

EQUIPMENT USE AGREEMENT

This Equipment Use Agreement (“Agreement”) is effective as of July 6, 2022, by and between the **Lower Connecticut River Valley Council of Governments**, 145 Dennison Road, Essex Connecticut (“RiverCOG”) and _____, _____, Connecticut (“User”). RiverCOG and ____ (please initial) may collectively be referred to as the “Parties”, and individually as a “Party”).

WHEREAS, the Regional Agriculture Council (“RAC”) of RiverCOG, through a Department of Agriculture Farm Viability Grant, is creating a no-till and cover crop cost sharing equipment program; and,

WHEREAS, the purpose of the program is to expand no-till farming practices in the region by introducing equipment to aid the implementation of soil health principles such as organic cover crop and no-till planting on Connecticut farms; and,

WHEREAS, the program will foster collaborative education through data collections throughout the two-year program (“Program”), which commences on November 30, 2021 through October 31, 2023; and,

WHEREAS, RAC through RiverCOG seeks to create a group of farmers who are interested in becoming a part of the Program and farmers interested in housing the no-till equipment; and,

WHEREAS, the primary goal is to get more land farmed using no-till practices. The no-till equipment will be available for regional farmers to practice no-till methods without having to purchase the equipment, thus reducing the cost and risk of adopting no-till crop production practices; and,

WHEREAS, the equipment will be available for use by farms only in the RiverCOG region. The RiverCOG region includes the municipalities of: Chester, Clinton, Cromwell, Deep River, Durham, East Haddam, East Hampton, Essex, Haddam, Killingworth, Lyme, Middlefield, Middletown, Old Lyme, Old Saybrook, Portland and Westbrook; and,

WHEREAS, at all times the Parties desire to comply with Connecticut General Statutes to the extent such statutes apply to this Agreement.

NOW THEREFORE, in consideration of the mutual covenants stated in this Agreement, the parties agree as follows:

1. Term. The term of this Agreement term shall become effective upon execution by the Parties (“Execution Date”) and shall continue from the Effective

Date for a period of October 21, 2021 year (“Anniversary Date”), which shall be automatically renewable; unless otherwise terminated by either Party, as set forth herein.

A. Upon Mutual Agreement. Upon mutual agreement the Parties. Upon request of one of the Parties at least ninety (90) days prior to the Anniversary Date, this Agreement may be terminated; although, the effective date of said termination shall also take into account any obligations the Parties may have under the terms of any addenda attached hereto and any obligations set forth therein.

B. Material Failure to Comply with the Terms of the Agreement: Notice. Either Party to this Agreement may terminate the Agreement and thereafter be relieved of further performance if the other Party fails to materially perform any of the covenants or conditions contained herein or any accompanying addendum, provided written notice is provided to the other party a minimum of thirty (30) days in advance of said termination stating the reasons for the proposed termination and the party upon whom said notice was given fails to rectify the situation within the thirty (30) day notice period. Either Party may further terminate for convenience on ninety (90) days written notice

2. Pre- and Post-Use Covenants, Conditions and Other Requirements, including Data Collection. In consideration for use of the Equipment and for the duration of the Program, User agrees to:

A. Complete the Farm Equipment User Application.

B. Provide evidence of insurance, as set forth below.

C. Assume responsibility and liability for legal transportation on a trailer or behind a tractor if local and, further acknowledges full and sole responsibility and liability for Equipment while in the care, custody and control of User, including but not limited to transport to and from the Host Farm or the location of another User.

D. Permit soil testing of nutrient analysis and organic matter, in accordance with the requirements set by the RAC both prior to and at the end of the program in order to track progress on your farm.

E. Encouraged to attend a RAC Demonstration Day, early to mid-June. Date to be determined.

F. Provide data and in-kind time to assist with monitoring the results of the project on their farm for the duration of the Program.

G. An acreage meter is attached to the no-till drill.

H. Fill out post use questionnaire.

3. Equipment Use. Under the transfer of the equipment, the Parties agree that the borrowed equipment is to be insured by whichever party is using the equipment. Users of the equipment must be at least eighteen (18) years of age. Said form must be completed before taking possession of the vehicle. User is responsible for:

A. Inspecting the Equipment prior to and following use and shall document with photos, which will be kept on file at RiverCOG;

B. Acknowledge Equipment is in good working order;

C. Insuring the Equipment and indemnifying RiverCOG the Host Farm, as set forth in paragraph 9, below;

D. And liable for repairs and damage to the Equipment during use and at all times when in User's care, custody and control;

E. Cleaning the Equipment before returning and lubricate after use; and,

F. Providing a secure covered storage space for the Equipment and furnish adequate protection from the elements/weather.

4. The Equipment. The following is the Equipment borrowed by the User under this Agreement (initial all that apply):

____ Roller/Crimper

____ No-till drill

____ Transplanter

5. Maintenance and Operation of Equipment. User shall not alter or modify the Equipment and shall maintain the Equipment in good repair and operative condition and return it to RiverCOG in such condition, ordinary wear and tear resulting from proper use thereof expected. In the event that the Equipment or any portion thereof is damaged, destroyed, vandalized or rendered inoperable, User shall replace the Equipment at User's expense. User agrees to inform RiverCOG of any damage to the Equipment within three (3) days of discovery of such damage.

