

**GROUND LEASE FOR ENERGY STORAGE SYSTEM**  
**(City of Fresno – Energy Nuevo Storage Farm, LLC.)**

THIS GROUND LEASE FOR ENERGY STORAGE SYSTEM (this **Lease**) is made and entered into this 4<sup>th</sup> day of January 2016 (the **Effective Date**), by and between the City of Fresno (**Lessor**), and Energy Nuevo Storage Farm, LLC., a Delaware limited liability company (**Lessee**). Lessor and Lessee are collectively referred to herein as the "**Parties**", and singularly as a "**Party**", or by their individual names.

**RECITALS**

A. Lessor is the owner of fee title to 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. Lessee desires to lease a portion of the Property for the purpose of developing a kinetic energy storage project on the site to provide energy storage to Pacific Gas & Electric (**PG&E**) under an Energy Storage Agreement and to other parties who desire energy storage.

C. Lessor and Amber Kinetics, Inc. (**Amber**) previously entered into a certain Grant of Option Agreement with an effective date of January 20, 2016 (the **Option Agreement**), whereby Lessor granted to Amber two options to lease separate parcels of the Property: the first option is identified as the "**Parcel 1 Option**" and the second is identified as the "**Parcel 2 Option**" (as those terms are defined in the Option Agreement).

D. On July 22, 2016 Amber exercised its option to lease Parcel 1 consisting of ten acres of Property more particularly described in the attached **Exhibit B**, (the **Leased Premises**), from Lessor.

E. The Leased Premises is currently leased by Lessor to Quist Dairy, a general partnership, pursuant to a Lease Agreement dated January 1, 2010 (the **Quist Lease**), which Quist Lease expires on December 31, 2016.

**AGREEMENT**

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

1. Incorporation of Recitals. The above Recitals are incorporated herein by this reference.

2. Assignment of Option Agreement. Amber hereby assigns all of its right, title and interest in and to the Parcel 1 Option to Lessee. Lessor and Lessee hereby consent to Amber's assignment of the Parcel 1 Option to Lessee. The Parties agree that the assignment from Amber to the Lessee shall include the right to enter into this

Lease to lease Parcel 1 and that Amber retains all rights to hold and exercise the option right to the Parcel 2 Option.

3. Lease of Leased Premises. Lessor hereby agrees to lease the Leased Premises to Lessee, and Lessee hereby agrees to lease the Leased Premises from Lessor, on the terms and subject to the conditions set forth in this Lease.

4. Lease Term.

4.1 Term. Unless terminated earlier as provided in this Lease, the initial term of this Lease shall be twenty-five years (the **Term**) and shall begin on the later of January 1, 2017, or the date that Lessor provides Lessee with possession of the Leased Premises. Delivery of the Leased Premises can be delayed up to three months after January 1, 2017, to accommodate the harvest and post-harvest activities of the Quist Dairy but the Leased Premises must be delivered to Lessee no later than April 1, 2017.

4.2 Options to Extend Term. Lessee shall have the right to extend the Term two times (each an **Option to Extend** and together the **Options to Extend**), which it may exercise in its sole discretion. The first Option to Extend shall be for an additional period of five years, and the second Option to Extend shall be for an additional period of four years and eleven months. Lessee may exercise each Option to Extend by giving Lessor written notice of exercise not less than six months prior to the expiration of the Term (including as it may have been previously extended). Any extended Term shall be on the same terms and conditions set forth in this Lease.

5. Use of Leased Premises.

5.1 Permitted Uses. This Lease is for the purpose of developing a kinetic energy storage project, as more fully described in this Section 5, (the **Project**) on the site. The Project will contract to provide energy storage for parties, including PG&E and/or others, who wish to store energy from the electrical power grid for later use. The Project uses on the property will include, without limitation:

- (a) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, using, monitoring and operating, existing, additional or new (i) individual kinetic energy storage units, including without limitation, existing and/or future technologies used or useful in connection with energy storage and storage of electricity from various sources, and associated support structure, braces, wiring, plumbing, and related equipment; (ii) electrical transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, towers, poles, cross-arms, guy lines, anchors, cabling, and wires; (iii) overhead and underground control, communications, and radio relay systems; (iv) interconnection and/or switching facilities and electric transformers and transformer pads; (v) control buildings, control boxes, and computer monitoring hardware;

(vi) utility installation; (vii) safety protection facilities; (viii) maintenance yards; (ix) roads and erosion control facilities; (x) signs and fences; and (xi) other improvements, fixtures, facilities, machinery, and equipment associated or connected with the storage, conversion, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale, or other use or conveyance of electricity stored and/or generated on the Leased Premises or on adjacent property (all of the foregoing, collectively an **Energy Storage System or Improvements**); and,

(b) removing, trimming, pruning, topping or otherwise controlling the growth of any tree, shrub, plant, or other vegetation; dismantling, demolishing, and removing any improvement, structure, embankment, impediment, berm, (except for berms) required to protect the Leased Premises from floodwater, wall, fence, or other object, on or that intrudes (or upon maturity could intrude) into the Leased Premises that could obstruct, interfere with, or impair the Energy Storage System or the use of the Leased Premises intended by Lessee hereunder; and excavating, grading, leveling, and otherwise modifying the land; and undertaking any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that are necessary, helpful, appropriate, or convenient in connection with, incidental to, or to accomplish any of the foregoing purposes, together with such uses as may be permitted by law.

