

Enabling Charter of  
**Coyote Valley Utility Corporation**

A Subdivision of the Coyote Economic Development Corporation

By virtue of adopting this Charter (“*Charter*”), the Coyote Economic Development Corporation (“*CEDCO*”), a federally chartered Tribal business corporation organized under 25 U.S.C. § 5124, by and through its Board of Directors (“*CEDCO Board*”), hereby forms and enables the Coyote Valley Utility Corporation (“*Subdivision*”), a corporate subdivision and subordinate economic entity of CEDCO, and an integral part of the economic development efforts of the Coyote Valley Band of Pomo Indians (“*Tribe*”), a federally recognized Indian tribe.

**Article I. PURPOSES**

**Section 1. Corporate Purposes.** The Subdivision is formed for the following purposes on behalf of CEDCO for the benefit of the Tribe, with the mission of improving the Tribe’s economy by developing, maintaining, and managing public utilities infrastructure on the Reservation, including but not limited to, electricity, water, sanitation, and telecommunications infrastructure, to internalize utility costs, generate revenue and provide essential government services for the health, safety and welfare of the Tribe and its Tribal members (each, a “*Utility Business Enterprise*”):

- (A) To improve the quality of public utility services on the Reservation by developing, maintaining, and managing public utilities infrastructure on the Reservation, including but not limited to, electricity, water, sanitation, and telecommunications infrastructure, through the development and operation of one or more Utility Business Enterprises;
- (B) To improve the Tribe’s economy by internalizing utility costs and generating revenue through the development and operation of one or more Utility Business Enterprises;
- (C) To act as the Tribe’s primary agent for the development and operation of such Utility Business Enterprises;
- (D) To enter into such agreements as is necessary, or otherwise beneficial, in relation to the development and operation of Utility Business Enterprises held in the name of the Subdivision; and
- (E) To exercise all other powers necessary and reasonably connected with such purposes, which may legally be exercised by a Subdivision formed under Article VIII, Section E, of the Federal Charter of Incorporation issued by the United States of America, Department of the Interior, Bureau of Indian Affairs, to the Coyote Valley Band of Pomo Indians for CEDCO, a Federally Chartered Tribal Business Corporation (“*CEDCO Charter*”), and to engage in all activities necessary, customary, convenient or incidental to any of the foregoing, subject to the limitations of this Charter and applicable law.

**Section 2. Use of Revenues.** Revenues generated by the Subdivision may only be used to fund Tribal government operations and programs, provide for the general welfare of the Tribe, promote and diversify the Tribe’s economic development, generate jobs for Tribal members, develop the Tribe’s self-sufficiency, donate to charitable organizations and help fund operations of local government agencies.

**Article II. OFFICES**

**Section 1. Principal Office.** The principal office of the Subdivision shall be established by its Board of Directors (“*Subdivision Board*”), provided such office shall be located within the boundaries of the Reservation. “Reservation,” as used in this Charter, shall mean all lands within the exterior boundaries of the Tribe’s Reservation, any lands held in trust by the United States for the benefit of the Tribe whether inside or outside the exterior boundaries of the Tribe’s Reservation, and any lands determined by law to be part of the Tribe’s Reservation.

**Section 2. Registered Office.** The Subdivision Board may maintain a registered office at a location that is the same as, or that is distinct from, the location of its principal office, provided such registered office is also located within the boundaries of the Reservation.

### **Article III. AUTHORITY FOR CREATION**

The Subdivision is organized, incorporated, and chartered pursuant to the power vested in CEDCO under Article VIII, Section E, of the CEDCO Charter.

### **Article IV. OWNERSHIP AND STATUS**

**Section 1. Status.** The Subdivision shall be a separate legal entity from CEDCO, the Tribe and all other entities owned or controlled by the Tribe, in whole or in part, but shall be a subordinate economic entity of CEDCO, cloaked in the same privileges and immunities as CEDCO, within the meaning of 25 U.S.C. § 5124, as amended, including the same federal income tax exemption status, immunity from taxation by the states, immunity from unconsented suit and such other exemptions, rights, privileges and immunities as available under Tribal and applicable federal law.

**Section 2. Ownership.** The Subdivision is wholly owned by CEDCO, which is in turn wholly owned by the Tribe; however, the activities, transactions, obligations, liabilities and property of the Subdivision are not those of CEDCO or the Tribe.

**Section 3. Ownership Rights.** All rights of CEDCO as the owner of the Subdivision shall be exercised by the Subdivision Board, which shall serve as the owner’s representative, except as otherwise provided herein or in the Subdivision’s Bylaws.

#### **Section 4. Limitations on Ownership.**

- (A) No individual or entity other than CEDCO, or another subdivision wholly owned by CEDCO, shall acquire ownership rights in the Subdivision; *provided, however,* that the Subdivision and any or all of its assets may be transferred to the Tribe, or another entity wholly-owned by the Tribe, with the consent of the Tribal Council.
- (B) Nothing in this Charter shall be deemed to waive, or permit the Subdivision to waive, the sovereign immunity of the Tribe, nor any entity, other than the Subdivision, owned or controlled by or through the Tribe, including without limitation CEDCO and its other subordinate entities (each, excluding the Subdivision, an “*Other Tribal Entity*”). Likewise, the sovereign immunity of the Subdivision may not be waived by the Tribe, CEDCO or any Other Tribal Entity.

### **Article V. DURATION**

The duration of the Subdivision shall be perpetual, unless dissolved according to the procedures in Article XIII of this Charter.

### **Article VI. GRANT OF ENUMERATED POWERS AND LIMITATIONS**

**Section 1. Enumerated Powers.** The CEDCO Board, by the enabling of this Charter, endows and authorizes the Subdivision, through the Subdivision Board, to exercise on behalf of the Subdivision the same powers granted to CEDCO in Article VIII of the CEDCO Charter; *provided, however*:

- (A) Waivers of the Subdivision’s sovereign immunity shall only be made in strict accordance with Article XI of this Charter.
- (B) The Subdivision shall have the power to enter into and make contracts of every kind and nature with any person, firm, association, corporation, municipality, nation, Indian tribe, state or body politic, without the approval of CEDCO, the Tribe or the Secretary of the Interior, *except*:
  - (i) if Tribal law or the use of trust or federally-restricted Indian property requires approval of CEDCO, the Tribe or the Secretary of the Interior, such approval(s) must be obtained; or
  - (ii) if the term of the contract may reasonably be expected to exceed five (5) years, or may reasonably be expected to exceed One-Hundred Thousand Dollars (\$100,000.00), the contract must be approved by the CEDCO Board and the Tribal Council prior to the Subdivision entering into the contract, *provided, however*, that where the members of the CEDCO Board and the Tribal Council are identical, the Subdivision may satisfy the requirements of this provision by obtaining one authorization from either the CEDCO Board or the Tribal Council.
- (C) The Subdivision shall have the power to incur debts and to raise, borrow and secure the payment of any money on its own behalf in any lawful manner, including the issue and sale or other disposal of stocks, bonds, indentures, obligations, negotiable and transferable instruments and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust or otherwise (each, a “**Debt Obligation**”), without the approval of CEDCO, the Tribe or the Secretary of the Interior, *except*:
  - (i) if Tribal law or the use of trust or federally-restricted Indian property requires approval of CEDCO, the Tribe or the Secretary of the Interior, such approval(s) must be obtained; or
  - (ii) if the Debt Obligation is may reasonably be expected to exceed One-Hundred Thousand Dollars (\$100,000.00), the Debt Obligation must be approved by the CEDCO Board and the Tribal Council prior to the Subdivision entering assuming the Dept Obligation, *provided, however*, that where the members of the CEDCO Board and the Tribal Council are identical, the Subdivision may satisfy the requirements of this provision by obtaining one authorization from either the CEDCO Board or the Tribal Council.
- (D) For the avoidance of doubt, the Subdivision shall have the power and authority to create subdivisions of the Subdivision (each, a “**Sub-Subdivision**”) but shall have no power or authority to create Corporate Subdivisions (as defined in the CEDCO Charter).

**Section 2. Limitations on Corporate Power.** The Subdivision shall also be subject to the same limitations on corporate powers applicable to CEDCO in Article IX of the CEDCO Charter.

**Section 3. Regulatory Authority.** Nothing in this Charter, and no action taken by the Subdivision pursuant to this Charter, shall be construed as permitting, recognizing or granting any state, or any political subdivision thereof, any regulatory or taxing jurisdiction over the property or activities of the Subdivision or its officers, directors, employees and agents located within the boundaries of the Tribe’s Reservation,

and, unless otherwise explicitly contravened by the United States Congress, the same shall be true for any activities located or occurring outside the boundaries of the Tribe's Reservation.

**Section 4. Interest of the Tribe.** No action may be taken by the Subdivision unless the Subdivision Board believes the action will benefit the long-term interests of the Tribe and its members.

**Section 5. Tribal Council Veto.** The Tribal Council, acting in its capacity as the Tribe's representative, may veto any action by a vote of five (5) or more members of the Tribal Council, that the Subdivision cannot demonstrate, to the satisfaction of the Tribal Council, will benefit the long-term interests of the Tribe and its members.

## Article VII. MANAGEMENT

**Section 1. Bylaws.** The Subdivision Board shall adopt Subdivision bylaws ("**Bylaws**") that detail the policies and processes by which the Subdivision Board shall manage the Subdivision, including through a management contract with a qualified third party. The Bylaws must be approved by CEDCO, and such Bylaws may be amended from time to time by a majority vote of the Subdivision Board, subject to the approval of the CEDCO Board; provided, however, that if the CEDCO and Subsidiary Boards are identical, no such secondary approval by the CEDCO Board shall be required.

**Section 2. Board of Directors.** The business and affairs of the Subdivision shall be managed by its Subdivision Board in accordance with the Bylaws and subject to any applicable limitations set forth in the Tribe's Constitution, the CEDCO Charter, this Charter or other Tribal law. The Subdivision Board shall determine the manner in which it shall exercise authority and responsibility for the management of the Subdivision and the extent to which such responsibilities shall be delegated by the Subdivision Board. The Subdivision Board generally shall be responsible for establishing overall policies and objectives for the management of the affairs and assets of the Subdivision, for planning and delegating responsibility and for periodically reviewing and evaluating results. For the avoidance of doubt, nothing herein shall prohibit the Subdivision Board from utilizing the services of qualified, third-party professionals to assist the Subdivision Board in establishing policies and objectives for the management of the affairs and assets of the Subdivision or for otherwise assisting in Subdivision operations.

**Section 3. Composition of Board of Directors.** Unless otherwise authorized by a unanimous vote of the full Tribal Council, the Subdivision Board shall at all times consist of the same members as the CEDCO Board (and such members, when serving on the Subdivision Board, shall be referred to herein as "**Directors**").

**Section 4. Officers.** Unless otherwise authorized by a unanimous vote of the full Tribal Council, the officers of the Subdivision Board ("**Officers**") shall be the same as the officers of the CEDCO Board.

**Section 5. Quorum.** A quorum of the Subdivision Board for the purpose of conducting business shall consist of four (4) Directors, *provided, however,* that in the event there are less than four (4) Directors at any time due to vacancies, a quorum shall consist of all remaining members of the Subdivision Board. In the event a quorum is not present, a lesser number may adjourn the meeting without further notice.

**Section 6. Voting.** Each Director shall have one (1) vote in all matters decided by the Subdivision Board in which the Director is present. Any tied vote shall result in a denial of the motion or action called for.

## Article VIII. CORPORATE ACTION

**Section 1. Action at Board Meeting.** Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present is an act of the Subdivision Board, and shall be considered a corporate action of the Subdivision. A meeting at which a quorum is initially present may continue to discuss business notwithstanding the loss of a quorum at the meeting due to a withdrawal of a Director from the meeting, but the remaining Directors may not take any corporate action unless and until a quorum is re-established. A majority of the Directors present at a meeting, whether or not a quorum is present, may adjourn the meeting to another time and place.

**Section 2. Action Without Meeting.** Any action required or permitted to be taken at a Subdivision Board meeting, except for an action to fill any vacancy or elect any position on the Subdivision Board, may be taken without a meeting, without prior notice and without a vote, upon the unanimous written consent of the Subdivision Board. Such action shall have the same force and effect as a vote at a Subdivision Board meeting with quorum present.

## **Article IX. CONFLICTS OF INTEREST**

**Section 1. Conflicts of Interest.** No Director may vote upon a matter coming before the Subdivision Board that in any way constitutes a Conflict of Interest.

