

AGREEMENT

THIS AGREEMENT, made and entered into this 17 day of May, 2019 by and between **Delta Natural Gas Company, Inc.**, a Kentucky corporation (“Delta”) and **AppHarvest Morehead Farm, LLC**, a Kentucky corporation (“AppHarvest”).

WITNESSETH:

THAT, WHEREAS, AppHarvest desires to purchase certain quantities of natural gas from a supplier to be designated (Supplier) and Supplier intends to sell the same to AppHarvest; and


WHEREAS, AppHarvest desires to have said quantities of natural gas purchased from Supplier transported and delivered to AppHarvest, by Delta; and

WHEREAS, Delta, subject to the terms and conditions set forth herein, desires to transport and deliver to AppHarvest that quantity of natural gas purchased by AppHarvest from Supplier and delivered by Supplier to Delta at a certain designated point(s);

WHEREAS, Delta owns and operates a natural gas transmission/distribution system in Sharkey, Rowan County, Kentucky; and

WHEREAS, AppHarvest is constructing an industrial scale vegetable greenhouse facility in Sharkey, Rowan County, Kentucky; and

WHEREAS, AppHarvest has requested Delta to extend its natural gas transmission/distribution facilities to the plant site at the Canada Farm Industrial Park, Sharkey, Kentucky, as indicated on the plat attached as Exhibit “A” to this Agreement, and

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WHEREAS, Delta estimates that the total cost for the extension of the transmission/distribution facilities is [REDACTED]

[REDACTED] and

WHEREAS, Delta is willing to extend its facilities to the AppHarvest site subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties agree to as follows:

ARTICLE 1. DEFINITIONS.

Unless this Agreement provides otherwise, the following definitions shall apply:


1.1. "Natural Gas" or "Gas" shall mean any mixture of hydrocarbons or hydrocarbons and non-combustible gases in a gaseous state, consisting essentially of methane.

1.2. "Delivery Point" shall mean the point of interconnection between the pipeline facilities of Delta and a designated delivery point which shall be agreed to by mutual consent of the parties hereto.

1.3. "Redelivery Point" shall mean the point of interconnection between the pipeline facilities of Delta and the metering facilities of Delta for AppHarvest.

1.4. "Supplier Contract Gas" shall mean the volumetric quantity of natural gas delivered at the Delivery Point to Delta by Supplier for the account of AppHarvest.

1.5. "Excess Gas" shall mean the amount or quantity of natural gas delivered by Delta to AppHarvest at the Redelivery Point in excess of or in addition to the Supplier Contract Gas (as adjusted for Delta's retainage of two percent (2%) for losses).

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1.6. "Mcf" shall mean the quantity of gas occupying a volume of one thousand (1,000) cubic feet at a pressure base of 14.73 pounds per square inch absolute (14.73 psia) and a temperature base of 60 degrees Fahrenheit (60° F).

ARTICLE 2. TERM AND EFFECTIVE DATE.

