.

**15. Other Documents** In connection with the execution of this Agreement, you will cause to be delivered to us (i) either (A) a certified copy of your audited financial statements for the year immediately preceding the date of this Agreement and a copy of the minutes of the relevant meeting or (B) an opinion of your counsel satisfactory in the form attached as Attachment C; (ii) a Verification of Insurance satisfactory in the form attached to this Agreement; (iii) a copy of the signed Form filed with the Internal Revenue Service required in Section B above as Attachment D; and (iv) any other documents or forms required by us.

**16. Applicable Law** This Agreement will be governed by the laws, including the laws relating to the choice of law, of the State in which you are located.

**SIGNATURES**

<b>LESSOR</b> CATERPILLAR FINANCIAL SERVICES CORPORATION Signature _____ Name (print) _____ Title _____ Date _____	<b>LESSEE</b> ADAIR COUNTY Signature: <i>Andrew Collins</i> Name (print): <i>Andrew Collins</i> Title: <i>Presiding Commissioner</i> Date: <i>8-5-2015</i>
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ATTEST: *Andrea Collop*  
County Clerk

*Andrew Collins*  
Presiding Commissioner