

RESOLUTION

of the

Tompkins County Soil and Water Conservation District

Resolution No.: 2015-45

Date: 9/14/2015

*Renewal of Cooperation Agreement with New York State Department of Environmental Conservation for operation, maintenance and housing of BigFoot Baler, Model BF-300.*

WHEREAS, the Department owns a certain BigFoot Baler, Model BF-300, with integrated trailer and hydraulic power unit, Serial Number BF300-004 ("Property") for use throughout Tompkins County and other nearby counties; and

WHEREAS, the Property was obtained for the purpose of compacting the plastics used in any and all sectors of agricultural production and sales (including, but not limited to, mulch films, greenhouse covers, forage wraps and covers, boat wrap) both on farms and in other locations, such that these plastics can be efficiently collected and transported for recycling; and

WHEREAS, the Department contracted with Cornell University to implement a Recycling Agricultural Plastics Program; and

WHEREAS, Cooperator is a participant in the Recycling Agricultural Plastics Program; and

WHEREAS, the Property was purchased using funds from the New York State Environmental Protection Fund; and

WHEREAS, the parties wish to enter into an agreement whereby the Cooperator will provide for proper storage, maintenance, and use of the Property:

NOW THEREFORE, in consideration of the promises herein contained, it is agreed by and between the parties that, pursuant to the Department's authority in the ECL § 3-0301(1), Cooperator is designated the manager to store, maintain, repair, schedule and use the Property as provided in this Cooperation Agreement ("Agreement"):

1. The Department grants to Cooperator a temporary revocable license to and over the Property for the term of this Agreement. The purpose of such license is to allow Cooperator to store, maintain, repair, use and oversee the use of the Property, for the purposes of carrying out its rights and responsibilities under this Agreement. This Agreement does not vest in the Cooperator any ownership or title interest in the Property. Ownership and title of the Property is and remains in the People of the State of New York under the jurisdiction of the Department, which retains all rights incident thereto including the right to inspect or repossess the Property at any time.
2. The term of this Agreement is from the date of signing of this Agreement by the Department through August 31, 2017, unless sooner terminated as provided herein. The

parties may renew this Agreement upon written notification to and agreement by the Department.

3. The purpose of this Agreement is to allow the Cooperator to store, maintain, repair, use and oversee the use of the Property for its intended purpose — which is to compact agricultural plastics, such that the plastic can be efficiently collected and transported for recycling. The intended uses are for the benefit of farmers and others who handle such materials (including boaters and marinas that use plastic film as boat wrap), the public, and the environment.

4. Unless the parties otherwise amend this Agreement, the use of the Property by Cooperator shall be restricted to the purposes described in this Agreement.

5. The parties agree that any and all use of the Property shall conform to applicable local, State, and federal laws and regulations.

6. The parties agree that all costs associated with the use of the Property, including but not limited to: transportation of the Property to farms and other collection sites, insurance, reasonable and necessary maintenance and repairs resulting from use of the Property, and training the Cooperator and other users in proper and safe operation of the Property, shall be the responsibility of the Cooperator. The parties agree that the Cooperator may raise the requisite funds for baler operation, management, and training by soliciting grants, contracts and other forms of reimbursement, and/or by charging users a fee to cover these costs. The Cooperator retains the right to set a reasonable fee that covers costs of operation, management, maintenance, insurance, and training, subject to approval by the Department.

7. The Property will be used primarily within Tompkins County and other nearby counties, but the Cooperator may make arrangements for the property to be used elsewhere in New York State for purposes of demonstration, education, and plastics collection.

8. Prior to use of the Property, the Cooperator shall obtain training from the Cornell University Recycling Agricultural Plastics Program (RAPP), or a designee of RAPP, in operational and safety procedures, and shall demonstrate competence in the safe and orderly use of the Property.

9. The Cooperator agrees to ensure that any and all users of the Property are similarly trained--either by the Cooperator, by RAPP, or by a designated trainer approved by RAPP--that such users demonstrate competence prior to their use of the Property.

10. Cooperator agrees to release and hold harmless the People of the State of New York, the Department, Cornell University, and the Cornell Cooperative Extension Associations of the various counties participating in the Recycling Agricultural Plastics Program (RAPP), their officials, employees and contractors, with respect to any claims or liabilities arising out of that training (the Release is attached as Schedule B).

Furthermore, Cooperator agrees to obtain the signature of its trainees on the Release, to retain signed Release forms in its files for the duration of this Agreement and any renewed Agreements, and to provide the signed Releases to Cornell University and/or the Department upon request. Moreover, the Department is specifically authorized to make any additional requirements reasonably necessary to insure the safe and orderly usage of the Property.

11. The Cooperator agrees, at its sole responsibility, cost and expense to:

(a) Store the Property in a secure environment and/or arrange for such storage at locations where the Property is being used.