**Section 2. Definition of Conflict of Interest.** A “*Conflict of Interest*” means:

- (A) Action or conduct by a Director which is in conflict with the Director’s obligation to take action in the best interests of the Subdivision, the Tribe, or any Other Tribal Entity; or
- (B) Knowledge or reasonable anticipation that a Director, or his or her Relative, has or will have a familial, personal, or financial interest that is separate from or adverse to the interests of the Subdivision, the Tribe, or any Other Tribal Entity. “*Relative*” shall mean father, mother, grandfather, grandmother, son, daughter, brother, sister, uncle, aunt, first cousin, second cousin, nephew, or niece, whether or not by adoption. In addition, the term includes husband, wife, a significant other, domestic partner, ex-spouse, son-in-law, daughter-in-law, father-in-law, mother-in-law, sister-in-law, brother-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

**Section 3. Disclosure.** Immediately upon becoming aware that a Conflict of Interest exists, a Director must disclose the existence of the conflict to the remaining Directors, withdraw from further deliberation on the issue and refrain from voting on the matter. Any such disclosure and withdrawal must be fully documented in the Subdivision’s minutes.

**Section 4. Board Action.** For any Conflict of Interest, the Subdivision Board, with the abstention of the interested Director, may decide whether such Director may participate in any reporting, discussion or vote on the issue that gave rise to the potential conflict. The Subdivision Board must withhold any information on such issues from the Subdivision Board materials distributed to the applicable Director and take all such other action necessary to effectuate this Article IX.

**Section 5. Recusal.** Any Director with a Conflict of Interest, which cannot be avoided to the satisfaction of the Subdivision Board, must recuse him or herself from any reporting, discussions or voting on the issue that gave rise to the conflict and, if necessary, from the Subdivision Board meeting, or any applicable part thereof. A Director stating such disqualification must be counted as a part of a quorum and must be considered an abstention for the purpose of determining the outcome of any vote on such matter.

**Section 6. Disputes About Conflicts of Interests.** If the Subdivision Board, with the abstention of the interested Director, cannot agree whether a Conflict of Interests exists, or otherwise believes it would be in the best interest of the Subdivision to seek a third-party resolution regarding the potential conflict, the Secretary shall present a written statement of the conflict, as approved by the Subdivision Board, and formally request that a neutral third party makes a determination as to whether a conflict of interest exists, and the decision of a neutral third party shall be final. . The Subdivision Board shall abstain from any further deliberation or voting on the matter until the CEDCO Board or the Tribal Council, where applicable, determines how the conflict, if any, shall be handled.

#### **Article X. CORPORATE RECORDS AND FINANCIAL RESPONSIBILITIES**

**Section 1. Corporate Records.** The Subdivision Board shall maintain permanent records of all meeting minutes, Subdivision Board resolutions and accounting in accordance with its Bylaws and generally acceptable corporate practice.

**Section 2. Accounting Records.** The Subdivision Board shall maintain permanent accounting records and at least one (1) detailed financial report per year in accordance with the Bylaws, generally acceptable accounting practices and any additional reasonable and business-focused requirements of the CEDCO Board.

**Section 3. Allocation of Revenues.** The revenues of the Subdivision shall be allocated between the Subdivision and CEDCO (and/or an Other Tribal Entity designated by CEDCO) in a manner set forth in a “Revenue Allocation Plan” approved by the Tribal Council, which may be amended from time to time by the Tribal Council, and provided that any such resolution or amendments are consistent with this Charter, applicable law, and the following limitations:

- (A) All revenue allocations shall be made in cash, unless the Tribal Council agrees otherwise;
- (B) No revenue allocations may be declared and distributed from the Subdivision if, after giving it effect: (i) the Subdivision would not be able to pay its debts as they become due in the usual course of business; (ii) the Subdivision’s total assets would be less than the sum of its total liabilities; or (iii) such allocation would violate any loan, financing or investment agreement;
- (C) No revenue allocations shall deny the Subdivision Board the discretion to reinvest available capital and profits as it deems in the best interest of the Tribe and its members; and

**Section 4. Transmutation.** Receipt of any asset by CEDCO, the Tribe or an Other Tribal Entity from the Subdivision shall immediately and irrevocably lose its character as a Subdivision asset and transmute into an asset of CEDCO, the Tribe or Other Tribal Entity, as applicable. Revenues and cash assets received by CEDCO, the Tribe or Other Tribal Entity from the Subdivision in particular shall immediately and irrevocably lose their character as Subdivision revenues and cash assets, and shall transmute into general treasury funds of CEDCO, Tribe or Other Tribal Entity, as applicable.

