

**DRAFT AGREEMENT
BETWEEN**

**THE U.S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION,
AND**

BIOMASS CONVERSION FACILITY

I. PURPOSE

This Agreement is between the U.S. Department of Agriculture (USDA), the Commodity Credit Corporation (CCC) and the to declare this facility in county as a participating biomass conversion facility (CHST qualified biomass conversion facility) under the Biomass Crop Assistance Program's (BCAP's) Collection, Harvest, Storage and Transportation implementation (CHST).

II. GENERAL PROVISIONS

The purpose of this Agreement is to allow, where deemed desirable by the USDA and CCC, certain biomass conversion facilities to be CHST participants under the BCAP. This executed Agreement will act as a letter of commitment by the CHST qualified biomass conversion facility to participate in the BCAP and as a declaration of a commitment to use eligible biomass material.

The CHST will be driven by CHST biomass conversion facilities that demonstrate a need for eligible biomass feedstock and materials for conversion into heat, power, biobased products, and/or advanced biofuels. The CHST will be the vehicle for a partnership between biomass conversion facility owners and operators, governmental entities, and non-governmental organizations in addressing renewable biomass feedstock and material needs. The goals for the CHST are to:

1. Provide matching payments for the collection, harvest, storage and transport of eligible materials to CHST biomass owners that make delivery to the CHST biomass conversion facilities, which uses the biomass for the purposes of producing heat, power, biobased products, and/or advanced biofuels;
2. Establish standards and operating procedures for CHST qualified biomass conversion facilities that receive collected, harvested, stored and transported eligible materials;
3. Receive and review letters of commitment for the CHST from biomass conversion facilities, based in the U.S. and Territories, seeking to participate as a CHST biomass conversion facilities; and
4. Provide and execute MOAs to participate as a CHST qualified biomass conversion facility to applicants that make the commitment participate.

This Agreement is not intended to supersede any rules or regulations that have been or may be promulgated by USDA, CCC, a State or any other Governmental entity participating in the BCAP or governing U.S. located biomass conversion facilities.

III. AUTHORITY

A. Federal

The CCC has the authority under the provisions of Section 9011 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The following authorities also apply: Section 5(c) of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a(c)), subchapter B and C of Chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq. and 3837 et seq.), subchapter D of Chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838n et seq.), subtitle B and C of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq. and 3821 et seq.), Section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)), Section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)), and the regulations at 7 CFR Part 1410 and 7CFR part 14693 to perform all activities contemplated by this Agreement. Other authorities may also apply.

IV. CHST ELEMENTS

USDA, CCC, and [REDACTED] agree that:

- A. The BCAP's CHST will consist of entering into a Memorandum of Agreements (MOAs) with CHST biomass conversion facilities that will be able to receive eligible crops and/or material or renewable biomass from CHST owners and operators.

This Agreement contemplates BCAP's CHST and the commitment of this biomass conversion facility that proposes to participate as a CHST qualified biomass conversion facility by receiving eligible renewable biomass crops and materials solely for the purpose of conversion to heat, power, biobased products, and/or advanced biofuels.

- B. CHST biomass conversion facilities under the BCAP will receive no payments or reimbursements. This Agreement will not act as a fiscal nor funds obligated document nor as an instrument for procurement.

The CHST qualified biomass conversion facility must consent, and is obligated to perform and allow for the following activities:

1. Develop and maintain a Biomass Purchase List for all eligible renewable biomass purchases and make available this List for examination by representatives from USDA, including but not limited to all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that is within the control of such entity for no less than three years from the payment date;

2. Purchase only the least expensive eligible biomass materials available, and deemed suitable for energy uses by the facility owners or facility managers, from biomass owners and make payment for such biomass only on a dollar per dry weight ton basis;
3. Provide and/or maintain access to and use of commercial freight scales which are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to determine the dry ton weight equivalent of actual tonnage delivered;
4. USDA inspection of biomass deliveries and maintain BCAP Facility Biomass Purchase Lists;
5. Maintain and submit evidence of compliance with all applicable Federal, State, agencies and local environmental laws and regulations;
6. Maintain that the CHST qualified biomass conversion facility remain an entirely separate legal entity from the owners of eligible material biomass who conduct purchases of eligible material biomass from the owners for biomass acquisition using arms-length transactions;
7. Allow general information about the facility or facilities and their biomass needs to be made public and promoted by the USDA and other entities, pursuant to execution of a commitment to participate; and
8. Use only eligible harvested and collected feedstock and materials, as described in Section 9011(a) of 2008 Farm Bill, for the purpose of conversion to heat, power, biobased products, and/or advanced biofuels.