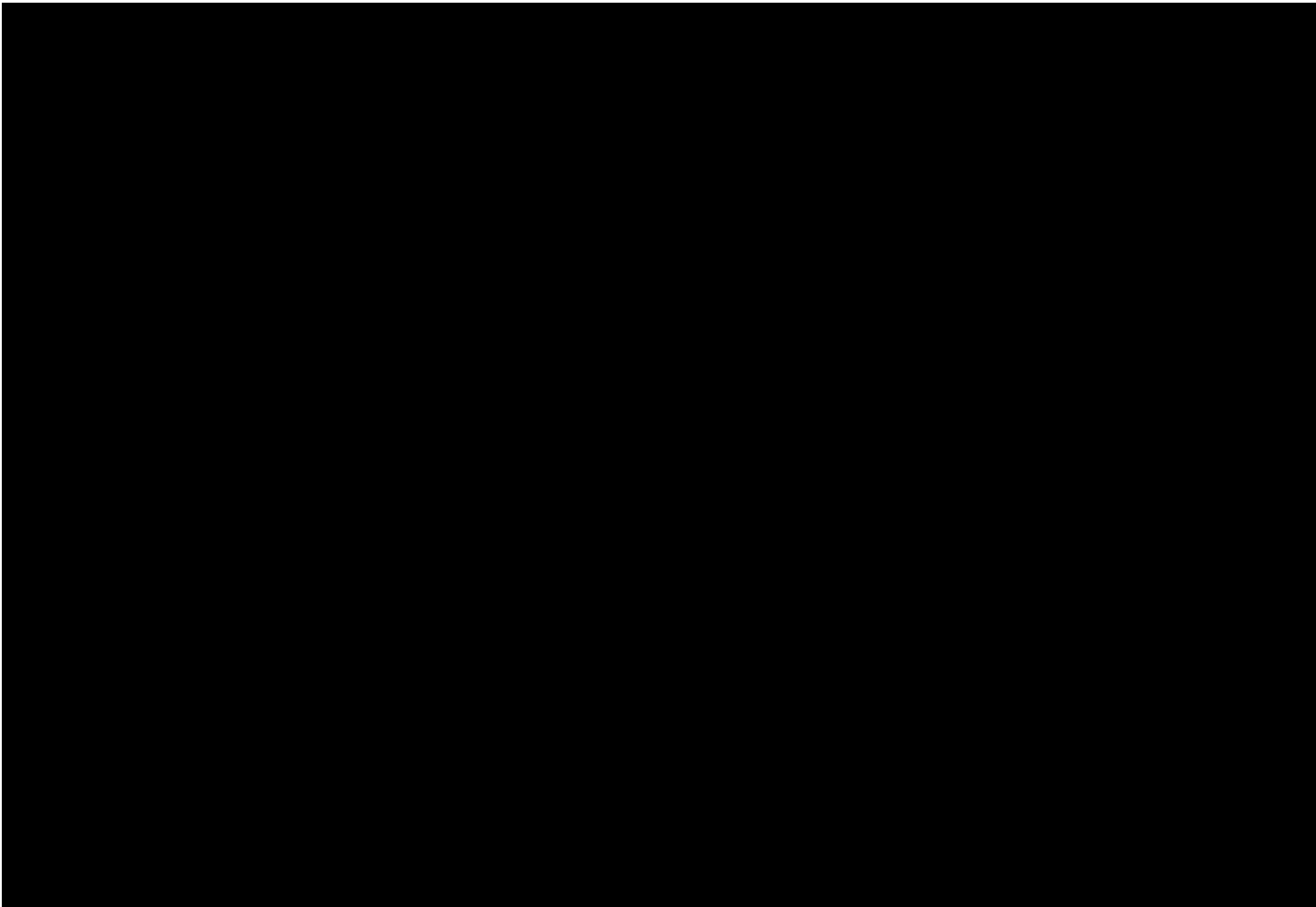
2.1. Subject to the terms and conditions herein, the term of this Agreement shall commence on August 1, 2019 and shall continue in full force and effect until August 1, 2024 and thereafter year to year unless terminated by either party with sixty (60) days written notice prior to the end of each term year. Notwithstanding the foregoing, this Agreement shall not become effective until approved by the Kentucky Public Service Commission ("Commission"). If the Commission suspends this Agreement for further review and subsequently approves it after August 1, 2019, then the effective date of this Agreement shall be the first day of the month after the date of such Commission approval.

ARTICLE 3. EXTENSION OF FACILITIES.

3.1. Delta agrees to construct and install a natural gas transmission/distribution pipeline and appurtenant facilities necessary, in Delta's judgment, to extend Delta's natural gas pipeline system to provide natural gas service to the AppHarvest site in accordance with plans to serve a boiler that is estimated to consume [REDACTED]

3.2. Delta reserves the right to nullify this agreement and not construct the facilities described in Section 3.1 if for any reason the proper easements and right of way are not attainable. Delta pledges to within reason pursue all easement options.

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ARTICLE 4. TRANSPORTATION AND DELIVERY OF CONTRACT GAS.

4.1. Subject to the terms and conditions herein, to the extent that Delta is available to deliver, AppHarvest shall exclusively utilize natural gas transported by Delta.

4.2. Subject to the provisions of Article 7 hereof and subject to available capacity and the daily needs of AppHarvest, Delta shall accept from Supplier on behalf of AppHarvest all daily Supplier Contract Gas which is delivered by Supplier to the Delivery Point, with an average daily minimum of ____ Mcf, up to a daily maximum of ____ Mcf unless capacity allows a higher volume.

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4.3. Delta shall transport and deliver to AppHarvest natural gas in quantities which are equivalent to the amount of Supplier Contract Gas less two percent (2%) by volume for line loss.

4.4. Volumes transported and delivered by Delta to AppHarvest as provided in Article 4.2 herein shall be balanced on a daily basis as nearly as possible. Should an imbalance exist at any time during the term of this Agreement or upon the termination of this Agreement, such imbalance will be corrected within thirty (30) days unless an extension is mutually agreed upon by the parties. AppHarvest shall purchase from Delta the Excess Gas delivered to AppHarvest in accordance with Articles 5 and 6 of this Agreement.

4.5. Delta's transportation obligation hereunder shall be to provide firm service to AppHarvest.

4.6. Delta shall not be responsible for paying any transportation or related costs of intermediate transporters, including related line loss, compressor fuel, gas inventory charges and any penalties or other costs.

ARTICLE 5. PRICE.

5.1. Subject to the provisions of Article 4, AppHarvest shall pay the applicable rate as set forth in Delta's tariffs on file with the Commission, as same may be changed from time to time, for the services of Delta in transporting to AppHarvest under the terms of this Agreement the natural gas in amounts equal to or less than the amount of Supplier Contract Gas (minus two percent (2%) by volume for line loss).

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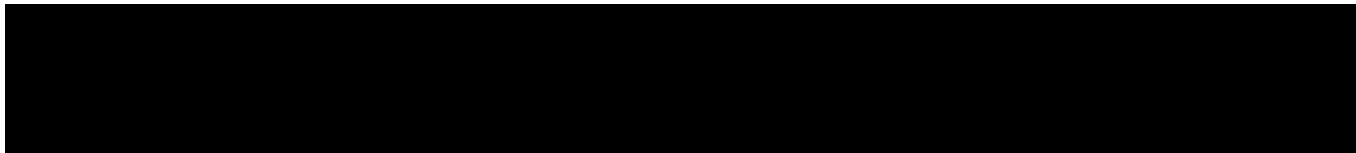


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5.2. For any Excess Gas delivered or sold by Delta to AppHarvest, AppHarvest shall pay



ARTICLE 6. STATEMENTS AND PAYMENTS.

6.1. Statements shall be rendered by Delta as appropriate to AppHarvest each month showing the amounts due to Delta for services rendered by Delta for AppHarvest during the preceding billing month.

6.2. Each statement required to be furnished shall be mailed to the address set forth in this Agreement. Payment by check payable to the order of Delta Natural Gas Company, Inc. shall be made by AppHarvest by mailing same within twenty (20) days after receipt of the bill. AppHarvest agrees to pay interest at the rate of one and one-half percent (1 1/2%) per month on any outstanding balance which is due Delta under the terms of this Agreement and which is not paid within the time period previously set forth.

ARTICLE 7. QUALITY.

7.1. All Supplier Contract Gas and all gas delivered to AppHarvest hereunder shall at all times be merchantable and be free from gasoline, oil, water, salt, gum, dust and other foreign substances that might interfere with the marketability of the gas. The gas delivered by Supplier shall contain not less than 1,000 Btu per cubic foot (as determined by calorimeter test at 60 degrees Fahrenheit (60° F) and saturated with water vapor), and a utilization factor of 1,300 plus or minus 6% (U.F. = heating value (BTU) divided by the square root of the specific gravity). The gas delivered shall not contain more than:

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- (a) Seven (7) pounds of water per million cubic feet measured at 14.7 psia and 60 degrees Fahrenheit on an approved dew point apparatus;
- (b) Three percent (3%) by volume of carbon dioxide;
- (c) Twenty-five hundredths (0.25) grain of hydrogen sulfide per one hundred (100) cubic feet; or
- (d) Ten (10) grains of total sulfur per one hundred (100) cubic feet.

7.2. The requirement that the natural gas tendered by Supplier to Delta on behalf of AppHarvest conform with the foregoing specifications is a condition precedent to the performance by Delta of the obligation to transport gas to AppHarvest imposed by this Agreement.

ARTICLE 8. MEASUREMENT.

8.1. Meters and other related equipment installed and maintained by or on behalf of Delta shall be the exclusive method and means of determining the quantity of gas redelivered to AppHarvest or delivered to Delta by Supplier for the account of AppHarvest. Reading, calibration and adjustment of Delta's meters and related measurement equipment shall be performed solely by Delta using generally accepted procedures. Delta shall read said meters at regular intervals and the cost of reading, calibrating, adjusting and otherwise maintaining said meters, excluding repair of damage due to the negligence or willful misconduct of AppHarvest, shall be borne by Delta. Delta shall test the accuracy of any Delta-owned meter in use under this Agreement in accordance with its standard practices as filed with the Commission (Practices 0-8.1 and 0-8.2) for such testing.

8.2. If AppHarvest challenges the accuracy of any meters maintained by Delta and requests to have the meters tested, Delta shall test the meters in the presence of AppHarvest or its representative, if AppHarvest exercises the right to be present or represented. AppHarvest shall prove the meter to be accurate within plus or minus two percent (+ or - 2%), the cost of

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testing the same shall be borne by the party requesting the test, but if the test proves the meter to be in error by more than plus or minus two percent (+ or - 2%), then the cost of testing and repairing the same shall be borne by the party who benefited from the inaccuracy. Meter measurements found to be in error more than plus or minus two percent (+ or - 2%) shall be corrected and the accounts for the period during which the meter error existed shall be adjusted accordingly. In the event the period during which the meter error existed is unknown, then the accounts shall be adjusted for one-half of the elapsed time since the last previous test but in no event for a period of more than sixty (60) days.

ARTICLE 9. DELIVERY POINTS AND TITLE.

9.1. Supplier Contract Gas. The point of delivery from Supplier to Delta for the account of AppHarvest shall be that Delivery Point herein described in Section 1.2. AppHarvest shall retain title to the gas from the Delivery Point to the Redelivery Point. While Delta is in control and possession of the Supplier Contract Gas, it shall be responsible for any damage, claim, liability or injury caused by the gas and shall be responsible for the gas itself.

9.2. Excess Gas. The title to the Excess Gas sold by Delta to AppHarvest hereunder shall pass to AppHarvest at the Redelivery Point. Before the Excess Gas passes the Redelivery Point, Delta shall be in control and possession thereof and shall be responsible for the gas itself.

9.3. After delivery at the Redelivery Point of the Supplier Contract Gas and the Excess Gas sold by Delta to AppHarvest hereunder, AppHarvest shall be deemed in control and possession thereof and shall be responsible for any damage, claim, liability or injury caused by the gas.

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ARTICLE 10. TAXES AND FRANCHISE FEES.

Delta may collect from AppHarvest any taxes and franchise fees, including, but not limited to, sales tax, school tax and gross receipts tax, which, by law, may be collected from AppHarvest and which are not otherwise paid by AppHarvest, whether such tax is now in existence or hereinafter promulgated or applied. The obligation to pay such taxes shall be in addition to the obligation to pay the appropriate rate set forth in Article 5 of this Agreement.

ARTICLE 11. FORCE MAJEURE.

11.1. Suspension of Obligations. If by reason of force majeure any party hereto is rendered unable, wholly or in part, to carry out its obligations under this Agreement, and if such party gives notice and reasonably full particulars of such force majeure, by an express means of written communication, to the other party within a reasonable time after the occurrence of the force majeure relied on, the party giving such notice, to the extent that it is affected by such force majeure, shall not be in default of its obligations hereunder or liable in damages during the continuation of any inability so caused. The party claiming suspension due to force majeure shall use due diligence to put itself again in position to carry out all of the obligations which it assumes in this Agreement.

11.2. Force Majeure. The term "force majeure" as used herein means any cause not reasonably in the control of the party claiming suspension, including but not limited to, acts of God or a public enemy, strikes, riots, injunctions or other interference through legal proceedings, breakage or accident to machinery, equipment or lines of pipe not caused by negligence or willful misconduct of the party invoking force majeure, washouts, earthquakes, landslides, mudslides, wells, blowouts, shutdowns to make emergency or unexpected repairs, or other events.

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lines of pipe, and compliance with any statute or regulation, either State or Federal, or with any order of the Federal government of any branch thereof, or of the government of the Commonwealth of Kentucky.

11.3. **Obligation to Pay.** Notwithstanding the foregoing provisions of this Article, AppHarvest may not claim suspension, by reason of force majeure, of its obligations under Article 5 and 10 of this Agreement to pay Delta for transportation service rendered and those taxes and franchise fees which Delta may collect from AppHarvest.

ARTICLE 12. GOVERNMENTAL REGULATION.

12.1. This Agreement shall be subject to all applicable and valid statutes, rules, orders and regulations of any federal, state or local governmental authority or agency having jurisdiction over the parties, their facilities or gas supply, this Agreement or any provision thereof. The parties agree that should any state, federal or local governmental authority or agency with jurisdiction over the parties to this Agreement or transactions herein require approval for the sale of gas hereunder, then each party shall make all necessary applications or filings and shall submit any records or data required by such governmental authority or agency.

12.2. Delta shall not be liable for failure to perform hereunder if such failure is due to compliance with rules, regulations, laws, orders or directives of any state, federal or local governmental regulatory authority or agency.

