



RESOLUTION No. 24-579

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN NEVADA COUNTY AND THE CITY OF GRASS VALLEY TO TRANSFER \$1,500,000 IN RULE 20A CREDITS - DISTRICT III

WHEREAS, the Pacific Gas and Electric Company (PG&E) administers a Rule 20A program in Nevada County allowing for a portion of utility undergrounding costs to be paid for by the ratepayers; and

WHEREAS, City and County jurisdictions receive Rule 20A credit allocations annually; and

WHEREAS, Rule 20A credits may be transferred by a County to other City jurisdictions within the County; and

WHEREAS, on August 6, 2024, per Resolution 24-441, the Board approved the County's proposal for use of Rule 20A credits to underground utilities on Red Dog Road and to negotiate with City of Grass Valley to facilitate transferring Rule 20A work credits; and

WHEREAS, the City of Grass Valley submitted a letter dated September 24, 2024, requesting \$1,500,000 in Nevada County Rule 20A credits for their LaBarr Meadows Road undergrounding project; and

WHEREAS, the proposed project will serve the citizens of Grass Valley and citizens of the Nevada County unincorporated area; and

WHEREAS, the transfer of Rule 20A credits to the City of Grass Valley will provide a public benefit and will be in the best interest of the public; and

WHEREAS, staff is recommending that the Board approve a Memorandum of Understanding (MOU) between Nevada County and the City of Grass Valley allowing for the transfer of the requested Rule 20A credits; and

WHEREAS, The City of Grass Valley anticipates approving the MOU at their December 9, 2024, meeting.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Nevada County Board of Supervisors:

1. Approves of the Memorandum of Understanding (MOU) between Nevada County and the City of Grass Valley requesting PG&E to transfer \$1,500,000 in Rule 20A Credits from Nevada County's Rule 20A credit allocation to the City of Grass Valley's Rule 20A credit allocation.
2. Authorizes the County Executive Officer to execute the attached Memorandum of Understanding (MOU) on behalf of the County of Nevada.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 12th day of November 2024, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward C. Scofield, Lisa Swarthout, Susan Hoek, and Hardy Bullock.

Noes: None.

Absent: None.

Abstain: None.

Recuse: None.

ATTEST:

TINE MATHIASSEN
Chief Deputy Clerk of the Board of Supervisors

By: _____



Hardy Bullock, Chair

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into the 15th day of December 2024 (Effective Date), by and between the County of Nevada (COUNTY) and the City of Grass Valley (CITY). CITY and COUNTY are sometimes individually referred to herein as "Party," and collectively as "Parties."

RECITALS

- A. Electric Utilities collect and allocate credits to communities to convert overhead electric facilities to underground electric facilities. These credits are commonly referred to as Rule 20A Credits. The amount of said funds allocated by Pacific Gas and Electric Company (PG&E) to COUNTY is hereafter referred to as the "COUNTY Allocation."
- B. CITY has identified a need for One Million Five Hundred Thousand Dollars (\$1,500,000) in additional RULE 20A Credits for the LaBarr Meadows Road undergrounding project per the City of Grass Valley Underground District No. 7.
- C. On December 9, 2024, the CITY Council authorized the CITY Manager to enter into this MOU with COUNTY to receive the transfer of Rule 20A Credits.
- D. On November 12, 2024, the COUNTY Board of Supervisors authorized the COUNTY County Executive Officer to enter into this agreement with CITY for the transfer of accrued COUNTY Allocation to CITY.
- E. It is for the public benefit and in the best interest of the public to transfer the Rule 20A credits from COUNTY to CITY.

AGREEMENT

NOW, THEREFORE, the Parties hereto agree as follows:

- 1. **Assignment of Rights.** COUNTY agrees to assign, for use by CITY, its rights and interests in One Million Five Hundred Thousand Dollars (\$1,500,000) of the COUNTY Allocation to CITY, and CITY agrees to acquire, for mutual consideration, the COUNTY Allocation in accordance with the terms of this MOU. This MOU shall be subject to the approval of the Parties.
- 2. **Term.** This MOU shall become effective upon December 15, 2024 and shall remain in effect until CITY no longer requires any Rule 20A credit transfers from COUNTY under this MOU.
- 3. **Transfer and Assignment of County Allocation.** Within ten (10) business days of COUNTY's receipt of the fully executed agreement, COUNTY shall deliver a written request to PG&E, with a copy to CITY, making a formal request to transfer and assign \$1,500,000 of the COUNTY Allocation to and for the benefit of CITY. COUNTY shall cooperate in good faith with CITY to provide any additional

documentation or information that is reasonably requested by PG&E to complete the transfer. If PG&E is unable to complete the transfer, COUNTY shall incur no cost from CITY.

