Agenda Item #6.2
For Board Meeting of: January 17, 2019

CITY OF SANTA ROSA
BOARD OF PUBLIC UTILITIES

TO: BOARD OF PUBLIC UTILITIES
FROM: JOE SCHWALL, INTERIM DEPUTY DIRECTOR SUBREGIONAL OPERATIONS
SUBJECT: APPROVAL OF CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT WITH CALPINE CORPORATION AND GEYSERS POWER COMPANY

AGENDA ACTION: MOTION

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## RECOMMENDATION

It is recommended by the Water Department and the City Attorney's Office that the Board, by motion, approve a Confidentiality and Nondisclosure Agreement with Calpine Corporation and Geysers Power Company, to allow City staff to receive confidential information for the purpose of evaluating a request for potential release of the Guarantee dated as of August 21, 2007.

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## EXECUTIVE SUMMARY

In order to engage in detailed discussions regarding a request by Calpine Corporation ("Calpine") and the Geysers Power Company ("GPC") that the City consider a release of the Guarantee dated as of August 21, 2007, a nondisclosure agreement is required due to the proprietary and confidential financial information that the City would need to review and evaluate in consideration of such request.

## BACKGROUND

In 2007, the City entered into a Second Amendment to Construction and Operating Agreement Santa Rosa Geysers Recharge Project dated as of August 14, 2007 with the Geysers Power Company for the continued operation of the Geysers Recharge Project following declaration of bankruptcy and assumption of the original Construction and Operating Agreement dated April 14, 1998 and first amendment thereto. In conjunction with this Second Amendment, City received parent guarantee from Calpine Corporation dated August 21, 2007 (the "Guarantee"). The City has had no cause to call upon the Guarantee since the date it was issued. City staff have received a request from the Geysers Power Company and Calpine to discuss the possibility of releasing the Guarantee.

## ANALYSIS

The City has had a cooperative and successful relationship with Calpine and GPC in the construction and operation of the Geysers Recharge Project and therefore staff wants to take reasonable efforts to accommodate consideration of this request by Calpine and GPC. To entertain any detailed discussions and allow City staff to evaluate the request it has received from Calpine and GPC, it will be necessary that GPC and Calpine share confidential information with the City. Calpine and GPC are seeking protection for confidential information provided via a nondisclosure agreement prior to the delivery of any such information. The NDA was negotiated by legal counsel for GPC and Calpine and the Santa Rosa City Attorney's Office to allow the receipt by the City of confidential information consistent with legal requirements.

If the NDA is approved and executed by the parties, City staff, through the City Attorney's Office, will receive information from Calpine and GPC to facilitate further discussion and analysis of the request to release the Guarantee. City staff will then be in a better position to determine next steps, including the possibility of any future action by the BPU or City Council.

## FISCAL IMPACT

Other than some staff time in processing the NDA and the Calpine and GPC request, there is no fiscal impact from an approval of the NDA.

## ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

## ATTACHMENTS

- Attachment 1 – Proposed Confidentiality and Nondisclosure Agreement

## CONTACT

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