

7/13/15 → 7/10/15

FAX

TO:	Mike Garand	FROM:	Victoria / Tibbits Equipment Services, Inc.
FAX:	802-223-4467	FAX:	802-479-9695
PHONE:	802-223-5870	PHONE:	802-479-9696
SUBJECT:	Rental of Cat 314ELCR & Hammer	DATE:	June 3, 2015
NO. PAGES: 4 including this cover			

COMMENTS:

Hello Mike,

Attached is the agreement for your upcoming rental of a Cat 314ELCR excavator with Gorilla Hammer.

Please sign/initial/complete the agreement where indicated by the asterisk "*" and return to me via email or fax (802-479-9695).

Please send an insurance binder listing Tibbits Equipment Services, Inc. as the loss payee and additional insured. The machine info for your insurance company: 2014 Cat 314ELCR Excavator serial # ZJT00685 and 2014 Gorilla GXS120 Hammer serial # 14A14A05 valued at \$250,000.00 total.

The signed rental agreement and insurance certificate are required prior to moving the equipment.

If you have any questions, please call 802-479-9696. Regards and thank you for your business,

Victoria

Victoria Tibbits
802-479-9696 / Fax: 802-479-9695
Tibbits Equipment Services, Inc.
Mailing Address: PO Box 356, South Barre, VT 05670
Physical Address: 303 South Main St, Barre, VT 05641
www.tibbitseq.com

TIBBITS EQUIPMENT SERVICES, INC.
P.O. Box 356 South Barre, VT 05670
802-479-9696/FAX 802-479-9695
tibbitseq@myfairpoint.net

RENTAL AGREEMENT

NAME OF LESSEE: TOWN OF EAST MONTPELIER
ADDRESS PO BOX 157, EAST MONTPELIER, VT 05651
TELEPHONE MIKE GARAND 223-4870 / FAX: 802-223-4467

TIBBITS EQUIPMENT SERVICES, INC., HEREINAFTER CALLED TIBBITS, AGREES TO LEASE TO THE LESSEE THE MACHINERY AND/OR EQUIPMENT DESCRIBED BELOW UPON THE TERMS AND CONDITIONS HEREINAFTER STATED.

DESCRIPTION OF EQUIPMENT - 2014 CAT 314ELCR EXCAVATOR SERIAL # ZJT00685 WITH 2014 GORILLA GXSI20 HAMMER SERIAL # 14A14A05.

START DATE 6/22/15 START HRS WILL BE NOTED AT TIME OF DELIVERY END DATE END HRS

EQUIPMENT USE LOCATION *

TOTAL VALUE: THE AGREED TOTAL VALUE OF THE EQUIPMENT IS SET AT \$ 250,000.00 (TOTAL VALUE) FOR THE PURPOSE OF DETERMINING LESSEE'S OBLIGATIONS FOR REIMBURSEMENT OF TIBBITS IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION OF THE EQUIPMENT.

RENT: THE RENT FOR THE EQUIPMENT HERIN LEASED SHALL BE \$ 3,300.00 PER WEEK EXCLUSIVE OF SALES AND/OR USE TAX, INSURANCE COSTS, MAINTENANCE COSTS AND OTHER COSTS, EXPENSES AND CHARGES OF LESSEE SPECIFIED BELOW, UPON RECEIPT OF CONTRACT. THE LEASE TERMS SHALL COMMENCE ON THE DATE THE EQUIPMENT LEAVES TIBBITS PLACE OF BUSINESS, EXCEPT AS OTHERWISE PROVIDED, RENT SHALL CONTINUE TO ACCRUE UNTIL THE LATTER TO OCCUR OF (A) THE DATE SAID EQUIPMENT IS RETURNED TO TIBBITS PLACE OF BUSINESS, AND (B) THE EXPIRATION OF THE TERM OF THIS AGREEMENT. * RENTAL RATES ARE MINIMUMS FOR ESTABLISHED PERIODS BASED ON EIGHT (8) HOURS PER DAY, THREE (3) DAYS PER WEEK, TWENTY-EIGHT (28) DAYS PER MONTH. IF LESSEE PURCHASES SAID EQUIPMENT, THIS LEASE SHALL BE DEEMED TO HAVE BEEN TERMINATED AND RENT SHALL CEASE TO ACCRUE ON THE DATE OF SUCH PURCHASE. RENT PAYMENTS SHALL BE MADE BY THE LESSEE AT TIBBITS' PLACE OF BUSINESS AND SHALL BE PAYABLE ON THE SAME DAY OF EACH MONTH FOR THE TERM HEREOF. * LESSEE WILL BE CHARGED THE COST OF \$6.50 PER GAL IF EQUIPMENT IS RETURNED WITHOUT A FULL TANK OF FUEL (UNLESS OTHERWISE SPECIFIED).

