

**Attachment J – Franchise Agreement for the
Tierra Del Sol Solar Project**

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, GRANTING TO TIERRA DEL SOL SOLAR FARM LLC, A FRANCHISE TO CONSTRUCT INSTALL, MAINTAIN, OPERATE, REPAIR, RENEW AND REMOVE AN UNDERGROUND ELECTRIC TRANSMISSION SYSTEM IN TIERRA DEL SOL BOULEVARD

THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO ORDAINS AS FOLLOWS:

Section 1. This ordinance shall take effect and be in full force within thirty (30) days of its enactment (“Operative Date”). The franchise granted by this ordinance shall become effective (“Effective Date”) when Tierra del Sol Solar Farm LLC or its successors in interest (“Grantee”) files a written acceptance of the franchise with the Clerk of the Board of Supervisors for the County of San Diego (“County”). Grantee shall have three (3) years from the Operative Date to accept the Franchise or it shall terminate. The time to accept this franchise shall run separately from the time to commence construction pursuant Section 17. This franchise is granted in accordance with Article 11, Section 7 of the California Constitution and Government Code section 26001. Without in any way limiting the scope of this authority, the County has utilized the procedures specified by the Franchise Act of 1937, Public Resources Code section 6201 et seq. as a means of awarding the franchise.

Section 2. The County grants to Grantee a nonexclusive franchise to construct, install, maintain, operate, repair, renew and remove an underground electric transmission system for the Tierra del Sol Solar Farm for the purpose of transmitting electrical power together with the appurtenances and equipment necessary or convenient for operation thereof, in Tierra del Sol Road, adjacent to the Tierra del Sol Solar Farm and from Alta Vega Road to the BNSF Railroad Right of Way (see attached Exhibit “A”) (“Franchise”).

Section 3. The term of the Franchise shall be for thirty-three (33) years from the Operative Date of this ordinance (“Term”).

Section 4. Grantee shall construct, install and maintain all elements of the transmission system and appurtenances in accordance and conformity with all of the ordinances and to the reasonable satisfaction of the Director, County of San Diego, Department of Public Works or his/her designee (“DPW”).

Section 5.

A. Commencing on the Effective Date and continuing for the remainder of the Term, Grantee shall pay to County an annual Franchise fee amounting to three (3) dollars per linear foot of underground transmission line system within Tierra del Sol Road (“Base Fee”) plus an annual Consumer Price Index (“CPI”) adjustment as detailed in Section 5.C. of this ordinance. In no event shall the annual Franchise fee be less than \$6,000.00. Grantee waives and releases all objections it may have to the payment of the Franchise fee on the grounds that the fee is not calculated as a percentage of gross receipts in the manner contemplated by Public Utilities Code section 6231.

B. Grantee shall file with DPW, within three (3) months after the expiration of the calendar year or fractional calendar year following the Effective Date of the Franchise and within three (3) months after the expiration of each calendar year thereafter, a verified statement showing in detail the location of the entire transmission line system within Tierra del Sol Road. The Grantee shall pay to the County, within fifteen (15) days after the time for filing the statement, in lawful money of the United States, the annual Franchise fee, without any setoff, deduction or demand from County. All payments shall be delivered to DPW.

C. From the Operative Date of the Franchise, and continuing for the remainder of the Term, annual CPI adjustments shall be calculated as follows: The Consumer Price Index - All Urban Consumers - San Diego (“Index”) as published by the United States Department of Labor’s Bureau of Labor Statistics (“Bureau”), will be the basis for annual Franchise fee adjustments. The month in which the Operative Date falls shall be used as the “Base Month Index” for the term of the Franchise. County shall review the Index annually and compare it with the Base Month Index. If there has been an increase in the Index, the annual Franchise fee for the succeeding year shall be increased by an amount equal to the Base Fee multiplied by the percentage of the increase over the Base Month Index. In no event shall the annual Franchise fee be adjusted downward to an amount less than the previous year’s annual Franchise fee. In no event shall the annual Franchise fee be less than \$6,000.00. Should the Bureau discontinue the publication of the Index, or publish the Index less frequently, such other government index or computation with which it is replaced or which is comparable in County’s judgment shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

