



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.g

Title: Recommendation to Approve Revised Solar Siting Agreement and Easement with IMEA

Presenter: Tom Bruhl

Meeting: Government Services Committee

Date: March 27, 2017

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

Consistent with our sustainability goals and our supplier, Illinois Municipal Electric Agency (IMEA) commitment to a diversified portfolio inclusive of renewable sources, IMEA selected the City of St. Charles to host their first utility scale solar installation in 2015. The original agreement with a solar developer fell through related to financing, and IMEA shifted to the second lowest bidder. The second lowest bidder, Altorfer Caterpillar completed a project twice as large in late 2016 in Rantoul. The City's proposal included siting the plant on property the City purchased for an electric substation within the Legacy Development. The substation site was sized to provide for an upgrade from our current 35kV feed to a 138kV class station. As our current planning forecast does not suggest that 138kV is going to be needed to serve the City's load in the foreseeable future, using the majority of the site for a solar installation is practical.

The agreement between the City and IMEA includes provisions for IMEA to remove the plant in the event that the City desired to build a 138kV station prior to the end of the 20 year agreement. The agreement includes public access via website link to real time and historical production data, and physical escorted access upon request. The revisions are related to the elimination of a storage battery and updated "buy out" numbers should the City need the land within the next 20 years.

The City Attorney has reviewed and approved these modifications.

**Attachments** *(please list):*

\* Revised Solar Siting Agreement with IMEA

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to approve Revised Solar Siting Agreement with IMEA.

## GENERATION SITING AND OPERATING AGREEMENT

This Agreement entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017, between ILLINOIS MUNICIPAL ELECTRIC AGENCY (“IMEA” or the “Agency”), a body politic and corporate, municipal corporation and unit of local government of the State of Illinois, and the CITY OF ST. CHARLES, ILLINOIS (“City”), a municipal corporation created and existing under the laws of the State of Illinois.

### **W I T N E S S E T H:**

WHEREAS, IMEA is a body politic and corporate, municipal corporation and unit of local government of the State of Illinois created to serve the municipalities in the State that own and/or operate their own municipal electric utilities through joint action to achieve economies and efficiencies in the production and supply of electric energy not possible for municipalities acting alone; the City owns and operates its own municipal electric distribution system and utility; and the City is a Member-owner of IMEA; and

WHEREAS, IMEA has long-term Power Sales Contracts with the City and its other 31 Members to provide all of the electric power and energy required for the operation of the Members’ municipal electric systems; and

WHEREAS, public policy in the country as it relates to the electricity industry is placing great pressure on load serving entities to meet larger portions of their electricity needs with carbon-free renewable generation resources and energy efficiency, including existing and proposed State and Federal legislation and regulations mandating or proposing to mandate minimum renewable resource and energy efficiency standards, and including the EPA’s latest proposed rules that would require reduction in greenhouse gas emissions, commonly referred to as the Clean Power Plan; and

WHEREAS, in furtherance of its obligations under the Power Sales Contracts and to further the national goals and policies of acquiring power supply from carbon-free, renewable resources, IMEA has adopted a solar energy resource program pursuant to which it will sponsor one or more solar generation projects to be located on sites within and to be interconnected with the municipal electric distribution systems of one or more of its Members; and

WHEREAS, the City has offered to host a solar project under the program and to provide the site identified in this Agreement for installation of a solar generation facility to be interconnected with the City’s distribution system and to provide the electricity therefrom to serve the citizens and businesses of the City on the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth in this Agreement, the Agency and the Member agree as follows:

1. IMEA shall install, own, operate and maintain, or cause to be installed, owned, operated and maintained, at its expense, a solar generation facility to be connected to the City’s

electric distribution system for use as a source of supply of electricity for the City’s citizens and businesses. The form of IMEA’s sponsorship on the solar project in St. Charles shall be through the execution of a Power Purchase Agreement (“PPA”) with the contractor/supplier finally selected by IMEA to build, own and operate the project. The solar generation facility will consist of photovoltaic panels, inverters and related equipment designed to produce and rated at approximately 500 kW. The PPA includes an option for IMEA to acquire ownership of the solar generation facility in the future.

