

GRANT OF OPTION AGREEMENT

THIS GRANT OF OPTION AGREEMENT (this "Agreement") is made and entered into this 20 day of January 2016 (the "Effective Date"), by and between the City of Fresno ("City"), a municipal corporation, and Amber Kinetics, Inc., a California corporation ("Amber Kinetics"). City and Amber Kinetics are sometimes collectively referred to in this Agreement as the "Parties" or singularly as a "Party" or by their individual names.

RECITALS

A. City is the owner of that certain real property located in the County of Fresno, State of California, referred to for convenience as approximately twenty-five (25) acres on the northeast portion of that certain real property identified by assessor's parcel number 327-030-38T (the "Property"), a depiction of which is attached hereto as **Exhibit "A"** and incorporated herein by this reference.

B. The Property is currently leased until December 31, 2016.

C. Amber Kinetics desires to obtain long-term site control of the Property for the purpose of developing a kinetic energy storage project on the site which will provide energy storage to PG&E under an Energy Storage Agreement.

D. City agrees to provide Amber Kinetics an option to lease the Property, pursuant to the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and in these Recitals, which are hereby incorporated by this reference, City and Amber Kinetics hereby agree as follows:

1. **Parcel 1 Option and Lease**

(a) **Parcel 1 Option**. The City hereby grants to Amber Kinetics the exclusive option and right to lease ten (10) acres of the Property ("Parcel 1"), as approximately identified in the attached "**Exhibit B**" (the "Parcel 1 Option"). The Parcel 1 Option will commence on the Effective Date and expire July 31, 2016 (the "Parcel 1 Option Term"). Amber Kinetics shall pay to the City a one-time, nonrefundable payment in the amount of Two Thousand Four Hundred Dollars (\$2,400) for the Parcel 1 Option. Amber Kinetics may exercise the Parcel 1 Option at any time during the Parcel 1 Option Term with a notice in writing to City.

(b) **Parcel 1 Lease**. If Amber Kinetics exercises the Parcel 1 Option, the "Parcel 1 Lease" shall be for an initial term of twenty-five (25) years (the "Parcel 1 Lease Term"). The Parcel 1 Lease Term shall begin on the later of January 1, 2017 or the date that the City provides Amber Kinetics with possession of Parcel 1. Amber Kinetics shall pay the City, in equal monthly installments, an initial rent of Two Thousand Dollars (\$2,000) per acre, per year (the "Parcel 1 Lease Payments"). The Parcel 1 Lease Payments shall increase annually by three percent (3%).

(c) **Maintenance of Property**. Following the date that Amber Kinetics obtains possession of Parcel 1 from the City after commencement of the Parcel 1 Lease, Amber Kinetics shall be responsible for maintaining Parcel 1 in a manner that

does not create a public nuisance and shall provide dust control, mowing, and weed control on Parcel 1 as is necessary to keep Parcel 1 in a reasonably satisfactory state of repair. If City determines to provide possession of Parcel 2 (as described below) to Amber Kinetics prior to the date that Amber Kinetics exercises its option to commence the Parcel 2 Lease, Amber Kinetics shall assume the responsibility to maintain Parcel 2, subject to the same standards mentioned above, from the date that the City provides possession. The City is not, however, required to provide possession of Parcel 2 to Amber Kinetics prior to the commencement of the Parcel 2 Lease.

2. **Parcel 2 Option and Lease**

(a) **Parcel 2 Option.** The City hereby grants to Amber Kinetics the exclusive option and right to lease all or any portion of the remaining fifteen (15) acres of the Property ("Parcel 2"), as approximately identified in the attached "**Exhibit B**" (the "Parcel 2 Option"). The Parcel 2 Option will commence on the Effective Date and, unless terminated as provided herein, and shall expire on July 31, 2019 (the "Parcel 2 Option Term"). Amber Kinetics shall make Option Payments to the City as follows: An initial non-refundable Two Thousand Seven Hundred Dollars (\$2,700) for the first six (6) months, and payment of Four Hundred Fifty Dollars (\$450) each month thereafter while the Parcel 2 Option is in effect (the "Parcel 2 Option Payments"). If Amber Kinetics exercises the Parcel 2 Option prior to the end of the Parcel 2 Option Term, a prorated portion of the Parcel 2 Option Payments actually made by Amber Kinetics shall be applied to the Parcel 2 lease payments. Amber Kinetics may exercise the Parcel 2 Option at any time during the Parcel 2 Option Term with a notice in writing no less than ninety (90) days prior to the start date of the Parcel 2 Lease. Amber Kinetics may also cancel the Parcel 2 Option with ninety (90) days' notice of cancellation. Amber Kinetics will be relieved of any further obligation to make Parcel 2 Option Payments or to maintain Parcel 2 on the ninety-first (91st) day following its notice of cancellation.