(b) Develop and oversee an efficient schedule for use of the Property by farmers, recyclers, Soil and Water Conservation District personnel and other appropriate users.

(c) Maintain records that show the location and party responsible for the Property at all times that it is being used by others than the Cooperator.

(d) Perform routine and other maintenance on the Property as required to keep the Property in a safe operating condition appropriate for the intended use of the Property. Perform such maintenance as is specified in the Property owners' manual and in guidelines provided by RAPP. When the Property is being used and stored elsewhere than the premises of the Cooperator's offices, the Cooperator may delegate such maintenance responsibilities to designated users of the Property. Maintenance shall include checking and correcting or replacing, as needed: levels of hydraulic fluid and gasoline; wear on the hydraulic hosing; wear and air pressure of tires; running lights, brake lights and turn signals; etc.

(e) Ensure that between each use the Property is inspected by the Cooperator or a designee and determined to be safe and serviceable for use. If it is not determined to be safe and serviceable for use, the Cooperator will make any repairs necessary to put the Property in such condition.

- (f) Make necessary repairs to the Property.
- (g) Comply with requirements of RAPP for participation in this Program, with the understanding that failure to do so shall constitute breach of this Agreement.

12. The Property shall be and remain the possession of Cooperator during the term of this Agreement and until such time as this Agreement is terminated. The Cooperator will schedule and oversee use of the Property, but may delegate day-to-day responsibilities to partnering farmers, recyclers, other SWCDs or other agencies or businesses.

Cooperators shall assure that users:

- (a) show proof of vehicle insurance and of liability insurance naming the People of the State of New York, the Department, Cooperator, and Cornell University as additional insureds;
- (b) undergo training and demonstrate competence in operational and safety procedures;
- (c) sign a release agreement in exchange for training;
- (d) sign a checklist provided by the Cooperator that lists all supplies and tools accompanying the Property;
- (e) agree to return the Property with all supplies and tools intact or to reimburse the Cooperator for missing or damaged items.

13. Upon termination of this Agreement, Cooperator shall relinquish possession of the Property to the Department.

14. Cooperator shall hold and save harmless the People of the State of New York, the Department, Cornell University, and the Cornell Cooperative Extension Associations of the various counties participating in RAPP, their officials, employees and contractors, from any claim or liability arising directly out of this Agreement or from or by reason of Cooperator's use, operation, or oversight of the Property, except for liability that is directly attributable to the acts or omissions of Cornell University, the Cooperative Extension Associations, the Department, or State of New York.

15. Cooperator shall provide insurance for the Property with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies) and the form and

content of such policy or policies shall be subject at any time to review and approval of the Department. Any such policies of insurance shall name the People of the State of New York, the Department of Environmental Conservation, and Cornell University as additional insureds. Proof of this coverage is to be provided upon execution of the Agreement. The insurance requirements are as follows:

(a) Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such liability shall be written in the Insurance Service Office's (ISO) occurrence for CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse and underground coverage.

(b) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

(c) Inland Marine Policy for full replacement value of the baler and any associated equipment, to cover loss or damage to the Property.

16. The parties agree to immediately notify each other of any report of injuries (personal or otherwise), claims made against either party involving the Property, and any other significant matters.

17. This Agreement may be modified or terminated upon mutual consent as expressed in writing subscribed by the parties, or upon breach of a material term of this Agreement.

18. Any notice to Cooperator required by this Agreement shall be personally delivered or sent by first class mail to the Cooperator at the following address:

170 Bostwick Rd.  
Ithaca, NY 14850

Any notice to the Department required by this Agreement shall be personally delivered or sent by first class mail to both of the following Department addresses:

New York State Department of Environmental Conservation

Region 7, Regional Director  
615 Erie Blvd West  
Syracuse, NY 13204

New York State Department of Environmental Conservation  
Attention: Jennifer Andaloro  
625 Broadway, 14th Floor  
Albany, New York 12233-1500

19. This Agreement merges the prior negotiations of the parties. There are no promises, representations, covenants, and warranties other than those expressed herein.

20. This Agreement may not be assigned by either party without prior written consent.

21. This Agreement binds the parties hereto and their respective successors, if any.

22. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE DEPARTMENT DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATED TO THE PROPERTY INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

23.)Jonathan Negley acting as the District Manager for the Tompkins County Soil and Water Conservation District is authorized to sign this contract.

24.)This resolution shall take effect immediately.

Board Chair Signature \_\_\_\_\_

Approvals:

Dan Carey: Present- Y( ) N ( ) , Vote- Y( ) N( )

Aaron Ristow: Present- Y( ) N ( ) , Vote- Y( ) N( )

Alan Teeter: Present- Y( ) N ( ) , Vote- Y( ) N( )

David McKenna: Present- Y( ) N ( ) ,  
Vote- Y( ) N( )

Jim Dennis: Present- Y( ) N ( ) , Vote- Y( ) N( )