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RESOLUTION NO. R-14-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA CALLING FOR THE PLACEMENT OF A MEASURE ON THE BALLOT AT THE JUNE 7, 2016 SPECIAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF A PROPOSED ORDINANCE AUTHORIZING A TRANSFER FROM THE CITY'S ELECTRIC SYSTEM REVENUE FUND TO THE CITY'S GENERAL FUND IN AN AMOUNT NOT TO EXCEED 20% OF ELECTRIC SYSTEM GROSS REVENUES UNTIL JUNE 30, 2021 AND REVERTING BACK TO A MAXIMUM OF 12.39% THEREAFTER, AND ESTABLISHING AN ELECTRIC UTILITY RATE FREEZE FOR A PERIOD OF FIVE YEARS, EXCEPT IN CASES OF FISCAL EMERGENCY.

WHEREAS, the City of Colton operates a public electric utility that provides electrical service to local residents and businesses; and

WHEREAS, pursuant to Section 3.44.030(iii)(i) of Chapter 3.44 of Title 3 of the Colton Municipal Code, the City is authorized to transfer up to 12.39% of electric system annual gross revenues from the City's Electric System Revenue Fund to the City's General Fund (the "General Fund Transfer"); and

WHEREAS, funds placed in the General Fund via the General Fund Transfer pay for City services such as police protection, fire and paramedic services, street operations and maintenance, library services, parks and recreation services and general municipal services to the public; and

WHEREAS, pursuant to California Elections Code Section 9222, the City Council desires that the voters consider authorizing an increase in the General Fund Transfer from a maximum of 12.39 percent to a maximum of 20 percent of Electric System Gross Revenues until June 30, 2021, after which the General Fund Transfer will revert back to a maximum of 12.39 percent; and

WHEREAS, the City Attorney's Office has advised that, pursuant to Proposition 26, approved by the voters on November 2, 2010 (California Constitution Article XIII C, Section 1(e)), an increase in the General Fund Transfer as proposed in this Measure is equivalent to a general tax increase; and

1 **WHEREAS**, on November 6, 1996, the voters of the State of California approved
2 Proposition 218 (California Constitution, Article XIII C, Section 2), an amendment to the State
3 Constitution which requires that all general taxes which are imposed, extended or increased
4 must be approved by a majority vote of the voters; and

5 **WHEREAS**, Proposition 218 permits the City Council to call a special election to
6 impose, increase or extend a general tax, only if the City Council finds, by a unanimous vote,
7 that there exists an emergency requiring a special election to be conducted earlier than the
8 next regularly scheduled general election at which city council members are to be elected; and

9 **WHEREAS**, the next regularly scheduled general election at which city council
10 members are to be elected is not until November 8, 2016; and

11 **WHEREAS**, for the following reasons, the health, safety and general welfare of the
12 citizens of the City would be endangered if the City were unable to place this Measure before
13 its voters until November 8, 2016; and

14 **WHEREAS**, the General Fund of the City of Colton has sustained a severe revenue
15 drop of \$14.7 million from 2007 to 2012, due to the economic decline resulting from the
16 Great Recession, the loss of utility users tax revenues, and the loss of Redevelopment
17 funding; and

18 **WHEREAS**, while the City Council has been able to use certain one-time revenues to
19 help balance the City budget in 2013 and 2015, these revenues are not sustainable for long-
20 term budgeting purposes; and

21 **WHEREAS**, the City Council has responded to declining revenues by implementing
22 furloughs, layoffs, and hiring freezes, eliminating programs citywide, reducing operating
23 hours at city facilities, deferring capital maintenance, replacement and improvements, and
24 reducing budgets in all departments; and

25 **WHEREAS**, anticipated revenue increases and cost savings will not be sufficient to
26 avoid further reductions to City services, thus impacting Colton's quality of life and long-term
27 viability; and
28

1 **WHEREAS**, the City Council finds that there is a need to have the People of the City
2 of Colton decide the General Fund Transfer measure before the start of the upcoming fiscal
3 year (July 1, 2016) so that the Council may prudently budget for the City’s expenses; and
4 delaying the election until November 8, 2016 will add substantial uncertainty to the FY 16-17
5 budgeting process, further jeopardizing City services and quality of life; and

6 **WHEREAS**, all of the circumstances described create an emergency situation
7 warranting the placement of the Measure on the next available special election ballot to
8 permit the voters to decide on the GFT Transfer pursuant to Proposition 218; and

9 **WHEREAS**, in conjunction with the General Fund Transfer, the City Council also
10 desires that the voters consider a ceiling on further electric system rate increases for a period
11 of five (5) years, during which the City Council would be prohibited from increasing electric
12 rates, except in a case of fiscal emergency declared by unanimous vote of the City Council
13 (the “Rate Ceiling”); and

14 **WHEREAS**, the Rate Ceiling portion of this Measure also requires majority voter
15 approval and is hereby submitted to the City’s electorate.

16 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON**
17 **DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

18 **Section 1. Findings.** The City Council finds that all of the preceding recitals are
19 true and correct, are incorporated herein by this reference, and made an operative part hereof.

20 **Section 2. Declaration of Emergency.** Pursuant to California Constitution,
21 Article XIIIIC, Section 2(b), the City Council, **by a unanimous vote**, hereby declares the
22 existence of an emergency in that there are imminent financial risks and dangers, as described
23 above, to the public welfare and the City’s financial ability to provide necessary municipal
24 services without disruption, so that a special election is necessary to address such risks and
25 dangers.

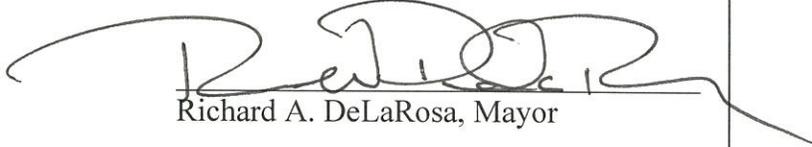
26 **Section 3. Submission of Measure.** Pursuant to California Constitution, Article
27 XIIIIC, Section 2(b), California Government Code Section 53724 and any other applicable
28 requirements of the laws of the State of California relating to general law cities, the City

1 operation of the Measure, and transmit such impartial analysis to the City Clerk not later than
2 the deadline for submittal of primary arguments for or against the measure, as set forth in City
3 Resolution No. R-15-16.

4
5 The impartial analysis shall include a statement indicating whether the Measure was
6 placed on the ballot by a petition signed by the requisite number of voters or by the City
7 Council. In the event the entire text of the Measure is not printed on the ballot, nor in the
8 voter information portion of the sample ballot, there shall be printed immediately below the
9 impartial analysis, in no less than 10-font bold type, the following: **“The above statement is
10 an impartial analysis of Ordinance or Measure ___. If you desire a copy of the
11 ordinance or measure, please call the Office of the City Clerk at (909) 370-5001 and a
12 copy will be mailed at no cost to you.”**

13
14 **Section 8. Certification.** The City Clerk shall certify to the passage and adoption
15 of this Resolution and enter it into the book of original Resolutions.

16 **PASSED, APPROVED AND ADOPTED** this 22nd day of February, 2016.

17
18 
19 Richard A. DeLaRosa, Mayor

20
21 ATTEST:
22 
23 Carolina R. Padilla, City Clerk

24
25
26 APPROVED AS TO FORM:
27 
28 Carlos Campos, City Attorney
Best Best & Krieger

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ATTACHMENT "A"

**ORDINANCE AUTHORIZING INCREASE IN GENERAL FUND
TRANSFER FROM ELECTRIC SYSTEM REVENUE ACCOUNT
AND SETTING FIVE-YEAR ELECTRIC UTILITY RATE FREEZE**

[SEE ATTACHED PAGES 7 THROUGH 9]

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ORDINANCE NO. O-04-16

AN ORDINANCE OF THE PEOPLE OF THE CITY OF COLTON AUTHORIZING A TRANSFER FROM THE CITY'S ELECTRIC SYSTEM REVENUE FUND TO THE CITY'S GENERAL FUND IN AN AMOUNT NOT TO EXCEED 20% OF ELECTRIC SYSTEM GROSS REVENUES UNTIL JUNE 30, 2021 AND REVERTING BACK TO A MAXIMUM OF 12.39% THEREAFTER, AND ESTABLISHING AN ELECTRIC UTILITY RATE FREEZE FOR A PERIOD OF FIVE YEARS, EXCEPT IN CASES OF FISCAL EMERGENCY.

(NOTE: additions are highlighted in *bold italics* and deletions are highlighted in ~~strikeout~~)

THE PEOPLE OF THE CITY OF COLTON, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Clause (i) of paragraph (iii) of Section 3.44.030 of Chapter 3.44 of Title 3 of the Colton Municipal Code is hereby amended to read as follows:

"3.44.030 – Flow of Gross Revenues.

The Treasurer shall deposit the Gross Revenues of the Electric System as received in the Revenue Account into a bank account separate and apart from other accounts of the City. On or before the 20th day of each calendar month, the Treasurer shall withdraw the entire amount on deposit in the Revenue Account and shall allocate and deposit such amount in the indicated priority to the following accounts, sub-account and fund:

- (i) First, there shall be transferred to the M&O Account an amount sufficient for the payment of Maintenance and Operation Expenses for the following month;
- (ii) Second, there shall be transferred to the Qualified Obligations Account the amount of Qualified Obligation Service necessary to be deposited (assuming equal monthly deposits) such that all Qualified Obligations may be made as scheduled (to the extent not already transferred to such Account in such month or not otherwise on deposit in such Account) or, if less, the entire amount of Gross Revenues then available for transfer, to such Account; and
- (iii) Third, all moneys remaining in the Revenue Account after the above transfers have been made shall be transferred to the Surplus Revenue Account. Moneys in the Surplus Revenue Account at any time shall be used in the following order of priority:
 - (a) For the payment of all Additional Installment Payments (as defined in the 1997 Installment Sale Agreement) that have accrued or been incurred or that are then due and payable.

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(i) For transfer to the City's general fund, on a monthly basis, in an amount set by the City Council, but not greater than *the following: Until June 30, 2021, one-twelfth (1/12th) of ~~twelve point thirty-nine~~ twenty (12.3920%) percent of the Electric System's Gross Revenues of the preceding Fiscal Year (less (x) the costs and expenses relating to sales of electricity for resale during such Fiscal Year, (y) contributions in aid of construction during such Fiscal Year and (z) the public benefit charge collected pursuant to Assembly Bill 1890) or all available moneys in the Surplus Revenue Account if less than such amount. After June 30, 2021, the maximum allowed monthly transfer shall revert to one-twelfth (1/12th) of twelve point thirty-nine (12.39%) percent of the Electric System's Gross Revenues of the preceding Fiscal Year (less those costs, expenses, contributions in aid, and public benefit charge identified above) or all available moneys in the Surplus Revenue Account if less than such amount;*

....”

Section 2. Section 3.44.040 is hereby added to Chapter 3.44 of Title 3 of the Colton Municipal Code and shall read as follows:

3.44.040 – Electric Utility Service Rate Freeze, Exception.

(a) *For a period of five (5) years from the effective date of this Section, the City Council may not set electric utility service rates for City of Colton customers in an amount that exceeds those rates set by City of Colton Resolution No. R-39-13 (adopted June 18, 2013) (the “Rate Freeze”).*

(b) *The City Council may increase electric utility service rates beyond the maximum amount set forth in subsection (a) only by resolution, duly adopted by a unanimous vote of all members of the City Council, and making written findings that there exists an emergency to the City’s Electric System that requires such an increase in rates.*

(c) *Upon the fifth (5th) anniversary of the effective date of this Section, the Rate Freeze shall have no further force or effect and the City Council may set increased electric utility service rates as otherwise permitted by law. However, it may not “back-bill” or apply rates retroactively to the Rate Freeze period.*

(d) *As a voter-approved ordinance, pursuant to Elections Code Section 9217, this Section 3.44.040 shall apply notwithstanding any ordinance, resolution or other action of the City to the contrary.”*

Section 3. Effective Date. This ordinance is subject to a vote of the citizens of Colton and shall take effect, if approved by a majority of the voters voting at such election, ten (10) days following certification of the election results.

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Section 4. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The People of the City of Colton hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5. Certification/Summary. Following certification that the citizens of Colton have approved this Ordinance, the Mayor shall sign this Ordinance and the City Clerk shall cause the same to be entered in the book of original ordinances of said City; and shall cause the same, or a summary thereof, to be published as required by law.

I hereby certify that the forgoing ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Colton on the ____ day of _____, 2016.

Richard A. DeLaRosa, Mayor

ATTEST:

Carolina R. Padilla, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney
Best Best & Krieger

1 **STATE OF CALIFORNIA**)
2 **COUNTY OF SAN BERNARDINO**) ss
3 **CITY OF COLTON**)

4 **CERTIFICATION**

5 **I, CAROLINA R. PADILLA**, City Clerk of the City of Colton, California, do hereby
6 certify that the foregoing is a full, true and correct copy of **RESOLUTION NO. R-14-16**,
7 duly adopted by the City Council of said City, and approved by the Mayor of said City, at its
8 Special Meeting of said City Council held on the **22nd day of February, 2016**, and that it
9 was adopted by the following vote, to wit:

10	AYES:	COUNCILMEMBER	Toro, Jorrin, Navarro, González, Suchil
11			Bennett and Mayor DeLaRosa
12	NOES:	COUNCILMEMBER	None
13	ABSTAIN:	COUNCILMEMBER	None
14	ABSENT:	COUNCILMEMBER	None
15			

16 **IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal
17 of the City of Colton, California, this _____ day of _____, 20__.

18
19
20
21 _____
22 CAROLINA R. PADILLA
23 City Clerk
24 City of Colton

25 (SEAL)
26
27
28