12.3. Nothing in this Agreement shall prevent any party from contesting the validity of any law, order, rule, regulation or directive of any state, federal or other governmental authority or agency, nor shall anything in this Agreement be construed to waive its right to assert the lack of jurisdiction of such regulatory body, g

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over this Agreement or any party thereto.

12.4. This Agreement shall not be effective in whole or in part until and unless all necessary regulatory approvals or authorizations shall have been obtained to the satisfaction of each of the parties hereto. In the event any such approval or authorization is withdrawn or expires (and any renewal is refused by the appropriate regulatory authority), this Agreement may be cancelled at the option of any party hereto. This Agreement may be terminated by Delta at any time during the term hereof if performance of this Agreement would subject Delta to the jurisdiction of the Federal Energy Regulatory Commission (FERC) or its successor. To the extent that Delta is aware of impending jurisdiction by FERC, Delta shall notify AppHarvest, in writing, of such impending action and the reason therefore thirty (30) days prior to termination.

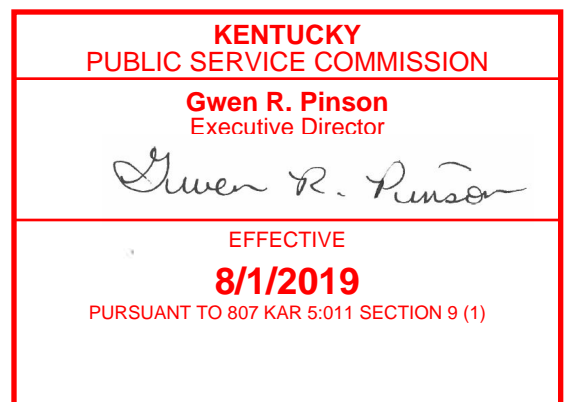
12.5. Except as otherwise provided herein, this Agreement is subject to the terms and conditions of Delta's Rates, Rules and Regulations, as set forth in Delta's tariffs on file with the Commission, as same may be changed from time to time.

ARTICLE 13. GOVERNING LAW.

This Agreement was entered into under and, to the extent permitted by law, shall be construed in accordance with the laws of the Commonwealth of Kentucky.

ARTICLE 14. NOTICES.

All notices, requests, statements and other communications hereunder shall be in writing and shall be delivered as follows:



To Delta:

Delta Natural Gas Company, Inc.
3617 Lexington Road
Winchester, KY 40391
Attention: Jeff Steele

To AppHarvest:

AppHarvest Morehead Farm, LLC
401 W. Main Street, Suite 321
Lexington, KY 40507
Attention: Seth Norat

or at such other addresses as the parties may designate in writing.

ARTICLE 15. MISCELLANEOUS

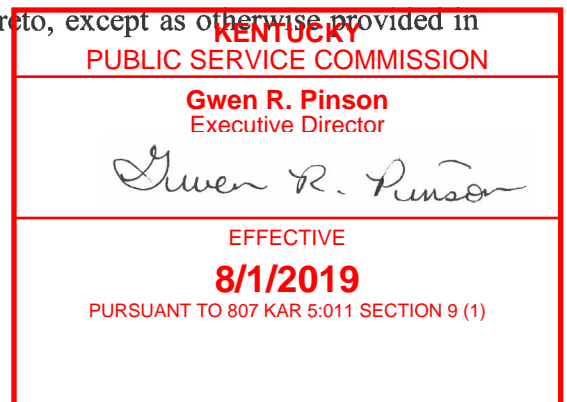
15.1. This Agreement contains the entire agreement of the parties hereto with respect to the transaction contemplated herein and shall not be modified or amended except by an instrument in writing signed by or on behalf of the parties hereto and then only to the extent set forth therein.

15.2. The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects if such invalid or unenforceable provision were omitted.

15.3. The headings in this Agreement are for convenience or reference only and shall not be deemed to alter or affect any provisions hereof.

15.4. This Agreement may not be assigned by either party without the prior written consent of the other party, except that the rights and obligations of Delta hereunder may be assigned by Delta to any affiliate of Delta.


15.5. All terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of the parties hereto, except as otherwise provided in Section 15.4 hereinabove.



15.6. A waiver by party of any one or more defaults by any other party in the performance of any provision of this Agreement shall not operate as a waiver of any future default.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, employees or members on the day and year first above written.

Delta Natural Gas Company, Inc.

By 
Donald C. Cartwright
Vice President – Gas Supply

AppHarvest Morehead Farm, LLC

By 
Seth Norat – Chief Operating Officer

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