USE: THE LESSEE AGREES NOT TO USE THE EQUIPMENT MORE THAN MAXIMUM TERMS STATED 40 HOURS PER WEEK, UNLESS LESSEE AGREES TO PAY ADDITIONAL COMPENSATION FOR OVERTIME TO TIBBITS \$ 85.00/HOUR. IT IS THE RESPONSIBILITY OF THE LESSEE TO OPERATE THE STATED MACHINE WITH A QUALIFIED AND EXPERIENCED EQUIPMENT OPERATOR. FAILURE TO DO SO MAY RESULT IN UNNESSARY DAMAGE TO THE MACHINE THAT THE LESSEE WILL BE RESPONSIBLE FOR *.

INSURANCE COVERAGE: LESSEE SHALL PROVIDE FULL INSURANCE COVERAGE: (A) TO COVER DAMAGE OCCASIONED BY ALL RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE THAT MAY OCCUR DURING THE TERM AND IN AMOUNT EQUAL TO THE TOTAL VALUE; AND (B) TO PROTECT TIBBITS WITH PUBLIC LIABILITY WITH LIMITS OF AT LEAST \$500,000 PER PERSON AND \$1,000,000 FOR EACH OCCURRENCE UNLESS LARGER LIMITS ARE REQUIRED BY TIBBITS, WHICH LESSEE WILL SATISFY UPON UPDATING TO ADVISED AMOUNT THEREOF. FURTHER, LESSEE SHALL AT ALL TIMES, SUPPLY TIBBITS WITH CERTIFICATES OF INSURANCE WHICH SHALL BE ISSUED BY COMPANIES SATISFACTORY TO TIBBITS, NAME TIBBITS AS AN ADDITIONAL INSURED/LOSS PAYEE AS RESPECTS THIS LEASE AND PROHIBIT CANCELLATION OR AMENDMENT UNTIL AFTER THIRTY DAYS PRIOR NOTICE SHALL FIRST HAVE BEEN GIVEN TO TIBBITS. *

TRANSPORTATION: ALL TRANSPORTATION CHARGES FROM POINT OF DELIVERY TO DESTINATION AND RETURN CHARGES TO THE POINT OF DELIVERY ARE TO BE PAID BY CUSTOMER. LESSEE IS RESPONSIBLE FOR CONTACTING TIBBITS 72 HOURS IN ADVANCE OF RENTAL END DATE TO ARRANGE RETURN TRUCKING. CONTACT AFTER THAT POINT MAY RESULT IN ADDITIONAL RENTAL CHARGES. *

DISCLAIMER OF AGENCY/WARRANTIES: TIBBITS IS NOT THE MANUFACTURER OF THE EQUIPMENT, NOR THE AGENT OF SAID MANUFACTURER. TIBBITS MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO EQUIPMENT UNLESS ENDORSED HEREIN IN WRITING.

RECEIPT/ACCEPTANCE: THE RECEIPT AND ACCEPTANCE BY THE LESSEE OF SAID EQUIPMENT SHALL CONSTITUTE ACKNOWLEDGEMENT THAT SAID PROPERTY HAS BEEN ACCEPTED, THAT SAID PROPERTY HAS BEEN EXAMINED, OPERATED UNDER ORDINARY WORKING CONDITIONS, AND FOUND IN GOOD CONDITION AND REPAIR AND FIT FOR USE UNLESS THE LESSEE MAKES CLAIM TO THE CONTRARY TO THE LESSOR BY REGISTERED MAIL WITH RETURN RECEIPT REQUESTED WITHIN TWO DAYS AFTER RECEIPT OF SAID EQUIPMENT.

