Res

BEFORE THE BOARD OF SUPERVISORS COUNTY OF PLACER, STATE OF CALIFORNIA

In the matter of:

Resolution No.: 2015-175

RESOLUTION OF THE COUNTY OF PLACER AUTHORIZING THE EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT WITH THE CITY OF COLFAX, ESTABLISHING THE SIERRA VALLEY ENERGY AUTHORITY

The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held on 8/18/15, by the following vote on roll call:

Ayes: DURAN, WEYGANDT, MONTGOMERY, UHLER

Noes: NONE

Absent: HOLMES

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE ATTEST

ANN HOLMAN
Clerk of the Board of Supervisors, County of Placer, State of California

Deputy Clerk

Signed and approved by me after its passage.

Chairman, Board of Supervisors

Attest:
Clerk of said Board

THE BOARD OF SUPERVISORS (THIS "BOARD") OF THE COUNTY OF PLACER (THE "COUNTY"), STATE OF CALIFORNIA (THE "STATE"), DOES HEREBY RESOLVE THAT:

WHEREAS, the County is a political subdivision of the State, organized and existing pursuant to the Constitution and laws of the State; and

WHEREAS, the County and City of Colfax (the "**City**") have proposed forming a joint powers authority under the provisions of Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "**Joint Powers Law**"), for the purpose of providing assistance to the County and City, and any other public agencies that become members of the joint powers authority from time to time in accordance with the Agreement (as defined below) (collectively, the "**Members**"), with the development and implementation of public and private sector energy and resource development and conservation programs under which local water, energy and economic development needs and goals will be determined, and infrastructure programs will be planned, developed and administered, and with the financing and refinancing of capital improvement projects of the Members and the financing of working capital for the Members; and

WHEREAS, to that end, this Board wishes at this time to approve the execution and delivery of a Joint Exercise of Powers Agreement (the "**Agreement**") by and between the County and City, establishing the Sierra Valley Energy Authority as a joint powers authority under the Joint Powers Law;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. This Board hereby specifically finds and declares that the actions authorized hereby constitute, and are with respect to, public affairs of the County, and that the statements, findings and determinations of the County set forth in the preambles above and of the documents approved herein are true and correct.

SECTION 2. Establishment of Sierra Valley Energy Authority. This Board hereby approves the establishment of the Sierra Valley Energy Authority (the "**Authority**") under the Joint Powers Law, pursuant to the Agreement, in the form on file with the Clerk of the Board of Supervisors. Any member of this Board is hereby authorized and directed to execute, and the Clerk of the Board of Supervisors is hereby authorized and directed to attest and affix the seal of the County to, the Agreement in the name and on behalf of the County.

SECTION 3. Authorization to Make Necessary Filings. The firm of Jones Hall, A Professional Law Corporation, as bond counsel to the County, is hereby authorized

and directed to cause to be prepared, executed and filed any and all reports, statements and other documents as may be required in order to implement the establishment of the Authority.

SECTION 4. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

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JOINT EXERCISE OF POWERS AGREEMENT FOR THE ESTABLISHMENT OF THE SIERRA VALLEY ENERGY AUTHORITY

THIS Joint Exercise of Powers Agreement (hereafter "Agreement"), effective as of the date set forth in Section 3, by and between the COUNTY OF PLACER, a political subdivision of the State of California (the "County") and the CITY OF COLFAX, a general law city and municipal corporation (the "City"), establishes the SIERRA VALLEY ENERGY AUTHORITY (the "Authority").

RECITALS:

A. Whereas, each of the parties to this Agreement has a vested interest in clean energy growth and development, resource conservation and the economic well-being of its respective jurisdiction and the region as a whole; and,

B. Whereas, each of the parties to this Agreement desires to enter into this Agreement to provide for assistance with programs that foster clean energy growth and development, resource conservation and the economic well-being of its respective jurisdiction and the region as a whole.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein, the parties hereto agree to establish a joint powers authority as follows:

Section 1. Parties; Authority for this Joint Exercise of Powers Agreement

The parties to this Agreement shall be the County, the City and each public agency that has executed or hereafter executes this Agreement, or any addenda, amendment, or supplement thereto and agrees to become a party to this Agreement, and which has not, pursuant to provisions hereof, withdrawn therefrom. Only the parties identified in this section and Associate Members approved under Section 4 of this Agreement, if any, shall be considered contracting parties to this Agreement under Government Code section 6502, provided that the rights of any Associate Member under this Agreement shall be limited solely to those rights expressly set forth in a PACE Agreement authorized in Section 4 of this Agreement.