2. The solar generation facility will be directly interconnected to the City’s electric distribution system. The power and energy from solar generation facility will be delivered directly to the City for use by the City’s citizens and businesses. This power and energy will be used to supplement IMEA’s provision of electricity to meet the City’s requirements under the Power Sales Contract. The other attributes associated with the energy produced by the solar generation facility, including but not limited to capacity, ancillary services and credits associated with the renewable or non-carbon nature of the energy produced, shall be retained by IMEA. IMEA will work with the City and its other Members to determine if a rate or program can be created that would allow the City’s retail customers to directly purchase the power and energy or the renewable energy credits from the solar generation facility.

3. The City shall provide a parcel of land to be used as the site of the solar generation facility. The site shall be a portion of Lot 15 of the Legacy Business Center of St. Charles, which is shown in Attachment A hereto. Specifically, the portion of the parcel where the solar generation facility is to be installed and maintained is the south half of the parcel and, subject to a right of reservation by the City as more fully described herein, a portion of the east half of the north half of the parcel, all as identified and depicted on Attachment B hereto. The City shall provide IMEA unrestricted usage of and access to the site for all purposes related to the solar generation facility.

4. Beginning at the end of Year 6 of the PPA, the City shall have the right to compel removal of all or a portion of the solar generation facility as follows:

- a. The City shall have the right to compel removal of the solar generation facility from the entire parcel of land if the City requires the land for substation expansion to accommodate a change of delivery voltage from 34.5 kV to 138 kV from the regional transmission provider. The City’s right to compel such removal shall be subject to the requirement that it make the payment specified in the following chart as required under the PPA, and IMEA will in turn make such payment to its contractor/supplier to buy out the solar generation facility under the PPA:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
6	\$807,970	11	\$563,554	16	\$319,138
7	\$759,087	12	\$514,671	17	\$270,255
8	\$710,204	13	\$465,788	18	\$221,371

9	\$661,320	14	\$415,904	19	\$172,488
10	\$612,437	15	\$368,021	20	\$123,605

If such right is exercised by the City, IMEA shall remove or cause to be removed all portions of the solar generation facility at the City’s expense and within a commercially reasonable time.

- b. The City shall have the right to compel removal of the solar generation facility to the same extent and subject to the same conditions as (a) above if the plant becomes commercially unviable and IMEA or its contractor/supplier have not taken reasonable steps to repair or otherwise cause the plant to be returned to a commercially viable state. Commercially unviable is defined as a load factor over a 12 month period of less than 1%. Load factor is defined as output from the solar generation facility in kWh for the 12 month period divided by the nameplate rating of the plant in kW multiplied by 8760 hours. Reasonable periods for repairs required as a result of significant damage from events typically understood to be force majeure events shall be excluded from the foregoing.
- c. The City shall have the right to compel removal of the portion of the solar generation facility from the north half of the parcel if the City determines that it requires such additional land for electric utility purposes, including but not limited to initial construction or future expansion of the planned substation to be built on the parcel as illustrated in Attachment B. The City’s right to compel such removal shall be subject to the requirement that it make the payment specified in the following chart as required under the PPA, and IMEA will in turn make such payment to its contractor/supplier under the PPA:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
6	\$150,282	11	\$104,821	16	\$59,360
7	\$141,190	12	\$95,728	17	\$50,267
8	\$132,098	13	\$86,636	18	\$41,175
9	\$123,005	14	\$77,358	19	\$32,082
10	\$113,913	15	\$68,452	20	\$22,990

If such right is exercised by the City, IMEA shall remove or cause to be removed all portions of the solar generation facility located on the north half of the parcel at the City’s expense and within a commercially reasonable time.

5. The City shall execute an appropriate instrument to grant IMEA an easement to use the property as the site for the solar generation facility. The instrument shall have a reversion clause that automatically terminates the easement rights when the solar generation facility ceases to exist or is acquired by the City. The instrument shall be in a form and have such provisions as are reasonable and customary in the county for instruments of its type and as shall be mutually agreeable to the parties. Upon execution, the instrument shall be recorded in the land records in the appropriate offices of Kane County, Illinois. The easement shall be granted in exchange for a nominal consideration. The City shall charge no other fee for the use of the site.

