Subject: Exchange of County Rule 20A Underground Utility Credits for use by the County of Colusa Underground Utility District

Department: County Administration and Public Works

Meeting Date Requested: July 24, 2018

Contact: D. Schmidt/C. Hatcher  Phone: (530) 538-7681

Regular Agenda □  Consent Agenda ☑

Department Summary: (Information provided in this section will be included on the agenda. Attach explanatory memorandum and other background information as necessary).

On May 23, 2018, the Department of Public Works received an inquiry from the Colusa County Public Works Director requesting $2 million of Rule 20A Underground Utility Credits for Colusa County’s use on a Caltrans Complete Streets project in the City and County of Colusa. Due to cost increases, Colusa County needs additional credits to fully fund their project. The Board previously approved transfers to jurisdictions within Butte County without payment, but has never considered a monetary exchange for the Rule 20A credits. The County’s PG&E Rule 20A liaison informed staff there are no restrictions on how or when an exchange may happen. Butte County has no identified future Rule 20A projects that would require use of the 20A credits.

On June 12, 2018, the Board of Supervisors directed staff to draft the necessary documents between Butte and Colusa Counties to allow an exchange of $2 million in Butte County Rule 20A Underground Utility Credits in return for $500,000 in one-time, unrestricted funds. The Colusa County Board of Supervisors authorized the County’s Chief Administrative Officer to execute the agreement, which she did on June 28, 2018.

Consistent with County policy and prior Board direction staff recommend these funds be held in the General Fund and used to either 1) increase reserves during the next budget cycle or 2) as a tool to address the County’s unfunded pension liabilities. The County’s General Fund Reserve Policy requires that the Board of Supervisors consider increasing the County’s General Fund reserves when one-time, unanticipated, discretionary revenue exceeding $500,000 is received.

Fiscal Impact:
Currently Butte County has $7,646,893 in Rule 20A credits. If the Board approves a $2 million transfer to Colusa County, the remaining credit balance will be $5,646,893. The sale of the Rule 20A credits would provide one-time, unrestricted funds to the County General Fund.

Personnel Impact:
Does not apply.

Action Requested:
Approve the agreement and authorize the Chair to sign.

Administrative Office Review: Casey Hatcher, Economic and Community Development Manager
RULE 20 CREDIT PURCHASE AGREEMENT

This Rule 20 Credit Purchase Agreement (Agreement) is between the County of Butte (Butte County) and the County of Colusa (Colusa County) both political subdivisions of the State of California.

RECITALS

A. Electric utilities collect and annually allocate credits to communities to convert overhead electric utilities to underground electric utilities. These credits are commonly referred to as “Rule 20 Credits”. The amount of Rule 20 Credits allocated by Pacific Gas and Electric Company (PG&E) to Butte County is referred to in this Agreement as the “Butte Allocation.”

B. Colusa County represents that it is eligible to use Rule 20 credits to underground overhead utilities as a part of a project otherwise known as the Bridge Street Reconstruction Project (Project).

C. On June 12, 2018, the Colusa County Board of Supervisors authorized Colusa County to purchase $2,000,000 of Butte County Rule 20 Credits for $500,000 and further authorized the County Administrative Officer for Colusa County to execute a purchase agreement for the credits.

AGREEMENT

1. Butte County agrees to sell and assign for use by Colusa County, Butte County’s rights and interest in $2,000,000 of Rule 20 Credits from the Butte Allocation.

2. Colusa County agrees to pay Butte County $500,000 in unrestricted funds for $2,000,000 of Rule 20 Credits from the Butte Allocation.

3. This Agreement will become effective on the date approvals are obtained from both Colusa County and Butte County for this Agreement.

4. No later than five (5) business days following the effective date of this Agreement, Butte County shall deliver a written request to PG&E, with a copy to Colusa County, making a formal request to transfer and assign $2,000,000 of Rule 20 Credits from the Butte Allocation to and for the benefit of Colusa County. Butte County shall cooperate in good faith with Colusa County to provide any additional information or documentation reasonably requested by PG&E to complete the transfer. This Agreement will be null and void if PG&E does not complete the transfer.

5. No later than fifteen (15) business days after the effective date of this Agreement, Colusa County shall deliver to Butte County a check in the amount of $500,000 for the purchase of $2,000,000 of Rule 20 Credits from the Butte Allocation.

6. Colusa County acknowledges and agrees that it has conducted its own investigation into the transferability of Rule 20 Credits from Butte County and Butte County has not made any representation or warranty to Colusa County with respect to the sale and transfer. The use of purchased Rule 20 Credits by Colusa County shall be subject to rules and procedures adopted by PG&E, the California Public Utilities Commission, and such other conditions in the California Public Utilities Code.

7. In the event that either party breaches an obligation under this Agreement, the non-breaching party shall have the right to terminate this Agreement with ten (10) business days written notice to the breaching party unless the breach is cured within the notice period.
8. All notices made under this Agreement will be delivered in person, by US Mail, or by overnight courier and shall be effective upon receipt. All notices shall be sent and addressed to the representative of the party signing this Agreement.

9. This Agreement shall be governed and construed in accordance with the laws of the State of California, and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Butte.

10. Each party shall at its own cost and expense comply with all statutes, ordinances and regulations and requirements of all government entities, including federal, state, county or municipal, whether now in force or later enacted.

11. A waiver by any party of any breach of any term, covenant, or conditions in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition, whether of the same or a different character.

12. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

13. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force.

14. In the event of any dispute or legal action arising from this Agreement, the prevailing party shall not be entitled to attorney’s fees.

15. This Agreement 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.

**COUNTY OF BUTTE**

(Date) ____________________________
Shari McCracken, County Administrative Officer

Approved as to form:

(Date) ____________________________
Bruce Alpert, County Counsel

**COUNTY OF COLUSA**

(Date) __6/28/18__
Wendy G. Tyler, County Administrative Officer

Approved as to form:

(Date) __6/28/18__
Marcos Kropf, County Counsel