5.2 Additional Uses. The Parties acknowledge and agree:

(a) that energy storage technologies are improving at a rapid rate and that it is probable that Lessee may (although Lessee shall not be required to) replace from time to time, all or part, of the existing Energy Storage System on the Leased Premises with a newer model or design of Energy Storage System, in Lessee's sole discretion;

(b) this Lease includes a grant of the right of ingress to and egress from the Leased Premises, under, and, along any existing roads and lanes on the Lessor's premises, and by such other route or routes as Lessee may construct on the Leased Premises from time to time, for the benefit of and for purposes incidental to the operations on the Leased Premises and to the Improvements owned or operated by Lessee or an affiliate of Lessee; and

(c) this Lease includes the right to (i) install and maintain on the Leased Premises, and if mutually agreed, on Lessor's adjacent premises, transmission lines and facilities, both overhead and underground, to carry electricity to and/or from lands other than the Leased Premises, and (ii) install and maintain on the Leased Premises and if mutually agreed, on adjacent Lessor's premises, in mutually agreed locations, communication lines and facilities, both overhead and underground to carry communications to and/or from lands other than the Leased Premises.

5.3 Exclusive Use. Lessee shall have the sole and exclusive right to conduct operations on the Leased Premises. Lessor shall not grant any rights in

the Leased Premises purporting to permit others to use the Leased Premises in derogation of Lessee's sole and exclusive rights on the Leased Premises.

5.4 Operations Date. The date of commencement of operations shall be the date the Project is interconnected to the electric utility grid at its fully rated capacity and stores, transmits, or otherwise conveys energy to the grid for commercial sale (the **Operations Date**). Conveying energy to test the Energy Storage System shall not be considered commencement of operations.

5.5 Limitation on Other Uses. The Leased Premises shall be used for no purpose not specified in this Section 5, except with the prior consent of Lessor.

## 6. Ownership and Operation of the Improvements.

6.1 Title. Title to the Improvements has been and is reserved to Lessee and remains the sole property of Lessee. Lessee may add or remove all or any portion of the Improvements at any time during the Term, irrespective of the manner or method of attachment of the same to the Leased Premises, provided same is accomplished in accordance with applicable laws. Lessor shall have no ownership or other interest in any component of the Improvements or any environmental attributes produced therefrom, including, without limitation, any and all credits (including tax credits, carbon credits, renewable energy credits), rebates, incentives, benefits, emissions reductions, entitlements, offsets, and allowances of any kind, howsoever entitled, attributable to the Improvements or the electric energy, capacity, or other products produced therefrom, whether in effect as of the Effective Date or as may come into effect in the future (collectively, **Environmental Attributes**). For the avoidance of doubt, Lessee's right to benefit from any such tax credit, existing or in the future, shall always be superior to Lessor's. If, under future laws, Lessee or any other holder of a leasehold interest in this Lease becomes ineligible for any Environmental Attributes resulting from the operation of the Improvements, Lessor shall use commercially reasonable efforts to assist Lessee in the amendment of this Lease or replacement of this Lease with a different instrument acceptable to Lessor, in Lessor's commercially reasonable discretion, so as to convert Lessee's interest in the Leased Premises to a substantially similar interest that makes Lessee or any other holder of a leasehold interest in this Lease eligible for such Environmental Attributes; provided, however, that such Lease amendment or replacement instrument does not: (a) directly or indirectly increase Lessor's obligations identified in this Lease; (b) decrease the Rent paid by Lessee to Lessor hereunder; (c) decrease the value of the Leased Premises; (d) decrease Lessor's rights under this Lease; (e) limit Lessor's ability to obtain financing in the future for the Leased Premises upon terms that are reasonably acceptable to Lessor; (f) increase the amount of Lessor's real property taxes; (g) otherwise decrease the value to Lessor of the revenue stream received by Lessor under this Lease; (h) decrease the value of Lessor's reversionary interest in the Leased Premises following the expiration of the Term, as amended, or at the end of the term of the replacement instrument; and/or (i) affect in any way Lessor's ownership interest in the Leased Premises. For purposes of this Section 6.1 only,

the term "Lessee" shall include all direct and indirect owners and affiliates of Lessee.

6.2 Operation of Improvements. The manner of operation of the Improvements, including, but not limited to, decisions on when to conduct maintenance, is within the sole discretion of Lessee. Notwithstanding the foregoing, Lessee at all times and at its sole cost and expense shall ensure that the Leased Premises and the Improvements are maintained and operated in accordance with prudent industry practices in place from time to time and in compliance with applicable law, governmental authorities and insurance underwriters requirements pertaining to the Leased Premises and the Improvements.

7. Rent for the Leased Premises.

7.1 Rent. Commencing with the first day of the month following the date that Lessee obtains possession of the Leased Premises from Lessor, Lessee shall pay Lessor, in equal monthly installments, an initial rent of \$2,000 per acre, per year (**Rent**). Rent will be increased annually by 3% beginning on the first anniversary after the Operations Date.

7.2 Payment of Rent. Rent shall be payable annually, in advance. Payment for each Lease Year to be made no later than February 15 of each year that the Lease is in effect. Rent payments shall be made to Lessor as follows at the following address:

City of Fresno  
Department of Public Utilities  
2600 Fresno Street, Room 4019  
Fresno, California 93721  
Attention: Director of Public Utilities

unless such address is changed by Lessor by notice given pursuant to Section 26.1, below.

8. Taxes and Assessments. Lessee shall pay (a) any personal property taxes on the Improvements and/or any such taxes that are directly attributable to the operations and any energy storage equipment installed by Lessee on the Leased Premises, and (b) all real property taxes or assessments levied against the Leased Premises from and after the Effective Date until the end of the Term hereof, including such taxes and assessments being imposed as of the Effective Date and any increase in such taxes and assessments that is imposed for reason of (i) this Lease; (ii) the addition of the Improvements to the Leased Premises; or (iii) the operations thereon; provided, however, such obligation shall not include any recaptured taxes attributable to any period prior to the Effective Date or due to a change in ownership of the Leased Premises, or any interest or penalties thereon (**Lessee's Taxes**). Lessee shall have the right, at its sole expense, to appeal or contest any such tax it could be responsible to pay under this Lease and to compromise and settle the same, and Lessor shall execute such petitions and agreements and otherwise cooperate with Lessee to the extent reasonably necessary for Lessor to do so. Lessor shall deliver to Lessee copies of all

real property tax bills within thirty days after receipt of the bill by Lessor from the taxing authority and Lessee shall pay Lessee's Taxes on or before the date payment is due. Lessor shall pay real property taxes other than the Lessee's Taxes.