6. IMEA shall have the right to grant one or more irrevocable, non-exclusive licenses running with the land for the site to the contractor/supplier selected to build, own and operate the solar generation facility for access to and for the purpose of installing, owning, operating and maintaining, and at appropriate times repairing, replacing and/or removing the solar generation facility and all related equipment on or from the site. IMEA may grant the holder of any such license the right to record a memorandum of license or other appropriate instrument in the land records in the appropriate offices of Kane County, Illinois.

7. IMEA and its contractor/supplier should not be subject to property taxes or other fees, monetary contributions or taxes in lieu of property taxes in connection with the ownership of the solar generation facility or the use of the site. The site was acquired by the City for the public purpose of being used in connection with the provision of electricity to the citizens and businesses of the City as part of its electric utility system, and as such it is tax-exempt. The solar generation facility to be located on the site serves the same public purpose. The City agrees to use its best efforts to keep IMEA and its contractor/supplier from being made subject to any such property related taxes, fees, monetary contributions or taxes in lieu in connection with the ownership of the solar generation facility or the use of the site.

8. The City agrees to take all steps reasonably necessary under applicable building, zoning and other regulations of all local government authorities such that IMEA and/or its contractor/supplier will have the necessary authorizations to install, operate and maintain the solar generation facility.

9. IMEA and the City acknowledge completion of the IDNR (Illinois Department of Natural Resources) **Ecological Compliance Assessment Tool (EcoCAT)** Application for the host site which provides natural resource reviews for:

- a. Illinois Endangered Species Protection Act [520 ILCS 10/11(b)] and Illinois Natural Areas Preservation Act [525 ILCS 30/17] as set forth in procedures under Title 17 Ill. Admin. Code Part 1075.
- b. Interagency Wetland Policy Act of 1989 [20 ILCS 830] as set forth in procedures under Title 17 Ill. Admin. Code Part 1090 when state agencies provide funding (including federal pass-through funding) or technical assistance.

The City's obligations under this Agreement are subject to the receipt by IMEA or its contractor/supplier of all necessary permits, approvals and authorizations to install, own, operate and maintain the solar generation facility, including any necessary variance or similar action with respect to any restriction arising out of the EcoCAT process.

10. IMEA agrees to provide for environmental and other governmental and/or regulatory permitting and approvals, if any, other than that specified in Sections 8 and 9 immediately above, as required by law to install, own, operate and maintain the solar generating facility. IMEA's obligations under this Agreement are subject to the receipt by IMEA or its contractor/supplier of all necessary permits, approvals and authorizations to install, own, operate and maintain the solar generation facility.

11. The City shall not build or allow to be built on the site any structure of any kind that would block access to the sunlight by the solar generation facility or make any alteration to the site that would otherwise adversely affect, cause damage to or interfere with the construction, operation or maintenance of the solar generation facility. The City will enforce its currently effective building, zoning or other land use regulations and restrictions to ensure to the extent possible under such currently effective regulations and restrictions that no construction on or alteration of any adjoining parcels will be allowed to block access to the sunlight by the solar generation facility or that would otherwise interfere with the solar generation facility. The City will not make any changes to its currently effective building, zoning or other land use regulations and restrictions or grant any variance or exception thereto that would allow for any such construction on or alteration of any adjoining parcels. The City shall notify IMEA in a timely manner if it becomes aware of any plans for any such construction on an adjoining parcel. The City will also use its best efforts to encourage the landscape elements and vegetation control on all adjacent properties to be configured so as not to block access to sunlight or otherwise interfere with the solar generation facility.

12. The City shall remove any and all trees from the site in a timely manner in coordination with IMEA and its contractor/supplier. IMEA or its contractor/supplier shall have the right and obligation to maintain all vegetation on the site. The City grants IMEA or its contractor/supplier permission to grade the site, including removal of the existing berm.

13. The City shall install and maintain in accordance with prudent utility practice, at its expense, the necessary equipment to connect the solar generation facility to the City's electric distribution system, which interconnection equipment shall be owned by the City. The City-provided three phase equipment is depicted on Attachment C and shall consist of a 1000 kVA 12.47 kV<sub>LL</sub> delta – 480 V<sub>LL</sub> wye grounded step up transformer, high side fuses and load break disconnect switching, low side bidirectional, four quadrant revenue metering (comparable to Elster's Alpha Plus polyphase meter) with SCADA connectivity, and associated high side cabling to extend the City's existing distribution feeder loop to the step up transformer and low side cabling between the step up transformer and the termination point at the solar generation facility 480 V switchgear. IMEA will cause its contractor/supplier to execute an appropriate interconnection agreement with the City.

14. The interconnection point between the solar project and the City's distribution system shall be made an additional Delivery Point for the City under its Power Sales Contract with IMEA and the power and energy delivered to the City from the solar generation facility shall be metered and billed to the City by IMEA in accordance with the Power Sales Contract. The City shall provide IMEA SCADA access to all output from the revenue metering and, as required, access to single phase 120 VAC power for IMEA SCADA communications at the site.

15. The City shall provide IMEA with access to monitoring points within the City's distribution system section serving the solar facility for the purpose of studying real-time voltage and harmonic conditions as the solar generation facility output and substation regulation and loading vary. Said cooperation would involve reasonable City staff time related to installation of devices on the system, with the exception that such devices would create any safety concerns or

limit operational flexibility. IMEA or its contractor/supplier will provide the City with access to a public internet web site displaying real time and historic solar array output data from the solar generation facility, reported in user-defined time intervals. Such web site shall be comparable to the public website currently maintained by IMEA's contractor/supplier for the Champaign IL Mass Transit District solar facility.

16. The City shall at all times preserve and maintain the interconnection of the solar generation facility to its electric distribution system in accordance with prudent utility practice and shall receive the electricity produced by the solar generation facility into its system. The City shall use its best efforts to cause the interconnection between its electric distribution system and the solar generation facility to be taken off line for no more than a total of twenty-four (24) daylight hours per calendar year. The City shall notify IMEA at least twenty-five (25) hours in advance of the commencement of any scheduled outage and shall use its best efforts to notify IMEA immediately of any unscheduled or emergency outage. In the event the City requires or causes outage of said interconnection in excess of a total of 24 daylight hours per calendar year, for reasons other than Force Majeure events, the City shall reimburse IMEA for any payment IMEA is required to make to its contractor/supplier for undeliverable energy as set forth in Section 9(e) of the Power Purchase Agreement between IMEA and its contractor/supplier for the St. Charles solar generation facility.

17. If and at such time as IMEA acquires ownership of the solar generation facility, the City agrees to continue to provide electric service at the site for the purpose of serving auxiliary power requirements of the solar generation facility, and IMEA agrees to reimburse City for the cost of said auxiliary power.

18. If and at such time as IMEA acquires ownership of the solar generation facility, the City agrees to provide or arrange for grounds maintenance for the solar generation facility, and IMEA agrees to reimburse the City for the reasonably incurred costs of doing so.

19. If and at such time as IMEA acquires ownership of the solar generation facility, the City agrees to provide electric utility personnel to perform routine maintenance and to operate the solar generation facility at IMEA's direction. IMEA agrees to reimburse City for use of municipal utility personnel at City's then current hourly rates of compensation.

20. IMEA agrees to secure or to cause its contractor/supplier to secure the site by installing, at its expense or at the expense of its contractor/supplier, chain link fencing (seven foot woven steel fabric with one foot extension of three-strand barbed wire) and lockable gate(s) accessible by IMEA or its contractor/supplier and by City personnel. The City shall notify IMEA prior to entering the solar generating facility for purposes of operating or maintaining the City's utility system, except where there is imminent risk of damage to persons or property. The City shall give IMEA 24 hour notice prior to providing facility access to small public groups for educational and promotional purposes. Said groups shall be properly escorted and supervised by City utility personnel while in the facility. Notwithstanding the foregoing, no activities shall be allowed at the site that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the operation of the solar generating facility

21. The City shall provide, at its expense, police and fire protection/emergency response for the solar generation facility, including any special training that may be needed for fire response at such a facility. IMEA or its contractor/supplier shall provide such emergency response personnel access to an emergency trip switch for the main low side breaker of the solar generation facility. Access to the emergency trip switch shall be secured by a lock box located immediately outside the facility fence.

22. The City shall notify IMEA immediately if an emergency condition arises regarding or that may affect the solar generation facility. The City shall notify IMEA in a timely manner if it becomes aware of any other risk to, damage, or condition affecting the site or the solar generation facility. IMEA and the City shall designate personnel and establish procedures to allow such notifications at all times, twenty-four (24) hours per day, including weekends and holidays.

23. IMEA agrees to procure and maintain such policies of liability insurance and to cause any third party to which it has granted use rights to procure and maintain such policies of liability insurance as shall be necessary in accordance with prudent utility practice to insure against any claim or claims of damage arising by reason of property damage, personal injury or death occasioned directly or indirectly in connection with the operation of the solar generation facility at the site. At a minimum, such policies shall include: (a) property insurance on the solar generation facility for the replacement cost thereof; (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate; (c) employer's liability insurance with coverage of at least \$1,000,000; and (d) workers' compensation insurance as required by law. Beyond any such insurance, IMEA shall not be liable to the City for any damage to the site or any injury or damage occurring on the site in connection with the operation of the solar generation project or otherwise, unless caused by the gross negligence or intentional misconduct of IMEA or its agents. The City agrees to procure and maintain such policies of liability insurance as are commercially reasonable as the owner of the site.

24. The City shall indemnify, defend and hold harmless IMEA and its contractor/supplier from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the site of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by IMEA or its contractor/supplier or any of its contractors or agents. IMEA shall indemnify, defend and hold harmless the City (or IMEA shall cause its contractor/supplier to indemnify, defend and hold harmless the City) from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the site of any Hazardous Substance to the extent deposited, spilled or otherwise caused by IMEA's contractor/supplier or any of its contractors or agents. Each party shall promptly notify the other party if it becomes aware of any Hazardous Substance on or about the site or the parcel generally or any deposit, spill or release of any Hazardous Substance.

25. The PPA requires IMEA to obtain certain acknowledgements and agreements from the City as it relates to the site and the solar generation facility. The solar generation facility is and shall retain its legal status as personal property and shall not attach to or be deemed a part of, or fixture to, the premises. The City shall place all parties having an interest in or a mortgage,

pledge, lien, charge, security interest, encumbrance or other claim of any nature on the premises on notice of the ownership of the solar generation facility and its legal status and classification as personal property. If there is at any time during the term of this Agreement any mortgage or fixture filing against the premises which could reasonably be construed as prospectively attaching to the solar generation facility as a fixture of the premises, Purchaser shall provide a disclaimer or release from such lienholder. The City consents to the filing of a disclaimer by IMEA's contractor/supplier of the solar generation facility as a fixture of the premises in the office where real estate records are customarily filed in the jurisdiction where the premises is located. If request by IMEA's contractor/supplier, the City agrees to deliver a non-disturbance agreement between itself and IMEA or between any lienholder and IMEA in a form reasonably acceptable to IMEA's contractor/supplier.

26. Unless otherwise agreed to by IMEA and City, at the end of the initial term, or any extension thereof, IMEA agrees to promptly remove all of its removable equipment from the site or cause the same to be removed and use reasonable efforts to restore the site to its condition prior to installing the solar generation facility.

27. The initial term of this Agreement shall commence upon its execution and continue until the date that is one hundred twenty (120) days following the date of expiration or termination of IMEA's PPA with the contractor/supplier who owns the solar generation facility; provided however, if the power supply portions of the PPA terminate earlier than 20 years after the Commercial Operation Date (as defined in the PPA) because IMEA acquired ownership of the solar generation facility during the term of the PPA, then the initial term of this Agreement shall continue until the date that is twenty years and one hundred twenty days after such Commercial Operation Date. Thereafter, this Agreement shall continue in full force and effect until terminated by one hundred and twenty (120) days written notice from either party. Notwithstanding the foregoing, this Agreement shall terminate if the solar generation facility is removed from the site.

28. If the Power Sales Contract between IMEA and the City expires and is not extended or replaced during the term of the PPA, then the City will accept assignment of the PPA. If at such time IMEA has acquired ownership of the solar generation facility, then ownership of the solar generation facility will be transferred to the City subject to the City paying IMEA an amount equal to the net book value of the facility.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their proper officials, respectively, being thereunto duly authorized, and their respective corporate seals to be hereto affixed, as of the day, month and year first above written.

ILLINOIS MUNICIPAL ELECTRIC AGENCY

By: \_\_\_\_\_  
President & CEO

ATTEST:

\_\_\_\_\_

CITY OF ST. CHARLES, ILLINOIS

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_

City Clerk