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 XIIIC, Section 1(e)), an increase in the General Fund Transfer as proposed in this Measure is equivalent to a general tax increase; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Council, **by a unanimous vote**, hereby orders the following proposed Measure/ordinance to be submitted to the voters of the City at the special municipal election to be held on **Tuesday, June 7, 2016**:

"To add approximately $4,800,000 in funding annually for general city services such as police, fire, paramedics, parks, libraries and senior services while stabilizing electric utility rates; shall an ordinance be adopted authorizing a transfer not to exceed 20% of annual electric utility gross revenues to the City's General Fund reverting back to a 12.39% maximum on June 30, 2021, and establishing a freeze on electric utility rates for 5 years, except in cases of financial emergency?"	YES NO

Section 4. Text of Ordinance. The text of the ordinance to be submitted to the voters is attached as Exhibit A.

Section 5. Conduct of Election. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 6. Notice of Election. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 7. Impartial Analysis. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the Measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the

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

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

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

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

Richard A. DeLaRosa, Mayor

ATTEST:

Carolina R. Padilla, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney
Best Best & Krieger

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]

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.

. . . .

(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*** (~~12.39~~***20***%) 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.

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

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF COLTON)

CERTIFICATION

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

AYES:	COUNCILMEMBER	Toro, Jorrin, Navarro, González, Suchil Bennett and Mayor DeLaRosa
NOES:	COUNCILMEMBER	None
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 _____ day of _____, 20___.

_____
CAROLINA R. PADILLA
City Clerk
City of Colton

(SEAL)