

**BYPRODUCTS SALE AGREEMENT**  
**“Preferred Pressed Pulp”**

**THIS AGREEMENT** is entered into effective as of the \_\_\_\_th day of \_\_\_\_\_, 2023 by and between American Crystal Sugar Company, a Minnesota corporation (“American Crystal”) and \_\_\_\_\_ (“Buyer”). American Crystal hereby agrees to sell, and Buyer agrees to buy, the byproducts described below (collectively, the “Byproducts”) on the terms and conditions set forth below and on the Terms and Conditions on the reverse side of this Agreement.

**Byproduct:** Pressed Pulp

**Term:** The term of this Agreement commences on the date hereof and continues through the processing year ending on or about June 2024 (the “Term”).

**Quantity:** \_\_\_\_\_ total tons. Tons to be taken in “Minimum Monthly Quantities” during each processing year during the Term hereof, as follows: September thru May 9 months \_\_\_\_\_ tons per month.

**Minimum Base Price:**      \$ 5.00 per ton    **Alternate Bid Price:** \$ \_\_\_\_\_ per ton

**Delivery:** Byproducts shall be delivered to Buyer FOB American Crystal’s (circle & rank in order of preference)

Moorhead           Hillsboro           Crookston           East Grand Forks           Drayton

factory pursuant to a mutually agreed upon delivery schedule. Buyer must accept delivery of the Byproducts within the designated month based on the delivery schedule and the Byproducts must be removed from the delivery location within 24 hours after American Crystal notifies Buyer that the Byproducts are available to Buyer.

**The sale of Byproducts is subject to the Terms and Conditions set forth on the reverse side hereof.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**AMERICAN CRYSTAL SUGAR COMPANY**

**BUYER**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**FORM 5**

**CATTLE FEEDING SITE SUITABILITY CHECKLIST**

**AMERICAN CRYSTAL SUGAR COMPANY**

**TO BE FILLED OUT BY OWNER OF SITE**

**Please print:**

**Site Location (County and Township):** \_\_\_\_\_

911 address of site: \_\_\_\_\_

\_\_\_\_\_

Directions to site: \_\_\_\_\_

\_\_\_\_\_

Does site meet suitability criteria below: Yes\_\_\_\_ No\_\_\_\_

- |   |
|---|
| <ul style="list-style-type: none"><li>• Site shall not be located within 200 feet of a river, lake, creek or drainage area.</li><li>• Site shall not be located in an area prone to flooding.</li><li>• Site shall not be located within 1000 feet of a residential community or inhabited dwelling unless permission has been received prior to delivery of waste.</li></ul> |
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**Feeding Operation:**

• Will by-product be stockpiled? Yes\_\_\_\_ No\_\_\_\_ (If yes, for how many days:\_\_\_\_\_)

• Estimated animal units: \_\_\_\_\_

Contractor hauling? Yes\_\_\_\_ No\_\_\_\_ Name of Contractor \_\_\_\_\_

Owner of Site (please print): \_\_\_\_\_

Owner phone # (for site inspection): \_\_\_\_\_

Signature of Owner \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Contractor \_\_\_\_\_ Date: \_\_\_\_\_

## PREFERRED CONTRACT TERMS AND CONDITIONS

1. **Payment Terms.** Buyer will be invoiced monthly for the greater of (i) Minimum Monthly Quantity or (ii) or the actual tonnage delivered to Buyer, unless American Crystal has notified Buyer that an insufficient quantity of Byproducts was available to satisfy the Minimum Monthly Quantity, in which case Buyer shall only be invoiced for that portion of the Minimum Monthly Quantity that was available. Buyer agrees to pay American Crystal within 15 days following the date of the invoice. Finance charges of 1.5% per month (or the highest rate allowed by applicable law) will be charged on past due invoices. In the event an account is past due, American Crystal may (i) suspend future deliveries until such time as the account is current, or (ii) convert the payment terms to C.O.D.
2. **Byproduct Delivery.** Byproducts will be delivered to Buyer FOB American Crystal's factory as specified on the face of this Agreement. American Crystal will load the Byproducts into Buyer's vehicle. Buyer's vehicle will be weighed by American Crystal to verify the actual tonnage of Byproduct sold to Buyer. Title and risk of loss to the Byproducts shall pass from American Crystal to Buyer at the time the Byproducts are loaded into Buyer's vehicle. American Crystal shall have no liability to Buyer for any delays in the availability, loading and/or delivery of Byproducts. Byproducts will be loaded on a daily reservation "first come, first serve" basis. In the event Buyer fails to take delivery of the contracted volume of pressed pulp in any month, Buyer will be liable for the payment of liquidated damages as provided in paragraph 8 hereof, and American Crystal may (i) consider this Agreement terminated with respect to the quantity not taken, and/or (ii) terminate this Agreement with respect to all remaining deliveries to be made in future months.
3. **No warranty.** The Byproducts are being sold to the Buyer "AS IS, WHERE IS AND WITH ALL FAULTS" and Buyer acknowledges that American Crystal makes no representation or warranty as to the quality, value or condition of the Byproducts. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. Buyer assumes full responsibility for issues resulting from the use of the Byproducts, including injury or illness to livestock to which the Byproducts are fed.
4. **Buyer's Operations.** Buyer agrees to operate in a professional manner while removing the Byproducts and agrees to follow any guidelines and safety and security requirements that may be established by American Crystal with regard to activities occurring on American Crystal property. Buyer agrees to procure and maintain continuing liability insurance and provide American Crystal with evidence of such insurance upon request.

