

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Transfer of Rule 20A Electric Underground Work Credits

DATE: June 17, 2013

City Council Goals:

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

Purpose:

To authorize the City Manager to enter into an Agreement with San Carlos that will transfer electric underground credits to San Carlos and have the credits returned to us with “interest”; this action provides an innovative solution both to accruing additional work credits for the City of Brisbane and for allowing the City of San Carlos to move forward with their proposed project.

Recommendation:

Authorize the City Manager to enter into an Agreement with the City of San Carlos for the transfer and return with “interest” of Rule 20A credits.

Background:

PG&E’s Rule 20A Program was established by the California Public Utilities Commission in 1967 as a mechanism to fund the gradual undergrounding of existing aboveground electrical facilities. Funded by ratepayers, the program requires PG&E to allocate “work credits” to all cities and counties each year based upon the number of meters in their community. Once an agency earns enough work credits, the agency may then request that PG&E implement an undergrounding project as part of an approved Underground Utility District. If PG&E determines there are sufficient funds in the agency’s Rule 20A account, it will begin the process of implementing the project. Otherwise, the project will be put on hold until such time as sufficient credits accrue in the agency’s Rule 20A account.

Typically, a Rule 20A project will take from 5-7 years to complete, with an average cost (depending upon the replacement cost of surface improvements and the complexity of the electrical system being undergrounded) of \$500 per linear foot. Using this average cost, a half-mile long segment (say, San Bruno Avenue from its intersection at Old County to Thomas Avenue) would require \$1.32M in credits to complete.

Discussion:

Brisbane’s current Rule 20A Electric Underground Work Credit Balance is \$426,871 as of 1/28/13. Based on the number the number of electric meters in Brisbane in 2012, our annual accrual of credits is approximately \$19,000 per year. The City does not presently have enough credits to fund an undergrounding project, and none are being actively planned.

The City of San Carlos approached Brisbane with a request to borrow credits, and to return them within a 7-10 year time frame while paying 5% interest on the balance due. (Note that the word “interest” as used herein does not mean actual cash; the term reflects that San Carlos will return our work credits at a rate greater than 1:1.) The attached draft Memorandum of Understanding documents the proposed details of this arrangement. Accepting their offer would generate an additional \$200,000 in credits to the City, which could then be applied towards a local undergrounding project. In 10 years, when all the work credits with interest have been returned, and accounting for the continuing annual accrual from the Rule 20A program, the City would have a credit balance of approximately \$800,000.

The City of San Carlos has authorized their City Manager to negotiate an agreement with the City of Brisbane. PG&E supports the proposed transfer as it allows for expenditure of work credits and accomplishes the goals of the Rule 20A Program.

Fiscal Impact:

There is no cost to the City for implementing the recommended actions, nor is the action deemed a loan under California law, as Rule 20A work credits do not represent actual dollars on hand. They are a planning tool for agencies that represent a qualified right to direct or assign a portion of PG&E’s anticipated capital budget towards the undergrounding of PG&E’s facilities within an approved Underground Utility District. PG&E permits the transfer of work credits from one agency to another, allowing them to be gifted, sold or loaned based upon mutually beneficial terms that agencies work out among themselves

Measure of Success

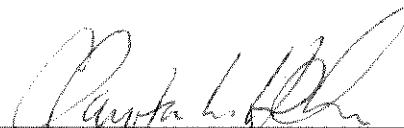
Accumulation of an additional \$200,000 in PG&E Rule 20A work credits above and beyond what the City would have otherwise accumulated were the transfer of work credits to San Carlos not completed.

Attachments:

- DRAFT Agreement
- City of San Carlos 3/25/13 Staff Report and Resolution No. 2013-024



Director of Public Works/City Engineer



City Manager

DRAFT

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF BRISBANE AND THE CITY OF SAN CARLOS
TO TRANSFER PG&E RULE 20A CREDITS

This Agreement is made and entered into this _____ day of _____ 2013, herein referred to as the "Effective Date" by and between the City of Brisbane, a municipal corporation, herein referred to as "Brisbane" and the City of San Carlos, a municipal corporation herein referred to as "San Carlos" and collectively referred to as the "Parties."

RECITALS

WHEREAS, PG&E collects and annually allocates Rule 20A work credits to communities for the purpose of directing a portion of their anticipated capital budget towards the undergrounding of electric facilities within an approved Underground Utility District; and

WHEREAS, San Carlos is actively planning a project to underground overhead electric facilities that qualifies for the application of Rule 20A work credits, however, San Carlos has encountered an unanticipated shortfall in the number of work credits necessary and desires to obtain an additional allocation of Rule 20A work credits to fund their project; and

WHEREAS, PG&E currently holds an allocation of Rule 20A work credits for the benefit of Brisbane, and Brisbane currently has no active project which can make use of this allocation; and

WHEREAS, San Carlos desires to borrow \$400,000 from Brisbane's Rule 20A work credit allocation to be used for their undergrounding project and Brisbane desires to loan Rule 20A work credits to San Carlos as San Carlos has agreed to return the work credits, with interest in the form of additional credits, from their future work credit allocation; and

WHEREAS, the loan of Rule 20A work credits will benefit Brisbane by providing additional work credits for undergrounding utilities; and

WHEREAS, the Parties now desire to enter into this Agreement to transfer PG&E Rule 20A work credits.

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

1. Brisbane agrees to transfer and assign its rights and interest in a portion of its Rule 20A work credits allocation to San Carlos and San Carlos agrees to return the work credits to Brisbane with interest in accordance with the terms of this Agreement. This Agreement shall be subject to the approval of the City Council of Brisbane and the City Council of San Carlos and shall become effective on the date when both such approvals have been obtained (the "Effective Date").

2. Within five (5) business days of the Effective Date, Brisbane shall deliver a written letter to PG&E, with a copy to San Carlos, making a formal request to transfer and assign \$400,000 of Rule 20A work credits contained in Brisbane's allocation to and for the benefit of San Carlos, and to provide any additional documentation or information that is reasonably requested by PG&E to complete the transfer. San Carlos acknowledges and agrees that it has conducted its own investigation as to the applicability and transferability of Brisbane's work credit allocation for use in San Carlos' proposed

project and that Brisbane has not made any representation or warranty to San Carlos with respect to the same. The actual use of the Brisbane's allocation of work credits by San Carlos shall be subject to the rules and procedures adopted by PG&E and such other conditions or requirements set forth in the Public Utilities Code.

3. In return for Brisbane's transfer of Rule 20A work credits, San Carlos agrees to return the work credits borrowed, with interest in the form of additional work credits, calculated annually at a 5% rate of return applied against the outstanding balance of work credits due. The reimbursement schedule for the work credit transfer back to Brisbane is included and attached as Attachment A to this Agreement. Reimbursement shall be made in the form of a written letter delivered to PG&E, with a copy to Brisbane, making a formal request to transfer and assign Rule 20A work credits from San Carlos' future allocations to and for the benefit of Brisbane in the amount, and in accordance with, the schedule included as Attachment A to this agreement.

4. All notices pursuant to this Agreement shall be delivered by First Class Mail to the attention of the Parties set forth below. Notice shall be effective upon receipt. Notice may also be given by electronic means, provided that such notice shall not be deemed effective unless it is acknowledged by the recipient.

City of Brisbane
50 Park Place
Brisbane, CA 94005
Attn: Clay Holstine, City Manager
cholstine@ci.brisbane.ca.us
(415) 508-2110

City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: Jeff Maltbie, City Manager
jmaltbie@cityofsancarlos.org
(650) 802-4228

5. Term of Agreement: This Agreement shall commence as of the Effective Date and shall terminate upon the return of PG&E work credits by the City of San Carlos, with interest, in accordance with the Reimbursement Schedule included as Attachment A.

6. Brisbane and San Carlos are separate subdivisions of the State of California and are independent contractors with respect to each other. This Agreement 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 Agreement shall be construed to create an employment relationship between Brisbane and any employee of San Carlos or between San Carlos and any employee of Brisbane. Each party shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors. Neither party's employees shall be entitled to any employee benefits from the other party.

7. Each agency shall hold harmless, defend and indemnify the other agency and its governing body, officers, employees, agents and volunteers 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 Agreement, except such loss or damage caused by sole negligence or willful misconduct.

8. This Agreement shall constitute the entire agreement between the Parties relating to the subject matter of this Agreement, and shall supersede any previous agreements, promises, representations, understanding and negotiation, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms which are embodied in this Agreement are hereby ratified.

9. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

10. This Agreement shall be governed and construed in accordance with the laws of the State of California. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and the prevailing party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the party may be entitled.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF BRISBANE

CITY OF SAN CARLOS

By: _____
Clay Holstine, City Manager

By: _____
Jeff Maltbie, City Manager

Attest:

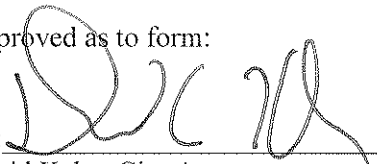
Attest:

By: _____
Sheri Spediacci, City Clerk

By: _____
Crystal Mui, City Clerk

Approved as to form:

Approved as to form:

By:  _____
David Kahn, City Attorney

By: _____
Greg Rubens, City Attorney

Attachment A

Reimbursement Schedule for the Transfer of Rule 20A Work Credits
from the City of San Carlos back to the City of Brisbane

<u>Year</u>	<u>Date</u>	<u>Previous FY Credit Balance</u>	<u>5% Interest</u>	<u>End of FY Credits Due</u>	<u>Credit Transfer</u>	<u>End of FY Credit Balance</u>
	June 30, 2013					\$400,000
1	June 30, 2014	\$400,000	\$20,000	\$420,000	\$0	\$420,000
2	June 30, 2015	\$420,000	\$21,000	\$441,000	\$0	\$441,000
3	June 30, 2016	\$441,000	\$22,050	\$463,050	\$0	\$463,050
4	June 30, 2017	\$463,050	\$23,153	\$486,203	\$0	\$486,203
5	June 30, 2018	\$486,203	\$24,310	\$510,513	\$0	\$510,513
6	June 30, 2019	\$510,513	\$25,526	\$536,038	\$0	\$536,038
7	June 30, 2020	\$536,038	\$26,802	\$562,840	\$200,000	\$362,840
8	June 30, 2021	\$362,840	\$18,142	\$380,982	\$135,000	\$245,982
9	June 30, 2022	\$245,982	\$12,299	\$258,281	\$135,000	\$123,281
10	June 30, 2023	\$123,281	\$6,164	\$129,445	\$130,000	(\$555)

					\$600,000	



CITY OF SAN CARLOS

AGENDA CATEGORY:	
BUSINESS SESSION:	_____
CONSENT CALENDAR:	_____
PUBLIC HEARING:	_____
STUDY SESSION:	_____
_____:	_____

COUNCIL MEETING DATE: March 25, 2013

ITEM TITLE: Adopt a resolution approving the plans and specifications for the Old County Road Rule 20A Undergrounding Project No. C9486, authorizing advertisement for bids and authorizing the City Manager to negotiate and execute an agreement for additional rule 20A credits as necessary to complete the project.

RECOMMENDATION:

It is recommended that the City Council approve the Old County Road Rule 20A Undergrounding Project plans and specifications, authorize the advertisement for bids and authorize the City Manager to negotiate and execute an agreement for additional Rule 20A credits.

FISCAL IMPLICATIONS:

Costs associated with the construction of this project will be funded mostly out of the City's Rule 20A allocation from PG&E and through reimbursements from outside utility companies. Under PG&E's Rule 20A program, PG&E will, at its expense, replace existing overhead electric facilities with underground facilities utilizing "credits" that are allocated to the City at a rate of approximately \$135,000 each year. As of January 2013, the City had a balance of around \$1.3 million credits with the ability to borrow 5 years into the future for a total project allocation of \$2.0 million.

Underground Work

The engineer's estimate for the undergrounding work needed on the project is \$1,150,000. This cost will be split among PG&E, AT&T, Comcast and Time Warner based upon their percentage share of trench utilization. PG&E's cost will be deducted out of the City's available credits. Other utility companies will reimburse the City directly upon invoicing as the work occurs. The City will take the lead on the trenching project and will have the contractual relationship with the contractor.

The estimated trench cost sharing amounts for the various utility companies is as follows:

PG&E	\$ 660,000	(This portion is to be funded out of the City's credits)
AT&T	\$ 250,000	(Reimbursed to City)
Comcast	\$ 190,000	(Reimbursed to City)
Time Warner	\$ 50,000	(Reimbursed to City)
Total	\$ 1,150,000	(Engineer's Estimate)

Wires and Connection Work

Following the completion of the undergrounding project work, each utility company will then be responsible for installing their wires and equipment within the newly installed infrastructure so that the utility poles can be removed. PG&E's portion of this cost will again be funded from the City's Rule 20A credits, while the other utility companies will be directly responsible for their own costs. The final cost for this portion of PG&E's work is still unknown at this time, however, it is anticipated that it will exceed the City's available credits.

After discussions with the PG&E Rule 20A Program Liaison, we have learned that it is not possible to break the project area into sections or build only the underground infrastructure (conduit and boxes) without also installing the electrical wires and equipment. As a result, the entire project must be funded in order to proceed. Furthermore, it is not possible to augment Rule 20A funds with additional cash appropriations as this mixing of funds would result in a Rule 20B determination which has a different set of conditions and less favorable reimbursement terms for the City.

PG&E has indicated that it will work with the City to help borrow additional credits, if necessary, so that the project can be fully funded. This is made possible through agreements with other agencies that have a surplus of credits and are willing to loan them out. To facilitate this process and as part of this agenda item, Council is being asked to authorize the City Manager to negotiate and execute an agreement for additional Rule 20A credits.

ANALYSIS:

Normally, as part of the recommendation to advertise a project for bids staff would also recommend that the City Council authorize the City Manager to execute the construction contract with the lowest responsible bidder if the bid is within the construction budget. Given the number of outstanding uncertainties on this project however, (pending PG&E equipment cost estimate, corresponding Rule 20A credit shortfall and uncertainty over where the credits will be obtained), staff would rather return to Council after the bids have been opened to report on project implementation aspects that staff believes will be resolved by then.

The advantage to advertising now is that we will gain at least a month of time toward getting the work started. This is important because this project work needs to be coordinated with the East Side Connect project. Both projects share the same work space within the same alignment, and there is special coordination language in each contract that requires the two contractors to work together in turning the project over to the other contractor. The East Side Connect contractor will do the demolition work, the Old County Road Rule 20A contractor will trench and install the underground utility conduits and the East Side Connect contractor will complete the surface improvements.

To minimize disruptions to the public and avoid delays due to one contractor not being able to start work after the other contractor has completed his phase, the two projects need to be awarded fairly close to one another in time. The East Side Connect Project could not be delayed any longer due to requirements to start spending TLC grant funds allocated for construction, and will open bids at the end of March. It would therefore be advantageous to advertise for bids on the Old County Road Rule 20A Undergrounding Project now, while staff works to resolve the remaining issues.

BACKGROUND:

On June 13, 2011, the City Council authorized the start of design for the East Side Connect project. This project will create a more inviting north/south bicycle and pedestrian corridor (separate from El Camino Real) that connects to the train station and spans the 2.3 miles from the northern to southern City Limits. The design work for this project is now complete and the Council recently authorized it's advertisement for bids.

As part of the vision for Old County Road, undergrounding of overhead utilities had also been anticipated and was pursued in conjunction with the East Side Connect project. Preliminary cost estimates demonstrated that not all of the desired areas could be undergrounded due to the City's limited Rule 20A credits. Following study and community discussions, the portion recommended for undergrounding was limited to residential neighborhoods along Old County Road and the area adjacent to the Caltrain station. Reflecting this, the City Council held a public hearing on January 9, 2012 and adopted a resolution adopting an Underground Utility District for portions of Old County Road and East San Carlos Avenue as described in Exhibit A of this report.

The original thought was to combine the Rule 20A undergrounding project along Old County Road with the East Side Connect project and bid them as a single project. This was not possible, however, due to the fact that the East Side Connect Project incorporated federal funding with separate requirements and NEPA environmental clearances which were obtained and did not apply or extend to the Rule 20A undergrounding portion of the work. If the projects were to be combined, the entire effort would need to be "federalized" and a new round of review, approvals and environmental clearances would be required. To avoid this, the two project effort are being bid separately, with strong coordination and sequencing clauses that will establish expectations for how the two contractors will share the work area.

On February 11, 2013, the City Council authorized the advertisement of the East Side Connect project. The plans and specifications for the Old County Road Rule 20A Undergrounding project are now complete and ready to advertise for bids.

ALTERNATIVES:

The alternatives available to the City Council include:

1. Adopting a resolution approving the Old County Road Rule 20A Undergrounding Project plans and specifications, authorizing advertisement for bids and authorizing the City Manager to negotiate and execute an agreement for additional Rule 20A credits.
2. Adopting a resolution only approving the plans and specifications and advertising for bids. Staff would return to Council when the total project cost was known and seek approval on the terms and conditions for any agreement necessary to obtain additional Rule 20A credits.
3. Provide alternate direction to staff.

Respectfully submitted,

Jay Walter, Public Works Director

Approved for submission by:

Jeff Maltbie, City Manager

Attachment 1
Old County Road Underground District Map

RESOLUTION NO. 2013-024

APPROVE THE PLANS AND SPECIFICATIONS FOR THE OLD COUNTY ROAD RULE 20A UNDERGROUNDING PROJECT NO. C9486, AUTHORIZE ADVERTISEMENT FOR BIDS AND AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT FOR ADDITIONAL RULE 20A CREDITS

WHEREAS, in accordance with procedures defined in the Public Contract Code, the Public Works Department has prepared plans, specifications and an estimate for the Old County Road Rule 20A Undergrounding Project and is ready to advertise for bids; and

WHEREAS, the estimated cost for the work being advertised is \$1,150,000; and

WHEREAS, PG&E allocates Rule 20A credits annually to the City which must be utilized as funding to complete the project work; and

WHEREAS, the cost estimate for the work being advertised is only for the trenching and underground conduit portion of the work and does not include the installation of wires and equipment which will be performed at a later date by PG&E as an additional draw upon the City's Rule 20A credits; and

WHEREAS, it is anticipated that this additional work by PG&E will exceed the City's accumulated credit balance, even when considering the City's ability to draw 5 years into the future; and

WHEREAS, only Rule 20A credits can be utilized to pay for the work, under the Rule 20A terms and conditions; and

WHEREAS, to overcome the anticipated project credit shortfall, additional Rule 20A credits will be necessary; and

WHEREAS, PG&E allows for Rule 20A credits to be loaned from one agency to another.

NOW, THEREFORE BE IT RESOLVED, that the Council of the City of San Carlos hereby authorized the following for the Old County Road Rule 20A Undergrounding Project:

1. Approval of the plans and specifications
2. Advertisement for sealed bids from qualified contractors
3. Approval for the City Manager to negotiate and execute an agreement for Additional Rule 20A credits as necessary to complete the project.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Carlos at a scheduled meeting thereof held on the 25th day of March, 2013 by the following vote:

AYES, COUNCILMEMBERS: CLAPPER, COLLINS, GROCOTT, OLBERT, GRASSILLI

NOES, COUNCILMEMBERS: NONE

ABSENT, COUNCILMEMBERS: NONE

Crystal Muir
Acting City Clerk of the City of San Carlos

APPROVED:

Bob Miller
MAYOR of the City of San Carlos