ORDINANCE NO. 0-08-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, AMENDING SECTION 3(III)(I) OF ORDINANCE NO. 0-09-02 (SECTION 3.44.030(III)(I) OF THE COLTON MUNICIPAL CODE) RELATING TO THE ELECTRIC SYSTEM REVENUE FUND AND AMENDING THE AMOUNT WHICH MAY BE TRANSFERRED TO THE GENERAL FUND

WHEREAS, the City of Colton ("City") is a municipal corporation, organized and existing under the general laws and the Constitution of the United State of California; and

WHEREAS, the City owns and operates and makes expenditures to finance, acquire and construct additions to, maintain, repair and operate its Electric System; and

WHEREAS, the City may, from time to time, enter into contracts with respect to said construction and additions to its Electric System; and

WHEREAS, the City adopted Ordinance No. 0-21-94 which established an Electric System Revenue Fund; and

WHEREAS, the City adopted Ordinance No. 0-13-95 which repealed Ordinance No. 0-21-94, and continued the Electric System Revenue Fund and established a flow of funds for the Electric System Revenue Fund; and

WHEREAS, in 1995, the City entered into an Installment Purchase Agreement, dated as of October 1, 1995 (the "1995 Installment Purchase Agreement") with the Colton Public Financing Authority (the "Authority") pursuant to which the City agreed to make certain payments thereunder in order to facilitate construction and additions to its Electric System (the "1995 Project"); and

WHEREAS, the 1995 Project was financed using proceeds of the $17,585,000 Colton Public Financing Revenue Bonds, 1995 Series (City of Colton, California Electric System Improvements) (the "1995 Bonds"); and

WHEREAS, in 1997, the City entered into an Installment Sale Agreement, dated as of April 1, 1997 (the "1997 Installment Sale Agreement") with the Financing Authority for Resource Efficiency of California, pursuant to which the City agreed to make certain payments thereunder in order to facilitate the prepayment of all Purchase Payments (as such term was defined in the 1995 Installment Purchase Agreement) and certain other amounts due under the 1995 Installment Purchase Agreement; and

WHEREAS, the prepayment under the 1995 Installment Purchase Agreement and the resulting refunding of the 1995 Bonds were financed using a portion of the proceeds of the $46,565,000 Financing Authority for Resource Efficiency of California, Certificates of Participation, 1997 Series (Capital Improvements Program) (the "FARECal Bonds"); and

WHEREAS, in 2002, the City entered into an Installment Purchase Agreement, dated as of August 1, 2002 (the "2002 Installment Purchase Agreement"), with the Financing Authority, pursuant to which the City agreed to make certain payments thereunder in order to facilitate the acquisition, construction and installation of a generation facility for its Electric System (the "2002 Project"); and

WHEREAS, the 2002 Project was financed using proceeds of the Colton Public Financing Revenue Bonds, 2002 Series (Electric Generation Facility Project) (the "2002 Bonds"); and

WHEREAS, on July 2, 2002 the City adopted Ordinance No. 0-09-02, which repealed Ordinance No. 0-13-95, continued the Electric System Revenue Fund and established a flow of funds for the Electric System Revenue Fund; and

WHEREAS, in the last Recital of Ordinance No. O-09-02, the City stated that it intended for Ordinance No. 0-09-02 to "amend and replace Chapter 3.44 of the Colton Municipal Code", with Section 3.44.010 being Section 1 titled "Definitions", Section 3.44.020 being Section 2 titled "Fund and accounts" and Section 3.44.030 being Section 3 titled "Flow of gross revenues"; and

WHEREAS, while the publisher has not yet published Ordinance No. O-09-02 as Chapter 3.44 of the Colton Municipal Code, they have assured the City that it will be published shortly; and

WHEREAS, the City intends by this Ordinance to amend and replace Section 3(iii)(i) of Ordinance No. O-09-02 (e.g Section 3.44.030(iii)(i) of Chapter 3.44 of the Colton Municipal Code) to amend the amount which may be transferred to the general fund;

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

Section 1. Section 3.44.030 (Flow of Gross Revenues).

Section 3.44.030(iii)(i) of the Colton Municipal Code shall be deleted in its entirety and replaced with the following:

> "(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 one-twelfth (1/12th) of twelve point thirty-nine percent (12.39%) 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;"

Section 2. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

Section 3. CEQA.

The City Council hereby finds that this Ordinance is categorically exempt from further environmental review pursuant to the California Environmental Quality Act (Pub. Resources Code, sec. 21000 et seq.) ("CEQA") because, pursuant to Section 15321(a), Class 21, Category (a) of the State CEQA Guidelines, the Ordinance constitutes the enforcement of a law administered or adopted by the City as a regulatory agency. City staff is hereby directed to file a Notice of Exemption with the County Clerk within three (3) days following the adoption of this Ordinance.

Section 4. Effective Date.

The City Clerk shall certify to the passage of this Ordinance and cause the same or a summary thereof to be published within fifteen (15) days after adoption in a newspaper of general circulation, printed and published in Colton, California, and the Ordinance shall take effect thirty (30) days after its enactment in accordance with the provisions of California law.

ORDINANCE PASSED AND APPROVED on this 17th day of July, 2012.

Sarah S. Zamora, Mayor
City of Colton

ATTEST:

Eileen C. Gomez, City Clerk
City of Colton

STATE OF CALIFORNIA)

COUNTY OF SAN BERNARDINO) ss
CITY OF COLTON)

I, EILEEN C. GOMEZ, City Clerk of the City of Colton, California, do hereby certify under penalty of perjury that the foregoing is a full, true and correct copy of **ORDINANCE NO. O-08-12,** and was duly passed, approved, and adopted by the City Council of the City of Colton at its Regular Meeting held on the **17th day of July, 2012**, by the following vote to wit:

AYES:	COUNCILMEMBER	Toro, Gonzales, Yzaguirre, Oliva, Perez, and Mayor Zamora
NOES:	COUNCILMEMBER	Bennett
ABSTAIN:	COUNCILMEMBER	None
ABSENT:	COUNCILMEMBER	None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Colton, California, this 25th day of July, 2012.

EILEEN C. GOMEZ, CMC
City Clerk
City of Colton, California

(SEAL)