9. Utilities. Lessee shall be solely responsible for obtaining and paying for all utilities needed or used by Lessee on the Leased Premises, including any costs associated with establishing utility service. Lessor shall use commercially reasonable efforts to cooperate with Lessee, as Lessee shall request, in Lessee's efforts to obtain utility service to and from the Leased Premises.

10. Liens. Lessor and Lessee shall keep the other's interest in the Leased Premises free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies, and equipment furnished in connection with Lessor's or Lessee's (as applicable) ownership or use of the Leased Premises, subject to Lessor's and Lessee's (as applicable) right to contest such liens and claims. If Lessor or Lessee (as applicable) wishes to contest any such liens or claims, such Party shall, within ninety days after it receives notice of such lien or claim, provide a bond or other security as the other Party may reasonably request, or remove any such liens from the Leased Premises pursuant to applicable law. The obligation to keep the Leased Premises free from liens, however, shall not conflict with the Lessee's and Lessor's respective rights to mortgage their interests as set forth in Section 18.

11. Other Expenses. Except as may otherwise be specifically set forth in this Lease, Lessor shall not be liable for any expenses incurred with respect to Lessee's operations on the Leased Premises during the Term, including, without limitation, wages and salaries of employees of Lessee.

12. Compliance with Laws. Lessee shall not do or suffer to be done on or about the Leased Premises, anything that would or does violate or conflict with any law, ordinance, rule or regulation now in force or effect, or that may hereinafter be enacted, promulgated or adopted by Federal, state or local authority.

13. Quiet Enjoyment. Lessor covenants that Lessee, upon paying the Rent and performing the covenants herein undertaken on Lessee's part, may quietly and peaceably have, enjoy and hold the Leased Premises for the Term.

14. Maintenance. Following the date that Lessee obtains possession of the Leased Premises from Lessor, Lessee shall be responsible for maintaining the Leased Premises in a manner that does not create a public nuisance and shall provide dust control, mowing, and weed control on the Leased Premises as is necessary to keep the Leased Premises in a reasonably satisfactory state of repair. If Lessor determines that it is in the best interest of Lessor to provide possession of Parcel 2 (as described in the Option Agreement) to Amber or its assignee prior to the date that Amber or its assignee exercises its option to commence the Parcel 2 Lease (as described in the Option Agreement), then Amber or its assignee will assume the responsibility to maintain Parcel 2, at Amber or its assignee's cost, subject to the same standards, from the date that Lessor provides possession of Parcel 2. Lessor is not, however, required to provide possession of Parcel 2 to Amber or its assignee prior to the commencement of the Parcel 2 Lease. Furthermore, even in the event that Amber or its assignee takes over

the maintenance of Parcel 2, neither Amber nor its assignee shall be obligated to pay rent for Parcel 2 until the commencement of the Parcel 2 Lease.

15. Alterations. Lessor may post and keep posted on the Leased Premises notices of nonresponsibility. Any improvements, modifications, or alterations made by Lessee shall be and remain the property of Lessee, so long as the Lease is in effect, and Lessee shall be entitled to take depreciation thereon.

16. Lessor's Representations, Warranties and Covenants. In addition to all other representations, warranties or covenants set forth in this Lease, express or implied, Lessor hereby represents, warrants and covenants to Lessee as follows:

16.1 Lessor's Authority. Lessor is the sole owner of the property comprising the Leased Premises as set forth in this Lease and the Recitals hereof and has the unrestricted right and authority to execute this Lease and to grant to Lessee the rights granted hereunder. Each person signing this Lease on behalf of Lessor is authorized to do so, and all persons having any ownership or possessory interest in the Leased Premises (including spouses) are signing this Lease as Lessor. When signed, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. No consent or other approval, authorization or action by, or filing with, any person is required to be made or obtained by such party for Lessor's lawful execution, delivery and performance of this Lease.

16.2 Liens and Tenants. To the best of Lessor's actual knowledge, there are no liens, encumbrances, leases, fractional interests, mineral rights, or oil and gas rights, or other exceptions to Lessor's fee title ownership of the Leased Premises or otherwise burdening the surface estate of Lessor in the Leased Premises other than those disclosed in that pro forma title insurance policy for the Leased Premises prepared by \_\_\_\_\_ Title Company under Title No. \_\_\_\_\_ and dated \_\_\_\_\_, 20\_\_, (the Title Policy), Lessor shall obtain the Title Policy and provide it to Lessee for review on or before \_\_\_\_\_, 2016. Should the Title Policy show liens or encumbrances that may interfere with Lessee's quiet enjoyment of the Leased Premises, Lessor will promptly remove those liens and encumbrances at Lessor's sole cost and expense (or at Lessee's election, Lessor shall provide Lessee with a recordable non-disturbance agreement executed by the holder(s) of any such liens or encumbrances, in form acceptable to Lessee). Lessor has not received any notice (orally or in writing) from any third-party of any adverse claim or encumbrance burdening the Leased Premises. Except as otherwise disclosed to Lessee in the Title Policy or in writing, there are no tenants on the Leased Premises other than the Quist Dairy.

16.3 Legal Access. Lessor represents and warrants that there is insurable ingress and egress to and from the Leased Premises, as well as reasonably available, suitable, and sufficient access to the Leased Premises from adjacent or nearby public roadways for pedestrian and vehicle access and communications lines. To the extent that such ingress, egress, and access is unavailable for use by Lessee at any time during the Term, Lessor shall grant to

Lessee such access easements and rights-of-way, for no additional consideration, over and across any adjacent property owned or controlled by any Lessor, as may be necessary or appropriate, as determined by Lessee in Lessee's reasonable discretion, to support Lessee's use of the Leased Premises for its operations during the Term.

16.4 No Interference. Lessor shall not grant any rights to any person or entity, which would, currently or in the future, impede or interfere with (a) Lessee's surface access to the Project and the citing, permitting, construction, installation, maintenance, operation, replacement, or removal of the Project; or (b) the undertaking of any other activities of Lessee permitted under this Lease.

16.5 Requirements of Governmental Agencies/Lenders. During the Term, Lessor, at no cost to Lessor, shall use commercially reasonable efforts to cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews, or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation, or removal of the Energy Storage System, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval.

16.6 Hazardous Materials. To the best of Lessor's actual knowledge, Lessor is in material compliance with all environmental laws as the same are applicable to the Leased Premises, and is not subject to any environmental proceedings with respect to the Leased Premises, nor is there any environmental proceeding with respect to the Leased Premises to which any other person is subject. Lessor has not received any written notice of any violation, and to the actual knowledge of Lessor, no other person has received any written notice of any violation, that, as of the date hereof, remains uncured, and no writs, injunctions, decrees, orders, or judgments outstanding, no suits, claims, actions, proceedings, or investigations have been instituted or filed, and none are pending or, to the knowledge of Lessor, threatened, under any environmental laws with respect to the ownership, use or occupation of the Leased Premises. As of the Effective Date, to the actual knowledge of Lessor: (a) no hazardous materials have ever been produced on the Leased Premises or disposed of thereon or therein, (b) no release has occurred on the Leased Premises, and (c) no hazardous materials have migrated to the Leased Premises. Lessor shall not violate, and shall indemnify Lessee for, from, and against any violation (past, present, or future) by Lessor, Lessor's agents or Lessor's predecessors-in-interest of, any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release, or threatened release, discharge, disposal, transportation, or presence of any substance, material, or waste which was or is introduced, released, or brought onto the Leased Premises by Lessor, Lessor's agents or Lessor's predecessors-in-interest and which was or is now or hereafter classified as hazardous or toxic, or



which is regulated under current or future federal, state, or local laws or regulations.

17. Indemnity.

17.1 Except to any extent expressly provided for in this Lease, and to the furthest extent allowed by law, Lessee shall indemnify, hold harmless and defend Lessor and its officers, officials, employees, agents, and volunteers (to collectively as Lessor) from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Lessor, Lessee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the Lessee's use of the Leased Premises. Lessee's obligations under the preceding sentence shall apply regardless of whether Lessor is passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of Lessor,

17.2 If Lessee should contract any work on the Leased Premises or subcontract any of its obligations under this Lease, Lessee shall require each consultant, subconsultant, contractor and subcontractor to indemnify, hold harmless and defend Lessor in accordance with the terms of this section and meet all the insurance requirements in this Lease or as determined by the City of Fresno Risk Manager or designee.

17.3 Hazardous Materials. Lessee shall not violate, and shall indemnify Lessor against any claims, costs, damages, fees, liabilities or penalties, including but not limited to environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees arising from a violation by Lessee or Lessee's agents of, any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release, or threatened release, discharge, disposal, transportation, or presence of any substance, material, or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state, or local laws or regulations, on or under the Leased Premises, except for any such violation which is imposed by reason of Lessor's activities on or upon the Property (or its invitees, lessees, or any permitted parties) whether now or in the future (including, without limitation, any permitted farming activities), or the existence on or under the Leased Premises of hazardous substances as of the Effective Date of this Lease.

17.4 The provisions of this Section shall survive the termination or expiration of this Lease for the period prescribed by law.

18. Assignment; Right to Mortgage and Assign.

18.1 Lessor recognizes that it may be necessary for Lessee to grant of one or more Mortgages in connection with the financing of all or any portion of the Project and Lessor consents to Lessee mortgaging the Lessee's leasehold interest. In addition, Lessor agrees that Lessor shall upon Lessee's request enter into any reasonable amendment hereto that may be requested by any Mortgagee or Lessee, including but not limited to amendments (i) granting Mortgagees a cure period of not less than thirty days after receiving a notice of Default (as defined in Section 20) by Lessee from Lessor, during which such Mortgagees may cure any such default by Lessee under this Lease, (ii) granting Mortgagees the right to acquire Lessee's Leasehold Estate by foreclosure or conveyance in lieu of foreclosure and thereafter to assign or transfer the Leasehold Estate to a third party, and (iii) prohibiting Lessor from accepting a surrender or cancellation of this Lease by Lessee without the consent of such Mortgagees. Lessor further agrees that it shall cooperate with such reasonable additional requests as may be made by any existing or prospective Mortgagee, including but not limited to the obtaining of non-disturbance agreements from the holder of any existing or prospective deed of trust or lien against Lessor's fee simple interest in the Property.

18.2 Lessor may not assign this Lease without Lessee's prior written consent, which shall not be unreasonably withheld, provided, that any such assignee assumes all of Lessor's obligations under this Lease. Lessor may mortgage its fee interest in the Leased Premises, provided, however, that prior to executing any mortgage, Lessor shall deliver to Lessee a subordination and non-disturbance agreement, in recordable form, from each party that holds or will hold a lien on any portion of the Leased Premises, or has or will have other rights, that might interfere with Lessee's rights under this Lease.

