



MARIPOSA COUNTY

Administration • 966-3222



RESOLUTION - ACTION REQUESTED 2021-234

MEETING: April 27, 2021
TO: The Board of Supervisors
FROM: Dallin Kimble, County Administrative Officer
RE: Sale of Rule 20A Credits to Los Altos Hills

RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement to Sell \$2,992,327 in California Public Utility Commission (CPUC) Rule 20A Pacific Gas and Electric (PG&E) Credits to the Town of Los Altos Hills for the Amount of \$1,346,547; and Authorize the Board of Supervisors Chair to Sign the Agreement.

This agreement will transfer \$2,992,327 in CPUC Rule 20A PG&E credits to the Town of Los Altos Hills for a payment of \$1,346,547 (a rate of \$0.45/\$1.00). The agreement also provides an option for the Town of Los Altos Hills to purchase additional 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.

On April 7, 2021, the CPUC issued a proposed decision stating that, if approved at the May 6, 2021, meeting of the CPUC, the Rule 20A credit program should be ended by December 2022 and all sale or transfer of credits should be immediately banned. PG&E has already ceased recognizing proposed sales or transfers.

Mariposa County currently has approximately \$3.6 million in Rule 20A credits. With this agreement, if approved, the County will have negotiated and executed the sale of all of those credits to support vital undergrounding projects in other communities. Revenues from the sales, if they are permitted to proceed, will help fund the \$4.2 million energy savings pilot project.

Resolution - Action Requested 2021-234

Rule 20A credits have been sold or traded between jurisdictions with some frequency in the past. In Fall 2020, County Administration received an offer from the City of Burlingame offering to purchase credits for 25% of their face value. The County did not sell its credits at that time.

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 Town of Los Altos Hills.

FINANCIAL IMPACT:

Approval of this item will generate \$1,346,547 in revenue to be allocated in a future Board meeting.

ATTACHMENTS:

Purchase of Rule 20A Credits_ Los Altos Hills (DOCX)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Miles Menetrey, District V Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into as of April 27th, 2021, by and between the County of Mariposa (“County”) and the Town of Los Altos Hills (“Los Altos Hills”). Los Altos Hills 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. Los Altos Hills has identified a qualifying project for which it would utilize available Rule 20A Credits (“Project”).

C. Los Altos Hills 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 \$2,992,327 and is hereafter referred to as the “Undergrounding 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 Los Altos Hills and Los Altos Hills agrees to purchase the Undergrounding Allocation in accordance with the terms of this MOU. County agrees to reserve, and subject to Los Altos Hills’s option, transfer and assign its rights and interest in additional Undergrounding Allocation credits that may be available beyond those initially identified in this Agreement (the “Option Allocation”) to Los Altos Hills and agrees that Los Altos Hills may, but is not required 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. Los Altos Hills 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 one (1) business day of the Effective Date, Los Altos Hills shall furnish funds in the amount of \$1,346,547 (“Purchase Price”) for the purchase of the Undergrounding

Allocation credits valued at \$2,992,327. The Purchase Price shall be deposited into an interest-bearing escrow account ("Escrow") to be opened by County, with interest accruing to County. Subject to the provisions of this Agreement, the Purchase Price shall constitute full consideration for the transfer and assignment of the foregoing Undergrounding Allocation credits.

5. Within one (1) business day of the Purchase Price being deposited in Escrow, County shall deliver a written request to PG&E, with a copy to Los Altos Hills, making a formal request to transfer and assign the Undergrounding Allocation to and for the benefit of Los Altos Hills. County shall cooperate in good faith with Los Altos Hills 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 provide written notice to Los Altos Hills as soon as practical thereafter of PG&E's written notification to County that PG&E will not complete the transfer. Within ten (10) business days of County's notice, the Escrow Agent shall return/pay the Purchase Price to Los Altos Hills from Escrow.
6. County shall not make or be permitted to make a draw on any amount of the Purchase Price from Escrow until after PG&E has approved and completed the transfer of credits for use in Los Altos Hills' qualifying Project. In addition, in the event that PG&E changes or rescinds such approval, or that any ruling, order, or action from the California Public Utilities Commission (CPUC) applies to overrule or restrict PG&E's completion of the transfer or the transfer of credits generally such that Los Altos Hills is not able to utilize the credits for the qualifying Project it identified, County shall return any Purchase Price funds drawn from Escrow to Los Altos Hills within ten (10) business days of the date of the CPUC ruling, order or action. Any Purchase Price funds remaining in Escrow at such time shall also be returned to Los Altos Hills.
7. Los Altos Hills 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 Los Altos Hills with respect to same. The actual use of the County Allocation by Los Altos Hills 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. Notwithstanding this section 7, the Parties agree that in the event that Los Altos Hills is not able to utilize the credits for the qualifying Project due to any determination by PG&E or the CPUC, the refund provisions set forth in Sections 5 and 6 shall continue to apply.
8. 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 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.

9. 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 Los Altos Hills 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 will not absolve either Party of the responsibility for timely performance of its agreed upon obligations to the other.
10. Each Party agrees to timely prepare accurate and complete financial and performance records relating to the transactions contemplated 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.

11. 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 Los Altos Hills has made a payment for the Purchase Price and/or an Option Price to Escrow, and the associated credits have not been transferred at the time this MOU is terminated, the funds in Escrow shall be returned to Los Altos Hills within ten (10) business days of the termination.
12. 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.

Town of Los Altos Hills Attn: Carl Cahill, City Manager 26379 Fremont Road Los Altos Hills, CA 94022	County of Mariposa Attn: Dallin Kimble 5100 Bullion Street Post Office Box 784 Mariposa, CA 95338
---	---

13. County and Los Altos Hills 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 Los Altos Hills or between Los Altos Hills and any employee of County. Each Party shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors.
14. 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.
15. This MOU shall be governed and construed in accordance with laws of the State of California.
16. 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.
17. 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.
18. 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.

19. 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.
20. In the event of any dispute or legal action arising under this MOU, the prevailing Party shall not be entitled to attorney's fees.
21. This MOU may be executed by electronic means and 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.

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

CITY OF LOS ALTOS HILLS

COUNTY OF MARIPOSA


ZORROsign 785B699443

George Tyson
Vice Mayor


ZORROsign 785B699425

Marshall Long, Chair
Mariposa County Board of Supervisors

APPROVED AS TO FORM:

APPROVED AS TO FORM:


ZORROsign 785B699439

Steve Mattas
City Attorney


ZORROsign 785B69941B

Steven W. Dahlem
County Counsel

Countersigned:


ZORROsign 785B69942F

Rene LaRoche, Clerk of the Board
Mariposa County