

ORDINANCE NO. 909
AN URGENCY ORDINANCE OF THE COUNTY OF RIVERSIDE GRANTING TO
DESERT SUNLIGHT 250, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
AND
DESERT SUNLIGHT 300, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
AND THEIR 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. Construct and Use. To lay, construct, excavate, erect, install, operate, maintain, use, repair, replace, relocate, and/or remove.
- b. 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.
- c. County Parties. County, County Special Districts, their respective directors, officers, Board of Supervisors, elected officials, agents and employees.
- d. 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 e of section 1.
- e. 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.
- f. 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 Exhibit A, 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.

- g. 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.
- h. Grantee. Desert Sunlight 250, LLC, a Delaware Limited Liability Company, and Desert Sunlight 300, LLC, a Delaware Limited Liability Company, and their 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.
- i. Project. The Desert Sunlight Solar Farm Project described in the “Desert Sunlight Solar Farm Project/California Desert Conservation Area Plan Amendment and Final Environmental Impact Statement,” and approved by the Bureau of Land Management in its Record of Decision dated August 8, 2011, including the Electrical Transmission Line, all solar power electrical generation facilities, and the Red Bluff substation.

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, 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. Grantee shall annually pay to the Riverside County Treasurer, in lawful money of the United States, the amount of six hundred thousand dollars (\$600,000). Within five (5) business days of the close of Department of Energy loan financing for the Project or the close of other financing for the Project, if there is no Department of Energy loan financing, Grantee shall provide written notice to County of such closing and shall make the initial payment to County. Such written notice shall indicate the identity of any and all lenders financing the Project, including the address, telephone and facsimile numbers, contact person, and, for identification purposes, an account or reference number. In no event, however, shall the initial payment be made later than September 1, 2012. Grantee shall make subsequent annual payments on February 1st of each year,

which shall be increased by the same percentage as the increase in the Consumer Price Index, All Urban Consumers, (Los Angeles — Anaheim) for the twelve (12) month period ending four (4) months prior to February 1st. In no event, however, shall the Consumer Price Index adjustment be less than one percent (1%) nor greater than four percent (4%).

- b. 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.
- c. Grantee shall pay all encroachment permit and inspection fees related thereto in connection with any necessary encroachment permits to Construct and Use the Electrical Transmission Line in the Franchise Area. These fees may be charged at the rates applicable at the time of payment.
- d. 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.
- e. Grantee shall pay to County on demand the cost of all repairs to public property made necessary by any of the operations of Grantee under this Franchise; such payment to be made within thirty (30) days after County furnishes Grantee with a written statement of such expenses.
- f. Local Sales and Use Tax.
 - 1. Within five (5) business days of the close of Department of Energy loan financing for the Project or the close of other financing for the Project, if there is no Department of Energy loan financing, Grantee shall deliver to County Executive Officer a letter of credit, which may be drawn upon as expressly set forth below. The amount of the letter of credit shall be equal to ten million seven hundred fifty-five thousand dollars (\$10,755,000), which is County's Estimate ("Estimate") of the Bradley-Burns Uniform Local Sales and Use Tax ("Local Sales and Use Tax") attributable to construction of the Project and projected to be allocated by the Board of Equalization to the unincorporated area of Riverside County.
 - 2. County agrees the letter of credit may be reduced annually to an amount equal to the amount of the Estimate minus the then cumulative total amount of Local Sales and Use Tax attributable to construction of the Project that the Board of Equalization records indicate were allocated to County. County shall provide annually to Grantee a summary of these records.

However, in no event shall the amount of the letter of credit be reduced sooner than one (1) year from the effective date of this ordinance. To accomplish such reduction, Grantee may replace the existing letter of credit with a new letter of credit in an amount equal to the new amount required, as determined using the calculation method described above.