6. Return of Equipment: Repairs. The borrowed Equipment must be returned to RiverCOG, at the location of the Host Farm, or as transferred to another

User, in the condition it was received. The User is responsible for all reasonable repairs including parts and labor should malfunction or damage occur during the borrowing period. Inspection of equipment is encouraged before taking possession.

7. Recall of Equipment. User acknowledges that the Equipment is for the use and benefit of all Users in the RiverCOG member municipalities. RiverCOG reserves the right to recall any or all Equipment upon ten (10) days written notice to User for use by other farms following the expiration of two (2) months of the commencement date listed on any Equipment Check-out Form.

8. DISCLAIMER OF WARRANTIES. RIVERCOG, BEING NEITHER THE MANUFACTURER, NOR SUPPLIER OF THE EQUIPMENT, MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS DESIGN, ITS CAPACITY, ITS PERFORMANCE, ITS MATERIAL, ITS WORKMANSHIP, ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT IT WILL MEET THE REQUIREMENTS OF ANY LAWS, RULES, SPECIFICATIONS, OR CONTRACTS WHICH PROVIDE FOR USE OF A SPECIFIC APPARATUS OR SPECIAL METHODS. RIVERCOG FURTHER DISCLAIMS ANY LIABILITY WHATSOEVER FOR LOSS, DAMAGE, OR INJURY TO USER OR THIRD PARTIES AS A RESULT OF ANY DEFECTS, LATENT OR OTHERWISE, IN THE EQUIPMENT. AS TO RIVERCOG, USER UTILIZES THE EQUIPMENT "AS-IS". RIVERCOG SHALL NOT BE LIABLE IN ANY EVENT TO USER FOR ANY LOSS, DELAY, OR DAMAGE OF ANY KIND OR CHARACTER RESULTING FROM DEFECTS IN, OR INEFFICIENCY OF, EQUIPMENT HEREBY USED OR ACCIDENTAL BREAKAGE THEREOF

9. Indemnity and Hold Harmless. User shall indemnify RiverCOG and the Host Farm against, and hold RiverCOG and Host Farm harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with or resulting from User's use of the Equipment, including without limitation, the manufacture, selection, delivery, leasing, renting, control, possession, use, operation, maintenance or return of the Equipment. User shall further indemnify RiverCOG and Host Farm and hold RiverCOG and Host Farm harmless from all loss and damage to the Equipment during the Term. This section shall survive the expiration of the Term of this Agreement.

10. Risk of Loss. RiverCOG shall not be responsible for loss or damage to property, material, or equipment belonging to User, its agents, employees, or anyone directly or indirectly employed by User while the Equipment is in User's care, custody, and control.

11. Insurance. User shall provide RiverCOG with proof of general liability insurance in minimum amount of \$250,000/\$500,000 and replacement value as a result of physical damage and provide a Certificate of Insurance to RiverCOG and Host Farm naming them as additional insured. User further agrees

to include thirty (30) days cancellation notice in said policies and proof of statutory workers' compensation insurance coverage.

12. Ownership of Equipment. RiverCOG shall at all times retain ownership and title to the Equipment

13. Execution of Equipment Check-out Form. RiverCOG and User agree that the Equipment Check-out Form may be submitted by User staff and approved by RiverCOG's project manager. The Equipment Check-out Form may be submitted multiple times by User throughout the term of this Agreement to request repeated use of the Equipment.

14. Resolution of Disputes. RiverCOG shall be responsible for resolving any disputes over the terms of this MOU. RiverCOG also reserves the right to relocate the equipment to another location, and to prohibit future use of the equipment by anyone who has improperly used or damaged the equipment.

15. Assignment. This Agreement and its contractual obligations shall not be assigned, in whole or part, by User without prior notification and subsequent written consent of RiverCOG.

16. No Third Party Beneficiaries. Nothing in this Agreement shall be construed as giving any person, corporation or other entity other than the Parties any right, remedy or claim under or in respect of this Agreement or any provision hereof.

17. Severability. If any provision of this Agreement is found to be invalid, the remaining provisions shall remain in full force and effect.

18. Waiver of Breach. The waiver by either Party of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach by the other Party of the same or of different provisions.

19. Governing Law. This Agreement is governed by the laws of the State of Connecticut, without giving effect to the conflict of law provisions thereof.

20. Counterpart Execution; Electronic Execution. This Agreement may be executed in any number of counterparts with the same effect as if all of the Parties had signed the same document. Such executions may be transmitted to the other Parties by facsimile or other electronic transmission and such facsimile or other electronic execution shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile executions, electronic executions or a combination of the foregoing, shall be construed together and shall constitute one and the same agreement.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement by its duly authorized officer as of the day and year first written above.

(Farmer)_____

RIVERCOG

By: _____

Name:

Title:

Date:

By: _____

Name: Samuel S. Gold

Title: Executive Director

Date: