



Item No. 13 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: ROBERT OVADIA, PUBLIC WORKS DIRECTOR

DATE: JANUARY 20, 2021

**SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE TRANSFER OF
RULE 20A UTILITY UNDERGROUNDING WORK CREDITS TO
THE CITY OF SOUTH SAN FRANCISCO**

RECOMMENDATION

Adopt a Resolution Authorizing the transfer of Rule 20A Utility Undergrounding Work Credits to the City of South San Francisco; and Authorize the City Manager to execute an agreement with the City of South San Francisco for the transfer of accumulated Rule 20A Undergrounding Work Credits in exchange for unrestricted general funds.

BACKGROUND

The California Public Utilities Commission (CPUC) and utility companies established a program to underground utilities across the State in 1967, commonly known as Rule 20. Under Rule 20A, investor-owned utilities allocate funds to communities to convert overhead electric facilities to underground facilities. These funds are not provided directly to communities but rather allocated as credits to cover the utility provider's project costs, primarily design and construction, for approved projects. The local jurisdiction is required to fund project costs associated with project support, and more significantly the relocation of other impacted municipally owned utilities and facilities, such as street lights and traffic signals.

The Town receives an allocation of approximately \$25,000 Rule 20A work credits annually and, including the 2020 allocation, has accumulated approximately \$1.427 million in credits to fund PG&E's costs associated with utility undergrounding projects. Jurisdictions may borrow future allocations, up to 5 years in advance, to implement projects. PG&E has indicated that their recent undergrounding projects have varied significantly and have ranged between \$1,000 and \$2,000 per linear foot. The Town would be responsible for certain costs in implementing the district including staff time, project coordination and inspection, and infrastructure associated with street light conversions in the district boundaries. While the various communication companies would be responsible for the costs associated with relocating their facilities underground and affected

private properties would be responsible for converting their properties to accept underground utility service, the Town’s obligations under a Rule 20A District and the high cost to underground make a Rule 20A District in Atherton cost-prohibitive. At the average price per linear foot and with the additional local costs, the Town would be able to underground approximately 500-750 feet.

As noted in previous staff reports to Council, Rule 20A funds can be “sold” to interested communities in exchange for General Fund dollars. Prior to PG&E’s declaration of bankruptcy, it was estimated that the Town could expect to receive 40-50% on the dollar for the funds.

Local agencies are permitted to trade or sell unused Rule 20A credits. Several local agencies have done so to raise funds for their projects. Typically, credits are sold or traded at less than their dollar value due to their limited use. Credit market value has varied depending on need, interest, and availability, ranging between 5 to 50 cents on the dollar. Example transactions are noted in the table below.

Seller	Purchaser	Year	Credit Value	Cash Value	Rate
Trinity County	Pinole	2018	\$631,104	\$315,552	\$.50
Butte County	Colusa County	2018	\$2,000,000	\$500,000	\$.25
Rocklin	Tiburon	2018	\$438,080	\$109,520	\$.25
Sonora	Half Moon Bay	2017	\$400,000	\$200,000	\$.50
Rocklin	Live Oak	2017	\$ 2,000,000	\$ 500,000	\$.25
Vallejo	Dublin	2017	\$ 750,000	\$ 300,000	\$.40
Foster City	Half Moon Bay	2017	5 years of credit allocations		\$.47
Foster City	Half Moon Bay	2016	\$ 437,189	\$ 200,000	\$.46
King City	Pismo Beach	2016	\$ 775,000	\$ 300,000	\$.39
County of San Luis Obispo	Arroyo Grande	2013	\$ 3,000,000	\$ 150,000	\$.05

The average value of recent credit transfers has been approximately \$.39 per credit, not including the Arroyo Grande transaction which was unusually low.

In April 2019, the CPUC held a workshop pursuant to Underground Proceed R.17-05-010 to discuss the background of the Rule 20 tariffs, locations of Rule 20A projects and estimated customer costs of the program, as well as potential near term improvements/modifications. A Staff Proposal workshop was held in March 2020 to present a potential overhaul of the utility undergrounding program, including a sunset of the current program which uses a work credit system in favor of a tiered ratepayer contribution system which would fund a fixed percentage of

undergrounding costs. Though the proposal includes the refinement and expansion of Rule 20 criteria, the proposal also includes a fixed time period to utilize accumulated work credits and the elimination of work credit transfers. The public comment period on the proposal has closed and a date for the Commission Decision has not yet been set.

On July 31, 2019, the Town received a Rule 20A Work Credit Reallocation Final Notice, pursuant to CPUC Resolution E-4971, which reallocated work credits from inactive communities to the City of Live Oak. In total, \$554,000 of unused work credits is to be transferred proportionately from jurisdictions that have not actively participated in the Rule 20A program. It is anticipated that approximately \$7,000 of the Town's work credits may be subject to transfer.

ANALYSIS

At its September 18, 2020 meeting, the Council directed staff to seek out and negotiate a sale of the Town's accumulated utility undergrounding work credits. With the onset of the COVID-19 pandemic and its impacts to municipal budgets, interested jurisdictions were hesitant to obligate their unrestricted general funds for such a purchase.

Recently, the City of South San Francisco expressed an interest in purchasing the Towns accumulated credits to support their planned undergrounding projects. As noted above, the Town has accumulated approximately \$1,427,825 in work credits with PG&E, prior to any reduction associated with the Live Oak Decision.

Staff negotiated an exchange rate of \$0.45 per credit with the City of South San Francisco and believes that the rate is fair and equitable to both parties. This exchange rate would provide approximately \$642,521.25 in unrestricted general funds that could be used for other Town priorities. Given the limited market, it is unlikely that another jurisdiction will be willing to agree to a higher exchange rate.

POLICY FOCUS

The Council's policy discussion should focus on the potential sale/transfer of Rule 20A work credits in exchange for unrestricted General Funds.

FISCAL IMPACT

The sale of Rule 20A work credits would provide additional one-time revenue in the amount of \$642,521.25 into the Town's General Fund that could be used to address other Town priorities.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ___ has or X has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)

- ___ Environmental Programs Committee (meets every other month)
- ___ Park and Recreation Committee (meets each month)
- ___ Planning Commission (meets each month)
- ___ Rail Committee (meets every other month)
- ___ Transportation Committee (meets every other month)
- ___ Tree Committee (meets each month)

ATTACHMENTS

1. Resolution Rule 20 A Transfer
2. Memorandum of Understanding – Rule 20 A Transfer City of South San Francisco

RESOLUTION NO. 21-XX

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENT(S) FOR THE TRANSFER OF RULE 20A WORK CREDITS IN EXCHANGE FOR GENERAL FUND DOLLARS

WHEREAS, Pacific Gas and Electric Company (PG&E) collects and annually allocates Rule 20A credits to agencies to convert overhead electrical facilities to underground facilities within an approved Underground Utility District; and

WHEREAS, the Town has accumulated \$1,427,825 in PG&E Rule 20A credits and does not have an active or planned project to underground overhead utilities; and

WHEREAS, PG&E’s Rule 20A credit program allows agencies to trade or sell unencumbered Rule 20A credits to other agencies based on a mutually agreeable rate of exchange and an agreement between the agencies for the trade or sale of such credits; and

WHEREAS, the City of South San Francisco is willing to purchase \$1,427,825 in Rule 20A credits from the Town to support their planned utility undergrounding projects and South San Francisco County will purchase the Rule 20A credits from the Town for \$642,521.25;

* * * * *

NOW, THEREFORE, BE IT RESOLVED that the City Council of the Town of Atherton authorizes the City Manager to execute an agreement with the City of South San Francisco for the transfer of accumulated PG&E Rule 20A credits; file appropriate documents with PG&E to affect the transfer; and amend the agreement as necessary to affect the sale of the Town’s accumulated Rule 20 credits.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the Town of Atherton at a regular meeting thereof held on this 20th day of January 2021, by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

Elizabeth Lewis, Mayor

ATTEST:

Anthony Suber, City Clerk

APPROVED AS TO FORM:

Mona G. Ebrahimi, City Attorney

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into the ___ day of _____, 202_ (Effective Date), by and between the Town of Atherton (ATHERTON) and the City of South San Francisco (SSF). Atherton and SSF are sometimes individually referred to herein as "Party" and collectively as "Parties".

RECITALS

- A. Electric Utilities collect and annually 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 credits allocated by Pacific Gas and Electric Company (PG&E) to the Town of Atherton is hereafter referred to as the "TOWN Allocation".
- B. SSF has identified qualifying project(s) for which it would utilize available Rule 20A Credits.
- C. On _____, 202_, the ATHERTON City Council authorized the ATHERTON City Manager to enter into this MOU with SSF for the transfer of accrued ATHERTON Rule 20A Credits.

AGREEMENT

NOW, THEREFORE, the Parties hereto agree as follows:

- 1. ATHERTON agrees to assign, for use by SSF, its rights and interests in the TOWN Allocation to SSF, and SSF agrees to acquire, for consideration, the TOWN Allocation in accordance with the terms of this MOU. 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 (Effective Date).
- 2. SSF shall purchase the accumulated TOWN Allocation at a purchase price of \$0.45 per \$1.00 of TOWN Allocation Credits. The calculated payment amount shall be known as the "Acquisition Price."
- 3. Within thirty (30) business days of the Effective Date, SSF shall make a payment to ATHERTON in the amount of \$642,521.25 (Acquisition Price) for the purchase of the currently available TOWN Allocation credits valued at \$1,427,825. Payment shall be made in immediately available funds via check or wire transfer to an account designed by ATHERTON. The Acquisition Price shall constitute full consideration for the transfer and assignment of the TOWN Allocation transferred pursuant to this MOU.
- 4. Within ten (10) business days of ATHERTON's receipt of the Acquisition Price funds, ATHERTON shall deliver a written request to PG&E, with a copy to SSF, making a formal

request to transfer and assign the TOWN Allocation, for which payment was made at a rate of \$0.45 for each \$1.00 credit to and for the benefit of SSF. ATHERTON shall cooperate in good faith with SSF 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, ATHERTON shall return the Acquisition Price funds to SSF within ten (10) business days of PG&E's written notification to ATHERTON that PG&E will not complete the transfer.

5. SSF acknowledges and agrees that it has conducted its own investigation as to the applicability and transferability of the TOWN Allocation for use by SSF and that ATHERTON has not made any representation or warranty to SSF with respect to same. The actual use of the TOWN Allocation by SSF 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.
6. 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 sole negligence or willful misconduct of the other Party.
7. 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. All notices to be given pursuant to this MOU shall be delivered in person, by U.S. mail, or by commercial overnight delivery and shall be effective upon receipt. All notices shall be sent and addressed to the representative of the Party that signs this MOU on behalf of the Party, as follows:

City of South San Francisco
Attn: City Manager
400 Grand Ave.
South San Francisco, CA 94080

Town of Atherton
Attn: City Manager
150 Watkins Avenue (Temporary Trailers)
Atherton, CA 94010

9. SSF and ATHERTON 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 SSF and any employee of ATHERTON or between ATHERTON and any employee of SSF. Each party

shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors.

10. 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.
11. 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 San Mateo.
12. 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.
13. 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.
14. 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.
15. 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.
16. In the event of any dispute or legal action arising under this MOU, the prevailing Party shall not be entitled to attorney's fees.
17. 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 Next Page)

IN WITNESS WHEREOF, The Town of Atherton and City of South San Francisco have executed this Memorandum of Understanding effective on the date and year first hereinabove set forth.

TOWN OF ATHERTON

George Rodericks, City Manager

Date

ATTEST:

Anthony Suber, City Clerk

Date

APPROVED AS TO FORM:

Mona G. Ebrahimi, City Attorney

Date

CITY OF SOUTH SAN FRANCISCO

Mike Futrell, City Manager

Date

ATTEST:

Rosa Govea Acosta, City Clerk

Date

APPROVED AS TO FORM:

Sky Woodruff, City Attorney

Date

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