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. If, on the 210th day following the contract on-line date of the Project, the Board of Equalization records show the cumulative total Local Sales and Use Tax attributable to construction of the Project and allocated by the Board of Equalization to County is less than the Estimate, Grantee shall pay such difference within sixty (60) days of the date County notifies Grantee of the deficiency. If Grantee does not pay such difference within such time period, County may draw upon the letter of credit in an amount equal to such deficiency.
5. The foregoing obligation to pay such deficiency is subject to Grantee's right to confirm, within such time period, the amount of actual Local Sales and Use Tax attributable to construction of the Project and allocated by the Board of Equalization to County. Grantee has the right to provide County with copies of Grantee's relevant Project records, including but not limited to any and all relevant sales and use tax filings associated with the Project which demonstrate that the actual amount of Local Sales and Use Tax paid by Grantee which should have been allocated to County by the Board of Equalization is greater than the amount shown by Board of Equalization records.
6. If in County's reasonable judgment Grantee adequately documents any such discrepancy (such discrepancy being the difference between what was actually allocated by the Board of Equalization to the County as opposed to what should have been allocated), Grantee may request that County defer, up to one (1) year, any demand for payment to County or any draw by County on the letter of credit to satisfy the deficiency, and County shall not unreasonably withhold consent to such deferral. If any such discrepancy is not resolved within one (1) year from County's notice of such deficiency, Grantee shall pay the amount of the deficiency to

- County, or County may draw upon the letter of credit for the amount of such deficiency.
7. If County later determines it received (i) Local Sales and Use Tax attributable to construction of the Project, (ii) direct payments under this section, and/or (iii) draws on the letter of credit, the total combined amount of which is in excess of the greater of the amount of the Estimate or the actual amount of Local Sales and Use Tax required to be paid in connection with construction of the Project, County shall reimburse the amount of such overpayment to Grantee within thirty (30) days of such determination.
 8. Grantee and County shall meet and confer to attempt to resolve any dispute with regard to subsections 6 and 7 of subsection f of section 4. 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.
 9. Upon payment in full of the amount of the Estimate (whether through allocations from the Board of Equalization, direct payments under this section, and/or draws upon the letter of credit), or upon a termination of this Franchise in accordance with subsection f of section 5 or otherwise, County shall return the letter of credit to Grantee without any further draws therefrom. With respect to any termination, however, County has the right to continue to hold a letter of credit in an amount necessary to secure any unpaid Local Sales and Use Tax required to be paid through the date of such termination consistent with the provisions set forth below regarding possible revision of the Estimate.
 10. The letter of credit and the obligations under this subsection f are intended to provide security to County with respect to Local Sales and Use Tax. In the event the Project is not constructed, is only partially constructed, or is reduced in size, the letter of credit obligation and the obligation to pay County any deficiency with respect to the Estimate shall be reduced accordingly through a revised estimate. Grantee shall provide the information needed by County to make this revised estimate.
- g. 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.

- h. 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.
- i. Should the Board of Supervisors adopt any policy 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 Project shall be exempt 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 Exhibit A 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 Electrical Transmission Line shall be located so as not to 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.
- 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 this Franchise.
- 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, Grantee's solar power electrical generation facilities 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.

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 person 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.

- 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. Within five (5) business days of the close of Department of Energy loan financing for the Project or the close of other financing for the Project, if there is no Department of Energy loan financing 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. 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 e 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 cash deposit 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: Desert Sunlight Holdings, LLC
c/o First Solar Development, Inc.
1111 Broadway, 4th Floor
Oakland, California 94607
Attn: Controller and General Counsel
Telephone No.: (510) 401-5800
Fax No.: (510) 401-5859

With a copy to: Farella, Braun + Martel LLP
235 Montgomery Street, 18th Floor
San Francisco, CA 94104
Telephone No.: (415) 954-4400
Fax No.: (415) 954-4480
Attn: Richard J. Rabbitt

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 is hereby declared to be an urgency measure and shall take effect immediately upon its adoption, provided that, on the date of adoption, Grantee files a written acceptance hereof with the Clerk of the Board agreeing to abide by the terms and conditions herein. In the event such written acceptance is not filed on the date of adoption, the ordinance shall not take effect. In accordance with the requirements of Government Code section 25123, subdivision (d), the Board of Supervisors hereby declares that the provisions contained herein are necessary for the immediate preservation of the public peace, health or safety for the following reasons: (i) this Franchise will improve the reliability of the transmission grid and minimize service interruptions; (ii) this Franchise will further federal and state greenhouse gas reduction and renewable electricity goals; (iii) the Project will lose its conditional loan guarantee from the Department of Energy (DOE) if Grantee does not obtain all discretionary entitlements before September 30, 2011; and (iv) this Franchise must take effect immediately in order for Grantee to obtain such discretionary entitlements before the specified date.

Adopted: 909 Item 16.6b of 08/16/2011 (Eff: immediately)