

ORDINANCE NO. 922

AN ORDINANCE OF THE COUNTY OF RIVERSIDE GRANTING TO DESERT HARVEST, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND ITS LAWFUL SUCCESSORS AND ASSIGNS, IN WHOLE OR IN PART, A FRANCHISE TO CONSTRUCT AND USE AN ELECTRICAL TRANSMISSION LINE UNDER, ALONG, ACROSS, OR UPON THE KAISER ROAD RIGHTS-OF-WAY IN EASTERN RIVERSIDE COUNTY

The Board of Supervisors of the County of Riverside ordains as follows:

Section 1. DEFINITIONS. As used in this ordinance, the following words and phrases shall have the following meanings:

- a. Base Payment. An amount equal to one hundred fifty dollars (\$150) multiplied by the entire Net Acreage for the Project and which is payable to County annually pursuant to section 4 of this ordinance and increased annually by two percent (2%) from and after 2013 (currently \$153 per acre in 2014).
- b. Construct and Use. To lay, construct, excavate, erect, install, operate, maintain, use, repair, replace, relocate, and/or remove.
- c. County. The County of Riverside of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.
- d. County Parties. County, County Special Districts, their respective directors, officers, Board of Supervisors, elected officials, agents and employees.
- e. Electrical Transmission Line. Poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, cross-arms, braces transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances, and any other property located or to be located under, along, across, or upon the Franchise Area for the purpose described in subsection f. of section 1.
- f. Franchise. The authorization granted hereunder to Construct and Use the Electrical Transmission Line to connect Grantee's solar power electrical generation facilities to Southern California Edison's Red Bluff Substation, under, along, across, or upon the Kaiser Road rights-of-way.
- g. Franchise Area. The precise location of the Electrical Transmission Line to be Constructed and Used under, along, across, or upon the Kaiser Road rights-of-way, as more fully described and depicted on Exhibits A and B, attached hereto and incorporated herein by this reference. To the extent that the Franchise Area includes any real property owned in fee by County, this Franchise shall also remain valid and effective with respect to such real property, regardless of whether or not the Kaiser Road rights-of-way may or may not have merged into the underlying fee interest.

- h. Government Agency. State, County, City or other political subdivision or governmental agency or instrumentality of the State of California, when acting in a governmental capacity.
- i. Grantee. Desert Harvest, LLC, a Delaware Limited Liability Company, and its lawful successors and assigns, in whole or in part, which jointly hold, and may use this Franchise and which are jointly and severally responsible for all provisions, rights, obligations and duties of this ordinance.
- j. Local Sales and Use Taxes. The one percent sales and use taxes imposed pursuant to and governed by the Bradley-Burns Uniform Local Sales and Use Tax Law, Revenue and Taxation Code Section 7200 et seq.
- k. Net Acreage. All areas involved in the production of power including, but not limited to, the power block, solar collection equipment, areas contiguous to solar collection equipment, transformers, transmission lines and/or piping, transmission facilities (on and off-site), service roads regardless of surface type – including service roads between panels or collectors, structures, and fencing surrounding all such areas. Net acreage shall not include off-site access roads or areas specifically set aside either as environmentally sensitive or designated as open space, and shall not include the fencing of such set aside areas. The approximate Net Acreage for the Project is 1,208 acres. In the event the Net Acreage of the Project is modified by any subsequent development approval of the County, court order, or by election of the Grantee, the Planning Director, in consultation with the County Executive Officer and County Counsel, shall recalculate the Net Acreage and such recalculated Net Acreage shall be documented in writing and used for all purposes under this Franchise as though it were a part hereof. An amendment to this Franchise shall be required for such recalculation and its implementation under this Franchise if such recalculation decreases the Net Acreage by twenty percent (20%) or more.
- l. Project. The Desert Harvest Solar Project described in the “Desert Harvest Solar Project Final Environmental Impact Statement and California Desert Conservation Plan Amendment,” and approved by the Bureau of Land Management in its Record of Decision dated March 13, 2013, including the Electrical Transmission Line and all solar power electrical generation facilities.

Section 2. AUTHORITY AND GRANT. Pursuant to and in accordance with the provisions of the California Constitution Article 11, Section 7, and Government Code Section 26001, the County hereby grants to Grantee, the Franchise described in this ordinance and all provisions, rights, obligations and duties hereof shall extend and inure to and be binding on Grantee. The Franchise granted herein is solely for the specified uses set forth in this ordinance.

Section 3. TERM. This Franchise shall be for a definite term of thirty (30) years from the effective date of this ordinance and shall endure in full force and effect during such term unless this Franchise shall be voluntarily surrendered or abandoned by Grantee; or unless the State or some municipal or public corporation shall purchase by voluntary agreement, or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this Franchise and situated within the territorial limits of the State, municipal, or public corporation purchasing or condemning such property; or unless this Franchise shall be forfeited for noncompliance with its terms by Grantee.

Section 4. CONSIDERATION AND PAYMENTS.

- a. If development of the Project occurs in a single phase, within five (5) business days of the commencement of construction of the entire Project, Grantee shall provide written notice to County of such commencement of construction and Grantee shall pay to the County an amount equal to the Base Payment calculated on the Net Acreage of the entire Project; provided however, that such initial payment shall be prorated based on the number of whole months remaining between the date of the payment and the first following September 30th.
- b. As stated in the Desert Harvest Solar Project Final Environmental Impact Statement and California Desert Conservation Plan Amendment, development of the Project may occur in three phases. The phasing could include an initial phase involving pre-construction surveys, exclusion fencing around a 10-acre area in the northwest corner of the Project site, desert tortoise exclusion (if tortoise are present), clearing and construction of a laydown yard, parking area, and pad mounts for transformers. A second phase could include site fencing, installation of temporary power, site grading and preparation over a 1,043-acre area, construction of an operations and maintenance building and on-site roads, construction of the on-site wells, construction of the project substation and switch-yard, and assembly and installation of panel blocks and wiring for 137 megawatts of solar power. A third phase could include site grading and preparation over a 155-acre area, assembly and installation of panel blocks and wiring for 13 megawatts of solar power. The Electrical Transmission Line is planned for construction during the second phase. If the development of the Project occurs in phases, prior to the commencement of construction of the Project, Grantee shall provide written notice to County of Grantee's decision to develop the Project in phases and, prior to the commencement of construction for each phase, Grantee shall provide written notice of such commencement of construction of the phase and shall pay to County an amount equal to that portion of the Base Payment calculated on the basis of the Net Acreage for the phase in question; provided, however, that each initial payment for each phase shall be prorated based on the number of whole months remaining

between the date of the payment and the first following September 30th.

- c. Grantee shall make subsequent annual payments in an amount equal to the Base Payment for the entire Project, or, if the construction of the Project is to be phased, that portion of the Base Payment attributable to each initiated phase of the Project, on or by September 30 of each year during the term of the Franchise.
- d. Grantee shall pay any application fees, administrative fees, processing fees, late charges, accrued interest, and penalties required in connection with this Franchise. These fees may be charged at the rates applicable at the time of payment.
- e. Grantee shall pay all encroachment permit fees, inspection fees, and unit inspection fees related thereto in connection with the processing of applications for any necessary encroachment permits to Construct and Use the Electrical Transmission Line in the Franchise Area as such fees are specified in Appendix A of Ordinance No. 499. These fees may be charged at the rates applicable at the time of payment as set forth in Appendix A of Ordinance No. 499.
- f. Grantee shall pay to County a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this Franchise; such payment to be made within thirty (30) days after County furnishes Grantee with a written statement of such expenses.
- g. County has advised Grantee that Kaiser Road was not engineered to handle heavy construction truck traffic. Unless Grantee has otherwise made the repairs itself, Grantee shall pay to County the cost of all repairs to County public property (or to other public property not belonging to the County but which the County is obligated to repair) made necessary by any damage demonstrably caused by Grantee while performing any activities authorized under this Franchise. The extent of any repairs subject to this provision shall be measured from baseline conditions as of the date Grantee starts activities authorized under this Franchise and shall be calculated by phase if the Project is phased. In no event shall Grantee be obligated to perform or pay for repairs attributable to deferred maintenance of the County or to damage to public property caused by the activities of others, including incidental activities, such as third-party construction traffic. The cost of repairs attributable to Grantee shall be determined as follows:
 1. Current Conditions Estimate. Prior to the start of activities authorized under this Franchise, Grantee shall hire an engineering firm to prepare a written determination of the then current status of County public property (or other public property not belonging to the County but which the County is obligated to repair) within the boundaries of the Franchise Area (“Grantee

Engineering Report”) and shall submit the Grantee Engineering Report to the County. Not later than forty-five (45) days after submittal of the Grantee Engineering Report to the County, County shall either (i) accept the Grantee Engineering Report as an accurate representation of baseline conditions as of the date Grantee starts activities authorized under this Franchise; or (ii) notify Grantee in writing of County’s decision to hire a different engineering firm to prepare, within ninety (90) days of the County’s receipt of the Grantee Engineering Report, a separate written determination of the then current status of County public property (or other public property not belonging to the County but which the County is obligated to repair) within the boundaries of the Franchise area (“County Engineering Report”). County shall be deemed to have accepted the determination of the Grantee Engineering Report if County does not notify Grantee within forty-five (45) days of County’s receipt of the Grantee Engineering Report that County has decided to request the County Engineering Report. If County elects to request a County Engineering Report, and the current conditions estimate of the Grantee Engineering Report and County Engineering Report differ by ten percent (10%) or less (e.g., by reference to the Pavement Conditions Index), then the average of the two determinations shall be deemed the baseline conditions as of the date Grantee starts activities authorized under this Franchise. If such not be the case, then Grantee shall accept the lower of the two estimates or, at the election of Grantee, the engineering firm that prepared the Grantee Engineering Report and the engineering firm that prepared the County Engineering Report shall mutually select a third qualified and impartial engineering firm (“Third Engineering Firm”) to issue a determination of baseline conditions as of the date Grantee starts activities authorized under this Franchise (“Third Engineering Report”). The determination of the Third Engineering Report shall be conclusive and binding on the Parties.

2. Grantee shall designate an engineering firm, subject to the approval of the County and the approval of which shall not be unreasonably withheld, to monitor activities conducted by Grantee under this Franchise for purposes of assessing Grantee’s proportional contribution to any damage to County public property (or other public property not belonging to the County but which the County is obligated to repair) made necessary by damages demonstrably caused by Grantee. County shall make reasonable efforts to assist Grantee in

obtaining monitoring information regarding other activities that could reasonably be considered to cause damage to County public property within the Franchise Area.

3. Repair Estimate. Upon completion of construction activities performed under this Franchise, the same process of subsection g.1., above, shall be applied to determine, instead of then current conditions, the extent and cost of repairs to County public property (or to other public property not belonging to the County but which the County is obligated to repair) made necessary by any damage demonstrably caused by Grantee, including possible reconstruction. Grantee shall pay such costs within thirty (30) days after County furnishes Grantee with an invoice to the sum of the determination of attributable cost developed pursuant to the procedure required by this paragraph. If Grantee fails to make such payment, County may immediately draw upon a single \$2,500,000 irrevocable standby Letter of Credit in favor of the County that is required for all encroachment permits for the Project, which has been agreed upon by Grantee and County. Such draw upon the Letter of Credit shall be in that amount necessary to cover the cost to the County of undertaking the repairs to County public property (or to other public property not belonging to the County but which the County is obligated to repair) made necessary by any damage demonstrably caused by Grantee. Any draws upon the Letter of Credit shall not limit the County's right and ability to make further draws upon the Letter of Credit up to the aggregate limit of \$2,500,000.

4. If Grantee undertakes the repair work itself, the County will inspect the work and notify Grantee as to whether it has accepted the repairs within forty-five (45) days of Grantee's written notice.

5. Grantee shall be responsible for all reasonable costs incurred for the services of any engineering firms regarding determinations under subsections g.1, g.2 and g.3 above, except that Grantee shall not be responsible for any cost of a County Engineering Report or Third Engineering Report to the extent it exceeds the cost of a Grantee Engineering Report by more than fifteen percent (15%).

- h. Local Sales and Use Tax. Grantee and County acknowledge and agree that solar power plant owners have a responsibility to assure that sales and use taxes are reported and remitted to the California State Board of Equalization ("BOE") as provided by law. To ensure allocation directly to County, to the maximum extent possible under the law, of the sales and use

taxes payable in connection with the construction of the Project, Grantee shall do the following consistent with the law:

1. If Grantee meets the criteria set forth in applicable BOE regulations and policies, Grantee shall obtain a BOE permit for the Project jobsite and report and remit all such taxable sales or uses pertaining to construction of the Project using the permit or sub-permit for that jobsite to the maximum extent possible under the law.
2. Grantee shall contractually require that all contractors and subcontractors whose contract with respect to the Project exceeds \$100,000.00 who meet the criteria set forth in applicable BOE regulations and policies (“Major Subcontractors”) must obtain a BOE permit or sub-permit for the solar power plant jobsite, if required by the applicable BOE regulations and policies, and report and remit all such taxable sales or uses pertaining to construction of the Project using the permit or sub-permit for that jobsite to the maximum extent possible under the law.
3. Grantee shall notify County of the contract on-line date of the Project, such date being the date of final completion under the engineering, procurement, and construction agreement for the Project.
4. Prior to commencement of construction for any phase of the Project, Grantee shall deliver to County a list that includes, as applicable and without limitation, each Major Subcontractor’s business name, value of contract, scope of work on the Project, procurement list for the Project, BOE account numbers and permits or sub-permits specific to the Project jobsite, contact information for the individuals most knowledgeable about the Project and the sales and use taxes for such Project, and, in addition, shall attach copies of each permit or sub-permit issued by the BOE specific to the Project jobsite. Said list shall include all the above information for the Project owner, its contractors, and all Major Subcontractors. Grantee shall provide updates to the County of the information required under this section within thirty (30) days of any changes to the same, including the addition of any Major Subcontractor.
5. Grantee shall certify in writing that it understands the procedures for reporting and remitting sales and use taxes in the State of California and will follow all applicable state statutes and regulations with respect to such reporting and remitting.
6. Grantee shall contractually require that each Major Subcontractor certify in writing that they understand the procedures for reporting and remitting sales and use taxes in the State of California and will follow all

applicable state statutes and regulations with respect to such reporting and remitting.

7. Grantee shall deliver to County or its designee (as provided in subsection h.8 below) copies of all sales and use tax returns pertaining to the Project filed by Grantee and Major Subcontractors. Such returns shall be delivered to County or its designee within thirty (30) days of filing with the BOE. Such tax returns may be redacted to protect, among other things, proprietary information and may be supplemented by additional evidence that payments made complied with this policy.
8. County may, at its sole discretion, select and retain the services of a private sales tax consultant with expertise in California sales and use taxes to assist in implementing and enforcing compliance with the provisions of this Franchise and that Grantee shall be responsible for all reasonable costs incurred for the services of any such private sales tax consultant and shall reimburse County within thirty (30) days of written notice of the amount of such costs.
 - i. In the event Grantee fails to make any of the payments provided for herein, then, following notice of such failure from County and subsequent failure by Grantee to cure within the applicable cure period, Grantee shall pay a late charge of ten percent (10%) of the amount due, said ten percent (10%) being due thirty (30) days after the expiration of the applicable cure period specified in section 13. The ten percent (10%) has been set by both parties hereto in recognition of the difficulty in affixing actual damages from a breach of said time of performance requirement.
 - j. In the event full payment of any rate, payment, or fee, including the ten percent (10%) late charge, is not received within sixty (60) days after the due date, an assessment of interest shall accrue on the unpaid balance at one percent (1%) per month beginning on the sixty first (61st) day after the due date, provided that County has notified Grantee in accordance with section 13 and Grantee has failed to pay within the required period.
 - k. Should the Board of Supervisors adopt any new policy after the effective date of this ordinance requiring the negotiation of revenue generating agreements for solar power plants or requiring solar power plant developers to pay a specified fee in connection with County's conveyance of a real property interest or the issuance of a permit for a solar power plant to ensure that County does not disproportionately bear the burden of solar energy production, the Grantee may elect to exempt the Project from such policy, it being acknowledged and agreed that Grantee is paying consideration to County as specifically provided pursuant to the express terms of this ordinance.

Grantee's other projects, however, would not be eligible to claim an exemption based on the foregoing exemption provided to Grantee pursuant to this ordinance.

Section 5.

CONSTRUCTION, USE AND MAINTENANCE

- a. Grantee shall Construct and Use the Electrical Transmission Line in accordance and in conformity with all of the ordinances and rules adopted by the Board of Supervisors in the exercise of its police powers and not in conflict with the paramount authority of the State, and, as to state highways, subject to the laws relating to the location and maintenance of electrical transmission lines therein.
- b. Grantee shall Construct and Use the Electrical Transmission Line in the Franchise Area described in Exhibits A and B and at the locations described in the exhibits attached to the encroachment permit(s) to be issued by County Transportation Director pursuant to this Franchise and Ordinance No. 499. The exact locations of the Electrical Transmission Line within the Franchise Area shall be determined by the County during the encroachment permitting stage. The Electrical Transmission Line shall be located so that its construction and use do not interfere with the use of the Franchise Area by the traveling public or with the use of County property or County public works for their primary purposes, except for temporary interference caused by Electrical Transmission Line construction activities consistent with those described in the Desert Harvest Solar Project Final Environmental Impact Statement and California Desert Conservation Plan Amendment.
- c. Grantee shall undertake its work in such manner as to leave the Franchise Area or other public property in as good condition as it was prior to said work.
- d. Grantee shall modify the Electrical Transmission Line, and the procedures associated with its maintenance and testing, to comply with all future statutes, laws, ordinances and rules, regulations, policies or standards adopted pursuant thereto that are generally applicable to pre-existing improvements, provided, however, that County, in its proprietary capacity, shall not undertake actions that would serve to deprive Grantee of any material benefit of this Franchise.
- e. Prior to commencing construction of Project, Grantee shall create and maintain an emergency response plan, and shall at all times maintain the necessary trained personnel and equipment to respond timely to any damage or destruction (e.g., fire) associated with the Electrical Transmission Line.
- f. Grantee shall in good faith commence construction under this Franchise within not more than three (3) years from the granting of this Franchise, and, if not so commenced within said time, this Franchise shall be declared forfeited, provided that Grantee's obligation to commence construction shall be

extended, day for day, for each day that any stay or injunction imposed by a court of competent jurisdiction, delays the issuance of all final permits for, or construction of the Project and/or the Electrical Transmission Line. The completion of the work shall be prosecuted diligently and in good faith by Grantee.

- g. Grantee shall, upon demand by County, and at the expense of Grantee, precisely identify the location, by land survey measurements or other accurate means, of the Electrical Transmission Line under this Franchise, for the purpose of the design or construction of public works projects on County rights-of-way.
- h. Grantee shall relocate without expense to County any portion of the Electrical Transmission Line installed, used, and maintained under this Franchise if and when made necessary by any lawful change of grade, alignment, or width of any public street, way, alley, or place by County.
- i. Before any excavation or other work requiring excavation in the Franchise Area, Grantee shall notify County Transportation Director, no less than thirty (30) days prior to commencement of such excavation or work. Provided that, in cases of emergency requiring immediate action, Grantee may make excavations and perform work in the Franchise Area to repair and restore the Electrical Transmission Line without giving prior notice to County Transportation Director of such excavation and work, but notice thereof shall be given to said Director promptly after the commencement of such excavation and work. In all cases, Grantee at its own cost and expense shall without unnecessary delay replace and restore the excavated portion of the Franchise Area to as good condition as it was prior to such excavation and work.
- j. In the event the County takes action which compels the Project to stop all power production for a period longer than ninety (90) consecutive days for any reason other than a default under this ordinance or a violation of the conditions of approval of any existing permit issued by the County for the Project, the next payment due under section 4.a. of this ordinance shall be reduced in proportion to the amount of time the Project was compelled by County to remain inoperative.

Section 6. REMOVAL. Upon surrender, abandonment, termination, or forfeiture of this Franchise, Grantee shall, upon written request of County and at its own expense, remove its Electrical Transmission Line and all ancillary equipment from County roadways and rights of way, properly and lawfully dispose of all such materials and ancillary equipment, and restore the Franchise Area to its original condition.

Section 7. INDEMNIFICATION.

- a. Grantee shall defend, indemnify and hold harmless County Parties from any liability whatsoever, based or asserted upon any act or omission, including but not limited to negligent acts or omissions, of Grantee, its officers, agents, employees,

subcontractors and independent contractors, for property damage, bodily injury, or death or any other element of damage of any kind or nature, relating to or, in any way connected with or arising from any operations under this Franchise, specifically excluding therefrom the gross negligence or willful misconduct of the County Parties. The obligation to defend, indemnify and hold harmless expressed herein shall include, without limitation, attorney fees, expert fees and investigation expenses and shall survive until any and all claims, actions and causes of action with respect to any and all such alleged acts or omissions are fully and finally barred by the applicable statute of limitations, unless such statute of limitations is overturned by any court of jurisdiction whereupon the indemnification shall continue until all issues are fully resolved.

- b. Grantee shall also defend, indemnify and hold harmless County Parties from any action or claim brought by any third party to attack, set aside, void or annul County's approval of this Franchise, this ordinance or any subsequently issued encroachment permit. The obligation to defend, indemnify and hold harmless expressed herein shall include, without limitation, attorney fees, expert fees and investigation expenses and shall survive until any and all claims, actions and causes of action with respect to any and all alleged acts or omissions are fully and finally barred by any applicable statute of limitations, unless such statute of limitations is overturned by any court of jurisdiction whereupon the indemnification shall continue until all issues are fully resolved.

Section 8. INSURANCE. Without limiting or diminishing Grantee's obligation to indemnify or hold County harmless, Grantee shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this ordinance which either meet the limits of liability set forth below or are covered when combined with excess umbrella policies.

- a. Workers' Compensation:
Grantee shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employer's Liability (Coverage B) including Occupational Disease with limits not less than one million (\$1,000,000) per person per accident. Policy shall be endorsed to waive subrogation in favor of County.
- b. Commercial General Liability:
Grantee shall maintain Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, completed operations, personal and advertising injury covering claims which may arise from or out of Grantee's performance of its obligations hereunder. Policy shall include County Parties as an additional insured with respect to Grantee's performance hereunder. Policy's limit of liability shall not be less than five million dollars (\$5,000,000) in

the aggregate and not less than three million dollars (\$3,000,000) per occurrence.

c. Vehicle Liability:

Grantee shall maintain liability insurance for all owned, non-owned or hired vehicles in an amount not less than one million (\$1,000,000) per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Franchise or be no less than two (2) times the occurrence limit. Policy shall name County Parties as an additional insured.

d. General Insurance Provisions - All lines:

1. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VII (A: 7) unless such requirements are waived, in writing, by the County Risk Manager. If County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2. Grantee's insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed five hundred thousand dollars (\$500,000) per occurrence such deductibles and/or retentions shall have the prior written consent of County Risk Manager before commencement of construction under this Franchise. Upon notification of deductibles or self-insured retentions which are deemed unacceptable to County, at the election of County's Risk Manager, Grantee's carriers shall either: (i) reduce or eliminate such deductibles or self-insured retentions as respects this Franchise with County, or (ii) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.

3. Prior to commencement of construction of the Project or each phase of the Project and annually thereafter, at the anniversary of the Grantee's insurance renewals, Grantee shall cause its insurance carrier(s) to furnish County with: (i) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; or, (ii) if requested to do so orally or in writing by County Risk Manager, allow County Risk Manager to review a certified copy of the original policy and all endorsements thereto at the offices of the Risk Manager or provide original Certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, to the

extent available from the insurance company, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) providing that no less than thirty (30) days written notice be given to County prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, County may forfeit this Franchise as provided below if Grantee does not have such insurance reinstated or replaced within the cure period specified in section 13. Evidence of any such reinstatement or replacement shall include a properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages and the insurance herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance. Grantee shall not commence construction under this Franchise until County has been furnished original certificate(s) of insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this section.

4. It is understood and agreed by the parties hereto and Grantee's insurance company(s) that the certificate(s) of insurance and policies shall so covenant and shall be construed as primary insurance, and County's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory as respects all claims that arise from this Franchise.
 5. Grantee shall pass down the insurance obligations contained herein to all tiers of contractors and subcontractors working under this Franchise.
- e. Not more frequently than once every five (5) years, County reserves the right to adjust the types of insurance required under this ordinance and the monetary limits of liability for the insurance coverage required herein, if, in County Risk Manager's reasonable judgment based on commercially reasonable amounts of insurance coverage required to be carried for similar operations, the amounts or types of insurance coverage specified herein have become materially inadequate due to passage of time or changed circumstances.

Section 9. ANNEXATION. Whenever any portion of the territory covered by this Franchise shall be annexed to, or otherwise become a part of any municipal corporation, or of any other county, the rights reserved under this ordinance to County, or County Parties, shall inure to the benefit of such municipal corporation or county, and its appropriate officers and employees.

Section 10. TRANSFERS AND ASSIGNMENTS. Grantee shall have the right to transfer this Franchise, in whole or in part, or assign all or part of its rights and interests hereunder, including, without limitation, granting a security interest to any lender or any other investor. In such event, Grantee shall provide County, within thirty (30) days of any sale, transfer, assignment or lease of this Franchise or any part hereof, with written evidence of the transaction certified by Grantee or its duly authorized officers. Grantee shall also provide written evidence, in a form reasonably acceptable to County, establishing to County's satisfaction that any transferee or assignee (other than a lender that has not foreclosed on its security interest) is in financially sound condition and able to comply with the obligations of Grantee under this Franchise; County shall have the right to request additional information to confirm the foregoing. Establishing County's satisfaction shall not require unreasonable measures or criteria. Any such transferee or assignee shall remain subject to all the terms and conditions in this ordinance including the obligation to maintain insurance coverage in the amounts specified in this ordinance.

Section 11. GOVERNMENT AGENCY WORK.

- a. A Government Agency may improve any highway or portion thereof in which Grantee's Electrical Transmission Line has been constructed or installed, and may construct, install, repair and maintain any such highway, and may remove from any such highway any public improvement.
- b. Provided a Government Agency gives written notice to Grantee thirty (30) days in advance of the date work is to be done pursuant to any right reserved in subdivision a of this section, specifying the general nature of the work and area in which the work is to be performed, Grantee shall, upon request of the Government Agency, disconnect and relocate the Electrical Transmission Line in the Franchise Area to such extent and in such manner as shall be necessary to permit the performance of such work, and to permit the maintenance, operation and use of such public improvement or of the highway as so improved. The Government Agency shall, to the extent possible, minimize interference with Grantee's property and operations pursuant to this Franchise. All of such things to be done and work to be performed by Grantee shall be at the sole cost and expense of Grantee.
- c. Grantee shall, upon written notice from a Government Agency to relocate a portion of the Electrical Transmission Line that is in conflict with a public works project on the public right of way, cause the conflicting portion of said Electrical Transmission Line to be relocated in a diligent manner as to avoid any unreasonable delays or costs to the public works project. Any direct costs incurred by the Government Agency, resulting from a delay to a public works project directly caused by the failure of Grantee to relocate the conflicting portion of Grantee's Electrical Transmission Line in a diligent manner as to avoid any unreasonable delay, shall be the responsibility of Grantee, which shall reimburse said costs to the Government Agency upon demand.

- d. No provision of this Franchise shall be so construed as to impose upon a Government Agency any duty or obligation to construct, repair or maintain any highway included in the area in which Grantee's Electrical Transmission Line is located in any particular manner or to any particular standard.
- e. In the event that a Government Agency, shall hereafter construct, install, reconstruct or repair any bridge or artificial support in or underlying any highway in which Grantee's Electrical Transmission Line is located or which is prescribed as the location for any of Grantee's Electrical Transmission Line, and in the event that the cost thereof be increased in order to provide for the installation, maintenance or operation of Grantee's Electrical Transmission Line in or on the highway area covered or underlain by said bridge or other artificial support, then Grantee shall pay to such Government Agency doing such work the full amount of such increase of cost upon completion of such construction, installation or repair.

Section 12. ENCROACHMENT PERMIT. No encroachment permit shall be issued for work to be undertaken in the Franchise Area, until Grantee has filed its written acceptance of the terms and conditions of this Franchise as specified in section 21. Following Grantee's acceptance of this Franchise, and provided that Grantee and its contractors have complied with all applicable permit issuance requirements established by County under Ordinance No. 499, Grantee shall be entitled to, and County shall issue, any requested encroachment permits consistent with this Franchise within sixty (60) days of application.

Section 13. FORFEITURE.

- a. Any neglect, failure or refusal of Grantee to comply with any provision of this Franchise, following notice and opportunity to cure as provided below, shall constitute cause for possible forfeiture of this Franchise at the discretion of the Board of Supervisors. Following such an uncured default, the Board of Supervisors may hold a hearing, at which Grantee and any lender shall have the right to appear and be heard. Following such hearing, the Board of Supervisors may determine whether the provision at issue is material and essential to this Franchise, whether Grantee is in default with respect thereto and may declare this Franchise forfeited. Notice of the hearing shall be given to Grantee, and any lender previously identified to County, in accordance with the notice provisions of this ordinance not less than thirty (30) days before said hearing. If this Franchise is forfeited pursuant to the foregoing, County may exclude Grantee from any further use of the Franchise Area under this Franchise; and Grantee shall thereupon surrender all rights in and to the same, and this Franchise shall be deemed and shall remain null, void and of no effect. From time to time, upon request of Grantee or any lender, County shall confirm in writing to Grantee and any lender whether Grantee is in compliance with the terms and conditions of this ordinance.

- b. County may sue in its own name for the forfeiture of this Franchise, in the event of noncompliance with any of the provisions or conditions hereof by Grantee.
- c. Grantee shall be liable to County for all damages proximately resulting from the failure of Grantee to observe and perform any provision of this Franchise.
- d. Grantee shall have ten (10) business days (and any lender shall have thirty (30) days) after written notice from County of a monetary default, or failure to carry required insurance, to cure said default to the satisfaction of the County. Grantee shall have thirty (30) days (and any lender shall have sixty (60) days) after written notice from County of any non-monetary default to cure said default to the satisfaction of the County or, if such default is not capable of cure within such time period, Grantee shall commence to cure such default within such time period and shall complete the cure of such default within a reasonable time thereafter.

Section 14. SECURITY/FAITHFUL PERFORMANCE BOND

- a. Within one (1) year following the effective date of this ordinance or prior to construction of the Electrical Transmission Line within the Franchise Area, whichever comes first, Grantee shall provide to County a faithful performance bond in the sum of not less than seven hundred twenty thousand dollars (\$720,000) payable to County and executed by a corporate surety acceptable to County and licensed to transact business as a surety in the State of California. Such bond shall be payable to the extent that Grantee shall fail to faithfully perform any of its obligations under this Franchise (specifically excluding, however, any and all consideration and payment obligations pursuant to section 4 of this ordinance, other than the repair obligations under subsection g. of section 4, which repair obligations shall be included in the obligations secured by the faithful performance bond and specifically excluding any construction obligations secured by the letter of credit required for any encroachment permit). In the event that Grantee fails to so perform, County may elect to make a claim under the bond equal to that amount necessary to undertake and complete such failed performance.
- b. Throughout the term of this Franchise, Grantee shall maintain the faithful performance bond in the amount specified herein. Within thirty (30) days after written notice from County that any amount has been paid on the bond as provided in this section, Grantee shall restore the bond to the full amount specified herein, reduced by the amount of those obligations that County, in its reasonable discretion, determines have been fully satisfied.
- c. The faithful performance bond shall continue to exist for one (1) year following any sale, transfer, or assignment of this Franchise (unless replaced by a satisfactory replacement bond

from the successor Grantee), or following the expiration or termination of this Franchise. County may release said bond prior to the end of the one (1) year period upon its determination that Grantee has satisfied all the obligations of this ordinance that are to be secured by the bond.

- d. County, in its reasonable discretion, may accept alternative security to meet the above bonding requirements in the form of an irrevocable letter of credit, certificate of deposit, or a cash deposit acceptable to County as an alternative to the faithful performance bond as described above. Such alternative security shall be made payable to County and shall be deposited with County.
- e. The types and amounts of the performance bond or alternative security coverage shall be subject to review and adjustment at five (5) year intervals during the term of this Franchise, to the extent that County or Grantee demonstrates that the costs of the obligations to be secured by the bond have materially increased or decreased. In the event of such adjustment, Grantee agrees to provide the adjusted coverage within thirty (30) days after written notice from County. Grantee and County shall meet and confer to attempt to resolve any dispute with regard to this subsection. Provided, however, that neither County nor Grantee shall by meeting and conferring waive any and all legal rights and remedies with respect to such dispute.
- f. No Franchise operations shall commence until Grantee has complied with the requirements of this section.

Section 15. NOTICES. Any notice with respect to this Franchise shall be in writing and shall be made to all parties (including any lender or other assignee) and will be effective (i) immediately upon delivery in person, provided delivery is made during regular business hours or receipt is acknowledged by a person reasonably believed by the delivering party to be employed by the recipient, or (ii) 24 hours after deposit with a commercial courier or delivery service for overnight delivery, provided delivery is made during regular business hours or receipt is acknowledged by a person reasonably believed by the delivering party to be employed by the recipient, or (iii) three (3) days after deposit with the United States Postal Service postage prepaid, certified mail, return receipt requested. All notices must be properly addressed and delivered to the parties at the addresses set forth below, or at such other addresses as any party may subsequently designate by written notice:

If to County: Clerk of the Board of Supervisors
4080 Lemon Street, 1st Floor
Riverside, CA 92501
(951) 955-1060
(951) 955-1071

If to Grantee: EDF Renewable Energy, Inc.
15445 Innovation Drive
San Diego, CA 92128
Telephone No.: (858) 521-3324
Fax No.: (858) 521-3595
Attn: Robert F. Miller

With a copy to: Marten Law
455 Market Street, Suite 2200
San Francisco, CA 94105
Telephone No.: (415) 684-9358
Fax No.: (415) 684-9360
Attn: Andrew C. Bell

Section 16. LENDER PROTECTION. In addition to the specific provisions set forth in this ordinance, County agrees that any lender with a security interest in Grantee's interest in this Franchise shall have customary and commercially reasonable mortgagee protection provisions to preserve, protect, and acquire Grantee's interest in this Franchise, including, without limitation, the right for any lender to a replacement Franchise if this Franchise is surrendered, abandoned or forfeited pursuant to a Grantee bankruptcy. Upon request of Grantee's lender, County shall process an amendment to this Franchise to add specific, customary and commercially reasonable mortgagee protection provisions as may be reasonably requested by any such lender.

Section 17. POSSESSORY INTEREST. This Franchise may create a possessory interest that may be subject to taxation, if created, and the party in whom the possessory interest is vested may be subject to the payment of the property taxes levied on the interest.

Section 18. NON-EXCLUSIVE FRANCHISE. This Franchise shall not be exclusive. The Board of Supervisors reserves and shall have the right and power to grant other and additional franchises to persons, firms and corporations as authorized and provided by law, provided that any such additional franchises do not unreasonably interfere with the Franchise granted hereunder.

Section 19. AMENDMENTS. This ordinance may be amended in whole or in part only by written consent of the parties in the manner prescribed by law for the amendment of ordinances. Any amendment to this ordinance shall also require the consent of any lender.

Section 20. SEVERABILITY. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

Section 21. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its adoption, provided that Grantee files within the same thirty (30) day period a written acceptance hereof with the Clerk of the Board agreeing to abide by the terms and conditions herein. The ordinance shall not take effect in the event such written acceptance is not filed.

Adopted: 07/01/14