19. Termination by Lessee. At any time during the Term, including as it may be extended, Lessee may terminate this Lease and Lessee's obligations hereunder by delivering to Lessor written notice of termination effective on a date provided in the notice by which date Lessee shall pay any due and unpaid Rent for the Lease Year during which termination occurs, and Lessee shall not be entitled to any refund of Rent paid for that Lease Year. Upon termination pursuant to this Section 19, Lessee shall perform its obligations under Section 21 herein, but shall have no further liability to Lessor (except such obligations which, by the provisions herein, expressly survive the termination of this Lease).

20. Default; Remedies. In the event of any alleged default or failure to perform any obligation under this Lease (**Default**), the non-defaulting Party shall give written notice thereof to the alleged defaulting Party and any Mortgagee that has, in writing to the noticing Party, requested Default notice copies, which notice shall include the acts required to cure the same with reasonable specificity. The Party given notice of failure to make any monetary payment when due shall have a period of fifteen days after such notice is given within which to make the payment and cure such default. In the event of any other failure, the defaulting Party shall have a period of thirty days within which to cure such default, which period shall be extended to the extent

reasonably necessary to complete such cure so long as the cure was commenced within thirty days after such notice is given and thereafter prosecuted with due diligence. Delinquent payments shall bear interest from their respective due dates until paid at the rate of 3% per annum. Any prohibited conduct under this Lease may be enjoined and this Lease shall be specifically enforceable. Subject to the other terms and conditions of this Lease, each Party shall have the right to terminate this Lease for any breach of this Lease by the other Party that is not cured as set forth herein. Furthermore, in the event of a default by Lessee, Lessor shall have the right, in lieu of any other remedies available at law or in equity, to retain the Rent payments previously paid by Lessee as Lessor's damages therefore; provided, that, the foregoing shall not apply to any defaults arising under the indemnity provisions set forth in this Lease, in which case the non-defaulting Party shall have all rights and remedies available at law or in equity.

21. Surrender and Restoration.

21.1 Surrender. Upon any termination, surrender, or expiration of this Lease, Lessee shall remove all of Lessee's personal property from the Leased Premises and shall peaceably deliver up to Lessor possession of the Leased Premises, or any part thereof, and other rights granted by this Lease, and shall execute, at Lessor's request, any and all documents needed to record or evidence such termination with the appropriate governmental agency

21.2 Restoration. Within six (6) months after any termination, surrender, or expiration of this Lease, Lessee at its sole cost and expense, shall decommission the Energy Storage System, which shall include the removal of all facilities except those that Lessor specifically allows Lessee to leave in place. Lessee shall restore the surface of the Leased Premises to the condition similar to its condition at the inception of this Lease. Lessee may leave all roads and grading in their condition existing at the time this Lease terminates.

22. Certain Protective Covenants.

22.1 Noninterference. During the term of this Lease, Lessor covenants and agrees that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted by this Lease; (ii) take any action or permit any condition to exist on the Leased Premises which will materially interfere with the availability or accessibility of the Leased Premises; (iii) take any action which will in any way materially interfere with the transmission of electric, electromagnetic, or other forms of energy to or from the Leased Premises; or (iv) take any action which will materially impair Lessee's access to the Leased Premises for the purposes specified in this Lease, materially obstruct access to any resource on, over, or across the Leased Premises or materially impair Lessee's access to any or all of the Improvements.

22.2 Observance of Laws and Covenants; Safety. Lessee shall use the Leased Premises granted by this Lease only for the purposes stated herein and shall conduct all of its operations on the Leased Premises in a lawful manner after obtaining all necessary permits and government approvals.

23. Consequential Damages Waiver. The Parties shall have no liability for consequential damages arising from a breach of this Lease.

24. Insurance.

### **INSURANCE REQUIREMENTS**

(a) Throughout the life of this Lease, Lessee shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by Lessor's Risk Manager or designee at any time and in his or her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to Lessor, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Lease or any extension, Lessee or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Lease shall be discontinued immediately, and all payments due or that become due to Lessee shall be withheld until notice is received by Lessor that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Lessor. Any failure to maintain the required insurance shall be sufficient cause for Lessor to terminate this Lease. No action taken by Lessor pursuant to this section shall in any way relieve Lessee of its responsibilities under this Lease. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Lessor that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify Lessor shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed

operations, and contractual liability (including, without limitation, indemnity obligations under the Lease) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the Lessor, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Premises Pollution Liability for environmental liability coverage for operators and/or Contractors Pollution Liability for any contractors for any pollution events.

#### **MINIMUM LIMITS OF INSURANCE LEASE AGREEMENT**

Lessee shall procure and maintain for the duration of the Lease, and for five years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to Lessor, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

##### **1. COMMERCIAL GENERAL LIABILITY**

- (i) \$5,000,000 per occurrence for bodily injury and property damage;
- (ii) \$5,000,000 per occurrence for personal and advertising injury;
- (iii) \$5,000,000 aggregate for products and completed operations; and,
- (iv) \$5,000,000 general aggregate applying separately to the work performed under the Lease.

##### **2. COMMERCIAL AUTOMOBILE LIABILITY**

\$2,000,000 per accident for bodily injury and property damage.

##### **3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

##### **4. PREMISES POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of

pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$2,000,000 per occurrence or claim; and,
  - (ii) \$4,000,000 general aggregate per annual policy period.
- (a) In the event this Lease involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by Lessee pursuant to the Lease.

### **UMBRELLA OR EXCESS INSURANCE**

In the event Lessee purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the Lessor, its officers, officials, employees, agents, and volunteers.

### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Lessee shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Lessee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the Lessor's Risk Manager or designee. At the option of the Lessor's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Lessor, its officers, officials, employees, agents, and volunteers; or
- (ii) Lessee shall provide a financial guarantee, satisfactory to Lessor's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall Lessor be responsible for the payment of any deductibles or self-insured retentions.

### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days written notice has been given to Lessor, except ten days for nonpayment of premium. Lessee is also responsible for providing written notice to the Lessor under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Lessee shall furnish Lessor with a new certificate and applicable endorsements for such policy(ies). In the event any Lessee policy is due

to expire during the work to be performed for Lessor, Lessee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form. The Premises Pollution Liability insurance policy shall be written on either an occurrence form, or a claims-made form.
- (iii) The Commercial General, Automobile and Premises Pollution Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. Lessee shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Premises Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) All such policies of insurance shall be endorsed so the Lessee's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. If Lessee maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Lessee.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Lease, Lessee's insurance coverage shall be primary insurance with respect to the Lessor, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, agents, employees and volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to Lessor, its officers, officials, agents, employees and volunteers.

**PROVIDING OF DOCUMENTS** - Lessee shall furnish Lessor with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the Lessor's Risk Manager or designee prior to Lessor's execution of the Lease and before work commences.** All non-ISO endorsements amending policy coverage shall be executed

by a licensed and authorized agent or broker. Upon request of Lessor, Lessee shall immediately furnish Lessor with a complete copy of any insurance policy required under this Lease, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Lease. All subcontractors working under the direction of Lessee shall also be required to provide all documents noted herein.

**CLAIMS-MADE POLICIES** - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Lease or the commencement of work by Lessee.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work or termination of the Lease, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Lease, or work commencement date, Lessee must purchase "extended reporting" period coverage for a minimum of five years after completion of the work or termination of the Lease, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to Lessor for review.
- (v) These requirements shall survive expiration or termination of the Lease.

**MAINTENANCE OF COVERAGE** - If at any time during the life of the Lease or any extension, Lessee or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Lease shall be discontinued immediately until notice is received by Lessor that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Lessor. Any failure to maintain the required insurance shall be sufficient cause for Lessor to terminate this Lease. No action taken by Lessor hereunder shall in any way relieve Lessee of its responsibilities under this Lease. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Lessor that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify Lessor shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee, its principals, officers, agents, employees, persons under the supervision of Lessee, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.



**SUBCONTRACTORS** -If Lessee subcontracts any or all of the services to be performed under this Lease, Lessee shall require, at the discretion of the Lessor Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by Lessor Risk Manager or designee. If no Side Agreement is required, Lessee shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and Lessee shall ensure that Lessor, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Lessee, and Lessor, prior to commencement of any work by the subcontractor.

25. Intentionally Deleted.

26. Miscellaneous.

26.1 Notices. All notices required or permitted by this Lease shall be in writing and shall be delivered in person or sent by mail, facsimile transmission, or electronic transmission (email). However, no writing other than the check or other instrument representing the Rent payment itself need accompany the payment of Rent. The addresses and addressees noted below are that Party's designated address and addressee for delivery or mailing of notices.

To Lessor: City of Fresno  
Department of Public Utilities  
City of Fresno  
2600 Fresno Street, Room 4019  
Fresno, CA 93721  
Attention: Director of Public Utilities  
Telephone: (559) 621-8600  
Facsimile: (559) 488-1304  
Email: [thomas.esqueda@fresno.gov](mailto:thomas.esqueda@fresno.gov)

To Lessee: 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](mailto: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](mailto:ccampbell@bakermanock.com)

Either Party may, by written notice to the other, specify a different address for notice. Notice given in the foregoing manner shall be deemed sufficiently given for all purposes hereunder on the date the same was personally delivered, deposited with the United States Postal Service or a nationally recognized overnight courier service, or sent by telecopier, facsimile, or email, except that notices of changes of address shall not be effective until actual receipt.

26.2 Time. Time is of the essence of every provision of this Lease.

26.3 Heirs, Successors and Assigns. This Lease shall inure to the benefit of and be binding upon the heirs, successors, and assigns of the Parties hereto.

26.4 Governing Law; Attorney's Fees. This Lease and any disputes arising out of this Lease shall be governed by and construed under the laws of the State of California, without regard to principles of conflicts of law. Venue for any action to enforce or interpret this Lease shall be Fresno County, California. In the event of any action or proceeding to enforce a term or condition of this Lease, any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Lease or any action or proceeding in any way arising from this Lease, the prevailing party in such action, or the nondismissing party when the dismissal occurs other than by a settlement, shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs of defense paid or incurred in good faith. The "prevailing party," for purposes of this Lease, shall be deemed to be the party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

26.5 Further Assurances. The Parties hereto shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes of this Lease and to give full force and effect to each and all of the provisions thereof.

26.6 Amendments. This Lease shall not be amended or modified in any way except by an instrument signed by Lessor and Lessee.

26.7 Severability. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby.

26.8 Headings. The Section headings are inserted only for convenience of reference and shall in no way define, limit or describe the scope or intent of a provision of this Lease.

26.9 Entire Agreement. This Lease shall constitute the entire agreement between the Parties with respect to the subject matter of this Lease and supersedes all other prior writings, negotiations and understandings.

26.10 Effect of Termination. Any termination of this Lease pursuant to the terms hereof shall not relieve either Party from any liabilities, obligations, or indemnities arising prior to the effective date of such termination.

26.11 Time of Essence. Time is of the essence regarding each provision of this Lease.

26.12 No Waiver. No waiver by either Party of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by the other Party.

26.13 Counterparts. This Lease may be executed in counterparts.

26.14 Recording of Memorandum. Concurrent with the execution of this Lease, the Parties shall execute, acknowledge and record in the Official Records a memorandum of this Lease in the form attached as **Exhibit C**, hereto.

27. No Partnership. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee. It is expressly understood and agreed that that Lessor shall not be responsible for any debt or obligation contracted or incurred by Lessee nor shall Lessee become responsible for any debt or obligation contracted or incurred by Lessor.

28. Brokerage Commissions. Lessor and Lessee each represent that such Party has not incurred, directly or indirectly, any liability on behalf of the other Party for the payment by the other Party of any real estate brokerage commission or finder's fee in connection with this Lease. Lessor and Lessee shall indemnify, defend, and hold the other Party harmless from and against any claim for any brokerage commissions or finder's fees claimed to be due and owing by reason of the indemnifying Party's activities.

29. Transfer Taxes on Lease. If any governmental authority levies, assesses, and/or imposes, a transfer tax as a result of this Lease, Lessee shall timely pay such tax.

30. Forfeiture of Leased Premises. If at any time the Leased Premises or any part thereof shall then be subject to forfeiture, or if Lessor shall be subject to any liability arising out of the nonpayment of real property or personal property taxes that are the responsibility of Lessor hereunder, Lessee may, in its sole and absolute discretion, following the expiration of ten business days' advance notice to Lessor and Lessor's failure to remedy the outstanding tax liability within such ten business day period, notwithstanding any pending contest or review, elect to either pay such taxes or post such bonds as the taxing authority may require to prevent such forfeiture or liability and may offset the amount of such payments from amounts due Lessor under this Lease. Notwithstanding the foregoing, in the event Lessee pays such taxes or posts such bonds during a pending contest or review and Lessor subsequently prevails over the taxing authority, Lessee shall pay Lessor any amounts previously offset under the foregoing sentence if such amounts have been reimbursed to Lessee by the taxing authority.

31. Force Majeure. A Party will not be considered to be in breach or default of its obligations (other than payment) under this Lease to the extent that performance of such obligations or its efforts to cure are delayed or prevented due to a Force Majeure Event. For purposes of this lease, "**Force Majeure Event**" means: fire, earthquake, flood, tornado or other acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency (other than Lessor), or any other act or condition beyond the reasonable control of a Party.

32. Condemnation. All payments made on account of any taking or threatened taking of the Leased Premises or any part thereof in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain may be made to Lessor, except that Lessee shall be entitled to, and Lessor shall request that such condemning authority make payment directly to Lessee of: (i) any removal and relocation costs of the Energy Storage System, (ii) any loss of or damage to the Energy Storage System, (iii) the loss of use of any portion of the Leased Premises by Lessee and (iv) Lessee's lost profits, measured in each case with regard to the effect on Lessee's use of the Leased Premises and any effect on Lessee's use of other property. If such condemning authority makes all payments to Lessor, then Lessor shall forthwith make payment to Lessee of the award to which Lessee is entitled. Lessee shall have the right to participate in any condemnation settlement proceedings and Lessor shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld.

[SIGNATURES FOLLOW ON NEXT PAGE.]

IN WITNESS WHEREOF, the Parties hereto have executed this Lease on the date and year first above written.

**Lessor**

City of Fresno, a municipal corporation

By: *Bruce Rudd*  
Bruce Rudd  
City Manager

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: *Marco Muruz*  
Deputy *Murco Muruz*  
*11/4/17*

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: *Brandon M. Collet* *12/30/16*  
Brandon M. Collet Date  
Deputy City Attorney

**ACKNOWLEDGED AND AGREED:**

**Amber Kinetics, Inc.**

By: *Mark Staut*

Name: Mark Staut

Title: Vice President

(If corporation or LLC, Board Chair, Pres. or Vice Pres.)

By: *Jennifer Hill*

Name: JENNIFER HILL

Title: TREASURER

(If corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

Attachments: Exhibit A  
Exhibit B  
Exhibit C

1890791v1 / 19040.0001

**Lessee**

Energy Nuevo Storage Farm, LLC., a Delaware limited liability company

By: *Mark Staut*

Name: Mark Staut

Title: Vice President

(If corporation or LLC, Board Chair, Pres. or Vice Pres.)

By: *Jennifer Hill*

Name: JENNIFER HILL

Title: TREASURER

(If corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

APPROVED AS TO FORM:

By: *Christopher L. Campbell* *12-19-16*  
Christopher L. Campbell Date  
Attorney

