City of Aliso Viejo
Agenda Item

DATE: November 15, 2017
TO: Mayor and City Council
FROM: Shaun Pelletier, City Engineer
SUBJECT: TRANSFER OF RULE 20A FUNDS TO LAGUNA BEACH

Recommended Actions:

1. Approve the transfer of funds with Laguna Beach and authorize the City Manager to execute the attached Memorandum of Understanding between the cities of Aliso Viejo and Laguna Beach.
2. Authorize the City Manager to notify Southern California Edison of the transfer of funds.

Fiscal Impact:

The City of Aliso Viejo will transfer $89,479 of Rule 20A funds to the City of Laguna Beach who will in turn transfer $49,213.45 of unrestricted funds, $0.55 per dollar of allocation, to the City of Aliso Viejo.

Background:

In 1992, the California Public Utility Commission (PUC) enacted Rule 20A which established a set aside portion of the electric utility tariff to be used to fund undergrounding of electrical lines in incorporated cities, towns and counties. Rule 20A funds are distributed based on the number of overhead electric meters in each local jurisdiction compared to the total overhead meters in the entire service area at the electric utility company (EUC). The Rule 20A funds can only be used for the purpose of placing above ground electric transmission/distribution lines underground. Each local jurisdiction within the EUC service area is allocated funds annually.

Although most of the City's utilities are underground, the City of Aliso Viejo receives approximately $45,000 annually based on the number of overhead utility meters and currently has a balance of $89,479 of Rule 20A funds available for undergrounding.
To retain the allocated funds, the local jurisdiction must identify a project for which their funds are to be used. The City of Aliso Viejo reviewed potential undergrounding projects shortly after incorporation. Because the City was a planned community and most development has been done since 1980, there are very few above ground electric lines which present very few options for undergrounding electric facilities. The only above ground electrical lines within the City limits are the 125 KV overhead transmission line which runs somewhat parallel to the SR73 corridor in the northern third of the city and a smaller overhead transmission line which runs generally along the eastern side of Aliso Creek, just west of Alicia Parkway.

Staff did not believe that a project was possible involving the 125 KV transmission line based on probable costs. It was estimated to cost approximately $2 million/mile plus an additional $2.5 million for terminal structures where the undergrounding project began and ended. Any viable project involving this transmission line would require many decades to accumulate sufficient funds for construction. Therefore, a project was identified to underground the smaller transmission line in the vicinity of where the line crosses Pacific Park Drive. The project anticipated undergrounding between 500 to 1000 feet of the transmission line both north and south of Pacific Park. The estimated cost of that project was $2.5 million. With the annual sum of approximately $50,000, it was estimated that the undergrounding project would require approximately 40 years to accumulate the funds. The project information was transmitted to Edison Electric and the project was accepted. However, since we were not actively designing or constructing the project, our account was deemed inactive.

Since many cities in California are unable/unwilling to develop an undergrounding project, the practice of cities trading Rule 20A funds with other cities for more versatile funds has been accepted by both the PUC and the EUC. There are numerous examples both statewide and in Orange County of successful transfers of Rule 20A money and other less restricted funds. The transfers are negotiated between interested cities and involve discounting the less restricted funding. Discounting rates vary widely.

**Discussion:**

In 2010, 2012, 2013 and 2015 the City reached similar agreements with the City of Laguna Beach to transfer a total Rule 20A fund balance of $943,005 for $518,653 in unrestricted funds. These funds are typically applied towards street maintenance or other public works projects.

Staff believes that transfers of Rule 20A funds to Laguna Beach for unrestricted funds are desirable. The proposed transfer and terms are described in the attached Memorandum of Understanding (MOU). Staff recommends that the City Council approve the MOU and authorize the City Manager to execute the MOU.
Shaun S. Pelletier  
City Engineer

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle  
City Manager

Attachment: Memorandum of Understanding
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of ________, 201_, by and between the City of Aliso Viejo, a municipal corporation with its principal place of business at 12 Journey, Suite 100, Aliso Viejo, CA 92656 ("Aliso Viejo") and the City of Laguna Beach, a municipal corporation with its principal place of business at 505 Forest Avenue, Laguna Beach, CA 92651 ("Laguna Beach"). Laguna Beach and Aliso Viejo are sometimes individually referred to herein as "Party" and collectively as "Parties."

RECITALS

A. Electric utilities collect and annually allocate funds to communities to convert overhead electric facilities to underground electric facilities ("Rule 20A Funds").

B. Laguna Beach is actively planning one or more projects to underground overhead electric facilities that qualify for the application of Rule 20A Funds ("Projects"), however, Laguna Beach desires to obtain an additional allocation of Rule 20A Funds to finance such Projects.