DAMAGE/REPAIR: THE LESSEE AGREES AT ITS OWN COST AND EXPENSE TO KEEP SAID EQUIPMENT IN GOOD WORKING CONDITION AND REPAIR DURING THE TERM OF THIS AGREEMENT AND TO RETURN IT TO TIBBITS IN AS GOOD CONDITION AS RECEIVED, NORMAL WEAR AND TEAR IN THE HANDS OF A COMPETENT OPERATOR EXCEPTED. LESSEE SHALL NOT MAKE ANY MATERIAL ALTERATIONS TO THE EQUIPMENT

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WITHOUT THE PRIOR WRITTEN CONSENT OF TIBBITS.

DUTY OF CARE: FROM THE TIME THE EQUIPMENT IS DELIVERED TO THE LESSEE UNTIL IT IS RETURNED TO TIBBITS, LESSEE SHALL USE AND PRESERVE THE EQUIPMENT IN A CAREFUL, PROPER, AND LAWFUL MANNER AND SHALL BE RESPONSIBLE FOR ANY LOSS OR DAMAGE, THERE TO FROM ANY CAUSE WHATSOEVER. LESSEE AGREES THAT ALL EQUIPMENT, PARTS AND REPAIRS AT ANY TIME MADE TO THE EQUIPMENT SHALL BECOME THE PROPERTY OF TIBBITS. LESSEE MAY BE RESPONSIBLE FOR ANY EQUIPMENT REVENUE LOSS AS A RESULT OF DAMAGE CAUSED TO THE EQUIPMENT DURING RENTAL. POSTED RENTAL RATES WILL BE CHARGED TO LESSEE WHILE MACHINE IS DOWN ~~IF~~

ASSIGNMENTS, SUBLEASES, AND LOANS: LESSEE AGREES TO KEEP SAID EQUIPMENT AND LESSEE'S INTEREST UNDER THIS AGREEMENT FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES AND FURTHER AGREES NOT TO SUBLEASE SAID MACHINERY AND EQUIPMENT OR OFFER IT FOR HIRE. LESSEE SHALL AT ITS OWN COST AND EXPENSE PROTECT AND DEFEND TIBBITS' TITLE TO THE INTEREST IN THE EQUIPMENT AGAINST THE CLAIMS AND DEMANDS OF ALL PERSONS CLAIMING BY, THROUGH OR UNDER LESSEE. LESSEE SHALL NOT REMOVE SAID EQUIPMENT FROM VERMONT WITHOUT THE WRITTEN CONSENT OF TIBBITS. LESSEE SHALL IMMEDIATELY NOTIFY TIBBITS IF THE EQUIPMENT IS MOVED FROM THE LOCATION LISTED ABOVE. LESSEE WILL KEEP THE EQUIPMENT AT THE ADDRESS SPECIFIED ABOVE AND NOT REMOVE ALL OR ANY PART OF THE EQUIPMENT THEREFROM WITHOUT TIBBITS' PRIOR WRITTEN CONSENT. LESSEE SHALL NOT SELL, TRANSFER, ASSIGN, SUBLET OR USE AS SECURITY OR COLLATERAL ANY OF THE EQUIPMENT LEASE HEREUNDER, OR ANY INTEREST IN THIS LEASE. LESSEE SHALL, IF AT ANY TIME REQUESTED TO DO SO BY TIBBITS, AFFIX IN A PROMINENT POSITION, PLATES, TAGS OR OTHER IDENTIFYING LABELS SHOWING OWNERSHIP OF THE EQUIPMENT BY TIBBITS.