City of



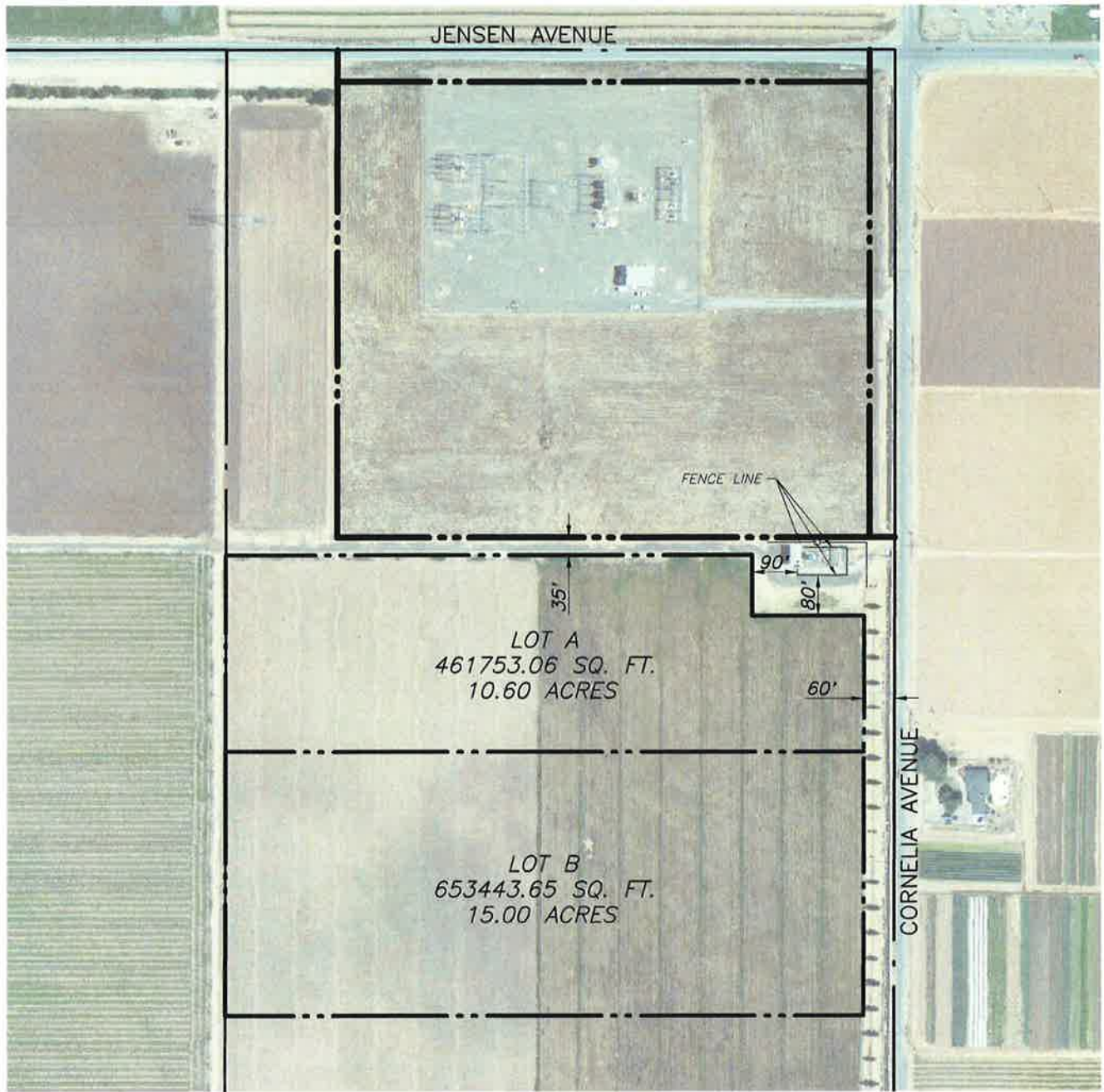
Department of Public Utilities

JANUARY 2016

W JENSEN AVE

S CORNELIA AVE

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



**Blair,  
Church  
Flynn**  
CONSULTING ENGINEERS

CONSULTANT  
Blair, Church & Flynn  
Consulting Engineers  
451 Clovis Avenue,  
Suite 200  
Clovis, California 93612  
Tel (559) 328-1400  
Fax (559) 328-1500

CITY OF FRESNO

RECORD OF SURVEY  
PROPOSED LEASE PARCEL AREAS

DR. BY ARG  
CH. BY RSW  
DATE 8/31/16  
SCALE: AS NOTED

SHEET NO. 1  
OF 1 SHEETS

Recording Requested by  
and When Recorded Mail to:

Christopher L. Campbell, Esq.  
BAKER MANOCK & JENSEN, PC  
5260 North Palm Avenue, Suite 421  
Fresno, California 93704

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

## MEMORANDUM OF LEASE

(City of Fresno – Energy Nuevo Storage Farm, LLC.)

THIS MEMORANDUM OF LEASE (this “Memorandum”) is made and entered into this \_\_\_ day of \_\_\_\_\_ 2016 (the “Effective Date”), by and between the City of Fresno (“Lessor”), and Energy Nuevo Storage Farm, LLC., a Delaware limited liability company (“Lessee”).

### RECITALS

A. Lessor and Lessee entered into that certain Ground Lease for Energy Storage System of even date herewith (the “Lease”). The Lease relates to approximately ten (10) acres that are a portion of real property identified by Assessor’s Parcel Number 327-030-38T and more particularly described in Exhibit A, attached hereto and incorporated herein (the “Leased Premises”).

B. Lessor and Lessee desire to execute this Memorandum to provide constructive notice of Lessee’s rights and interests under the Lease to all third parties.

NOW THEREFORE, in consideration of the above recitals, which are incorporated herein, and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Lease of Premises. Lessor leases to Lessee the approximately ten (10) acres of the Leased Premises pursuant to the terms and subject to the conditions of the Lease, which are incorporated herein by this reference. In the event of any inconsistency between this Memorandum and the Lease, the Lease shall control.

2. Term. Lessee has the right to lease the Leased Premises from Lessor for a period of up to thirty-four years (34) years and eleven (11) months, commencing on January 1, 2017, or the later date that Lessor provides Lessee with possession of the Leased Premises. Delivery of the Leased Premises can be delayed up to three months after January 1, 2017.

3. Governing Law. This Memorandum and the Lease shall be construed and enforced in accordance with the laws of the State of California.



4. Counterparts. This Memorandum may be executed in counterpart signature pages and the signature pages combined to create one document binding on the parties.

IN WITNESS WHEREOF, the parties have executed this Memorandum to be effective as of the Effective Date.

“Lessor”

“Lessee”

CITY OF FRESNO, a municipal corporation

ENERGY NUEVO STORAGE FARM,  
LLC., a Delaware corporation

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

Bruce Rudd  
City Manager

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

Name: \_\_\_\_\_

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

Title: \_\_\_\_\_  
(If corporation or LLC, Board Chair, Pres. or  
Vice Pres.)

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

Deputy

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(If corporation or LLC, CFO, Treasurer,  
Secretary or Assistant Secretary)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF FRESNO )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF FRESNO )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF FRESNO )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

Exhibit "A"

Parcel Boundary Map

W JENSEN AVE

S CORNELIA AVE

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