4. **Representations.** CITY acknowledges and agrees that it has conducted its own investigation as to the applicability and transferability of COUNTY Allocation for use in CITY projects. COUNTY has not made any representation or warranty to CITY with respect to same. The actual use of COUNTY Allocation by CITY 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.
5. **Indemnification.** CITY shall indemnify, defend (with counsel reasonably acceptable to COUNTY), and hold harmless COUNTY, its elected officials, officers, employees, agents, contractors, and attorneys, from and against any and all demands, claims, actions, causes of action, damages, losses, liabilities, or expenses of any nature whatsoever, including those for reasonable attorney's fees, arising from the use of COUNTY Allocation in connection with the construction of any CITY project. CITY'S indemnification of COUNTY from such claims and demands arising from the use of COUNTY Allocation shall apply regardless of the merit or outcome of any such claim or suit, and regardless of whether the nature of such claim or suit is administrative, judicial, or legislative.
6. **Acknowledgement.** CITY acknowledges that it has read Section 5, pertaining to CITY'S indemnification of COUNTY, and fully understands its terms. CITY acknowledges, knows, and understands that it is signing the MOU freely and voluntarily.
7. **Termination for Breach.** 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 days' 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.
8. **Notices.** All notices to be given pursuant to this MOU shall be delivered in person, by registered or certified U.S. mail (return receipt requested), or by commercial overnight delivery and shall be effective upon receipt. 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. All notices shall be sent and addressed to the representative of the Party that signs this MOU on behalf of the Party.
9. **Headings.** Headings used in this MOU are for reference purposes only and shall not be considered in construing this MOU.
10. **Authority to Enter MOU.** Each person executing this MOU on behalf of the Parties represents and warrants that he or she is duly authorized to execute and deliver this MOU on behalf of COUNTY or CITY, and that this MOU is binding on COUNTY and CITY in accordance with its terms and conditions.

11. **Binding Effect.** This MOU shall inure to the benefit of and be binding upon the Parties hereto and their representative heirs, successors, and assigns.
12. **No Assignment.** No Party shall assign or transfer, by operation of law or otherwise, any or all its rights or obligations under this MOU without the prior written consent of the other Party and formal written modification.
13. **No Third-Party Beneficiaries.** Nothing contained in this MOU shall be construed to create any rights in third parties, and the Parties do not intend to create any such rights.
14. **Modification.** This MOU may be modified or amended only by a writing duly authorized and executed by COUNTY and CITY.
15. **Governing Law and Venue.** This MOU shall be governed and construed in accordance with the laws of the State of California, and any action brought relating to this MOU shall be adjudicated in a court of competent jurisdiction in the County of Nevada unless transferred by court order pursuant to Code of Civil Procedure section 394.
16. **Compliance with Applicable Law.** 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. **Waiver.** 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, unless specifically stated in writing.
18. **No Party Deemed to be Draftsperson.** 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.
19. **Severability.** 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. **Attorney's Fees.** 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. **Counterparts.** 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.

22. Entire MOU. This MOU contains the entire agreement between CITY and COUNTY relating to the services, rights, obligations, and covenants contained herein and assumed by the Parties respectively. Any prior or other agreements or representations between CITY and COUNTY regarding those matters are null and void unless expressly set forth in this MOU. No oral understanding or agreement not incorporated in the MOU is binding on any of the Parties.

IN WITNESS WHEREOF, CITY and COUNTY have executed this Memorandum of Understanding effective on the date and year first herein above set forth.

CITY OF GRASS VALLEY
125 East Main St.
Grass Valley, CA 95945

COUNTY OF NEVADA
950 Maidu Avenue
Nevada City, CA 95959

By: _____
Tim Kiser
City Manager

By: _____
Alison Lehman
County Executive Officer

Date: _____

Date: _____

Attest:

By: _____
Taylor Whittingslow
City Clerk

By: _____
Jeffery Thorsby
Chief of Staff/Clerk of the Board

Approved as to form:

By: _____
Legal Counsel to Grass Valley

By: _____
Katharine L. Elliott
COUNTY COUNSEL



GRASS VALLEY
A PLACE TO LIVE AND THRIVE

CITY OF GRASS VALLEY
Public Works Department

125 East Main Street
Grass Valley, CA 95945
530-274-4350

Engineering · Maintenance · Water and Wastewater · Parks and Recreation

September 24, 2024

Patrick Perkins, Principal Engineer
Department of Public Works
950 Maidu Avenue, Suite 170
Nevada City, CA 95959

Subject: Rule 20A Intra County Donation

Dear Mr. Perkins:

As a follow up to your department's June 3, 2024 letter and our previous discussions regarding a potential Rule 20A Intra County Donation of County of Nevada work credits, the City of Grass Valley respectfully submits the following letter of request.

The City of Grass Valley has identified a promising electrical utility undergrounding project in the City area adjacent to South Auburn Street and La Barr Meadows Road, beginning near the intersection of McKnight Way and extending to the City limits, adjoining the Nevada County Operations Center at 12350 La Barr Meadows Road. The project meets Rule 20A program eligibility criteria in that it involves a street with a high volume of public traffic and is listed as a arterial roadway as defined in the Governor's Office of Planning and Research Guidelines.

We believe that the proposed undergrounding would have mutual benefits to the City and County through the hardening of electric facilities which ultimately serve the Operations Center, as well as facilitating civic improvements such as bike lanes or paths, intersection improvements, roadway widening and corridor safety along the recently annexed City portion of La Barr Meadows Road.

Project costs are estimated at \$3million. With a combination of the City's nearly \$1million in Rule 20A work credits and a donation of \$1.5million County of Nevada work credits, a fully funded project is within reach and the City would plan to identify remaining funding necessary to deliver the project. City Staff have been actively working with PG&E representatives to establish the La Barr Meadows Rd undergrounding as the City's "active" Rule 20A project.

The City of Grass Valley formally requests the County of Nevada to initiate proceeding to complete an Intra County donation of \$1.5million in PG&E work credits to the City, in support of the La Barr Meadows Road undergrounding project. We appreciate your consideration of this request. If you have any questions or require additional information, please do not hesitate to contact me at 530-274-4353 or bjornj@cityofgrassvalley.com

Sincerely,

Bjorn P. Jones, PE
City Engineer

CITY OF GRASS VALLEY