HOLD HARMLESS AGREEMENT: LESSEE AGREES TIBBITS SHALL NOT BE LIABLE, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT OR BREACH OF DUTY. LESSEE AGREES TIBBITS SHALL NOT BE LIABLE FOR ANY PROPERTY DAMAGE OR FOR ANY PERSONAL INJURY, INCLUDING DEATH, SUSTAINED OR SUFFERED BY ANY PERSON, FIRM, ENTITY OR CORPORATION IN CONNECTION WITH THE OPERATION OR INSTALLATION OF SAID EQUIPMENT, NOR FOR ANY LOSS, DELAY OR DAMAGE RESULTING FROM DEFECTS IN, ACCIDENTAL BREAKAGE OF, OR INEFFICIENCY OF SAID EQUIPMENT. LESSEE AGREES TO ASSUME ALL RISK AND LIABILITY FOR, AND AGREES TO INDEMNIFY, SAVE AND HOLD TIBBITS HARMLESS FROM ALL CLAIMS AND LIENS, ALL LOSS OF DAMAGE TO THE EQUIPMENT AND ALL LOSS, DAMAGE, CLAIMS, PENALTIES, LIABILITY AND EXPENSES, INCLUDING ATTORNEY'S FEES, HOWSOEVER ARISING FROM OR INCURRED BECAUSE OF THE USE, OPERATION OR STORAGE OF SAID EQUIPMENT.

TAX, ASSESSMENTS & OTHER CHARGES: THE LESSEE SHALL DURING THE TERM OF THIS AGREEMENT PAY ANY ALL TAXES, ASSESSMENTS OR THEIR CHARGES LEVIED UPON SAID EQUIPMENT AND ANY SALES, USE OR OTHER TAX WHICH MAY BE IMPOSED BY STATE LAW ON THIS TRANSACTION, AND SHALL COMPLY WITH ALL LAWS RELATING TO THE OPERATION OF SAID EQUIPMENT AT HIS OWN EXPENSE.

DEFAULT: LESSEE AGREES IF ANY ONE OR MORE OF THE FOLLOWING EVENTS OF DEFAULT SHALL OCCUR: TIBBITS, AT ITS OPTION, MAY WITHOUT NOTICE, RETAKE POSSESSION OF AND REMOVE SAID EQUIPMENT WITHOUT LEGAL PROCESS (A) THE LESSEE SHALL FAIL TO PAY PROMPTLY ANY RENTAL INSTALLMENT OR ANY OTHER AMOUNT DUE HEREUNDER; ~~IF~~ (B) THE LESSEE SHALL FAIL TO PERFORM ANY OF THE AGREEMENTS TO BE PERFORMED BY LESSEE AS PROVIDED HERIN; (C) THE LESSEE SHALL BECOME INSOLVENT OR ANY BANKRUPTCY, REORGANIZATION INSOLVENCY, CASE OR PROCEEDINGS UNDER ANY FEDERAL OR STATE LAW, NOW OR HEREAFTER ENACTED SHALL BE INSTITUTED BY OR AGAINST THE LESSEE; (D) THE EQUIPMENT IS, IN THE SOLE OPINION OF TIBBITS, BEING USED BEYOND ITS CAPACITY OR IN ANY MANNER IMPROPERLY CARED FOR, ABUSED OR MISUSED THEN IN EACH SUCH EVENT. IN THE EVENT OF SUCH REPOSSESSION, THE TOTAL UNPAID RENTAL FOR THE ENTIRE RENTAL PERIOD, PLUS ANY OTHER UNPAID RENTALS, SHALL BECOME IMMEDIATELY DUE AND PAYABLE BY THE LESSEE TOGETHER WITH THE COSTS AND EXPENSES OF SUCH REPOSSESSION INCLUDING TIBBITS REASONABLE ATTORNEY'S FEES AND LEGAL EXPENSES, TOGETHER WITH INTEREST ON ALL OF THE FOREGOING AT THE HIGHEST RATE PERMITTED BY LAW. THE ABOVE REMEDIES SHALL NOT BE DEEMED EXCLUSIVE.