This Agreement is made pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, commencing with Section 6500 (the "Act") and relates to the joint exercise of power common to the parties to this Agreement and the exercise of additional powers granted under the Act.

Section 2. Creation of Authority

The Authority is hereby created as an authority and public entity under the Act. As provided in the Act, the Authority shall be a public entity separate from the parties to this Agreement. The debts, liabilities and obligations of the Authority shall not constitute

debts, liabilities or obligations of the parties to this Agreement.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State in the manner set forth in sections 6503.5 of the Act. Such notice shall also be filed with the office of the Controller of the State.

Section 2. Purpose of Agreement

The purpose of the Agreement is to create a separate public entity to provide assistance to the parties to this Agreement with the development and implementation of public and private sector energy and resource development and conservation programs under which local water, energy and economic development needs and goals will be determined, and infrastructure programs will be planned, developed and administered, and with the financing and refinancing of capital improvement projects of the parties to this Agreement and the financing of working capital for the parties to this Agreement.

Section 3. Term

This Agreement shall become effective upon execution by all of the parties hereto and shall continue in full force and effect until terminated in the manner herein provided.

Section 4. Powers

The Authority shall have any and all common powers of the parties to this Agreement, and the powers separately conferred by law upon the Authority. All such powers, whether common to the parties or separately conferred by law upon the Authority, are specified as powers of the Authority except any such powers that are specifically prohibited to the Authority by applicable law. The Authority's exercise of its powers is subject to the restrictions upon the manner of exercising the powers of the City.

The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of said powers, including, but not limited to, any or all of the following:

A. Develop and implement comprehensive energy and resource development and conservation programs within the jurisdiction of the parties to this Agreement under which local energy needs and goals will be determined by input from the parties to this Agreement, and with assistance of energy development and resource conservation programs, through which energy and infrastructure programs and enterprises will be planned, conducted, evaluated and implemented.

B. Act as grant recipient, fiscal agent and administrative entity for any available federal, state, local or private sector programs, and disburse and account for funds so received.

C. Make and enter into contracts necessary for day to day operation of the Authority, employ agents and employees, including contracts for the

services of engineers, attorneys, planners, financial and energy industry consultants and other service providers.

D. Acquire, lease, rent, construct, manage, maintain, hold or dispose of property, real, financial or personal, including buildings, public works or improvements, equipment, material and supplies and other assets.

E. Incur debts, liabilities, obligations and to issue bonds, and to make and enter into agreements and other documents of any nature whatsoever as may be necessary or convenient in the exercise of the powers provided under the Act. Any bonds, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special obligations of the Authority payable solely from, and secured solely by, the revenues, funds and other assets pledged therefor under the applicable indentures or similar such agreements, and shall not constitute a charge against the general credit of the Authority. The bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable indentures or similar such agreements. The bonds shall not constitute a debt, liability or obligation of the State or any public agency thereof, including the parties to this Agreement, other than the special obligation of the Authority as described above. Neither the faith and credit nor the taxing power of the State or any public agency thereof, including the parties to this Agreement, shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the bonds nor shall the State or any public agency or instrumentality thereof, including the parties to this Agreement, in any manner be obligated to make any appropriation for such payment. The approval of the Governing Board shall be required for the Authority to incur debts, liabilities and obligations or to issue bonds, but the approval of the parties to this agreement shall not be required.

F. Establish and operate one or more programs for the financing and refinancing of distributed generation renewable energy, energy efficiency and water efficiency improvements (each, a "PACE program") pursuant to Chapter 29 of the Improvement Bond Act of 1911, Division 7 of the California Streets and Highways Code or other applicable law, and to enter into one or more agreements, including without limitation, participation agreements, implementation agreements and joint powers agreements and amendments thereto to fulfill such programs both within and outside the jurisdictional boundaries of the Authority.

G. Establish an "Associate Member" status that provides membership in the Authority to local jurisdictions that are outside the Authority's original jurisdictional boundaries, but within whose boundaries a PACE program will be established and implemented by the Authority. Said local

jurisdictions shall become Associate Members of the Authority by adopting one or more agreements or amendments of this Agreement (the "PACE Agreements") on terms and conditions established by the Authority. The rights of Associate Members shall be limited solely to those terms and conditions expressly set forth in the PACE Agreements for the purposes of implementing the PACE program within their jurisdictional boundaries. Except as expressly provided for by the PACE Agreements, Associate Members shall not have any rights otherwise granted to the members of the Authority by this Agreement, including but not limited to the right to vote, the right to amend this Agreement and the right to sit on committees or boards established under this Agreement.

