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ORDINANCE NO. O-10-11

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, GRANTING TO SOUTHERN CALIFORNIA EDISON COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO USE AND TO CONSTRUCT AND USE, POLES, WIRES, CONDUITS AND APPURTENANCES, IN, ALONG, ACROSS, UPON, OVER AND UNDER THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES, AS THEY MAY NOW OR HEREAFTER EXIST, WITHIN THE CITY OF COLTON

WHEREAS, Southern California Edison Company (SCE) is a California corporation and a public utility transmitting and distributing electricity by means of poles, wires, conduits and appurtenances, subject to the Public Utilities Code of the State of California and the jurisdiction of the California Public Utilities Commission (CPUC); and

WHEREAS, SCE wishes to construct, operate, maintain, upgrade, repair, replace and use poles, wires, conduits, and appurtenances, in, along, across, upon, over and under the Streets within the City of Colton, for the purpose of transmitting or distributing electricity through the City of Colton, and serves a limited number of retail, wholesale, resale or other electric customers located within the City of Colton;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON DOES ORDAIN AS FOLLOWS:

SECTION 1: Findings.

The City Council of the City of Colton hereby finds and determines that the recitals contained above are true and correct.

SECTION 2: Definitions.

Whenever in this Ordinance the words or phrases hereinafter in this section defined are used, it is intended that they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a

1 different meaning):

2
3 A. The word "Grantee" shall mean the corporation to which the Franchise
4 contemplated in this Ordinance is granted, Southern California Edison Company, and its
5 lawful successors or assigns.

6 B. The word "City" shall mean the City of Colton, a municipal corporation of the
7 State of California, in its present incorporated form or in any later reorganized,
8 consolidated, enlarged or reincorporated form.

9
10 C. The word "Streets" shall mean the public streets, ways, alleys and places as the
11 same now or may hereafter exist within the City.

12 D. The phrase "poles, wires, conduits and appurtenances" shall mean poles, towers,
13 supports, wires, conductors, cables, guys, stubs, platforms, cross arms, braces,
14 transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches,
15 appliances, attachments, appurtenances and any other property located or to be located
16 along, across, upon, over or under the Streets of the City and used or useful, directly or
17 indirectly, for the purpose of transmitting or distributing electricity for all lawful purposes,
18 pursuant to agreements between Grantee and third parties.

19 E. The phrase "construct and use" shall mean to lay, construct, excavate, encroach,
20 erect, install, reinstall, operate, maintain, use, repair, modify, replace, relocate, or remove
21 any Facilities used for transmitting and distributing electricity for all purposes within the
22 Streets.

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24 F. The term "Facilities" shall mean the poles, wires, conduits and appurtenances, or
25 any of them, of any kind installed or constructed by Grantee as described in section (D)
26 above.
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1 G. The word "Franchise" shall mean and include any authorization granted hereunder
2 in terms of a franchise, privilege, permit, license or otherwise to construct and use poles,
3 wires, conduits and appurtenances, for transmitting and distributing electricity for any and
4 all lawful purposes in, along, across, upon, over, and under Streets within the City.

5 SECTION 3: Right to Serve

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7 As authorized by the California Constitution and by statute, City owns, operates and
8 maintains a publicly-owned electric utility. As of the adoption of this Franchise, City's electric
9 utility provides service to most areas and consumers within the City. In addition to owning,
10 operating and maintaining today or in the future Facilities that are used to transmit and deliver
11 electric power to end use customers located outside the City, Grantee currently provides retail
12 service to the areas of the City and customers not served by City's own utility

13 SECTION 4: Grant of Franchise.

14
15 (a) Pursuant to and in accordance with the provisions of the Franchise Act of 1937,
16 Public Utilities Code §6201, *et seq.*, and subject to the terms and conditions set forth herein, the
17 City hereby grants to Grantee and its lawful successors and assigns a Franchise to construct and
18 use Facilities for the purposes of transmitting and distributing electricity for any and all lawful
19 purposes, within the City, upon poles, wires, conduits and appurtenances, as authorized by
20 Grantee's Certificate of Public Convenience and Necessity, tariff and/or any final decision or
21 order of the California Public Utilities Commission, pursuant to agreements between Grantee and
22 third parties, along, across, upon, over and under the Streets within the City of Colton, provided
23 that nothing in this franchise shall authorize Grantee to provide communications services to any
24 third party or to use facilities installed or maintained pursuant to this franchise to provide such
25 communications services.

26 The City may issue a blanket fee permit to Grantee for all work activities of Grantee in the
27 streets and public right-of way, in lieu of City's standard permitting process, in order to reduce
28 administrative costs of both City and Grantee. Such blanket fee permit shall be in a form

1 provided by Grantee to City, but subject to the reasonable review and approval of City.
2 Notwithstanding the foregoing, City shall be under no obligation whatsoever to issue such blanket
3 fee permit.

4 (b) With respect to the provision of retail service by Grantee to customers within the
5 City of Colton, Grantee may provide such service until such time as the City acquires some or all
6 of Grantee's facilities and elects to deliver electric power to customers formerly served by
7 Grantee from such facilities. The area included within this Franchise shall be deemed modified to
8 exclude any area served by facilities which the City acquires from Grantee.

9 (c) Nothing in this Franchise in any way affects or otherwise requires Grantee to
10 provide, report or otherwise disclose to the City or its agents or other third parties, any
11 documents, maps, Facilities information, transmission/distribution systems, generating plants,
12 apparatus inventories, or other records that are considered confidential, privileged, are otherwise
13 protected or classified as "protected materials" under Federal Energy Regulatory Commission
14 (FERC) or CPUC Policies, or are defined as Critical Energy Infrastructure Information (CEII)
15 pursuant to 18 C.F.R. § 388.113(c)(1).

16 (d) This Franchise is granted in lieu of all other franchises owned by Grantee, or by
17 any successor of Grantee to any rights under this Franchise, for transmitting and distributing
18 electricity within the limits of the City, as said limits exist at the time of the granting of this
19 Franchise, and the acceptance of the Franchise hereby granted shall operate as an abandonment of
20 all franchises within the limits of the City of Colton, as such limits now or may hereafter exist, in
21 lieu of which this Franchise is granted.

22 SECTION 5: Franchise Term.

23 This Franchise term shall be for a period of twenty-five (25) years from the effective date
24 as set forth in Section 16, provided that either party may notify the other in writing of a desire to
25 reopen franchise negotiations to address changes in applicable law which affect the franchise,
26 and/or the invalidity or unenforceability of any material provision hereof. Pending resolution of
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1 those negotiations, the existing ordinance shall remain in effect for two years following the date
2 of notice of the reopened franchise negotiations.

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4 SECTION 6: Franchise Fee.

5 (a) Grantee shall pay to the City the sum provided by law, which is presently two
6 percent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession
7 of the Franchise; except that this payment shall not be less than one percent (1%) of the gross
8 annual receipts derived by Grantee from the sale of the electricity within the City.

9
10 (b) In the event the California Legislature amends the Franchise Act of 1937 or enacts
11 any other state law which increases the electric franchise payment to cities to a level greater than
12 that provided in this Section 6, the City shall have the option of prospectively employing the new
13 legislative formula, which shall apply for the remaining term of the Franchise. If the City
14 exercises this option, the new legislative formula shall be prospectively applied hereto either (at
15 the City's sole option) on the effective date of the legislation, or on some date subsequent to the
16 effective date of the legislation.

17 SECTION 7: Verified Statement of Gross Receipts.

18 (a) The Grantee shall file with the City Clerk of the City of Colton within three (3)
19 months after the expiration of the calendar year, or fractional calendar year, following the date of
20 the granting of this Franchise, and within three (3) months after the expiration of each calendar
21 year thereafter, a verified statement substantially in the form attached hereto as Exhibit "A"
22 showing in detail the following:

23 (1) The total gross receipts of the Grantee during the preceding calendar year,
24 or such fractional calendar year, from the sale of electricity within the City;

25 (2) The total gross receipts of the Grantee during the preceding calendar year,
26 or such fractional calendar year, from the use, operation or possession of this Franchise; and
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2 (3) The method and supporting calculations used to calculate the franchise fees
3 which are payable to the City in accordance with this Franchise, including any municipal public
4 lands use surcharge payable pursuant to §6350, *et seq.* of the California Public Utilities Code,

5 (b) The Grantee shall pay to the City within fifteen (15) days after the time for filing
6 said statement, in lawful money of the United States, the aforesaid percentage of its gross receipts
7 for the calendar year or fractional calendar year, covered by said statement. Any neglect,
8 omission or refusal by Grantee to file said verified statement, or to pay said percentage at the
9 times or in the manner herein before provided, unless promptly cured following notice, shall
10 constitute grounds for the declaration of forfeiture of this Franchise and of all rights of Grantee
11 hereunder.

12 (c) The City Financial Officer, or any qualified person designated by the City of
13 Colton, upon not less than sixty (60) days' prior written notice to Franchisee, may make
14 examination at the Franchisee's office or offices at any reasonable time during regular business
15 hours of such books and records of Franchisee, as are reasonably necessary to verify the accuracy
16 of Franchisee's franchise fee calculation for the prior filing year, set forth in the annual statement
17 required herein, subject to the following terms and conditions:

18 (1) All books and records subject to examination by the City Financial Officer, or
19 other qualified person designated by the City of Colton, shall be made available within the
20 Franchisee's office where they are maintained.

21 (2) Records need not be made available unless and until the City of Colton
22 executes and delivers to Franchisee written confirmation that the City's request to examine the
23 books and records is made pursuant to its audit rights herein and written confirmation that City of
24 Colton shall use the information obtained only for purposes of the audit, shall not disclose any
25 information it obtains to third parties without the prior written consent of Franchisee, and that it
26 shall maintain the confidentiality of any information reasonably designated by the Franchisee as
27 confidential. Nothing herein shall be construed to require Franchisee to make available
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1 information which constitutes private or confidential information pertaining to specific customers
2 of Franchisee, without the prior written consent of the customer(s) involved.

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4 (3) City of Colton shall provide Franchisee with comprehensive, written results of
5 its audit. In the event City's audit reveals an error in the Franchise fee amount set forth in the
6 statement being audited, the following provisions shall apply:

7 (i) If the audit determines that additional Franchise fees are due, and if
8 Franchisee agrees with such determination, the additional Franchise fees shall be paid within
9 fifteen (15) business days after receipt of City's written demand Failure to pay such charge shall
10 be grounds for forfeiture of the Franchise.

11 (ii) If the audit determines that additional franchise fees are due, but
12 Franchisee disagrees with such determination, payment of the additional Franchise fees shall be
13 stayed pending Franchisee's appeal of the determination to the City Council, which appeal shall
14 be filed by Franchisee within thirty (30) days of Franchisee's receipt, from City, of the written
15 determination that additional Franchise fees are due.

16 (iii) If the audit determines that an overpayment of the Franchise fee
17 occurred, then City shall refund or apply funds as a credit to future franchise fees due, the amount
18 of the overpayment within fifteen (15) business days after receipt of Franchisee's written demand.
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20 (4) In the event of a disagreement between the parties, each party shall have all of
21 the rights and remedies provided by the Franchise and by law.

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23 SECTION SECTION 8: Publication Expenses.

24 The Grantee of this Franchise shall pay to the City a sum of money sufficient to reimburse
25 it for all publication expenses incurred by it in connection with the granting of this Franchise,
26 within thirty (30) days after the City shall have furnished Grantee with a written statement of such
27 expenses. The City Clerk shall cause this Franchise to be published and posted within fifteen (15)
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1 days after its passage in three (3) public places within the City as required by law.

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3 SECTION 9: Conformity to Rules and Statutory Requirements.

4 The Grantee shall construct and use its Facilities in accordance and in conformity with
5 applicable statutory requirements and regulatory requirements of the California Public Utilities
6 Commission, all of the ordinances and rules adopted by the City Council in the exercise of its
7 police power and not in conflict with the paramount authority of the State or the United States,
8 and, as to state highways, subject to the laws relating to the location and maintenance of such
9 Facilities therein.

10 Grantee shall construct, install, replace and maintain its facilities in accordance with the
11 rules and regulations adopted by the California Public Utilities Commission, State and Federal
12 Laws, and as to state highways, subject to the laws relating to the location and maintenance of
13 such facilities. Before the work of constructing any poles, wires, conduits, and appurtenances by
14 the Grantee, Grantee shall file with the City Engineer plans showing the location thereof, such
15 construction shall be approved by the City Engineer, which shall not be unreasonably withheld.

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17 SECTION 10: Removal or Relocation of Facilities.

18 (a) The Grantee shall remove or relocate any Facilities installed, used and maintained
19 under the Franchise if and when made necessary by any lawful change of grade, alignment or
20 width of any public Street, way, alley or place, including the construction of any subway, viaduct,
21 pedestrian tunnel, traffic signal, street lighting facility, or any other public works construction
22 projects undertaken by the City and as provided in the Public Utilities Code. Such removal or
23 relocation shall be performed by Grantee without expense to the City. However, Grantee shall not
24 be required to bear the expense of any removal or relocation made at the request of the City on
25 behalf of or for the benefit of, any developer or other third party. City will make good-faith
26 efforts to minimize the occurrence and frequency of projects requiring relocation of Facilities at
27 Grantee's expense which have been relocated at Grantee's expense within the previous seven (7)
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(b) City shall endeavor to assist the Grantee with access and a right of entry to private streets within gated communities located within the City and to all of Grantee's facilities therein, but City shall have no obligation or responsibility to commence any action in law or equity to compel any homeowners' association or other entity controlling access to private streets within gated communities. By accepting this Franchise, Grantee shall be deemed to have acknowledged that private streets in gated communities that have not been dedicated or offered for dedication to the City shall not be considered Streets for the purpose of this Franchise.

SECTION 11: Indemnification.

Grantee shall indemnify and hold harmless the City and its officers, agents and employees from all liability for damages proximately resulting from any operations under this Franchise, and shall be liable to the City for all damages proximately resulting from the failure of Grantee to comply with each and every provision of this Franchise and the Franchise Act of 1937.

SECTION 12: Repairs, Excavation and Restoration.

The Grantee shall make all repairs to public property made necessary as a direct result of the operations of the Grantee under the franchise.

In the event it is necessary to excavate a street for the purpose of maintaining, replacing or installing Grantee's facilities where the street has not been paved or repaved for more than five (5) years prior to Grantee's excavation, the resulting trench shall be repaired in accordance with the pavement restoration standards described in the then-current edition of the American Public Works Association Standards promulgated by the Public Works Standards, Inc. Greenbook Committee, together with any applicable rules and regulations adopted by the California Public Utilities Commission, State and Federal Laws, and as to state highways, subject to the laws relating to the location and maintenance of such facilities.

Grantee shall not excavate a street for the purpose of maintaining, replacing or installing

1 Grantee's facilities within five (5) years after the repaving of the portion of the public street, way,
2 alley or place that Grantee seeks to excavate, except in the following circumstances:

- 3 - An emergency which endangers life or property;
- 4 - Repair or modification to prevent interruption of essential utility service;
- 5 - Relocation work that is mandated by the City pursuant to this franchise;
- 6 - Service for buildings where no other reasonable means of providing service exists;
- 7 - The public street is scheduled for repaving within one (1) year after the excavation
8 permit is issued;
- 9 - Potholing to verify utility depth or location; or
- 10 - Other situations deemed by the City to be in the best interest of the general public.

11 If Grantee is issued a permit to excavate within five (5) years of the City's filing of a
12 notice of completion or acceptance of a new street or within five (5) years after the repaving of
13 the portion of the public street, way, alley or place, Grantee shall comply with the pavement
14 restoration standards as described in the City of Colton Standard Drawings and to the satisfaction
15 of the City Engineer. The repaving may, at the discretion of the City Engineer, cover the entire
16 width of the street and cover the entire length of the trench plus ten (10) feet at both ends of the
17 trench.

18 If the trench repair work set forth above becomes defective, meaning that such repair work
19 does not comply with the Pavement Standards and the failure or defect of such repair is not due to
20 ordinary wear and tear, City and Grantee shall utilize the following repair protocol:

21
22 (a) Non Emergency Repairs.

23 City shall provide Grantee with written notice of the defect ("Notice of Defect"). Such
24 Notice of Defect shall include the exact location of the defect in question. Thereafter, Grantee
25 shall complete a commercially reasonable temporary repair of the defect. Such temporary repair
26 shall be completed within three (3) days receipt of the Notice of Defect. Grantee shall then be
27 required to complete a permanent repair of the defect within forty-five (45) days from Grantee's
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1 receipt of the Notice of Defect. Nothing set forth herein shall be construed so as to prohibit
2 Grantee from completing a permanent repair in the time frame set forth for a temporary repair or
3 in any way preventing the City from extending the repair period in the reasonable exercise of its
4 discretion, provided that City shall have no obligation to do so.

5 (b) Emergency Repairs.
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7 For the purpose of this Subsection, an "Emergency Defect" shall mean a defect in
8 previously repaired or restored trench consisting of a three-quarters inch (3/4") or more separation
9 in grade of the pavement and/or a pavement crack of any length that is three-quarters inch (3/4")
10 in width. To the extent of an Emergency Defect, City shall provide Grantee with a Notice of
11 Defect. Thereafter, Grantee shall complete a commercially reasonable temporary repair within
12 twenty-four (24) hours from receipt of the Notice of Defect. Grantee shall then be required to
13 complete a permanent repair within forty-five (45) days from receipt of the Notice of Defect.
14 Nothing set forth herein shall be construed so as to prohibit Grantee from completing a permanent
15 repair in the time frame set forth for a temporary repair or in any way preventing the City from
16 extending the repair period in the reasonable exercise of its discretion, provided that City shall
17 have no obligation to do so.