WAIVER OF DEFAULT: WAIVER OF ANY DEFAULT HERIN IS NOT A WAIVER OF ANY OTHER OR SUBSEQUENT DEFAULT. THE RIGHTS AND REMEDIES OF TIBBITS UNDER THIS LEASE ARE SIMULATIVE AND ARE NOT ALTERNATIVE. THE RIGHTS AND PRIVILEGES OF TIBBITS UNDER THIS LEASE SHALL INSURE TO THE BENEFIT OF ITS SUCCESSORS AND ASSIGNS OF THE LESSEE. PERSONAL PRONOUNS AS USED HERIN ARE INTENDED TO REFER TO CORPORATIONS, PARTNERSHIPS, AND OTHER ORGANIZATIONS.

TITLE: TIBBITS SHALL RETAIN TITLE TO SAID EQUIPMENT AT ALL TIMES DURING THE TERM OF THIS AGREEMENT. THE LESSEE SHALL NOT PERMIT ANY SECURITY INTEREST IN OR ANY OTHER LIEN ON SAID EQUIPMENT OR PERMIT ANYTHING TO BE DONE TO IMPAIR THE TITLE OF TIBBITS. LESSEE AGREES NOT TO REMOVE OR PERMIT TO BE REMOVED ANY SERIAL NUMBER, MODEL, NAME OR OTHER INDICATION SHOWING OWNERSHIP.

AUTHORIZATION FROM LESSEE: LESSEE AGREES TO EXECUTE ANY INSTRUMENT NECESSARY FOR FILING OR RECORDING THIS AGREEMENT UPON REQUEST FROM TIBBITS. LESSEE AUTHORIZES TIBBITS OR ITS ASSIGNS TO FILE A FINANCING STATEMENT SIGNED ONLY BY TIBBITS OR ITS ASSIGNS IN ALL PLACES WHERE NECESSARY TO PERFECT TIBBITS' SECURITY INTEREST IN THE EQUIPMENT IN ALL JURISDICTIONS WHENEVER SUCH FILING IS PERMITTED BY LAW. TIBBITS IS HEREBY AUTHORIZED, AT TIBBITS' OPTION TO INSERT HERIN THE SERIAL NUMBERS OF THE EQUIPMENT AND OTHER IDENTIFYING MARKS OR SIMILAR INFORMATION.

NOTICE: ANY NOTICE REQUIRED TO BE GIVEN BY LESSEE OR TIBBITS HEREUNDER SHALL BE DEEMED ADEQUATELY GIVEN IF SENT BY REGISTERED OR CERTIFIED MAIL TO THE OTHER PARTY AT ADDRESS STATED HEREIN, OR AT SUCH OTHER PLACE THE PARTIES MAY DESIGNATE.

VARIATION/MODIFICATION OF LEASE: NO VARIATION OR MODIFICATION OF THIS LEASE AND NO WAIVER OF ANY OF THESE PROVISIONS OF CONDITION SHALL BE VALID UNLESS IN WRITING AND SIGNED BY TIBBITS AND LESSEE.

RIGHT OF INSPECTION: AT ALL TIMES DURING NORMAL BUSINESS HOURS, TIBBITS SHALL HAVE THE RIGHT TO INSPECT THE EQUIPMENT OR OBSERVE ITS USE AND SHALL HAVE THE RIGHT TO ENTER THE PREMISES WHERE THE EQUIPMENT MAY BE LOCATED FOR SUCH PURPOSE. LESSEE SHALL IMMEDIATELY NOTIFY TIBBITS OF ANY ACCIDENT, PERSONAL INJURY OR PROPERTY DAMAGE CONNECTED WITH THE EQUIPMENT OR ITS USE, INCLUDING THE TIME, PLACE, AND NATURE OF THE ACCIDENT, PERSONS, OR ENTITIES INVOLVED, AND THE EXTENT OF THE DAMAGE TO THE EQUIPMENT AND IN THE EVENT OF ANY SUCH ACCIDENT, PERSONAL INJURY OR PROPERTY DAMAGE, LESSEE AGREES TO COOPERATE WITH TIBBITS AND ANY INSURER OF THE EQUIPMENT.

EXPIRATION/TERMINATION OF LEASE: UPON THE EXPIRATION OR TERMINATION OF THIS AGREEMENT, LESSEE, AT LESSEES SOLE EXPENSE, SHALL REMOVE, AND RETURN THE EQUIPMENT IN PROPER MANNER, FREIGHT AND INSURANCE PREPAID, UNENCUMBERED TO TIBBITS AT THE PLACE WHERE THE RENT IS PAID, OR TO SUCH OTHER PLACE AS TIBBITS MAY DESIGNATE. ANY USE OF THE EQUIPMENT BY LESSEE BEYOND THE TERM OF THIS LEASE SHALL AT THE OPTION OF TIBBITS BE DEEMED TO BE AN EXTENSION OF THIS LEASE ON A MONTH TO MONTH BASIS ONLY, AND ALL OBLIGATION OF LESSEE HEREBUNDER SHALL CONTINUE DURING SUCH HOLDING OVER. DURING ANY SUCH HOLDING OVER, TIBBITS MAY TERMINATE SUCH LEASE AND TAKE POSSESSION OF THE EQUIPMENT UPON DEMAND AFTER TEN (10) DAYS WRITTEN NOTICE TO LESSEE.

REMEDIES: LESSEE SHALL PAY TO TIBBITS ALL COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES, INCURRED BY TIBBITS IN EXERCISING ANY OF ITS RIGHTS OR REMEDIES HEREUNDER, WHETHER OR NOT SUIT IS COMMENCED.

ACKNOWLEDGMENT OF SALE: LESSEE ACKNOWLEDGES THAT THE EQUIPMENT IS STOCK IN TRADE OF TIBBITS AND AVAILABLE FOR RESALE BY TIBBITS TO A THIRD PARTY AT ANY TIME DURING THE TERM OF THIS AGREEMENT. THEREFORE, LESSEE AGREES UPON NOTICE FROM TIBBITS THAT THE EQUIPMENT HAS BEEN SOLD, LESSEE SHALL IMMEDIATELY SURRENDER TO TIBBITS THE EQUIPMENT AND ACCEPT FROM TIBBITS, AS A SUBSTITUTE, A COMPARABLE OR SUPERIOR PIECE OF EQUIPMENT OR MACHINERY. WITH RESPECT TO SUCH SUBSTITUTED EQUIPMENT, THIS AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT.

EXCLUSIVE AGREEMENT: THIS LEASE CONSTITUTES THE FINAL, COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES. TIBBITS SHALL NOT BE BOUND BY ANY AGREEMENT OR REPRESENTATION RELATING IN ANY MANNER TO THIS TRANSACTION, WHICH IS NOT CONTAINED IN THIS CONTRACT.

APPLICABLE LAW: THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED BY THE LAWS OF THE STATE OF VERMONT AND WHERE APPLICABLE TO THE UNITED STATES.

THIS LEASE AGREEMENT IS FOR IMMEDIATE ACCEPTANCE BY THE LESSEE, BUT ALTHOUGH SO ACCEPTED DOES NOT CONSTITUTE A CONTRACT UNTIL THE SAME IS APPROVED BY AN AUTHORIZED REPRESENTATIVE OF TIBBITS EQUIPMENT SERVICES, INC. AND IS SUBJECT TO CHANGE OR WITHDRAWAL UNTIL SO APPROVED.

WE CLEARLY UNDERSTAND THIS AGREEMENT AND HAVE READ AND AGREE TO BE BOUND BY THE CONDITIONS STATED IN THIS CONTRACT

* DATE: _____

* LESSEE _____
(INDIVIDUAL, COMPANY, CORPORATION, PARTNERSHIP)

* LESSEE SIGNATURE _____ PRINTED NAME _____

TIBBITS EQUIPMENT SERVICES, INC.. SIGNATURE _____

GUARNTY and SURETY

THE UNDERSIGNED, JOINTLY AND SEVERALLY IF MORE THAN ONE, HEREBY PERSONALLY AND INDIVIDUALLY GUARANTY ALL OF THE DEBTS AND OBLIGATIONS OF LESSEE UNDER THE FOREGOING RENTAL AGREEMENT AND HEREBY WAIVE ALL SURETYSHIP DEFENSES OF EVERY KIND AND NATURE.

GUARANTOR

DATE

TIBBITS EQUIPMENT SERVICES, INC