

**Attachment H – Tierra Del Sol Solar Fire and  
Emergency Services Agreement**

## **FIRE AND EMERGENCY PROTECTION SERVICES AGREEMENT**

THIS FIRE AND EMERGENCY PROTECTION SERVICES AGREEMENT (“Agreement”) dated as of \_\_\_\_\_ (the “Effective Date”), by and between the County of San Diego and its SAN DIEGO COUNTY FIRE AUTHORITY, an agency formed by the Board of Supervisors of the County of San Diego (the “Authority”), and TIERRA DEL SOL SOLAR FARM LLC (“Tierra del Sol”) (sometimes referred to individually as a “Party” and collectively as “the Parties”).

### **RECITALS**

WHEREAS, the Authority supports the delivery of high quality emergency medical and fire services to a 1.5 million-acre area of unincorporated San Diego County, and coordinates regional fire prevention for unincorporated San Diego County; and

WHEREAS, Tierra del Sol has applied for Major Use Permit No. 3300 12-010 for certain real property located within the unincorporated area of the County of San Diego and within the Authority’s jurisdiction in CSA 135 (the “Property”), as more particularly described on the attached Exhibit “A” incorporated herein by reference; and

WHEREAS, Tierra del Sol seeks approval from the County of San Diego (the “County”) to construct the Tierra del Sol Solar Farm on the Property (the “Project”), as more fully described on the attached Exhibit “B” incorporated herein by reference, with a solar generation faceplate capacity of approximately 60 megawatts (MW) of installed alternating current (AC); and

WHEREAS, the potential for significant environmental impacts associated with the Project was studied in a Final Programmatic Environmental Impact Report (FPEIR), which also analyzes a project proposed by Rugged Solar LLC (“Rugged”); and

WHEREAS, as a condition of the County’s approval of the Project, Tierra del Sol is required to enter into this agreement with the Authority to make a fair share contribution to fund the provision of appropriate fire and emergency protection services pursuant to County General Plan Safety Element; and

WHEREAS, Tierra del Sol also desires to enter into this agreement with the Authority to provide funds to further the Authority’s mission in excess of its fair share contribution as a community benefit; and

WHEREAS, the Authority desires to receive such funds and use them as specified in this Agreement to improve its ability to provide improved fire and emergency protection services.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1. The Project

The description of the Project is contained in Exhibit “B” attached hereto and incorporated by this reference.

2. Scope of Agreement

Provided that Tierra del Sol timely complies with each of its obligations under this Agreement, the Authority agrees to use the funds it receives under the Agreement to improve local fire and emergency response capabilities as described more fully in Section 4, below.

3. Term

This Agreement shall be effective upon the Effective Date. The term of this Agreement shall begin upon Commencement of Construction (as defined below) of the Project and be in effect for the life of the Project. Tierra del Sol shall give notice to the Authority of the Commencement of Construction at least thirty (30) calendar days prior to the Commencement of Construction pursuant to items (a), (b), or (c) of this paragraph. “Commencement of Construction” shall be the first to occur of: (a) any ground disturbance of any portion of the Property in connection with the Project, except for geotechnical investigation or other environmental analysis required as part of the permitting process; (b) delivery of any materials to any portion of the Property in connection with the Project; (c) delivery of any equipment, including but not limited to a construction trailer, but excluding meteorological tower(s), to the Property in connection with the Project. For purposes of this Agreement, Commencement of Construction shall be considered a single, one-time event. In the event Applicant fails to provide notice that any of items (a), (b), or (c) of this paragraph have occurred, the Authority shall have the right to establish Commencement of Construction based on its knowledge of the occurrence of items (a), (b), or (c) and written notice thereof to Applicant. The notice by Tierra del Sol to the Authority pursuant to items (a), (b), or (c), above, or the notice by the Authority to Tierra del Sol, shall each be referred to as the “Construction Notice.” The Authority’s right to provide a Construction Notice shall not relieve Applicant of its affirmative obligation to provide a Construction Notice pursuant to this Section.

Tierra del Sol may terminate this Agreement at any time by providing the Authority sixty (60) calendar days prior written notice if: (aa) Tierra del Sol fails to obtain all governmental licenses, permits, and/or approvals required of or deemed necessary or appropriate by Tierra del Sol or the County in order to begin Commencement of Construction of the Project, including without limitation applications for major use permits and construction permits (collectively, the “Approvals”); or, (bb) Tierra del Sol elects not to construct the Project; or, (cc) subsequent to issuance of the Approvals, Tierra del Sol has ceased operations on the Property and has complied with a County-approved decommissioning plan.

The “Termination Date” of the Agreement shall be sixty (60) calendar days from the date the Authority receives written notice, as specified in Section 17, below, in which Tierra del Sol certifies to the Authority that: (aa) Tierra del Sol has failed to obtain the Approvals and has withdrawn its application to the County for the Approvals; or, (bb) Tierra del Sol has elected not to construct the Project and has withdrawn its application to the County for the Approvals, or has

relinquished its right to construct the Project under the Approvals; or, (cc) subsequent to issuance of the Approvals, Tierra del Sol has ceased operations on the Property and has complied with a County-approved decommissioning plan.

#### 4. Initial and Annual Compensation

Within fifteen (15) days of providing the Construction Notice, Tierra del Sol shall deposit with the Authority the amount of \$210,000.00 (the “Deposit”), of which \$60,000.00 shall be used to fund a paramedic staff position startup kit to improve local fire and emergency response capabilities in the southeast portion of County Service Area (“CSA”) 135 (“Paramedic Deposit”), as provided in PDF-PS-1 in the FPEIR, and \$150,000.00 shall be used as the Authority sees fit to provide for equipment, personnel, and supplies in furtherance of its mission in the southeast portion of CSA 135 (“Equipment Deposit”).<sup>1</sup>

A “Fiscal Year” means the period starting on July 1 and ending on the following June 30. For any Fiscal Year, or portion thereof, after issuance of a valid Construction Notice, Tierra del Sol shall pay annually to the Authority \$101,000.00, including: (i) \$73,000.00 to fund a paramedic staff position to improve local fire and emergency response capabilities in the southeast portion of CSA 135 (“Paramedic Rate”), as provided in PDF-PS-1 in the FPEIR; (ii) \$24,000.00 for equipment, personnel, and supplies to be used as the Authority sees fit in furtherance of the Authority’s mission in the southeast portion of CSA 135 (“Equipment Rate”); and \$4,000.00 for fire prevention to be used as the Authority sees fit in furtherance of the Authority’s mission in the southeast portion of CSA 135 (“Fire Prevention Amount”).<sup>2</sup> The Paramedic Rate shall increase by five percent (5%) each Fiscal Year thereafter (i.e., the rate in effect for the prior Fiscal Year multiplied by 1.05 to obtain the following Fiscal Year’s rate). The Equipment Rate shall increase by two and one-half percent (2.5%) each Fiscal Year thereafter (i.e., the rate in effect for the prior Fiscal Year multiplied by 1.025 to obtain the following Fiscal Year’s rate).

Tierra del Sol hereby agrees to pay to the Authority on or before July 1 of each Fiscal Year, an amount equal to the sum of the Paramedic Rate, the Equipment Rate, and Fire Prevention Amount, respectively, for each Fiscal Year thereafter. Payment shall be as follows. Tierra del Sol’s duty to pay the Authority shall commence on the Commencement of Construction.

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<sup>1</sup> Tierra del Sol is individually responsible for funding the Paramedic Deposit. If Rugged makes the Paramedic Deposit first, however, then Tierra del Sol shall not make the Paramedic Deposit. If Rugged and Tierra del Sol elect to make their Deposits contemporaneously, each project may deposit its share of the Paramedic Deposit, so long as the projects’ combined deposit equals \$60,000.00.

<sup>2</sup> Tierra del Sol is individually responsible for funding the Paramedic Rate. If Rugged is also paying under its own agreement with the Authority, however, the projects may each pay their respective share of the Paramedic Rate, so long as the combined payments equal the amount Tierra del Sol would have otherwise been obligated to pay.

Upon the receipt of a valid Construction Notice, the Authority shall: (aa) calculate the number of days remaining in the current Fiscal Year by determining the days from and including the date of the Commencement of Construction to and including the following June 30 (the “Remainder”); (bb) multiply the sum of the Paramedic Rate, the Equipment Rate, and Fire Protection Amount times a fraction, the numerator of which is the Remainder, and the denominator of which is 365, which is equal to the proportionate amount due for the portion of the Fiscal Year in which Commencement of Construction begins (the “Stub Year Amount”);<sup>3</sup> and (cc) calculate the rate applicable to the next following Fiscal Year by calculating the sum of (i) the Paramedic Rate times 1.05, (ii) the Equipment Rate times 1.025, and (iii) the Fire Protection Amount (the “Following Year Rate”).<sup>4</sup> The Authority shall calculate all of the above and give notice thereof to Tierra del Sol (“Compensation Notice”). Tierra del Sol shall pay the Stub Year Amount within thirty (30) days of receipt of the Compensation Notice, and shall pay, on or before July 1 of the next Fiscal Year, the Following Year Rate.

The Annual Compensation established in this Section 4 is separate and distinct from any fire protection fees that may be required in the ordinary course of a development project, including but not limited to fire mitigation fees, building permit fees, property taxes or assessments, or project design features or mitigation measures required to comply with environmental review requirements, except where explicitly noted. Under no circumstances shall this Agreement or payments under Section 4 be construed as a waiver of any other legal obligations to pay fees, taxes or implement fire protection measures.

5. Rugged Solar Farm

Section 4 assumes that Rugged has not received a Major Use Permit and submitted notice of Commencement of Construction. If the County does grant a Major Use Permit to Rugged and Rugged gives notice of Commencement of Construction, the Equipment Rate shall be increased from \$24,000.00 to \$51,000.00.

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<sup>3</sup> After issuing the Construction Notice, Tierra del Sol would pay to the Authority the Deposit (\$210,000.00) and the Stub Year Amount. If Commencement of Construction would start on May 1, the Stub Year Amount would be calculated as follows:

$$\text{Stub Year Amount} = (\$73,000.00 + \$24,000.00 + \$4,000.00) * (61 / 365) = \$16,879.45.$$

<sup>4</sup> The Following Year Rate for Year 2 would be calculated as follows:

$$\text{Following Year Rate for Year 2} = (\$73,000.00 * 1.05) + (\$24,000.00 * 1.025) + (\$4,000.00)$$

The Following Year Rate for Year 3, and all subsequent years, would be calculated as follows:

$$\begin{aligned} \text{The formula for the "Following Year Rate" for Year 3}^+ = \\ (\text{Paramedic Rate} * 1.05^{\text{Year} - 1}) + (\text{Equipment Rate} * 1.025^{\text{Year} - 1}) + (\$4,000.00). \end{aligned}$$

$$\begin{aligned} \text{The "Following Year Rate" for Year 3} = \\ (\$73,000.00 * 1.05^{(3 - 1)}) + (\$24,000.00 * 1.025^{(3 - 1)}) + (\$4,000.00) = \$109,697.50 \end{aligned}$$

6. Installed Alternating Current Capacity

Section 4 assumes that the County grants Tierra del Sol a Major Use Permit for the development of approximately 60 MW AC and Tierra del Sol installs approximately 60 MW AC (the “Installed Capacity Amount”). If the County grants Tierra del Sol a Major Use Permit for less than the Installed Capacity Amount or Tierra del Sol constructs less than 60 MW AC (the “Actual Capacity Amount”), the Equipment Deposit, Equipment Rate, and Fire Prevention Amount shall be revised proportionally downward by multiplying them by the “Actual Capacity Factor”, defined below:

$$\text{Actual Capacity Factor} = \text{Actual Capacity Amount} / 80$$

The Paramedic Deposit and Paramedic Rate shall remain as stated in Section 4, irrespective of the Actual Capacity Amount.

7. Approvals

Tierra del Sol acknowledges and agrees that the Authority has no duty or obligation to obtain any Approvals on behalf of Tierra del Sol.

This Agreement shall not constitute an “approval” of the Project by the County for purposes of any governmental licenses, permits and/or approvals required or deemed necessary or appropriate for Applicant to construct the Project. To the extent the County has separate and distinct permitting authority for any aspect of the Project, this Agreement in no way limits or controls the County’s discretion in approving, approving with conditions, or denying a particular project or project component.

8. Assignment

Tierra del Sol may assign this Agreement if Tierra del Sol is transferring the Project to the assignee; provided, however, to be valid, (a) any such assignment shall be in writing substantially in the form of Exhibit “C” (“Form of Assignment of Agreement For Provision of Fire and Emergency Protection Services”) (the “Assignment”) attached hereto and incorporated by this reference; (b) the Assignment provides for Tierra del Sol’s assignment of all of its obligations under this Agreement to the assignee and the assignee assumes all of such obligations; (c) Tierra del Sol is not released of its obligations to the Authority under this Agreement that existed prior to the date of the Assignment but is otherwise released; (d) the Assignment contains the name, address, telephone number, facsimile number, and contact person for the assignee; and (e) the Authority has provided Tierra del Sol and the assignee with written acknowledgement of receipt of the Assignment signed on behalf of Tierra del Sol and the assignee.

9. Breach

Failure to abide by any terms of this Agreement shall constitute a breach of this Agreement. The Party asserting a breach must notify the other Party in writing pursuant to Section 17 below. Each Party shall have the right but not the obligation or duty to cure any

breach by the other Party of the terms of this Agreement. An “Event of Default” shall exist if: (a) the breach can be cured solely by the payment of money and the breach is not cured within thirty (30) business days after the notifying Party delivers notice (a “Breach Notice”) thereof to the breaching Party; or (b) the breach cannot be cured solely by the payment of money and the breach is not cured within thirty (30) days after the notifying Party delivers a Breach Notice thereof to the breaching Party. If an Event of Default occurs, the notifying Party shall be entitled to any and all remedies available at law. Should the notifying Party unilaterally elect to cure any such breach by the breaching Party, the breaching Party shall promptly reimburse the notifying Party for all costs and expenses incurred by the notifying Party to effectuate such cure.

10. Jurisdiction and Venue

The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.

11. Successors in Interest

This Agreement and all rights and obligations created by this Agreement shall remain in full force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on such Party’s successor in interest.

12. Integration

This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or by a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement. The Parties acknowledge and agree that the Recitals set forth above are true and correct and are hereby incorporated by reference.

13. No Third Party Beneficiaries

The Parties hereto agree that there shall be no third-party beneficiaries to this Agreement. This Agreement is not intended to and shall not confer any rights or remedies hereunder upon any other party other than the Parties to this Agreement and their respective successors in interest.

14. Counterparts

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page. The Parties agree that a signed copy of this Agreement transmitted by one Party to the other Party by facsimile transmission or electronic mail as a PDF, shall be binding upon the sending Party to the same extent as if it had delivered a signed original of this Agreement.

15. No Waiver

No failure of any Party to require strict performance by the other Party of any covenant, term or condition of this Agreement, nor any failure of any Party to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect regardless of any existing or subsequent breach. A waiver of any such breach shall not be interpreted to mean that any Party has waived its right to demand in the future the full and complete performance by the other Party of its duties and obligations under this Agreement.

16. Signing Authority

The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or governmental entity and agrees to indemnify and hold the other Party hereto harmless if it is later determined that such authority does not exist.

17. Notices

All letters, statements, or notices required pursuant to this Agreement shall be deemed effective upon receipt when personally served, transmitted by facsimile machine or electronic mail, or sent certified mail, return receipt requested, to the following addresses:

To: Authority      San Diego County Fire Authority  
                          Attn: Herman Reddick, Group Program Manager  
                          8525 Gibbs Drive, Suite 201  
                          San Diego, CA 92123  
                          Telephone No. (858) 974-5813  
                          Facsimile No. (858) 974-5928

To: Applicant      Tierra del Sol Solar Farm LLC  
                          Attn: Clark Crawford, Attorney In-fact  
                          16650 Via Esprillo  
                          San Diego, CA 92127  
                          Telephone No. (858) 746-9000



With a copy to: Stoel Rives LLP  
Attn: Ryan R. Waterman, Esq.  
12255 El Camino Real, Suite 100  
San Diego, CA 92130  
Telephone No. (858) 794-4100  
Facsimile No. (858) 794-4101  
[rrwaterman@stoel.com](mailto:rrwaterman@stoel.com)

Any such notice or demand shall be deemed served at the time of delivery if delivered in person, by facsimile transmission, or electronic mail, or on the business day following deposit thereof in the U.S. Mail where sent by registered or certified mail.

18. Modification or Amendment

This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

*[Signatures Follow]*

“Applicant”

**TIERRA DEL SOL SOLAR FARM  
LLC**

By Soitec Solar Development, LLC,  
Its sole member

By: \_\_\_\_\_  
Clark Crawford, Attorney In-fact  
Authorized Representative

“Authority”

**SAN DIEGO COUNTY FIRE  
AUTHORITY**

By: \_\_\_\_\_  
Ron Lane, Fire Warden  
Public Safety Group

**Exhibit "A"**

Legal Description of the Property

**1. Real property in the unincorporated area of the county of San Diego, State of California, described as follows:**

**APN Numbers:** 658-120-02-00 and 658-090-54-00

More particularly described as follows:

Lots 23, 24, 25, 26 and 27 of Section 13 and lots 1, 2, 3 and 4 of Section 24; all in Township 18 South of Range 6 East of the San Bernardino Meridian, except any Lots or portions of said Lots within the following described metes and bounds:

Beginning at the northwest corner of Lot 23, of said Section and Township; thence south 0 degrees 03 minutes and 0 seconds west along the westerly boundary of said Lot to the southwest corner of Lot 4 of said Section and Township; thence north 84 degrees 45 minutes and 33 seconds along the southerly line of Lots 4, 3 and 2 a distance of 45.50 chains to a point; thence north 0 degrees 11 minutes and 15 seconds east a distance of 29.26 chains to the northerly line of Lot 25 of said section and township; thence south 84 degrees 30 minutes and 27 seconds west to the point of beginning.

Said property being described as Parcel B in a Certificate of Compliance recorded on January 5, 1995 as instrument no. 95-004751 of official records of San Diego County.

**2. Real property in the unincorporated area of the county of San Diego, State of California, described as follows:**

**APN:** 658-120-03-00, 658-090-31-00 and 658-090-55-00

More particularly described as follows:

Lots 17, 18, 19, 20, 21, and 22 of Section 13 Township 18 South, Range 6 East, San Bernardino Meridian, and that portion of Lots 23, 24, and 25 of Section 13, and lots 1, 2, 3 and 4 of Section 24, Township 18 South, Range 6 East, San Bernardino Meridian, California, according to the official plat of the survey of said land on file in the general land office, within the following described metes and bounds:

Beginning at the northwest corner of Lot 23, of said Section and Township; thence south 0 degrees 03 minutes and 0 seconds west along the westerly boundary of said Lot to the southwest corner of Lot 4 of said Section and Township; thence north 84 degrees 45 minutes and 33 seconds along the southerly line of Lots 4, 3 and 2 a distance of 3003.00 feet to a point; thence

north 0 degrees 11 minutes and 15 seconds east a distance of 1931.16 feet to the northerly line of Lot 25 of said Section and Township; thence south 84 degrees 30 minutes and 27 seconds west to the point of beginning.

Said property being described as Parcel A in a Certificate of Compliance recorded on January 5, 1995 as instrument no. 95-004751 of official records of San Diego County.

**Exhibit “B”**

Project Description

The following documents are hereby incorporated by reference as the project description for the Tierra del Sol Solar Farm:

1. Project description provided in Section 1.2 of the Final Programmatic Environmental Impact Report, for the Tierra del Sol Solar Farm;
2. Tierra del Sol Solar Farm Plot Plans, as approved.

**Exhibit "C"**

Form of Assignment of Agreement For Provision of Fire and Emergency Protection Services

**ASSIGNMENT OF AGREEMENT**

THIS ASSIGNMENT OF AGREEMENT (this "Assignment") is made effective as of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_ ("Assignee").

A. Assignor is a party to the Fire and Emergency Protection Services Agreement ("Agreement") entered into with the San Diego County Fire Authority on \_\_\_\_\_, \_\_\_\_.

B. Assignor wishes to assign to Assignee, and Assignee wishes to assume, Assignor's rights and obligations in and under the Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby transfers, conveys, sells and assigns to Assignee all of Assignor's right, title and interest in and to Agreement.
2. Assignee hereby affirmatively and unconditionally accepts the assignment, and assumes the obligations of Assignor with respect to the Agreement.
3. This Assignment is governed by California law, without regard to its conflicts of law provisions. This Assignment may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one and the same instrument, and shall be binding and effective when all parties hereto have executed and delivered at least one counterpart.
4. Each party shall take such acts and execute and deliver such documents as may be reasonably required to effectuate the purposes of this Assignment.
5. The terms and provisions of this Assignment shall be binding upon and inure to the benefit of the respective parties hereto, and their respective successors and assigns.

6. The Assignee's contact information is as follows:

Name:  
Address:

Telephone number:  
Facsimile number:

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first written above.

**ASSIGNOR:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the San Diego County Fire Authority acknowledges and consents to this Assignment as of the day and year first written above.

**SAN DIEGO COUNTY FIRE AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_