

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

THIS FIRST AMENDMENT (this **Amendment**) is made and entered into this ____ day of _____ 2018 (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. On January 4, 2017, Lessor and Lessee entered into a Lease for ten (10) acres (Lease) 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; and

B. Lessee entered into the lease to develop a kinetic energy storage project on the site to provide energy storage to Pacific Gas & Electric and to other parties who desire energy storage (Project); and

C. Lessor and Lessee agree to sublease the Property so long as the Sub Lessee uses the Property solely for single season animal feed crops.

AGREEMENT

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

1. **SUBLEASE OF PROPERTY.** The Parties agree that the Lessor, as agent for the Lessee, shall select an agricultural user to sublease the Property, subject to the terms, covenants, and conditions set forth herein. The Lessor shall be solely responsible to supervise the Sub-lessee. The Lessee shall not have any right or obligation to supervise or respond to any issues related to the Sub-lessee's use or occupation of the Property during the Sublease.

2. **MAINTENANCE DURING TERM OF SUBLEASE.** Lessee shall be relieved of all maintenance responsibilities in Section 14 of the Lease during the term of the sublease. The Sub-lessee shall assume the maintenance obligation during the term of the Sublease subject to oversight by the Lessor.

3. **RENT.** In consideration of Lessor managing the Sub-lessee, the Parties agree to equally share the Property's gross rent revenue for the term of the sublease.

4. **USE OF PROPERTY DURING THE TERM OF SUBLEASE.** The Sub-lessee shall use the Property only to grow single season animal feed crops.

5. **SUBLEASE REQUIRED PROVISIONS.** Lessee shall include the following provisions in any sublease:

a. **INSURANCE.** Sub-lessee shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** throughout the term of the sublease.

b. **RIGHT OF ENTRY.** Lessor, or Lessor's representatives, shall have the right to enter the Property at any time during the Lease, to protect, inspect, exercise or investigate any rights of Lessor herein reserved. However, Lessor's activities, connected with the exercise of this right of entry, shall not interfere with the operations of Sub-lessee or its use of the Property. In addition, the Lessee shall have a limited right to enter the property, subject to a minimum of 48 hours advance notice to perform any testing or other activities necessary to prepare for its planned energy storage project. However, Lessee's activities, connected with the exercise of this right of entry, shall not interfere with the operations of Sub-lessee or its use of the Property.

c. **INDEMNIFICATION; RELEASE; SAFETY AND INSURANCE.**

(a) Sub-lessee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless Lessor, Lessee and their respective officials, officers, representatives, agents, employees, volunteers, transferees, successors and assigns (each an "Indemnitee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), which arise from or are in any way connected with Sub-lessee's activities, or the entry on, occupancy or use of, the Property by Sub-lessee or Sub-lessee's representatives, or the exercise by Sub-lessee of Sub-lessee's rights hereunder, or the performance of, or failure to perform, Sub-lessee's duties under this Lease, including, but not limited to, Claims arising out of: (i) injury to or death of persons, including but not limited to employees of Lessee, Lessee, or Sub-lessee (and including, but not limited to, injury due to exposure to Potential Environmental Hazards in, on or about the Property); (ii) injury to property or other interest of Lessor, Sub-lessee or any third party; (iii) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to the environment and including any liability imposed by law or regulation without regard to fault.

(b) Sub-lessee acknowledges that all Claims arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of or in connection with Sub-lessee's use or occupancy of the Property, Sub-lessee's activities or the activities of any of Sub-lessee's representatives, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

(c) Sub-lessee's use and occupancy of the Property shall be at Sub-lessee's sole risk and expense. Sub-lessee accepts all risk relating to Sub-lessee's occupancy and use of the Property. Neither Lessor nor Lessee shall be liable to Sub-lessee for, and Sub-lessee hereby waives and releases Lessor, Lessee and the other Indemnitees from, any and all liability, whether in contract, tort, strict liability or on any other basis, for any injury, damage, or loss resulting from or attributable to an occurrence on or about the Property.

(d) Sub-lessee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against claims, losses, costs (including attorneys' fees and costs), liabilities and damages resulting from the failure of Sub-lessee, or any of Sub-lessee's consultants, contractors or subcontractors, to comply with the insurance requirements set forth in this Sublease.

(e) The provisions of this Section shall survive the expiration or termination of this Sublease.

d. **TERMINATION BY LESSOR/LESSEE.** In addition to any other rights of termination that it has under this Sublease, Lessor and Lessee have the right to terminate this Lease upon 90 days prior written notice to Sub-lessee; Unless the termination notice is given due to a default by the Sub-lessee, however, the Lessee shall not have the right to take possession of the Property until the Sub-lessee reasonably completes harvest of the crops growing on the Property at the time of the notice of termination was given.

6. In the event of any conflict between the body of this Amendment and any exhibit or attachment hereto, the terms and conditions of the body of this Amendment shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Amendment, shall be null and void.

7. Except as otherwise provided herein, the Agreement entered into by Lessor and Lessee, dated January 4, 2017, remains in full force and effect.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

LESSOR:
CITY OF FRESNO,
A California municipal corporation

LESSEE:
ENERGY NUEVO STORAGE FARM, a
Limited Liability Company

By: _____
Thomas C. Esqueda,
Director of Public Utilities

By: Mark Stout
Name: Mark Stout _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

Title: Vice President, Project Development
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: Brandon M. Collet 3/7/18
Brandon M. Collet Date
Deputy City Attorney

By: William Golove
Name: William Golove _____

ATTEST:
YVONNE SPENCE, CMC
City Clerk

Title: Secretary _____
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

By: _____
Deputy

REVIEWED BY:

Addresses:
LESSEE:
City of Fresno
Attention: Thomas C. Esqueda
Director of Public Utilities
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8635
FAX: (559) [#]

LESSOR:
Amber Kinetics, Inc.
Attention: Mark Stout
VP, Project Development
32920 Alvarado Niles Road, Suite 250
Union City, CA 94587
Phone: 559-273-4037
FAX: 510-474-1000