

**FIRST AMENDMENT TO THE  
INDUSTRIAL POWER AGREEMENT WITH INTERRUPTIBLE  
SERVICE AND ECONOMIC DEVELOPMENT RIDER**

This FIRST AMENDMENT is made and entered into this 13<sup>th</sup> day of June, 2023, by and between East Kentucky Power Cooperative, Inc., a Kentucky corporation with its principal offices at 4775 Lexington Road, Winchester, Kentucky 40391 (“EKPC”), Fleming-Mason Energy Cooperative, a Kentucky corporation with its principal offices at 1449 Elizaville Road, Flemingsburg, Kentucky 41041 (“Cooperative”), and AppHarvest Morehead Farm, LLC, a Delaware corporation with its principal offices at 100 Lake Park Drive, Morehead, Kentucky 40351 (“Customer”).

**WITNESSETH:**


**WHEREAS**, EKPC, Cooperative, and Customer are Parties to an Industrial Power Agreement with Interruptible Service and Economic Development Rider, dated April 18, 2019 and effective July 1, 2019 (“Agreement”); and

**WHEREAS**, Paragraph 2 of the Agreement establishes the rates and charges the Customer will pay the Cooperative monthly for power and energy made available under this Agreement; and

**WHEREAS**, Paragraph 3 of the Agreement recognizes that the Customer’s expected load and unique energy use profile warranted a two-level Contract Demand; and

**WHEREAS**, Paragraph 4 of the Agreement establishes a single Firm Load for all months with the balance being Interruptible Demand; and

**WHEREAS**, Paragraph 13(a) includes the Cooperative’s agreement with the Customer not being required to pay the monthly Customer Charge; and

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<b>Linda C. Bridwell</b> Executive Director

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**WHEREAS**, the Parties to the Agreement agree that it is necessary and advisable to amend: 1) Paragraph 2 to provide that the Customer will be charged a fuel adjustment clause (“FAC”) based on EKPC’s FAC, 2) Paragraph 3 to recognize changes in the Customer’s load and energy use profile which necessitate changes in the Contract Demand and the months included in the two-level Contract Demand, 3) Paragraph 4 of said Agreement to recognize changes in the Customer’s load and energy use profile by establishing a two-level Firm Load provision consistent with the two-level Contract Demand, and 4) Paragraph 13(a) to delete the waiver of the Customer Charge;


**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions contained herein, the Parties agree as follows:

1. **FAC Charge.** As the electric meter is located at the substation, the Parties agree that the Customer should be charged a FAC based on EKPC’s FAC rather than the Cooperative’s FAC. Therefore, the following subparagraph shall be inserted between the second and third subparagraphs of Paragraph 2 of the Agreement:

Customer will be charged a fuel adjustment clause (“FAC”) based on EKPC’s FAC and this charge will not be adjusted for Cooperative’s line losses as long as the subject electric meter is located at the substation.

All other provisions described in Paragraph 2 of the Agreement remain unchanged.

2. **Change in Contract Demand.** The Parties agree that the two-level Contract Demand periods stated in Paragraph 3 of the Agreement should be identified as “Winter Months” and “Summer Months” for clarity purposes. The Parties further agree that the month of October should be considered a Summer Month for purposes of this Agreement. Finally, the Parties agree that the Contract Demands stated in the Agreement should reflect the current Contract Demands.

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Therefore, the Contract Demand section of Paragraph 3, beginning with the words, “EKPC, the Cooperative, and the Customer agree...” on page 4 of the Agreement and ending with the word, “September” is revised and shall read:

EKPC, the Cooperative, and the Customer agree that the Customer’s expected load and unique energy use profile warrants a two-level “Contract Demand.” The “Contract Demand” for service under this Agreement for the Winter Months of November through March shall be 10,000 kW and for the Summer Months of April through October shall be 500 kW. The monthly energy usage shall be equal to or greater than 400 hours per kW of Contract Demand per month. Customer shall have the right to increase or decrease said levels of Contract Demand, by giving written notice thirty (30) days prior to the date of the desired change, except that Contract Demand shall not be reduced below 10,000 kW for the Winter Months of November through March and not be reduced below 500 kW for the Summer Months of April through October.