18 (c) Coordination/Compaction Standards.

19 Grantee shall coordinate its repair activities taken pursuant to this Section with the City by
20 providing advance notice of any excavation of, or repair to City streets. City shall have the right
21 to have an inspector present to monitor such repair work and to review and approve compaction
22 tests prior to the completion of said work.

23 (d) Self Help.
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25 If Grantee believes that it will be unable to complete necessary repairs in the specified
26 time periods, Grantee may request that the City meet and confer with Grantee prior to the
27 expiration of the applicable time period to determine the cause for the delay. If in the City's
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1 reasonable opinion, the work could not have been completed within the applicable time period
2 due to unusual or unforeseen circumstances, and the work is being reasonably prosecuted towards
3 completion, the City may extend the repair time periods. Alternatively, if Grantee has not
4 completed repair work as of the expiration of the applicable time period, City shall have right to
5 complete the necessary repairs that would have been required of Grantee under the applicable
6 requirements set forth above and Grantee shall reimburse the City for the cost of the repairs.

7 SECTION 13: Sale, Transfer, Assignments, Lease of Franchise.

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9 The Grantee shall file with the City within thirty (30) days after any sale, transfer,
10 assignment, or lease of this Franchise or any part hereof, or any of the rights or privileges granted
11 by this Franchise, written evidence of the transaction certified by Grantee or its duly authorized
12 officers. Payment of any fees due pursuant to Franchise Fee payment provisions shall not be
13 unreasonably withheld or delayed.

14 SECTION 14: Value of Franchise; Eminent Domain.

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16 (a) This Franchise shall never be given any value before any court or other public
17 authority in any proceeding of any character in excess of the cost to the Grantee of the necessary
18 publication and any other sum paid by the City at the time of acquisition.

19 (b) This Franchise shall not in any way or to any extent impair or affect the right of
20 the City to acquire the property of Grantee installed or constructed pursuant to this Franchise,
21 either by purchase or through the exercise of the right of eminent domain, and nothing in this
22 Franchise shall be construed to contract away or to modify or abridge the City's right of eminent
23 domain with respect to Grantee.

24 SECTION 15: Noncompliance.

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26 The City, by its City Council, may declare this Franchise forfeited, if the Grantee fails,
27 neglects or refuses to comply with any of the provisions or conditions of this Franchise, and does
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1 not within thirty (30) days after written demand for compliance begin the work of compliance, or
2 after such beginning, does not prosecute the work with due diligence to completion. Provided,
3 however, that Grantee shall be afforded due process including reasonable notice and reasonable
4 opportunity to cure any noncompliance prior to the commencement of any termination
5 proceedings.

6 The City may sue in its own name for the forfeiture of this Franchise, in the event of
7 noncompliance with any of the provisions or conditions thereof by Grantee.

8
9 SECTION 16: Written Acceptance Required.

10 This Franchise shall become effective when Grantee files written acceptance hereof with
11 the City Clerk which shall be within thirty (30) days after the adoption of this Ordinance. Such
12 written acceptance shall constitute a continuing agreement by the Grantee that if and when the
13 City later annexes, or consolidates with, additional territory, all franchises, rights and privileges
14 owned by the Grantee therein shall be deemed abandoned and subsumed by this Ordinance within
15 the limits of the additional territory.

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17 SECTION 17: Bond.

18 The Grantee shall file within thirty (30) days after the date of the granting of the Franchise
19 and at all times during the life of this Franchise keep on file, with the City Council a corporate
20 surety bond running to the City, in the penal sum of Five Thousand Dollars (\$5,000.00)
21 conditioned that the Grantee shall well and truly observe, fulfill and perform each and every term
22 and condition of this Franchise, and that in the case of any breach of condition of the bond, the
23 whole amount of the penal sum therein named shall be recoverable from the principal and surety
24 upon the bond. If the bond is not so filed, or does not receive the approval of the City Council, the
25 Franchise may be refused or forfeited and any money paid to the City in connection therewith
26 shall be retained by the City. Grantee shall reinstate the bond limit or provide a replacement bond
27 in the original amount within 30 days after notice from the City that any amount has been
28 recovered from the bond.

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Exhibit A
Verified Statement of Gross Receipts

[Attached behind this page.]