C. Southern California Edison ("SCE") currently holds a balance of $89,479 in Rule 20A Funds for the benefit of Aliso Viejo ("Aliso Viejo Allocation") and Aliso Viejo currently has no active projects which can make use of the Aliso Viejo Allocation.

D. Laguna Beach desires to purchase the Aliso Viejo Allocation to use in connection with the Projects and Aliso Viejo desires to transfer the Aliso Viejo Allocation to enable the Rule 20A Funds which have been allocated to Aliso Viejo to be used for their intended purpose of undergrounding electric facilities and to derive economic benefit from the Aliso Viejo Allocation.

AGREEMENT

NOW THEREFORE, the Parties hereto agree as follows:

1. Aliso Viejo agrees to transfer and assign its rights and interest in the Aliso Viejo Allocation to Laguna Beach and Laguna Beach agrees to purchase the Aliso Viejo Allocation in accordance with the terms of this MOU. This MOU shall be subject to the approval of the City Council of Aliso Viejo and the City Council of Laguna Beach and shall become effective on the date when both such approvals have been obtained (the "Effective Date"). Notwithstanding the foregoing, if this MOU has not become effective as of March 30, 2018, then either Party may terminate this MOU upon five (5) business day's written notice to the other Party.

2. Within ten (10) business days of the Effective Date, Laguna Beach shall make a payment to Aliso Viejo in the amount of Forty Nine Thousand, Two Hundred Thirteen and 45/100 Dollars ($49,213.45) ("Purchase Price"), which is equivalent to $0.55 per dollar of allocation. The Purchase Price shall be made in immediately available funds via check or wire transfer to an account designated by Aliso Viejo. The Purchase Price shall constitute full consideration for the transfer and assignment of the Aliso Viejo Allocation.

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3. Within ten (10) business days of Aliso Viejo’s receipt of the Purchase Price, Aliso Viejo shall deliver a written request to SCE, with a copy to Laguna Beach, making a formal request to transfer and assign the entire balance of the Rule 20A Funds contained in the Aliso Viejo Allocation to and for the benefit of Laguna Beach. Aliso Viejo shall cooperate in good faith with Laguna Beach to provide any additional documentation or information that is reasonably requested by SCE to complete the transfer. Laguna Beach acknowledges and agrees that it has conducted its own investigation as to the applicability and transferability of the Aliso Viejo Allocation for use in the Projects and that Aliso Viejo has not made any representation or warranty to Laguna Beach with respect to same. The actual use of the Aliso Viejo Allocation by Laguna Beach shall be subject to the rules and procedures adopted by SCE and such other conditions or requirements as are set forth in the Public Utilities Code. In the event that SCE denies the transfer of Rule 20A credits to the City of Laguna Beach, the City of Aliso Viejo will return the Purchase Price in full to the City of Laguna Beach.

4. Laguna Beach shall indemnify, defend and hold harmless Aliso Viejo, its elected officials, officers, employees and agents, from any claim, damage or liability arising in connection with the use of Rule 20A Funds from the Aliso Viejo Allocation in connection with the construction of the Projects.

5. 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 Agreement on ten (10) business day’s 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.

6. All notices to be given pursuant to this MOU shall be delivered in person or by commercial overnight delivery to the address of the Party set forth above and addressed to the “City Manager” of such Party 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.

7. This MOU shall be governed and construed in accordance with the laws of the State of California. Venue shall be in the County of Orange.

8. If any legal proceeding, including an action for declaratory relief, is brought to enforce or interpret provisions of this MOU, 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 maybe entitled.

9. This Memorandum of Understanding may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Memorandum of Understanding attached thereto.

10. Severability If any term, covenant or condition of this Memorandum of Understanding shall, to any extent, be invalid, void, illegal or unenforceable, the remainder of this Memorandum of Understanding shall not be affected thereby, and each other term, covenant or
condition of this Memorandum of Understanding shall be valid and be enforced to the fullest extent permitted by law.

11. No modification, variation or amendment of this Memorandum of Understanding shall be effective without the written consent of all of the parties to this Memorandum of Understanding at the time of such modification, variation or amendment.

12. This Memorandum of Understanding shall be binding on and inure to the benefit of each of the parties' successors and assigns.

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[SIGNATURES PAGE FOLLOWS]
IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the Effective Date.

CITY OF ALISO VIEJO

By: ____________________________
David A. Doyle, City Manager

Attest:

By: ____________________________
Mitzi Ortiz, City Clerk

Approved as to form:

By: ____________________________
Scott C. Smith, City Attorney

CITY OF LAGUNA BEACH

By: ____________________________
John Pietig, City Manager

Attest:

By: ____________________________
Lisette Chel-Walker, City Clerk

Approved as to form:

By: ____________________________
Philip D. Kohn, City Attorney