All other provisions described in Paragraph 3 of the Agreement remain unchanged.

3. **Change in Firm Load.** Paragraph 4 on page 5 of the Agreement is deleted in total and replaced with the following:

**Interruptible Service.** In accordance with Cooperative’s Rate Schedule 6B – Large Industrial Service and the Interruptible Rider, Service to Customer may be interrupted by approved communication medium from EKPC’s Market Operations Center (“MOC”). EKPC, the Cooperative, and the Customer agree that the Customer’s load and unique energy use profile warrants a two-level Firm Load. For the Winter Months of November through March the Customer chooses 1,000 kW of Firm Load with the balance being Interruptible Demand. For the Summer Months of April through October the Customer

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chooses 800 kW of Firm Load with the balance being Interruptible Demand. Interruptible Demand shall not be less than 250 kW and not exceed 20,000 kW.

The Customer shall have the right to request one change to each of the Firm Loads during a 12-month period. Changes in the Firm Loads will become effective on June 1<sup>st</sup> of a given year. A request for a change in the Firm Loads shall be made by giving written notice to the Cooperative and EKPC no later than December 31<sup>st</sup> of the year prior to the year the change is to be effective. The Cooperative and EKPC will review the request, and if agreed, shall provide the Customer with a written acceptance of the requested change in Firm Loads.

All other provisions described in Paragraphs 4(a) through 4(c) of the Agreement remain unchanged.

4. **Deletion of Waiver of Customer Charge.** Paragraph 13(a) is deleted in total and replaced with the following:

a. **Regular Monthly Billing.** Cooperative will bill the Customer each month for the cost of electric power and energy delivered to Customer during the preceding month. This bill will clearly state the amount due and the corresponding due date. Cooperative's Rate Schedule 6B – Large Industrial Service includes a monthly Customer Charge. For the duration of this Agreement, in lieu of the monthly Customer Charge stated in the Cooperative's Rate Schedule 6B, the Customer agrees to pay the Cooperative the substation charge and meter point charge EKPC charges the Cooperative.

5. **Effective Date of First Amendment.** This First Amendment shall become effective upon the approval of the Kentucky Public Service Commission.



6. **Other Terms of the Agreement.** Except as expressly and specifically set forth herein, each and every other term of the Agreement shall remain in full force and effect. In the event of a conflict between any provision of the Agreement and this First Amendment, this First Amendment shall control.

7. **Miscellaneous.**

a. **Headlines of Articles.** Headings of articles of this First Amendment have been inserted for convenience only and shall in no way affect the interpretation of any term or provision hereof.

b. **Severability.** Except where expressly stated otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective.

c. **Governing Law.** This First Amendment shall be governed by and interpreted in accordance with the law of the Commonwealth of Kentucky.

d. **Waivers.** Any waiver at any time by a Party of its rights with respect to a default or with respect to any other matters arising in connection with this First Amendment shall not be deemed a waiver with respect to any subsequent default or other matter.

e. **Prior Agreements.** The Parties hereby acknowledge that this First Amendment contains the entire agreement among the Parties and supersedes all prior agreements and understandings related to the subject matter hereof.

f. **Counterparts.** This First Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original.



IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their respective officers, who are duly authorized to execute same, as of this day and year first written above.

**EAST KENTUCKY POWER COOPERATIVE, INC.**

BY: Anthony E. Campbell

TITLE: Pres./CEO

**FLEMING-MASON ENERGY COOPERATIVE**

BY: Brandon Hunt

TITLE: President/CEO

**APPHARVEST MOREHEAD FARM, LLC**

BY: Lorena Eggleston

TITLE: Chief Financial Officer

