MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into the 15th day of December 2020 (Effective Date), by and between the County of Nevada (COUNTY) and the City of Nevada City (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 Five Hundred Thousand Dollars ($500,000) in additional RULE 20A Credits for the West Broad Street and East Broad Street undergrounding project per Nevada City Underground District No. 7.

C. COUNTY currently has no active undergrounding projects that could make use of the COUNTY Allocation.

D. On December 9, 2020, the CITY Council authorized the CITY Manager to enter into this MOU with COUNTY to receive the transfer of Rule 20A Credits.

E. On December 15, 2020, 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.

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 Five Hundred Thousand Dollars ($500,000) of the COUNTY Allocation to CITY, and CITY agrees to acquire, for 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.** CITY shall acquire for no cost $500,000.00 of COUNTY Allocation Credits.

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 $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 NEVADA CITY
317 Broad Street
Nevada City, CA 95959

By: _____
Catrina Olson
City Manager

Date: _____

COUNTY OF NEVADA
950 Maidu Avenue
Nevada City, CA 95959

By: _____
Alison Lehman
County Executive Officer

Date: _____

Attest:

By: _____
Niel Locke
City Clerk

_____
Julie Patterson-Hunter
County Clerk

Approved as to form:

By: _____
Legal Counsel to Nevada City

By: _____
Legal Counsel to Nevada County