H. Monitor, evaluate and take corrective action concerning performance specified in any agreement, and contracts or agreements into which the Authority has entered and evaluate the effectiveness of individual programs.

I. Adopt, promulgate and enforce such bylaws, rules and regulations as the Authority deems necessary for operation and management of the Authority and implementation of the programs.

J. Invest any money pursuant to Section 6505.5 of the Act which is not required for the immediate necessities of the Authority, as the Authority determines is advisable in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the California Government Code.

K. Sue or be sued in its own name.

Section 5. Governing Body; Officers

A. Membership. Except as provided below, the Governing Body of the Authority shall be a five (5) member Board, consisting of one member of the Board of Supervisors that is appointed by the Board of Supervisors, the County Executive Officer for the County, one member of the City Council that is appointed by the City Council, the City Manager for the City and the Placer County Treasurer-Tax Collector.

Each of the Board of Supervisors from the County and the City Council from the City shall also appoint not less than one alternate member. The term of office of each Governing Body member and alternate(s) appointed by the Board of Supervisors or the City Council, as applicable, may be terminated by such body at any time.

The designated alternate shall have authority to attend, participate, and vote at any meeting of the Governing Body whenever the regular member, for whom they are designed to act as an alternate, is absent from the meeting.

Immediately upon admission of a new member that is not an Associate Member pursuant to Section 15, such member shall be entitled to appoint two members of the Governing Body.

B. Quorum. The majority of the members of the Governing Body shall constitute a quorum. No action may be taken by the Governing Body unless a quorum is present and there is an affirmative vote by a majority of the Governing Body members, except that less than a quorum may adjourn a meeting from time to time.

C. Chairperson. The Chairperson and Vice Chairperson of the Governing Body shall be selected by the Governing Body from its members. The term of office of the Chairperson and Vice Chairperson shall each be one calendar year.

D. Secretary. The Governing Body shall appoint a Secretary to the Governing Body who shall be the Executive Director of the Authority.

E. Meetings. All meetings of the Governing Body shall be held subject to the provisions of the Ralph M. Brown Act, Division 2, Chapter 9 of the California Government Code (hereafter, the "Brown Act").

G. Bylaws. The Governing Body shall adopt bylaws for the conduct of business which shall not be inconsistent with the provisions of this Agreement, and the laws of the State of California.

H. Officers. The Officers of the Authority shall consist of the Executive Director, the Auditor-Controller and the Treasurer described below and a Secretary appointed by the Board.

Section 6. Executive Director and Other Staff

A. The Governing Body shall be assisted by an Executive Director who shall be appointed by the Governing Body and shall serve at the pleasure of the Governing Body. The Executive Director shall in turn hire and supervise any Authority employees or consultants.

C. The Governing Body may delegate a contract approval function to the Authority's Executive Director. The Governing Board shall adopt any such delegation by resolution.

D. The Governing Body may appoint or contract for the services of an independent monitor to review programs operated by the Authority and to report to the Governing Body.

Section 7. Auditor-Controller and Treasurer

The Auditor-Controller of the County of Placer shall be the Auditor-Controller of the Authority.

The Placer County Treasurer shall be the Treasurer of the Authority, shall have custody of all monies received by the Authority, and shall:

A. Receive all funds of the Authority and place them in the Treasury of the County of Placer to the credit of the Authority.

B. Be responsible upon his or her official bond for safekeeping and disbursement of all money of the Authority so held. The Treasurer and such officer shall file an official bond in the amount of $_____ as required by section 6505.1 of the Act; provided, that such bond shall not be required if the Authority does not possess or own property or funds with an aggregate value of greater than $500 (excluding amounts held by a trustee or other fiduciary in connection with any bonds or other debt). The cost of the bond shall be paid by the Authority.

C. Pay, when due, out of the Authority funds so held, all sums due from the Authority upon presentation of authorization from the Authority.

Section 8. Meetings of the Governing Body

A. The Governing Body shall hold its regular meetings four times a year. It may, by resolution, provide for additional regular meetings, and by act of the President or a majority of the members provide for special meetings.

The date, hour and place of such regular meetings shall be fixed by resolution of the Governing Body.

B. Meetings may be held by telephonic or other electronic means

C. All meetings of both the Governing Body shall be called, held, noticed and conducted subject to the provisions of the Brown Act.