#### **Article XI. WAIVERS OF SOVEREIGN IMMUNITY**

**Section 1. Authority.** Only the Subdivision Board may waive the Subdivision’s sovereign immunity, and only in accordance with this Article XI. For the Subdivision Board to waive the Subdivision’s sovereign immunity, it must do so by resolution (“*Authorizing Resolution*”).

**Section 2. Authorized Waivers.** Waivers of the Subdivision’s sovereign immunity shall be presumed limited to specific performance and Direct Damages. “Direct Damages,” as used in this Charter, means the actual damages that are, or reasonably can be presumed will be, the immediate and proximate injury resulting from a breach of contract or other obligation, without regard to any unique or special circumstances or conditions regarding the non-breaching party. No other causes of action, self-help remedies or claims in law or equity shall be cognizable against the Subdivision except as may be expressly set forth in an Authorizing Resolution. A waiver of sovereign immunity by the Subdivision shall not be deemed consent to the levy of any judgment, lien or attachment upon the property of the Subdivision, other than for income or chattels especially pledged or assigned. The benefits of a waiver of sovereign immunity shall be limited to the party or parties named in the Authorizing Resolution.

**Section 3. Limited Scope, Parties, and Duration.** Waivers of sovereign immunity shall always be limited to the scope of the transaction for which the waiver was granted and shall not extend to any claim or cause of action not arising directly from that transaction. For any waiver granted by the Subdivision, such waiver shall not allow any action to be brought against the Subdivision Board, collectively or individually, or the officers, attorneys, employees, agents, owners or any other persons (natural or otherwise) acting on behalf of the Subdivision. Enforcement of such waivers shall be limited to the extent of assets specifically pledged by the Subdivision Board, and in the event an Authorizing Resolution is silent as to the assets pledged, enforcement shall be limited to the value of the contract or other agreement that is the subject of the waiver, or in the absence of such a contract or other agreement, \$10,000 per claim, whichever is greater, and with any class action considered a single claim. Nothing in this Charter shall be construed, interpreted, or implied to have waived the sovereign immunity of the Subdivision, except as explicitly stated in this Article XI.

**Section 4. Pledging Assets.** An Authorizing Resolution may pledge assets by listing as available for recourse: a specific, “not to exceed” amount of funds (such as the value of a contract); a specific source of funds (such as the net revenues of a certain business); certain personal property (such as one or more specifically identified pieces of equipment); a certain category or categories of personal property (such as “all inventory and equipment” of a certain business owned by the Subdivision); any other reasonable means of listing assets, such as by reference to a security agreement signed by the Subdivision; or any combination of the foregoing.

**Section 5. Void Waivers.** Any waiver of sovereign immunity granted in violation of this Article XI is void, shall not be recognized and shall possess no legal or other compulsory force.

**Section 6. Restrictions.** The Subdivision does not have the authority to waive the sovereign immunity of the Tribe, CEDCO or any Other Tribal Entity. It is legally impossible for the Subdivision to waive the sovereign immunity of the Tribe, CEDCO or any Other Tribal Entity, whether directly or indirectly, purposefully or inadvertently, explicitly or implicitly. Likewise, neither the Tribe, CEDCO or any Other Tribal Entity may waive the sovereign immunity of the Subdivision. It is legally impossible for the Tribe, CEDCO or any Other Tribal Entity to waive the sovereign immunity of the Subdivision, whether directly or indirectly, purposefully or inadvertently, explicitly or implicitly.

**Section 7. Governing Law.** Unless otherwise stated in the Authorizing Resolution, all contracts and other agreements entered into by the Subdivision shall be governed by the laws of the Tribe.

