



MARIPOSA COUNTY

Administration • 966-3222



RESOLUTION - ACTION REQUESTED 2021-220

MEETING: April 20, 2021
TO: The Board of Supervisors
FROM: Dallin Kimble, County Administrative Officer
RE: Sale of Rule 20A Credits to Larkspur

RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement to Sell \$486,170 in California Public Utility Commission (CPUC) Rule 20A Pacific Gas and Electric (PG&E) Credits to the City of Larkspur in the Amount of \$218,777; and Authorize the Board of Supervisors Chair to Sign the Agreement.

This agreement will transfer \$486,170 in CPUC Rule 20A PG&E credits to the City of Larkspur for \$218,777 (a rate of \$0.45/\$1.00). The option also provides the City of Larkspur with a 180-day option to buy an additional \$122,222 in credits at the same rate.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The CPUC Rule 20A program provides credits for local governments for the planning, design and construction elements necessary to relocate overhead infrastructure, such as power lines, to an underground trench. The utility is compensated for project costs by collecting the jurisdiction's accumulated credits and including them in subsequent general rate cases so that the electric rates charged to all customers within their service territory will cover the submitted Rule 20A expenses.

While the CPUC has not made a final decision, it is considering options that may change Rule 20A as early as August of this year. Possible changes include: 1) eliminating credits from entities that have not used them; 2) freezing credits with a requirement to use or lose any remaining balance within a given timeframe; or 3) paying off credits to close the program.

Mariposa County currently has approximately \$3.6 million in Rule 20A credits. The County does not have a project close enough to construction to preserve these credits from a CPUC action in August. In order for a project to be approved or considered qualified, it must be located on a major collector or arterial street or corridor that

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serves the good of the community at large. The costs for these types of projects can range from \$1,000 to \$2,000 per foot, making it difficult to find a viable project using the available credits.

Rule 20A credits can be sold or traded between jurisdictions and the market for these credits has gotten considerably more active since news of the possible changes became public last year. In Fall 2020, County Administration received an offer from the City of Burlingame offering to purchase credits for 25% of their face value. A counteroffer of \$0.33/\$1.00 was rejected and the County did not sell its credits in the fall.

On January 26, 2021, the Board directed staff to solicit offers from other jurisdictions and move forward with the sale of the County's remaining Rule 20A credits. That activity has led to the current agreement and ongoing negotiation with other jurisdictions.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve. The County will not sell credits to the City of Larkspur. Staff will need additional direction from the Board to understand how to proceed.

FINANCIAL IMPACT:

Approval of this item will generate \$218,777 in revenue to be allocated in a future Board meeting.

ATTACHMENTS:

Purchase of Rule 20A Credits_Larkspur (PDF)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Wayne Forsythe, District IV Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into as of April 20, 2021, 2021, by and between the County of Mariposa (“County”) and the City of Larkspur (“Larkspur”). Larkspur and County are sometimes individually referred to herein as “Party” and collectively as “Parties.”

RECITALS

A. Electric utilities collect and annually allocate funds to communities to convert overhead electric facilities to underground electric facilities (“Rule 20A Credits”). The amount of said credits allocated by Pacific Gas and Electric Company (“PG&E”) to the County is hereafter referred to as the “County Allocation.”

B. Larkspur has identified a qualifying project for which it would utilize available Rule 20A Credits (“Project”).

C. Larkspur desires to purchase a portion of the County Allocation to use in connection with their Project and County desires to transfer a portion of the County Allocation to enable the Rule 20A Credits to be used for their intended purpose of undergrounding electric facilities. The portion of said credits is valued at \$486,170 and is hereafter referred to as the “Undergrounding Allocation.”

D. Larkspur further desires to secure an option to purchase additional portions of the County Allocation to use in connection with their Project and County desires to convey said option and agrees to reserve additional portions of the County Allocation for this purpose. The portion of said credits is valued up to a maximum of \$122,222 and is hereafter referred to as the “Option Allocation.”

AGREEMENT

NOW, THEREFORE, the Parties hereto agree as follows:

1. County agrees to transfer and assign its rights and interest in the Undergrounding Allocation to Larkspur and Larkspur agrees to purchase the Undergrounding Allocation in accordance with the terms of this MOU. County agrees to reserve, and subject to Larkspur's option, transfer and assign its rights and interest in the Option Allocation credits to Larkspur and Larkspur agrees to execute its option to purchase the Option Allocation credits in accordance with the terms of this MOU.
2. This MOU shall be subject to the approval of the Parties and shall become effective on the date when both such approvals have been obtained (the "Effective Date").
3. Larkspur shall purchase the Undergrounding Allocation, and may purchase Option Allocation credits, at a purchase price of \$0.45 per \$1.00 of County Allocation Credits.
4. Within thirty (30) business days of the Effective Date, Larkspur shall make a payment to County in the amount of \$218,777 ("Purchase Price") for the purchase of the Undergrounding Allocation credits valued at \$486,170. The Purchase Price shall be made in immediately available funds via check or wire transfer to an account designated by County. The Purchase Price shall constitute full consideration for the transfer and assignment of the foregoing Undergrounding Allocation credits.
5. Within five (5) business days of County's receipt of the Purchase Price, County shall deliver a written request to PG&E, with a copy to Larkspur, making a formal request to transfer and assign the Undergrounding Allocation to and for the benefit of Larkspur. County shall cooperate in good faith with Larkspur to provide any additional documentation or information that is reasonably requested by PG&E to complete the transfer. In the event that PG&E is unable to complete, or does not approve, the transfer, County shall return the Purchase Price funds to Larkspur within ten (10) business days of PG&E's written notification to County that PG&E will not complete the transfer.
6. Larkspur shall retain the option to purchase Option Allocation credits for an additional 180 days from the Effective Date. Larkspur may exercise its option to purchase Option Allocation credits in increments by providing notice(s) to County pursuant to Section 11. Within five (5) business days of County's receipt of a Larkspur option notice, Larkspur shall make a payment to County in the amount of \$0.45 per \$1.00 of Option Allocation credits requested by Larkspur ("Option Price"), not to exceed the cumulative amount of \$55,000 for the purchase of Option Allocation credits valued up to \$122,222. Each Option Price paid shall constitute full consideration for the transfer and assignment of the associated amount of Option Allocation credits.

7. Within five (5) business days of County's receipt of an Option Price payment, County shall deliver a written request to PG&E, with a copy to Larkspur, making a formal request to transfer and assign the respective amount of Option Allocation credits purchased by Larkspur, to and for the benefit of Larkspur. County shall cooperate in good faith with Larkspur to provide any additional documentation or information that is reasonably requested by PG&E to complete the transfer. In the event that PG&E is unable to complete, or does not approve, the transfer, County shall return the Option Price payment to Larkspur within ten (10) business days of PG&E's written notification to County that PG&E will not complete the transfer.
8. Larkspur acknowledges and agrees that it has conducted its own investigation as to the applicability and transferability of the County Allocation subject to this MOU for use in the Project and that County has not made any representation or warranty to Larkspur with respect to same. The actual use of the County Allocation by Larkspur shall be subject to the rules and procedures adopted by PG&E, the California Public Utilities Commission and such other conditions or requirements as are set forth in the Public Utilities Code.
9. Each Party shall hold harmless, defend, and indemnify the other Party and its governing body, officers, employees, and agents from and against any and all liability, loss, damage, expense and costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with the performance of the terms hereunder, or failure to comply with any of the obligations in this MOU, except such loss or damage caused by the sole negligence or willful misconduct of the other Party.
10. Disputes between the Parties in connection with any matter relating to the terms or provisions of this MOU shall first be considered jointly by the City Manager of Larkspur and the County Administrative Officer for County. Prior to taking any judicial action to interpret or enforce provisions of this MOU, the Parties agree to first submit the matter to a mediator, to be mutually agreed upon by the Parties hereto, in concert with a representative of each Party. Each Party shall pay one-half of the cost of the mediator. However, pending resolution, the existence of any dispute (except for disputed charges for which notice was timely provided as required herein) will not absolve either Party of the responsibility for making timely payments for provided credits nor will such disputes absolve either Party of the responsibility for timely performance of its agreed upon obligations to the other.
11. Each Party agrees to timely prepare accurate and complete financial and performance records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this MOU, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.

Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of either Party, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. Each Party hereby agrees to make such records available during normal business hours for inspection, audit and reproduction by any duly authorized agents of the State of California or the federal government. Each Party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or the federal government. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this MOU, including the costs of administering this MOU.

12. In the event that either Party is in breach of its obligations as set forth in this MOU, then the non-defaulting Party shall have the right to terminate this MOU on ten (10) business day's written notice to the defaulting Party unless the default is cured within the notice period. Upon termination for breach, the non-defaulting Party may exercise any right or remedy which it may have under applicable law. If Larkspur has made a payment for the Purchase Price and/or an Option Price, and the associated credits have not been transferred at the time this MOU is terminated, the County will return the payment within ten (10) business days of the termination.
13. All notices to be given pursuant to this MOU shall be delivered in person, by U.S. Mail, or by commercial overnight delivery to the address of the Party and shall be effective upon receipt. All notices shall be sent and addressed to the representative of the Party as set forth below. Notice may further be given by electronic means, provided, however, that such notice shall not be deemed effective unless it is acknowledged in writing by the recipient of such notice.

City of Larkspur Attn: _____ 400 Magnolia Avenue Larkspur, CA 94939	County of Mariposa Attn: Dallin Kimble 5100 Bullion Street Post Office Box 784 Mariposa, CA 95338
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14. County and Larkspur are independent contractors with respect to each other. This MOU is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. Nothing in this MOU shall be construed to create an employment relationship between County and any employee of Larkspur or between Larkspur and any employee of County. Each Party shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors.

15. This MOU shall constitute the entire agreement between the Parties relating to the subject matter of this MOU, and shall supersede any previous agreements, promises, representations, understanding and negotiation, whether oral or written, concerning the same subject matter.
16. This MOU shall be governed and construed in accordance with laws of the State of California.
17. Each Party shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.
18. A waiver by either Party of any breach of any term, covenant, or conditions contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.
19. The terms of this MOU shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of the MOU or any other rule of construction which might otherwise apply. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the Parties.
20. If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this MOU shall continue in full force and effect.
21. In the event of any dispute or legal action arising under this MOU, the prevailing Party shall not be entitled to attorney's fees.
22. This MOU may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[SIGNATURES ON THE NEXT PAGE]


IN WITNESS WHEREOF, the Parties hereby have executed this MOU as of the Effective Date.

CITY OF LARKSPUR

COUNTY OF MARIPOSA


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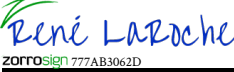
Dan Schwarz, City Manager


zorrosign 777AB30623
Marshall Long, Chair
Mariposa County Board of Supervisors

COUNTERSIGNED


COUNTERSIGNED:

777AB3064B

Alison Foulis, City Clerk


zorrosign 777AB3062D
Rene LaRoche, Clerk of the Board

APPROVED AS TO FORM

APPROVED AS TO FORM:

777AB30641

Sky Woodruff, City Attorney


zorrosign 777AB30619
Steven W. Dahlem County Counsel