



AGENDA

August 16, 2021

SPECIAL MEETING NOTICE
CITY COUNCIL
1:00 p.m.
Council Chambers
311 Vernon Street
Roseville, California
www.roseville.ca.us/CORTV

The meeting may be viewed on Comcast channel 14, Consolidated Communications channel 73, and AT&T U-Verse. City Council meetings are also video streamed live and are available on the City's website and YouTube channel.

Members of the public may offer public comment by phone:
Dial in Phone Number: 916-774-5353

If you need a disability-related modification or accommodation to participate in this meeting, please contact: Voice: 916-774-5200, TDD: 916-774-5220. Requests must be made as early as possible.

THE CITY OF ROSEVILLE WELCOMES YOUR PARTICIPATION

If an agenda item is open to public comment, such public comment shall be addressed to the chair of the meeting.

Public Comment - Speakers have three minutes under Public Comment to speak on issues that are not listed on the agenda and are within the City's jurisdiction. The Brown Act does not permit any action or discussion on items not listed on the agenda.

Consent Calendar - If applicable, the Consent Calendar consists of routine items that may be approved by one motion. Any person can remove an item from the Consent Calendar to be discussed separately.

Agenda Items - Speakers have five minutes to address items that are listed on the agenda.

Americans with Disabilities Act - Notify the City Clerk or Secretary at least 72 hours in advance if special assistance is required to participate in a meeting including the need of auxiliary aids or services.

Audio/Visual Presentations - If making a presentation regarding an agenda item, audio/visual materials must be submitted to the City Clerk or Secretary at least 72 hours in advance.

Security procedures are in place to attend Roseville City Council meetings. All attendees must successfully pass through a security metal detector. Any person with a prohibited item will not be allowed entry. Prohibited items include, but are not limited to: firearms (even with valid CCW), knives, pepper spray/mace, explosives of any kind/ any weapons and/or dangerous devices of any kind, illegal drugs and alcohol.

Roseville City Clerk 311 Vernon Street, Roseville, CA 916-774-5200 TDD 916-774-5220

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

4. MEETING PROCEDURES

5. PUBLIC COMMENTS

6. RESOLUTIONS

6.1. Emergency Generation Capacity for California Department of Water Resources - Right of Entry

Memo from Power Supply and Portfolio Administrator William Forsythe and Electric Utility Director Michelle Bertolino recommending the City Council adopt RESOLUTION NO. 21-383 APPROVING AN AGREEMENT FOR RIGHT OF ENTRY, BY AND BETWEEN THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE CITY OF ROSEVILLE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE IT ON BEHALF OF THE CITY OF ROSEVILLE. Staff also requests an approval of an Emergency Generation Capacity Term Sheet between the City and the California Department of Water Resources (CDWR) relating to the installation of temporary electric generation units at the Roseville Energy Park (REP). In addition, Roseville would grant a Right of Entry to CDWR to enable them to immediately commence with further analysis and minor construction activities at the REP. CDWR will pay \$9 million over the term of this transaction as compensation for locating and Roseville Electric staff operating the units at the REP site.

CC #: 1682

File #: 0800-02

CONTACT: William Forsythe 916-774-5619 wforsythe@roseville.ca.us

7. COUNCIL REPORTS / PUBLIC COMMENTS

8. ADJOURNMENT



COUNCIL COMMUNICATION

CC #: 1682
File #: 0800-02

Title: Emergency Generation Capacity for California Department of Water Resources - Right of Entry
Contact: William Forsythe 916-774-5619 wforsythe@roseville.ca.us

Meeting Date: 8/16/2021
Item #: 6.1.

RECOMMENDATION TO COUNCIL

Staff recommends that the City Council: (1) Approve an Emergency Generation Capacity Term Sheet between the City of Roseville (City) and the California Department of Water Resources (CDWR); (2) Adopt a resolution authorizing the City Manager to execute a Right of Entry; and (3) Authorize staff to negotiate associated agreements that will be brought before the City Council for consideration at a future City Council meeting in September 2021.

BACKGROUND

California is suffering from an extended drought which has reduced the availability of hydroelectric power and electricity generating capacity in California. The California Department of Water Resources (CDWR) operates the California State Water Project (SWP) and is both a large producer of hydroelectric power, and a large consumer of electricity in operating the SWP. To offset the large decline in generating capability from the drought, CDWR is seeking sites that can rapidly add generating capability to the California grid, with a goal of installing small natural gas peaking units available to provide grid support by mid-September 2021.

When the Roseville Energy Park (REP) was designed and built, the site was planned as a hub for various generating technologies. Accordingly, the site has the ability to accommodate additional generating capacity. CDWR has identified the REP site as one of very few in California capable of rapidly developing new electric generation capacity.

Discussions between CDWR and Roseville Electric staff resulted in a mutual interest to assist CDWR with its efforts to support the California grid. Roseville Electric staff, working closely with the City Attorney's Office, and CDWR created an Emergency Generation Capacity Term Sheet that sets forth the principle deal points for the proposed transaction. In addition, Roseville would grant a Right of Entry to CDWR to enable CDWR (at its own risk) to immediately commence with further analysis and minor construction activities at the REP. This item would also authorize staff to negotiate at least three separate agreements between Roseville and CDWR related to this transaction: Site Use and Installation Agreement; Operation and Maintenance Agreement; and an

Energy Services Agreement. The proposed term of all of the agreements is upon execution and through December 31, 2023.

FISCAL IMPACT

CDWR will pay \$9 million over the term of this transaction as compensation for locating and Roseville Electric staff operating the units at the REP site. All costs for construction, operations and maintenance will be borne or reimbursed by CDWR. In addition, Roseville will have the option to purchase the generating units at the end of the contract term for an agreed upon purchase price. If Roseville chooses not to purchase the units, CDWR will remove the units and return the property to its currently existing condition at their cost.

ENVIRONMENTAL REVIEW

The proposed project involves the construction of a limited number of small facilities. This activity is categorically exempt from CEQA as a Class 3 Exemption (State CEQA Guidelines Section 15303). The Exemption will be prepared and no further CEQA action is required.

Additionally, the proposed project involves minor alteration in the condition of the land, water, and or vegetation which will not remove healthy, mature scenic trees. This activity is categorically exempt from CEQA as a Class 4 Exemption (State CEQA Guidelines Section 15304). The Exemption will be prepared and no further CEQA action is required.

Lastly, Governor Newsom issued a "Proclamation of a State of Emergency" on July 30, 2021, and pursuant to section 10 of that Proclamation of a State of Emergency, the California Environmental Quality Act in Public Resources Code, Division 13 (commencing with section 21000) and regulations adopted pursuant to that Division, are suspended for this project.

CITY COUNCIL STRATEGIC PLAN/OVERARCHING GOALS

Goal A - Remain fiscally responsible in a changing world.

Goal F - Invest in well-planned infrastructure and growth.

Respectfully Submitted,

William Forsythe, Power Supply and Portfolio Administrator

Michelle Bertolino, Electric Utility Director



Dominick Casey, City Manager

ATTACHMENTS:

Description

Term Sheet

Resolution 21-383

Right of Entry

Emergency Generation Capacity Term Sheet

This term sheet summarizes the principal terms of the proposed transactions among the California Department of Water Resources (“**CDWR**”) and the City of Roseville, a municipal corporation (“**Roseville**”) as described below. CDWR and Roseville are referred to individually as a “**Party**” and collectively as the “**Parties**”. This term sheet is not intended to include an exhaustive list of any Party’s rights or obligations and does not create any obligations on the part of any Party. All binding obligations will be set forth in one or more definitive agreements to be signed by the Parties, and no obligations are created until such definitive agreements are signed.

Transaction Overview

In order to secure additional emergency generation capacity that will be available quickly and for the next two to three years until additional long term capacity resources can be arranged, CDWR is purchasing up to 2 LM2500 combustion turbine generators (the “**Combustion Turbines**” or “**CTs**”) from General Electric Company (“**GE**”), but it requires a site on which to locate the CTs and services to install the CTs, to interconnect them to the electric grid (“**Grid**”), to connect to natural gas and water supplies, to operate the CTs, schedule their output into the Grid and manage the supply of fuel necessary for operations. Roseville owns a site that could be used for these purposes and is willing to grant CDWR a license to use that site. It also has a generation step-up transformer (“**GSU**”) and interconnection rights and available natural gas and water interconnections that can be used to interconnect the CTs to the Grid and supply the necessary fuel. Therefore, in order to aid CDWR in accomplishing its objective of securing additional generation capacity, the Parties will enter into (1) a Site Use and Installation Agreement (“**Site Agreement**”), (2) an Operation and Maintenance Agreement (“**O&M Agreement**”), and (3) an Energy Services Agreement (“**Energy Services Agreement**”) as further described below.

Site Use and Installation Agreement

Parties:	Owner: City of Roseville (“Roseville”) Licensee: CDWR
Site:	Owner will grant CDWR a license to use and occupy a site (“ Site ”) at the Roseville Energy Park, in a location to be agreed upon by the Owner and CDWR, for the installation and operation of the CTs.
Term:	From the execution date through December 31, 2023.
Installation of Combustion Turbines:	CDWR will purchase the CTs from GE and contract with GE or another contractor for all installation, testing and commissioning of the CTs, including connection of the CTs to the GSU and gas lines. Owner’s responsibilities will be limited to (1) providing the Site for the installation of the CTs, (2) providing interconnections to the existing GSU and the existing natural gas lines at the Site, (3) providing connections to portable demineralized water supply trailers, and (4) while CDWR will provide a construction manager, Roseville may monitor GE’s or other contractor’s installation, testing and commissioning of the CTs on behalf of CDWR.

	The Parties acknowledge that pursuant to federal law it may also be necessary to install a selective catalytic reduction system (“SCR”) on each of the CTs in order to meet air permit requirements. CDWR will purchase SCRs for the CTs as part of its purchase of the CTs, but the Parties acknowledge that the SCRs will not be available for installation at the time the CTs are initially installed. CDWR will be responsible for installing and commissioning, and will have GE or another contractor install, test and commission, the SCRs for each of the CTs in order to comply with air permit requirements.
Title:	CDWR will retain title to the CTs and will be responsible for all property taxes and similar taxes payable with respect to the CTs.
Permits:	Owner will use commercially reasonable efforts to obtain new permits and licenses, or amendments to existing permits and licenses, as may be necessary to install and operate the CTs as contemplated in this term sheet, including temporary operation prior to installation of the SCRs and subsequent operation after installation of the SCRs. CDWR will reimburse Owner for all third party costs incurred in applying for and/or obtaining such permits and licenses or amendments to permits and licenses, including costs of third party consultants, modeling costs, the fair market value of any emission reduction credits (“ERCs”) owned by Owner or its affiliates to obtain such permits, licenses and amendments, and the cost of obtaining any ERCs from third parties. The Parties acknowledge that there is no certainty that such permits, licenses or amendments can be obtained and that the cost estimates provided by Owner for obtaining these permits, licenses and amendments, including the cost of third party services and ERCs, are only estimates and not a guaranty of or cap on costs payable by CDWR. Based on Paragraph 10 of the Governor’s Proclamation of a State of Emergency, dated July 30, 2021, CDWR represents that the installation will not be subject to the provisions of Public Resources Code Division 13 (commencing with Section 21000) or regulations adopted pursuant to that Division. CDWR acknowledges that the CTs may be subject to regulatory operating constraints and that they will not be operated outside of those constraints.
Compensation:	CDWR will reimburse Owner for all third party costs, including, but not limited to, legal costs incurred by Owner in providing the services described in clauses (2), (3) and (4) under “Installation of Combustion Turbines” and in connection with applying for and obtaining the new or amended licenses and permits, as provided under “Permits” and such other third party costs as may be identified in the course of negotiating the definitive agreements. In addition, CDWR will pay Owner a fee (“Fee”) of Three Million, Five Hundred Thousand Dollars (\$3,500,000.00) for 2021 (prorated per quarter), Three Million, Five Hundred Thousand Dollars (\$3,500,000.00) for 2022, and Three Million, Five Hundred Thousand Dollars (\$3,500,000.00) for 2023. The Fee for 2021 will be payable upon execution of the definitive agreements, and the Fee for 2022 and 2023 will be payable on January 1, 2022 and January 1, 2023, respectively or as may be agreed upon by the Parties.

Removal of CTs on Termination:	Unless Owner wishes to purchase the CTs, at the end of the Term or upon an earlier termination of the Site Agreement, CDWR will decommission the CTs and have them removed from the Site by the end of the Term or within 30 days after any earlier termination. Owner's obligations will be limited to disconnecting the CTs from the GSU, natural gas lines and demineralized water supply.
Events of Default:	The Site Agreement will include customary events of default (following agreed notice and cure periods), including for non-payment of amounts due and breaches of covenants and representations, and remedies.
Termination Rights:	In addition to rights to terminate following events of default, Owner will have the right to terminate the Site Agreement if (a) it is unable to obtain the necessary permits and licenses or amendments to permits and licenses necessary to install and/or operate the CTs for the Term of the Site Agreement, (b) it reasonably determines that installation or operation of the CTs will adversely impact its ability to operate the Roseville Energy Park in any material respect, including as a result of limitations on air emissions, natural gas consumption or hours of operation, (c) it reasonably expects that it or any of its affiliates or employees will incur liabilities or expenses of any kind that cannot or will not be fully covered by CDWR's indemnification obligations, or (d) it reasonably determines that installation or operation of the CTs will result in the violation of any applicable laws or permits, including any laws or permits related to the operation of the Roseville Energy Park, for any reason other than the gross negligence or willful misconduct Owner or the Operator under the O&M Agreement, including failure to timely provide the SCRs. Upon the exercise of any such termination right, CDWR will pay Owner a termination fee of Three Hundred Thousand Dollars (\$300,000.00) in consideration of the work performed by Owner in seeking new or amended permits and licenses, preparing the Site for delivery and installation of the CTs, testing and repair of existing equipment and other work done by Owner in connection with the Site Agreement.
Indemnification Obligations:	In addition to customary indemnification obligations for breach of covenants or representations and for injuries to third parties or property, and without limiting CDWR's other payment and reimbursement obligations, to the extent allowed by law, CDWR will indemnify, defend, save and hold harmless Owner, and it's officers, agents and employees against all claims, expenses and liabilities arising out of (a) any challenges to or invalidation of any new or amended permits or licenses sought or obtained by Owner or any of its affiliates in connection with the installation or operation of the CTs, including legal expenses, expert fees and court costs, (b) any claims, assertions or determinations, including those based on non-compliance with the requirements of Public Resources Code Division 13 (commencing with Section 21000) or regulations adopted pursuant to that Division, that installation or operation of the CTs pursuant to any new or amended permits or licenses were illegal or not permitted by applicable law for any reason, including any fines, penalties or other

	sanctions and any costs of modifying or removing the CTs, (c) greenhouses gases, including any penalties, offset requirements, taxes and compliance costs, and (d) any environmental damage, costs or liabilities, including claims or monetary enforcement sanctions, costs and liabilities for cleanup or disposal of hazardous materials or for air emissions, arising from the installation, commissioning, operation or decommissioning of the CTs, except to the extent arising from Owner's gross negligence or willful misconduct.
Insurance:	CDWR will obtain and maintain property insurance or provide proof of self-insurance on the CTs and all related equipment for their full replacement cost. Owner and CDWR will each obtain and maintain general liability insurance and such other insurance as they may agree in amounts to be agreed or may provide proof of self-insurance.
Limited Recourse:	Except for gross negligence or willful misconduct, the liability of Owner under the Site Agreement in any year will be limited to the amount of the Fee payable in such year. No Party will be liable to another Party for consequential or punitive damages.
Purchase Option:	Anytime following the completion of the first year of the Site Agreement, Owner may notify CDWR of its intent to purchase one or both of the CTs, at the end of the term of the contract between State and Roseville, at a price equal to 70% of the estimated equipment value of +/- \$20M per unit, minus \$3M per unit for avoided decommissioning costs, and minus an additional \$1M of avoided decommissioning administration costs, whether Roseville chooses to buy one or two units. The parties acknowledge that this calculation equates to a total purchase cost to Roseville of \$10M for the first unit and \$11M for the second unit.

Operation and Maintenance Agreement

Parties:	Equipment Owner: CDWR Operator: City of Roseville (“ Roseville ”)
Services:	Operator will operate the CTs in accordance with the operating schedules set under the Energy Services Agreement. All scheduled and unscheduled maintenance on the CTs and all warranty work will be performed by GE or another contractor retained by CDWR. Operator will assist CDWR in administering GE's and/or such other contractor's maintenance and warranty work on behalf of CDWR, but any actions required to enforce or pursue any warranties or remedies for deficient work or services by GE or such other contractor will constitute additional services for which additional compensation will be paid, or will be undertaken by CDWR. Operator will also not be required to institute or defend any litigation, arbitration or similar remedies against GE or such other contractor on behalf of CDWR, all of which will be done by CDWR in its own name. Operator will not guarantee the output, heat rate, efficiency

	or any other operational parameter of the CTs. CDWR will look solely to GE or such other contractor for any such guarantees.
Term:	From completion of commissioning of the CTs through the earlier of the start of decommissioning or the termination of the Site Agreement
Compensation:	Operator will receive a management fee of Three Hundred Thousand Dollars (\$300,000.00) for each calendar year (or part thereof) during the Term, payable in advance at the beginning of each calendar year. CDWR will also reimburse Operator for all fixed and variable operating costs, including the cost of materials (such as consumables, spare parts and demineralized water) supplied by Operator. The Fee for 2021 will be payable upon execution of the definitive agreements, and the Fee for 2022 and 2023 will be payable on January 1, 2022 and January 1, 2023, respectively, or as may be agreed upon by the Parties.
Events of Default:	The O&M Agreement will include customary events of default (following agreed notice and cure periods), including for non-payment of amounts due and breaches of covenants and representations, and remedies.
Indemnification Obligations:	In addition to customary indemnification obligations for breach of covenants or representations and for injuries to third parties or property, and without limiting CDWR's other payment and reimbursement obligations, to the extent allowed by law, CDWR will indemnify, defend, save and hold harmless Operator, and its officers, agents and employees against all claims, expenses and liabilities arising out of (a) any challenges to or invalidation of any new or amended permits or licenses sought or obtained by Operator or any of its affiliates in connection with the installation or operation of the CTs, including legal expenses, expert fees and court costs, (b) any claims, assertions or determinations, including those based on non-compliance with the requirements of Public Resources Code Division 13 (commencing with Section 21000) or regulations adopted pursuant to that Division, that installation or operation of the CTs pursuant to any new or amended permits or licenses were illegal or not permitted by applicable law for any reason, including any fines, penalties or other sanctions and any costs of modifying or removing the CTs, (c) greenhouses gases, including any penalties, offset requirements, taxes and compliance costs, and (d) any environmental damage, costs or liabilities, including claims or monetary enforcement sanctions, costs and liabilities for cleanup or disposal of hazardous materials or for air emissions, arising from the installation, commissioning, operation or decommissioning of the CTs, except to the extent arising from Operator's gross negligence or willful misconduct.
Insurance:	CDWR will obtain and maintain property insurance or provide proof of self-insurance on the CTs and all related equipment for their full replacement cost. CDWR and Operator will each obtain and maintain general liability insurance and such other insurance as they may agree in amounts to be agreed or may provide proof of self-insurance.

Limited Recourse:	Except for gross negligence or willful misconduct, the liability of Operator and its affiliates under the O&M Agreement in any year will be limited to the amount of the management fee payable in such year. No Party will be liable to another Party for consequential or punitive damages.
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Energy Services Agreement

Parties:	Owner: CDWR Service Provider: City of Roseville (“ Roseville ”)
Scheduling Coordinator:	Roseville will act as CDWR’s scheduling coordinator for the CTs and will schedule them in accordance with CDWR’s instructions, subject to notice requirements to be agreed in the Energy Services Agreement. Roseville will not have any obligation to schedule or dispatch the CTs except in accordance with instructions from CDWR or the CAISO. However, Roseville will not be required to schedule the CTs in any manner that violates any applicable permit or law, that would violate GE’s warranty or operating recommendations, or that would adversely affect Roseville’s ability to operate and dispatch the Roseville Energy Park. CDWR will cooperate with Roseville and take all actions necessary for Roseville to be designated as scheduling coordinator. CDWR will be entitled to receive all CAISO and other revenues related to the capacity or output of the CTs and will be responsible for all CAISO fees, charges, penalties, imbalance charges or penalties and, if applicable, resource adequacy replacement costs and shortfall charges.
Potential Operating Model Change	The Parties agree that the Units may be placed under operational constraints until any SCRs that may be required can be installed and commissioned. In that event, the Parties recognize and agree that once the SCRs have been commissioned, a different operating model may produce greater benefit to the people of the State of California. Accordingly, the Parties agree to confer to discuss changing circumstances and may agree to modifications to the operating model set forth in this Agreement.
Fuel Management:	Roseville will act as CDWR’s fuel manager and will nominate and arrange for the delivery of fuel to the CTs necessary to satisfy CDWR’s scheduling instructions on a day ahead basis, subject to compliance with all instructions regarding Emergency Flow Order (“ EFO ”) or Operational Flow Order (“ OFO ”) conditions, which may require adjustment of previously given schedules. CDWR will pay or reimburse Roseville for all fuel costs, including commodity and transportation costs, surcharges and taxes, and all imbalance charges due to differences between day ahead nominations and real time usage. Roseville will not be responsible for any failure of the CTs to operate at the heat rate guaranteed by GE, and CDWR will look solely to GE to recover any costs due to failure to achieve a guaranteed heat rate. If a failure to achieve the guaranteed heat rate would result in a permit violation or would adversely impact Roseville’s ability to operate the Roseville Energy Park, Roseville may curtail the operation of the CTs in

	order to avoid such violation or adverse effect, and CDWR will hold Roseville harmless from any costs, penalties or liabilities as a result of such violation, adverse effect or curtailment. CDWR will comply with all EFO and OFO requirements and will be responsible for all costs, expenses, sanctions and penalties as a result of non-compliance, except to the extent due to Roseville's gross negligence or willful misconduct, and will reimburse Roseville for all such costs promptly upon notice.
Term:	From commencement of testing and commissioning of the CTs through the earlier of the start of decommissioning or the termination of the Site Agreement
Compensation:	In addition to the reimbursement of costs described above, Roseville will receive (a) a scheduling and fuel management fee of Two Hundred Thousand Dollars (\$200,000.00) for each calendar year (or part thereof) during the Term plus actual cost per MMBtu. The fixed portion of these fees will be payable in advance at the beginning of each calendar year. Service Provider will also be compensated for any additional services that it provides on a basis to be agreed, including, but not limited to, costs incurred by Service Provider in securing necessary transmission to deliver energy to the CAISO controlled grid. The Fee for 2021 will be payable upon execution of the definitive agreements, and the Fee for 2022 and 2023 will be payable on January 1, 2022 and January 1, 2023, respectively, or as may be agreed upon by the Parties.
Events of Default:	The Site Agreement will include customary events of default (following agreed notice and cure periods), including for non-payment of amounts due and breaches of covenants and representations, and remedies.
Indemnification Obligations:	In addition to customary indemnification obligations for breach of covenants or representations and for injuries to third parties or property, and without limiting CDWR's other payment and reimbursement obligations, to the extent allowed by law, CDWR will indemnify, defend, save and hold harmless Service Provider, and its officers, agents and employees against all claims, expenses and liabilities arising out of (a) any challenges to or invalidation of any new or amended permits or licenses sought or obtained by Service Provider or any of its affiliates in connection with the installation or operation of the CTs, including legal expenses, expert fees and court costs, (b) any claims, assertions or determinations, including those based on non-compliance with the requirements of Public Resources Code Division 13 (commencing with Section 21000) or regulations adopted pursuant to that Division, that installation or operation of the CTs pursuant to any new or amended permits or licenses were illegal or not permitted by applicable law for any reason, including any fines, penalties or other sanctions and any costs of modifying or removing the CTs, (c) greenhouses gases, including any penalties, offset requirements, taxes and compliance costs, and (d) any environmental damage, costs or liabilities, including claims or monetary enforcement sanctions, costs and liabilities for cleanup or disposal of hazardous materials or for air emissions, arising from the installation, commissioning, operation or

	decommissioning of the CTs, except to the extent arising from Service Provider's gross negligence or willful misconduct.
Insurance:	CDWR and Roseville will each obtain and maintain general liability insurance and such other insurance as they may agree in amounts to be agreed or may provide proof of self-insurance.
Limited Recourse:	Except for gross negligence or willful misconduct, Roseville's liability under the Energy Services Agreement in any year will be limited to the amount of the scheduling and fuel management fees payable in such year. No Party will be liable to another Party for consequential or punitive damages.

RESOLUTION NO. 21-383

APPROVING AN AGREEMENT FOR RIGHT OF ENTRY, BY AND BETWEEN
THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE CITY OF
ROSEVILLE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE IT ON
BEHALF OF THE CITY OF ROSEVILLE

WHEREAS, an Agreement for Right of Entry, by and between the California Department of Water Resources and the City of Roseville, has been reviewed by the City Council; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Roseville that said Agreement is hereby approved and that the City Manager is authorized to execute it, as well as any other documents necessary to effectuate the purpose of the Agreement, on behalf of the City of Roseville.

PASSED AND ADOPTED by the Council of the City of Roseville this ____ day of _____, 20_, by the following vote on roll call:

AYES COUNCILMEMBERS:

NOES COUNCILMEMBERS:

ABSENT COUNCILMEMBERS:

MAYOR

ATTEST:

City Clerk

RIGHT OF ENTRY

Project: Emergency Generation Capacity Site Evaluation and Preparation

This Right of Entry is entered into by and between the California Department of Water Resources ("CDWR"), and the City of Roseville ("City") on this __ day of _____, 2021.

1. Purpose. CDWR desires to enter upon property that is owned by the City and located at or near 5120 Phillip Road in Roseville, California (the "Property") to perform preliminary evaluation, site preparation, and associated activities related to CDWR's purchase and installation of additional emergency generation capacity in the form of two (2) LM2500 combustion turbine generators from General Electric Company (the "Work"). The Work shall be performed on the Property at the location shown on Exhibit "A" attached hereto. All terms, payments, and responsibilities associated with the Work shall be addressed in separate agreements to be approved by City Council of City.

2. Entry. City hereby grants CDWR, its contractors, agents, and employees permission to enter upon and use the Property, as may be reasonably necessary in order to perform the Work on the Property. Such Right of Entry shall be subject to the terms and conditions stated herein.

3. Additional Terms and Conditions. CDWR shall comply with the following:

- a. Be solely responsible for all of the costs of Work including, but not limited to, City staff time, permits, inspections and utilities required during performance of the Work. Details of the associated City costs shall be addressed in separate agreements to be approved by City Council of City.
- b. Hold a pre-Work meeting with City staff.
- c. Notify City twenty four (24) hours in advance prior to the initial commencement of the Work.
- d. All Work must comply with all federal, state and local laws.
- e. Except as agreed upon in advance by City, Roseville Energy Park shall remain fully operational and shall be kept in a safe manner during performance of the Work.

4. In Effect. This Right of Entry shall remain in effect until the completion of the Work or until a separate Site Use and Installation Agreement has been approved by the City Council of City, whichever is earlier.

5. Insurance. CDWR agrees that it shall maintain, and shall require its contractors to maintain in full force and effect, the following policies of insurance during the term of this Right of Entry.

COVERAGELIMITS OF LIABILITY

Workers Compensation

Statutory

Commercial General Liability

Bodily Injury:
 \$1,000,000 each occurrence
 \$2,000,000 aggregate
 Property Damage:
 \$1,000,000 each occurrence
 Personal Injury:
 \$1,000,000 each occurrence
 \$2,000,000 aggregate

Automobile liability

\$1,000,000 combined single limit

CDWR shall submit certificates evidencing such coverage, or proof of self-insured retentions, in a form satisfactory to the City Attorney of City, prior to undertaking any work hereunder. Separate endorsement forms showing City, its officers, agents and employees as additional named insureds, except for Workers' Compensation, shall also be provided. Such insurance shall specifically cover the contractual liability of CDWR as it relates to performance of the Work. The coverages shall be primary as to such additional insureds and no coverage of the City shall be called upon to contribute to any loss. The additional insured coverage shall be at least as broad as the Insurance Services Office ("ISO") CG 20 01 Endorsement. Any available insurance proceeds in excess of the specified minimum insurance coverage requirements and limits shall be available to the additional insureds. Said certificates shall provide at least thirty (30) days written notice to City prior to cancellation or modification of any insurance required by this Right of Entry. CDWR shall furnish certificates or proof of self-insured status for the period covered by this Right of Entry. Any insurance written on a claims made basis is subject to the approval of the City Attorney. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve CDWR of liability in excess of such coverages, nor shall it preclude City from taking such other actions as are available to it under any other provisions of this Right of Entry or law. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the full coverage and maximum limits of any insurance proceeds available to the named insureds, whichever is greater.

Should CDWR elect to self-insure for any required insurance, CDWR shall be liable to Owner for the full equivalent of insurance coverage which would have been available to Owner if the applicable insurance policies had been obtained by CDWR from a third-party insurer, in full compliance with the provisions under this Section 5, and shall pay on behalf of or indemnify Owner for all amounts which would have been payable by the third party insurer. In addition, CDWR shall act with the same promptness and be subject to the same standards of good faith as would apply to a third-party insurance company.

6. Indemnification. To the fullest extent allowed by law, CDWR agrees to defend, indemnify, and save and hold harmless City, its elected and appointed officials, employees, City personnel, agents, volunteers, and contractors harmless from any and all claims or liability arising out of the Work or the use of this Right of Entry by CDWR, its contractors, or their subcontractors, employees, agents, and/or any other person(s), except those matters arising from

City's gross negligence or willful misconduct. This indemnification is expressly intended to include any claims or liability arising out of any demand made or requirements imposed by any governmental agency, with respect to any portion of the Work or this Right of Entry. CDWR shall further defend and indemnify City from any lien or proceeding against the City, the Property, or the Work arising out of entry on the Property or performance of the Work. The parties intend that this provision shall be broadly construed.

CDWR's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Right of Entry for the full period of time allowed by law. The defense and indemnity obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. CDWR shall provide a Release to City, attached hereto as Exhibit "B", concurrent with execution of this Right of Entry.

7. Notices. Any notices to parties shall be delivered personally or mailed, U.S. first class postage prepaid, and addressed as follows:

CITY

City of Roseville
Attn: City Manager
311 Vernon Street
Roseville, CA 95678

CDWR

California Department of Water Resources
Attn: Anthony Meyers
1416 9th Street
Sacramento, CA 95814

8. Attorney's Fees; Venue; Governing Law. If either party commences any legal action against the other party arising out of this Right of Entry or the performance of the Work, the prevailing party in such action shall be entitled to recover its reasonable litigation expenses, including but not limited to, court costs, expert witness fees, discovery expenses, and attorney's fees. Any action arising out of this Right of Entry shall be brought in Placer County, California, regardless of where else venue may lie. This Right of Entry shall be governed by and construed in accordance with the laws of the State of California.

9. Modification. This Right of Entry and each provision contained herein may be waived, amended, supplemented or eliminated only by mutual written agreement of the parties.

10. Severability. If any of the provisions contained in this Right of Entry are for any reason held invalid or unenforceable, such holding shall not affect the remaining provisions or the validity and enforceability of the agreement as a whole.

11. Integrated Agreement. This is an integrated agreement and contains all of the terms, considerations, understanding and promises of the parties. It shall be read as a whole.

12. Counterparts. This Right of Entry may be executed by the parties hereto in one or more counterparts, each of which shall be deemed to be an original, and which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Right of Entry in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ____ day of _____, 2021, and the CALIFORNIA DEPARTMENT OF WATER RESOURCES represents that it has caused this Right of Entry to be duly executed.

CITY OF ROSEVILLE, a
municipal corporation

CALIFORNIA DEPARTMENT OF
WATER RESOURCES

BY: _____
DOMINICK CASEY
City Manager

BY: Ted Craddock
TED CRADDOCK
Deputy Director

ATTEST:

By: _____
SONIA OROZCO
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

BY: _____
MICHELLE SHEIDENBERGER
City Attorney

BY: Robert S. Hedrick
ROBERT S. HEDRICK
Attorney IV

APPROVED AS TO SUBSTANCE:

BY: _____
MICHELLE BERTOLINO
Electric Utility Director

EXHIBIT "B"

GENERAL RELEASE OF ALL CLAIMS AND LIABILITY

The California Department of Water Resources does hereby release, acquit and forever discharge the City of Roseville and their officials, employees, agents, servants and all other persons of and from any and all claims, suits, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever which may arise in connection with or resulting from the performance of the Work on the Property as defined in the Right of Entry ("Project").

It is further understood and agreed that all rights under California Civil Code Section 1542 and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The parties further declare and represent that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that terms of this Release are contractual and not a mere recital.

THE UNDERSIGNED HAS READ AND FULLY UNDERSTANDS THE FOREGOING RELEASE.

Signed, sealed and delivered this _____ day of _____, 2021.

CITY OF ROSEVILLE, a
municipal corporation

CALIFORNIA DEPARTMENT OF
WATER RESOURCES

BY: _____
DOMINICK CASEY
City Manager

BY:  _____
TED CRADDOCK
Deputy Director