Buyer and American Crystal must complete the Form 5 attached to this Agreement for each location where the Byproducts will be stored or used by Buyer. Buyer agrees to use the Byproducts only in the location(s) specified in the Form 5. Buyer and American Crystal must complete a new Form 5 prior to storing or using the Byproducts in a new location.
5. **Regulatory Compliance.** Buyer agrees to use and handle the Byproducts in a manner that is protective of surface and groundwater. Buyer agrees and understands that it shall be responsible for the proper management of the Byproducts and such management shall be in accordance with reasonable management practices and safeguards that shall be employed by the Buyer to prevent surface and groundwater contamination. Buyer acknowledges that any contamination of groundwater and/or surface water supplies as a result of the Buyer's handling or mishandling of the Byproducts could subject the Buyer to enforcement actions. Buyer grants American Crystal the right to inspect its facilities where the Byproducts will be stored or used, upon reasonable notification by an American Crystal representative.
6. **Termination.** This Agreement may be terminated: (i) by mutual agreement of the parties, or (ii) upon written notice by American Crystal in the event the Buyer defaults in its performance hereunder.
7. **Indemnification.** Buyer shall defend, indemnify and hold harmless American Crystal, its members, directors, officers, employees, agents and representatives against any and all liabilities, costs and damages, including reasonable attorneys' fees, arising from or in connection with: (i) Any breach by Buyer of any provision of this Agreement; (ii) Injury or death to persons or damage to property arising from the negligent or intentional act or omission of Buyer, Buyer's employees, and subcontractors, in connection with or resulting from the transportation

and/or use of the Byproducts; (iii) Any claim, demand, cause of action, loss, expense or liability on account of actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of the transportation and/or use of the Byproducts. Buyer's indemnification obligation under this Section shall survive termination of this Agreement.

**8. Liquidated Damages.** American Crystal and Buyer intend that Buyer will take delivery of the Minimum Monthly Quantity of the Byproducts set forth herein during the term of this Agreement. Should Buyer fail to take delivery of the Minimum Monthly Quantity, Buyer shall be deemed to be in breach of this Agreement and shall be responsible for paying liquidated damages to American Crystal in the amount of the purchase price per ton multiplied times the difference between the Minimum Monthly Quantity and the actual tons delivered to Buyer during that month. The liquidated damages shall be due and payable upon receipt of an invoice from American Crystal. The parties acknowledge and agree that American Crystal's damages resulting from Buyer's failure to take delivery of the Minimum Monthly Quantity will be difficult to calculate, and the liquidated damages provided herein are a reasonable estimation of the actual damages that may result from Buyer's breach. Buyer's payment of liquidated damages is the Buyer's sole liability for Buyer's failure to take delivery of the Minimum Monthly Quantity. The obligation to pay liquidated damages hereunder shall survive the termination or expiration of this Agreement.

**9. Force Majeure.** American Crystal shall not be in breach of this Agreement or be liable for any delay in delivery or any non-delivery of Byproducts arising from Acts of God, wars or the consequences thereof, revolutions, riots, civil commotions, strikes, lockouts or other labor troubles (whether or not within American Crystal's power to settle), fire, floods, droughts, storms, accidents, breakdown of machinery, regulation or action of any governmental authority, or, without limiting the foregoing, any other circumstances of like or different kind beyond the reasonable control of American Crystal. If American Crystal's delivery is delayed in whole or in part by reason of any such circumstances, the Buyer shall nevertheless be obligated to accept later deliveries of Byproducts; provided, however, that if by reason of any such circumstances American Crystal does not deliver Byproducts within 30 days of the date delivery would otherwise be due, the delayed quantity shall be omitted from the Agreement and neither party shall be liable to the other party for the quantity so omitted, and the total quantity to be delivered hereunder shall be reduced by such quantity. If by reason of any of the foregoing circumstances American Crystal's supply of the goods herein specified shall be sufficient to meet some but not all to American Crystal's requirements, then American Crystal shall have the right, at its option and without liability, to apportion its available sales supply among any and all purchasers in such a manner as American Crystal believes to be equitable. Nothing in this paragraph shall relieve the Buyer of its obligation to pay for goods as to which the risk of loss has passed to the Buyer hereunder. Buyer and American Crystal acknowledge and agree that American Crystal is engaged in the business of processing pressed pulp into pulp pellets and from time to time such pulp pellet production may result in American Crystal being unable to provide the Minimum Monthly Quantity of pressed pulp to Buyer. Such inability to provide the pressed pulp to Buyer shall not result in a default under the terms of this Agreement and shall be considered an event of force majeure hereunder.

**10. Miscellaneous Provisions.** This Agreement shall be governed in all respects by the laws of the State of Minnesota, excluding its conflict of laws rules. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, and negotiations, whether written or oral, with respect to the subject matter hereof. No provision of this Agreement may be amended, modified or waived except by a writing signed by an authorized representative of the party against whom such amendment, modification or waiver is asserted. No waiver or any failure or omission to enforce any provision of this Agreement or any claim or right arising hereunder shall be deemed to be a waiver of any other provision of this Agreement or any other claim or right arising hereunder. Buyer may not assign this Agreement without American Crystal's written consent. American Crystal shall have all rights and remedies available under applicable law to collect past due payments for pulp delivered hereunder. American Crystal shall also be entitled to receive from Buyer all costs of collection, including collection fees, court costs and reasonable attorneys' fees.