**Section 8. Jurisdiction.** Unless otherwise stated in the Authorizing Resolution, the courts of the Tribe shall have sole jurisdiction over any claim or other action brought against the Subdivision. For the avoidance of doubt, entering into a contract or other agreement consenting to dispute resolution before a quasi-judicial body, such as the American Arbitration Association or JAMS, does not constitute consent to any state or federal court unless such consent is expressly given in the Authorizing Resolution. For purposes of a waiver of sovereign immunity granted by the Subdivision, any language in any rules of such a quasi-judicial body purporting to subject the Subdivision to the jurisdiction of a state or federal court shall be stricken as a condition of the Subdivision's grant of a waiver of sovereign immunity, unless consent to such jurisdiction is expressly given in the Authorizing Resolution. Consent to the jurisdiction of a federal or state court shall not be considered consent to any alleged sanctioning authority by said courts, unless otherwise stated in the Authorizing Resolution.

**Section 9. Tribal Exhaustion.** Unless otherwise stated in the Authorizing Resolution, the Subdivision maintains any rights held under the doctrine of tribal exhaustion.

## **Article XII. INDEMNIFICATION**

The Subdivision shall indemnify any current or former Director, officer, employee or agent (which shall include the Subdivision's attorneys, accountants and other professionals) against reasonable expenses actually and necessarily incurred by such person in connection with the defense of any action, suit or proceeding in which such person is made a party by reason of being, or having been, such Director, officer, employee or agent of the Subdivision, and the reasonable costs of settlement of any such action or proceeding, if a majority of Directors not seeking indemnification or otherwise involved in the controversy shall determine in good faith that: (i) such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent; (ii) any legal fees paid or any settlements made are reasonable; and (iii) the person seeking indemnification did not act beyond the scope of the authority of his or her employment or office. In the event all Directors are seeking indemnification, the Subdivision Board shall make the determination of the eligibility of the Directors regarding indemnification, using the factors described in item (i)-(iii) of this Article XII.

## **Article XIII. TEMPORARY SUSPENSION AND PERMANENT DISSOLUTION**

**Section 1. Temporary Suspension.** CEDCO may temporarily suspend the business of the Subdivision upon recommendation by the Subdivision Board or a majority vote of the CEDCO Board. Suspension of the Subdivision's operations may be temporarily imposed if the Subdivision Board finds, and CEDCO Board concurs, that the Subdivision's business may be resumed if certain prerequisites may likely be complied with, such as obtaining financial support, or overcoming temporary disabling conditions within a reasonable period.

**Section 2. Action to Dissolve or Sell or Dispose of Corporate Assets.** The Subdivision may be dissolved, or all or substantially all of the Subdivision's assets may be sold or otherwise disposed of other than in the regular or usual course of business, only by a majority vote in favor thereof by the Board and prior written approval by the CEDCO Board and the Tribal Council.

**Section 3. Distribution of Assets.** Upon dissolution, the Subdivision's assets, including cash assets remaining after payment of all debts and liabilities shall be distributed to the Tribe, or to an Other Tribal



Entity designated by the Tribe, so as to ensure that the assets of the Subdivision will be used exclusively to accomplish the general purposes for which it was created. Any asset distributed in such a manner shall immediately and irrevocably lose its character as a Subdivision asset and transmute into general treasury funds of the entity to which the asset was transferred.

**Article XIV. AMENDMENTS**

This Charter may be amended at any time by a majority vote of CEDCO and ratification by the Tribal Council.

*(Certificate of Approval on Following Page)*

**Certified Instrument of Enabling**

Done in convention by resolution of the CEDCO Board, in witness whereof, we hereunto subscribe our names this January 26, 2023.



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MICHAEL HUNTER, CHAIRMAN

COYOTE ECONOMIC DEVELOPMENT CORPORATION



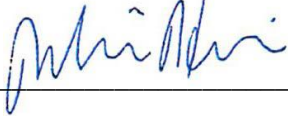
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CANDACE LOWE, SECRETARY

COYOTE ECONOMIC DEVELOPMENT CORPORATION

**Ratification**

By duly held meeting of the Tribal Council of the Coyote Valley Band of Pomo Indians, we hereby ratify this Charter and, by our marks, establishment of Coyote Valley Utility Corporation shall be done.



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MICHAEL HUNTER, CHAIRMAN  
COYOTE VALLEY BAND OF POMO INDIANS



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CANDACE LOWE, SECRETARY  
COYOTE VALLEY BAND OF POMO INDIANS