D. Any neglect, omission or refusal by Grantee to file the verified statement, or to pay the annual Franchise fee at the time or in the manner provided, shall make the Grantee subject to penalties as detailed herein and/or constitute grounds for declaration of forfeiture of the Franchise and of all rights thereafter. Franchise fees paid more than ten (10) days after they are due shall be subject to a one-time late charge penalty of fifteen percent (15%) of the amount that is in arrears plus interest at the rate of one and one half (1½%) percent per month from the date the Franchise fee was due. Grantee agrees that this penalty is a fair estimate of the County’s cost to recover the Franchise fee and waives and releases any defense to payment of the fifteen (15%) percent on the grounds that it is punitive or excessive.

Section 6. All installations under the Franchise shall be performed in accordance with the provisions and conditions prescribed by law, all applicable ordinances and regulations of the County, and to the reasonable satisfaction of DPW. Upon completion of any trench, ditch, pit or other excavation, Grantee shall fill the hole and close it in such a manner that the surface of the road/right of way area will be supported in substantially the same manner as though no digging had occurred and to the reasonable satisfaction of the DPW. County may, but is not required to, perform repairs of any highway or any portion of any highway that Grantee excavated for the purpose of making installations under the Franchise. Workmanship and costs thereof shall be consistent with industry standards and rates applicable to a government agency. All costs and expenses incurred by County as a result thereof shall be invoiced to Grantee and Grantee shall pay County upon demand. No action taken by County pursuant to this Section shall constitute a waiver of any of Grantee's obligations hereunder.

If, at any time during the construction of the work or thereafter, the surface of the road or traveled way offers any indication of breaking up, sinking or being otherwise disturbed by reason of the construction of such trench, ditch, pit or other excavation, Grantee, upon being notified by County, shall immediately repair the damage. All construction work done in, along or under a County highway or the right of way of a highway shall require an encroachment permit and traffic control permit and shall be done pursuant to all applicable requirements contained in the San Diego County Code or as may reasonably be imposed by DPW.

The Grantee is liable to the County for all damage proximately resulting from the failure of Grantee to well and faithfully observe and perform any provision of the Franchise. Grantee and its successors shall pay the County of San Diego all costs of suit and reasonable attorneys' fees as the court may fix if the County is given judgment in a suit to enforce the Franchise, to recover damages for a breach of the conditions thereof or to forfeit the Franchise.

Section 7. The Grantee shall pay the County, on demand, the cost of all repairs to public property made necessary by any of the construction by or operations of Grantee under the Franchise.

Section 8. The acceptance of this Franchise by Grantee constitutes an express waiver by the Grantee of any liability of the County and its officers, employees, agents and permittees for damages to Grantee's facilities and shall constitute an agreement to indemnify, defend with counsel acceptable to County and hold harmless the County and its officers, employees, agents and permittees from all liability for damages proximately resulting from any construction or operation under the Franchise, and any action to challenge or resulting from the award of this Franchise, including without limitation any proceeding brought pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq.

Without limiting the generality of the foregoing, the defense and indemnity provided for damages proximately resulting from any construction or operation under the Franchise shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of County; any regulatory or enforcement actions brought by a government agency or third party, where authorized by law, to enforce any environmental laws,

regulations and permits; and any workers' compensation claim or suit arising from or connected with any work performed pursuant to this Franchise.

Section 9.

A. If the Grantee fails, neglects or refuses to comply with any of the provisions or conditions prescribed by this ordinance and does not, within ten (10) days after written demand for compliance begin the work of compliance, or after such beginning does not complete the work with due diligence, but in no event more than twelve (12) months from receipt of a written demand, the Board of Supervisors of the County may declare the Franchise forfeited. Provided, however, that following the submittal of a complete application, such time periods shall be tolled day for day for every day that Grantee does not have County authorization to perform the work.

B. The County may levy a monetary penalty on Grantee as an alternative to, or in addition to, forfeiting the Franchise for Grantee's failure to abide by the terms and conditions of this ordinance. The amount of penalty shall be assessed at the sole discretion of the County per the schedule as follows:

- a. Up to \$5,000 for the first offense;
- b. Up to \$10,000 for the second offense;
- c. Up to a maximum of \$25,000 for third and all subsequent offenses.

Grantee agrees that the monetary penalties are a fair estimate of the County's costs to enforce the Franchise and waives and releases any defense to payment on the grounds that they are punitive or excessive. Each month (i.e., 30 calendar days) that a violation occurs shall be considered a new violation for purposes of levying a monetary penalty.

Section 10.

A. If a Hazardous Condition arises, Grantee shall immediately undertake to investigate and remediate or remove such Hazardous Condition at its sole cost. Grantee shall also immediately determine the source of the Hazardous Condition and cause its repair and restoration at its sole cost. For purposes of this Franchise, "Hazardous Condition" shall mean any damage to trench, conduit, wires, or electric transmission equipment and appurtenances which has or could lead to a deterioration of line safety, create a safety hazard, or adversely impact the function of the right-of-way.

B. All actions to investigate, remove and remediate Hazardous Conditions and repair or restore Grantee's transmission line system, the right-of-way and appurtenances as provided in the preceding paragraph shall be the sole responsibility of Grantee and shall be conducted by Grantee or its employees, agents, contractors, subcontractors, or suppliers in conformance with any and all laws, ordinances, rules, regulations, requirements, and orders whatever, present or future, of the national, state, County, or other local government at Grantee's sole cost. If Grantee fails to take any action required by this Section, County may, but shall not be obligated to, take all actions it deems appropriate with respect to the Hazardous Condition, at Grantee's cost. Upon written demand by

County, Grantee shall reimburse County for all of County's expenses incurred in connection with County's actions including, but not limited to, all direct and indirect costs relating to investigation, remediation and removal of the Hazardous Condition.

C. Grantee shall deliver to County immediate notice of any of the following occurrences:

(i) any release of Hazardous Materials from the Grantee's lines and/or other Grantee facilities or the presence of Hazardous Materials in or adjacent to the Franchise area to the extent Grantee has notice thereof. "Hazardous Materials" shall include, without limitation, (a) substances or materials that are toxic, corrosive, flammable, infectious, explosive, or ignitable, (b) lead based paint, mold, asbestos, oil, petroleum and petroleum products, radioactive materials, hazardous wastes, toxic substances, or related injurious materials, and (c) substances defined by the terms, or terms similar to, "hazardous substances," "hazardous materials," "toxic substances," "hazardous waste," "toxic waste" or "oil and petroleum products" or similar terms in 15 U.S.C. section 2601, et seq. (the Toxic Substances Control Act), 33 U.S.C. section 1251, et seq. (the Clean Water Act), 33 U.S.C. section 2701, et seq. (the Oil Pollution Act), 42 U.S.C. section 6901, et seq. (the Resource Conservation and Recovery Act), 42 U.S.C. section 7401, et seq. (the Clean Air Act), 42 U.S.C. section 9601, et seq. (the Comprehensive Environmental Response, Compensation, and Liability Act), 49 U.S.C. section 1801, et seq. (the Hazardous Materials Transportation Act), or any other federal, state or local statute, ordinance or regulation related to environmental protection or human health; and

(ii) any notice, claim or allegation of any violation relating to Grantee's transmission line or other Grantee facilities within the Franchise area received from any federal, state or local governmental agency or authority or any non-governmental person or entity or the filing or commencement of any judicial or administrative proceeding by any such agency or authority or non-governmental person or entity that relates to or is a result of Grantee's activities in the Franchise area.

Section 11. Grantee shall reimburse the County for all publication expenses incurred by the County in connection with the granting of the Franchise. The reimbursement payment shall be made within thirty (30) days after the County furnishes the Grantee a written statement of expenses.

Section 12. The Franchise shall not become effective until it has been accepted in writing by the Grantee. Grantee may terminate the Franchise by providing thirty (30) days written notice to DPW and following the procedure provided in Section 13, below. Grantee shall pay the Franchise fee required by section 5 for any year or fractional year in which the Franchise was terminated.

Section 13.

A. At the expiration, revocation or termination of the Franchise, if it is not extended or replaced with a new Franchise, or of the permanent discontinuance of the use of all or a portion of its facilities, Grantee shall, within thirty (30) days thereafter, make written application to DPW for authority either:

1. To abandon all or a portion of such facilities in place; or
2. To remove all or a portion of such facilities.

Such application shall describe the facilities desired to be abandoned, their location with reference to County highways, and shall describe with reasonable accuracy the physical condition of such facilities. DPW shall determine whether any abandonment or removal which is thereby proposed may be effected without detriment to the public interest and under what conditions such proposed abandonment or removal may be effected. DPW shall then notify the Grantee of the determinations.

B. Within thirty (30) days after receipt of such notice, Grantee shall apply for a permit or written approval from DPW to abandon or remove the facility.

C. The Grantee shall, within sixty (60) days after obtaining such permit or approval, commence and diligently prosecute to completion the work authorized by the permit or approval.

D. If Grantee fails to timely take action as required by this Section, the County may remove or cause to be removed the Franchise facilities at Grantee's expense and Grantee shall promptly pay the County upon the County's demand the amount of such expense. The County may take possession of, and appropriate to itself without payment, any property of Grantee, or anyone claiming under Grantee, which remains on or under the public roads, highways or rights-of-way in the County of San Diego not then included within the limits of an incorporated city, after the expiration or termination of this Franchise.

E. If, at the expiration, revocation or termination of this Franchise, or of the permanent discontinuance of the use of all or a portion of its facilities, the Grantee, within thirty (30) days thereafter, fails or refuses to make written application for the above mentioned authority, DPW shall make the determination as to whether the facilities shall be abandoned in place or removed. DPW shall then notify the Grantee of this determination. The Grantee shall thereafter comply with the provisions of Section 13.D of this ordinance.

Section 14. No provision of this Franchise shall be so construed as to impose upon the County any duty or obligation to construct, repair or maintain any highway, including those areas in which Franchise property is located, to any particular standard.

Section 15.

A. The State and any municipal corporation, political subdivision or governmental agency or instrumentality of the State acting in a governmental capacity may improve or alter any public road or portion thereof in which Franchise properties have been installed and may install, and maintain in any such public road or remove any public improvement.

B. If notice in writing is given to the Grantee ninety (90) days in advance that work is to be done pursuant to any right reserved in Section 15.A of this ordinance, specifically the general nature of the work and the area in which the same is to be performed, then the Grantee shall do all things necessary to protect its Franchise property during the progress of such work. If ordered

by the County or by the governmental agency performing such work, the Grantee shall disconnect, remove or relocate its facility within the public road to such extent, in such manner, for such period as shall be necessary to permit the performance of such work in an economical manner, and in accordance with the generally recognized engineering and construction methods, to permit the maintenance, operation and use of such public improvement or of the highway as so improved. All of such things shall be done and such work be performed by the Grantee at the sole cost and expense of the Grantee.

C. The right is reserved in the County, through DPW to: (1) Vacate subject to a reservation of franchise rights pursuant to Streets & Highways Code section 8340(a), and change the grade, alignment, or width of any public road over which this Franchise is granted; (2) extend, place, lay or construct an installation of any kind or nature including the construction of any subway or viaduct, whether or not it is within the facilities granted by this Franchise, over, in upon or under any public road. In the event DPW desires to exercise any of the foregoing powers, ninety (90) days written notice shall be given by the County to Grantee of County's intention to do so and the Grantee at its own cost and expense, within said time shall begin, and within a reasonable time but in no event more than six (6) months shall complete, a change of location of all installations made by it in its operations under the Franchise so as to permit and conform to such change or installation desired to be made by the County.

Section 16. [Reserved]

Section 17. Grantee shall commence in good faith the installation of the transmission system within thirty-six (36) months of the Effective Date, and if not so commenced within said time, this Franchise may be declared forfeited unless the Project's Major Use Permit No. PDS 2012-3300-12-010 is determined to be vested by the County, or a time extension pursuant to sections 7374 and 7376 of the Zoning Ordinance of the County of San Diego is granted. The work of installation shall be prosecuted diligently and in good faith so as to reasonably satisfy the purpose for which this Franchise is granted. An encroachment and traffic control permit will be required before installation work may be performed in the County's right of way.

Section 18. Grantee shall obtain and file with the County a Faithful Performance Bond or make a deposit in lieu of bond pursuant to Code of Civil Procedure section 995.710, prior to obtaining an encroachment permit for the installation of the transmission system. The bond or deposit shall be in a form acceptable to County, run to the County as obligee, be in a penal sum of \$25,000, and be conditioned upon the Grantee well and truly observing, fulfilling and performing each term and condition of the Franchise, and provide that, in case of any breach or condition or term of the bond, the amount of the penal sum therein shall be paid to County as liquidated damages. If said bond is not so filed, the award of this Franchise will be set aside and any money paid therefore will be forfeited. The Bond shall remain in place through the life of this Franchise and be kept on file with the Board throughout the term of the Franchise. Any substitution of one bond with another bond shall be preceded by sixty (60) days prior written notice to the County.

Section 19. The Grantee shall maintain, at its cost and expense, at all times during the term of the Franchise, a commercial general liability policy of insurance, including broad form

property damage coverage, owner's and contractor's protective insurance (during construction), fire legal liability coverage and contractual liability coverage for obligations under the Franchise, naming County, its officers, agents, employees and volunteers as additional insureds, acknowledging that the Franchise shall be used for an electric transmission system. Such insurance policy or policies shall be maintained in the amount equal to the policy limits, but shall be no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate. However, the amounts of insurance required hereunder shall be subject to adjustment specified by the County on or about each fifth (5th) anniversary of the Effective Date. Such insurance shall not contain a deductible or be subject to a self-insured retention greater than \$100,000. The requirement of such policy coverages shall in no way serve as a limitation on Grantee's liability under the other provisions of the Franchise. Such insurance shall be written on an "occurrence" form, if available. If the insurance in part or in whole is written on a "claims made" form, Grantee will ensure the continuance of such coverage for a period of five (5) years beyond the expiration of the Franchise either by maintaining ongoing "claims made" coverage having a retroactive date equal to the inception date of the first "claims made" policy provided or by purchasing "tail" coverage for a five (5) year period beyond the expiration date of the Franchise.

The insurance which Grantee is required to provide shall be primary insurance and the insurer shall be liable for the full amount of the loss up to and including the total limit of liability required hereunder without the right of contribution from any other insurance coverage that may be held by the County or by any self-insured retention of the County.

All insurance required by the Franchise to be provided by Grantee shall be procured from responsible insurance companies having a minimum Best's rating of A-VII and which are admitted to do business in California or which is a California licensed excess/surplus lines insurer. A certificate and a copy of the completed endorsement evidencing such insurance policies shall be delivered to the County simultaneously with the execution and delivery of the acceptance of the Franchise, and evidence of renewals thereof shall be delivered by Grantee to County at least thirty (30) days prior to the respective expiration dates of such policies. County shall be provided at least thirty (30) days written notice of any termination, cancellation, amendments or changes to the terms of such insurance policies.

If Grantee fails or refuses to procure or to maintain insurance coverages as required by this Franchise, or fails or refuses to furnish County required proof that such insurance has been procured, is in force and paid for, County, at its election, may procure and maintain such insurance, in which event all premiums paid by County shall be charged to and immediately due and payable by Grantee, with a one-time fifteen (15%) percent service charge plus interest at the rate of one and one half (1½%) percent per month from the date the premium was paid. Grantee agrees that the service charge and interest are a fair estimate of the County's cost to procure insurance and waives and releases any objection to payment on the grounds that the amounts are punitive or excessive.

Section 20. [Reserved]

Section 21. Any provision, clause or section of this ordinance, or the application thereof, which is, or becomes inconsistent or in conflict with any of the laws of the United States of



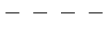
American or State of California shall be deemed to be preempted and superseded by such law.

Section 22. Any provision, clause or section of this ordinance, or the application thereof, which is preempted or superseded shall not preempt, supersede or in any other way invalidate the other provisions, clauses or sections of this ordinance which can be given a reasonable effect without the preempted or superseded provision, clause, or section, and to this end, the provisions, clauses, and sections of this ordinance are hereby declared to be severable.

EXHIBIT A: County Franchise Rights for Tierra Del Sol Solar Farm



Legend

-  Franchise Area
-  Parcels
-  Proposed Route