(b) **Parcel 2 Lease.** IF Amber Kinetics exercises the Parcel 2 Option, the "Parcel 2 Lease" shall be for an initial term of twenty-five (25) years (the "Parcel 2 Lease Term"). The Parcel 2 Lease Term shall begin on the date (no later than January 1, 2020) that Amber Kinetics specifies in its notice of exercise of its Parcel 2 Option or the date that the City provides possession of Parcel 2 to Amber Kinetics, whichever is later. Amber Kinetics shall continue to pay monthly Parcel 2 Option Payments to the City until the commencement of the Parcel 2 Lease. Following commencement of the Parcel 2 Lease, Amber Kinetics shall pay rent to the City in equal monthly installments and shall be calculated based on the same per acre rent Amber Kinetics pays for the Parcel 1 Lease (the "Parcel 2 Lease Payments"). The Parcel 1 and Parcel 2 Lease Payments shall escalate at the same rate so the per acre rent payments shall be consistent for the entire Property.

3. **Restoration of Leased Property**

Upon termination of the Lease for Parcel 1 and Parcel 2, Amber Kinetics shall be responsible for removing all equipment, materials and related appurtenances placed, installed, constructed, and stored by Amber Kinetics on Parcel 1 and Parcel 2. Further, upon removing all equipment, materials and related appurtenances, Amber Kinetics shall restore the site to its current condition so that it can be suitably, safety,

and readily returned to agricultural purposes for crop farming. All costs required to remove all equipment, materials, and related appurtenances, and to restore the site to its current agricultural crop farming use shall be borne by Amber Kinetics. In addition, all work required to remove all equipment, materials, and related appurtenances, and to restore the site shall be completed within 18 months of the termination date of the lease for Parcel 1 and Parcel 2.

4. **Right to Inspect**

(a) In March and April of 2016, during the Parcel 1 Option Term, City shall provide Amber Kinetics, and Amber Kinetics' agents, employees, and representatives (collectively, "Amber Kinetics' Agents") with reasonable access to the Property, and each portion thereof, to allow Amber Kinetics and Amber Kinetics' Agents to investigate, inspect, and to conduct such tests upon the Property, and each portion thereof, as Amber Kinetics has deemed necessary or advisable.

5. **Miscellaneous**

(a) **Notices.** All notices required or permitted by this Agreement shall be in writing and may be delivered in person or sent by mail, facsimile transmission, or electronic transmission (email). The addresses and addressees noted below are that Party's designated address and addressee for delivery or mailing of notices.

To City: Thomas C. Esqueda
Director of Public Utilities
City of Fresno
2600 Fresno Street, Rm. 3065
Fresno, CA 93721
Telephone: (559) 621-8600
Facsimile: (669) 488-1304
Email: thomas.esqueda@fresno.ca.gov

To Amber Kinetics:
Bill Barnes
Managing Director Development
Amber Kinetics, Inc.
32920 Alvarado-Niles Road
Union City, CA 94587
Telephone: (415) 218-3935
Facsimile: (510) 474-1000
Email: bbarnes@amberkinetics.com

With copy to: Christopher L. Campbell
BAKER MANOCK & JENSEN, PC
5260 N. Palm Avenue, Suite 421
Fresno, California 93704
Telephone: (559) 432-5400
Facsimile: (559) 432-5620
Email: ccampbell@bakermanock.com

Either Party may, by written notice to the other, specify a different address for notice.

(b) Entire Agreement. This Agreement and items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. The Parties further warrant and represent that they have not relied on any inducements, promises, or representations made by any Party or its representative, or any other person, except for those expressly set forth herein.

(c) Amendments. No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing duly authorized by representatives of both Parties.

(d) Counterparts. This Agreement may be signed by the Parties in different counterparts, which together shall constitute one Agreement, even though all Parties may not have signed the same counterpart.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY

AMBER KINETICS

City of Fresno, a municipal corporation

Amber Kinetics, Inc., a California corporation

By: Bruce Rudd
Bruce Rudd
City Manager

By: Bill Barnes
Bill Barnes, Managing Director
Development
(If corporation or LLC, Board Chair, Pres. or Vice Pres.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Richard M. Chong
Name: RICHARD M. CHONG
Title: CFO
(If corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

By: Marco Martinez-Velasquez
Deputy Marco Martinez-Velasquez
2/19/16

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

APPROVED AS TO FORM:

By: Brandon M. Collet 2/18/16
Brandon M. Collet Date
Deputy City Attorney

By: Edward Chiac
Edward Chiac
CEO/Board of Directors

Attachment: Exhibit A
Exhibit B

JANUARY 2016

W JENSEN AVE

S CORNELIA AVE



Exhibit A
Parcel Boundary Map
APN 327-030-38T
2201 S CORNELIA AVEENUE

Exhibit B

Proposed Parcels for Energy Storage Project