C. The eligible renewable biomass or feedstock and materials that CHST biomass conversion facilities must record in their Biomass Purchase List are as follows:

1. Only eligible materials are eligible for a BCAP CHST payment. The list of eligible materials is posted at <http://www.fsa.usda.gov/energy>. Additional material may be designated eligible by the CCC through written consent.
2. The following materials are ineligible:
 - Food waste;
 - Yard waste;
 - Algae;
 - Animal waste and animal byproducts including fats, oils, grease and manure;
 - Any harvested grain, fiber, or other crops, including crop residue, eligible to receive Title I payment (see list posted at <http://www.fsa.usda.gov/energy>); or

- Any plant that is invasive or noxious, as determined by the Secretary, in consultation with other appropriate Federal or State departments and agencies and local authorities.

D. CHST owners and operators will only be eligible to receive payment for eligible materials that are used by the CHST qualified biomass conversion facility to produce heat, power, biobased products, and/or advanced biofuels.

1. Biobased products does NOT include:

- Timber;
- Lumber;
- Wood pulp; or
- Any other finished wood product.

E. Qualified CHST Biomass Conversion Facilities are required to record in their Biomass Purchase list only the purchases of eligible materials that come from eligible lands:

1. Eligible lands as described in Section 9011 of the 2008 Farm Bill are agricultural and nonindustrial private forest lands (as defined by Section 5(c) of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a(c)):

Agricultural lands are cropland, grasslands, pastureland, rangeland, hayland and other land on which food, fiber, or other agricultural products are produced or can be produced 7 CFR 14693.

Nonindustrial private forest lands means rural lands with existing tree cover, or suitable for growing trees.

2. CHST eligible land must be in compliance with the highly erodible land conservation requirements established under the Food Security Act of 1985 and the wetland conservation requirements also established under the Act.

F. CHST biomass conversion facilities are required to record in their Biomass Purchase Lists the purchase of eligible renewable biomass crops and materials.

1. Biomass Purchase Lists will contain the following elements:

- *Facility I.D. and facility legal name* must be recorded, a Facility I.D. number will be provided pursuant to the execution of an MOA and its statement of commitment to participate as a CHST qualified biomass conversion facility;
- *Facility manager and representative* purchasing and receiving the eligible materials;
- *Date* of the actual delivery of the eligible renewable biomass;

- *Facility I.D. and Facility legal name* must be recorded, a Facility I.D. number will be provided pursuant to the execution of an MOA and its statement of commitment to participate as a CHST qualified biomass conversion facility;
 - *Facility manager and representative* purchasing and receiving the eligible materials;
 - *Date* of the actual delivery of the eligible renewable biomass;
 - *Eligible material* must be recorded and characterized by common use name such as corn stover or switch grass;
 - *Point of origin of the eligible materials* in terms titled location of property or plant;
 - *Weight* must be recorded in dry tons;
 - *Payment total or price* for each purchase must be recorded in U.S. dollars;
 - *Price per ton* must be recorded by delineating dollar per ton paid; and
 - *Producer* name must be recorded at the time of delivery.
- C. CHST biomass conversion facilities are required to maintain compliance with all applicable Federal, State, agencies and local environmental laws and regulations.
- D. Complete the CHST qualified biomass conversion facility overview, Attachment 1.
- E. Notify USDA of changes in operations that would impact the operation. These include but are not limited to:
- Shut down of the facility;
 - Change of biomass utilization; and
 - And any other operation changes affecting input and/or output capacity.

VI. OTHER PROVISIONS

A. Amendments

This MOA may be amended at any time by mutual agreement of the Parties, in writing. Attachments may be developed and revised, as needed on mutual agreement, without necessitating the need to revise the MOA.

B. Effective Period and Termination

This MOA will be in effect on date of the final signature of each authorized Party and continue for up to three years or for as long as USDA has an authorized program for the BCAP and CHST Biomass Conversion Facilities, whichever date is shorter. It may be modified or terminated at any time by mutual agreement of the Parties, in writing, or by one of the Parties with thirty days' notice, in writing, to the other Parties. Nothing in this MOA prevents the USDA-CCC from suspending transmission of data in the event a security breach is suspected.

The Deputy Administrator for Farm Programs, Farm Service Agency or the Deputy Administrator's designee or successor, is delegated authority to carry out this Agreement and, with this Biomass Conversion Facility, the Facilities' designee or successor, may further amend this Agreement consistent with the provisions of the 1985 Act, as amended, and the regulations at 7 CFR Part 1410. The provisions of this Agreement may only be modified by written Agreement between the parties.

- C. The U.S. Department of Agriculture generally prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA, Office of Communications at 202-720-5881 (voice) or 202-720-7808 (TDD). To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC, 20250, or call 202-720-7327 (voice) or 202-720-1127 (TDD). USDA is an equal employment opportunity employer.

So agreed:

A. On behalf of the United States Department of Agriculture Farm Service Agency State Committee and the Commodity Credit Corporation:

Deputy Administrator for Farm Programs
Farm Service Agency and
Deputy Vice President
Commodity Credit Corporation

Date

B. For the

Biomass Conversion Legal Entity
Signatory's title

Date

DRAFT