Section 9. Fiscal Year

For the purposes of this Agreement, the Authority shall have a fiscal year from July 1 to and including the following June 30.

Section 10. Records and Reports

The Governing Body, shall establish reporting requirements and direct staff to maintain such reports, including, but not limited to, funds and accounts as may be required by good accounting practice or by law. All books and records of the Authority shall be open to inspection at all reasonable times by any party to this Agreement or its representatives. Annual audits of the Authority's accounts and records shall be made by an independent CPA firm, and reports shall be filed in the manner provided in Section 6505 of the California Government Code.

Section 11. Debts, Liabilities and Obligations

The debts, liabilities and obligations of the Authority shall not, under any circumstances, constitute debts, liabilities or obligations incurred by any party under this Agreement. Should any debt, liability or obligation of the Authority not be waived or allowed payable through assets of the Authority, none of the members shall be liable, except as provided by Government Code sections 895 through 895.8.

Section 12. Insurance

During the term of this Agreement, the Authority shall maintain general liability insurance coverage, as well as errors and omissions coverage, in a sum not less than $2 million per occurrence. The insurance shall also contain a written endorsement to such policy or policies which names each of the members that are not Associate Members as additional insureds.

Section 13. Right of Withdrawal

Any party to this Agreement may withdraw upon written notice of such withdrawal to the other parties not less than six (6) months prior to the effective withdrawal date therein specified; provided, however, that no such withdrawal shall result in the dissolution of the Authority so long as any debt of the Authority is unpaid.

Section 14. Termination of Agreement

This Agreement may be terminated:

A. Upon the joint actions of the Board of Supervisors and City Council to mutually terminate this Agreement.

B. Upon withdrawal of such number of parties from this Agreement as to reduce the remaining number of parties to less than two members.

However, no termination of this Agreement shall be effective until the full retirement of any outstanding debt. Any party may fund the retirement of the debt for the purpose of terminating the Authority.

Section 15. New Members

With the approval of two-thirds (2/3rds) of the Governing Body, any qualified public agency (as defined by Section 6500 of the JPA law) may become a party of this Agreement. A party to this Agreement may be a voting member or an Associate Member. A public agency requesting membership may apply by presenting to the Authority a certified resolution of the public agency approving of this Agreement and, with respect to Associate Members, any related PACE Agreements. The date and terms upon which the applying public agency will become a member will be determined by the Governing Body.

Section 16. Termination of Powers

The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, and thereafter shall continue to exercise only such powers as to enable it to pay and discharge all costs, expenses, and charges legally incurred hereunder, and to dispose of, divide and distribute any property required as a result of the joint exercise of such powers.

Section 17. Disposition of Assets; Property and Money

Upon termination of this Agreement under Section 14, all costs, expenses, and charges legally incurred by the Authority shall be paid and discharged; and the Authority shall sell such property as may be necessary and shall distribute to the federal or State government such property and funds as are lawfully required; the balance of such property and any surplus money on hand shall be distributed or returned in proportion to contributions made by the affected parties except to the extent otherwise agreed upon by the affected parties.

Section 18. Amendments

This Agreement may be amended at any time by the written agreement of the parties to this Agreement. Notwithstanding the foregoing, (a) any amendment required to add a new member that is not an Associate Member shall only be executed by the new member and the members of the Authority that are not Associate Members and (b) any amendment required to add a new member that is an Associate Member shall only be executed by the new member and the Authority.

Section 19. Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the members for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance made in respect of a revenue-producing facility shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the members, and the Authority at the time of making such advance as provided by section 6512.1 of the Act. It is mutually understood and agreed that none of the members has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though either may do so. The members may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

Section 20. Severability

Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions of provisions shall not be affected thereby.

Section 21. Entire Agreement

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligation under this Agreement be waived, except by written instrument signed by the parties.

Section 22. Counterparts and Effective Date

This Agreement may be executed in counterparts and be as valid and binding as if each party signed the same copy. A faxed copy of the executed signature page shall be sufficient to cause the terms of this Agreement to become fully operative. The effective date of the Agreement shall be the latest date that the City or County executed the Agreement.

WITNESS THE AGREEMENT HEREOF the date set opposite our respective entities:

EXECUTED ON
AUGUST 18, 2015

By

Chairman, Board of Supervisors

COUNTY OF PLACER, a political subdivision

And approved as to form

ATTEST:

EXECUTED ON
SEPTEMBER 9, 2015

By

Mayor, City Council

CITY OF COLFAX, a general law city and municipal corporation

And approved as to form

ATTEST: