

# MEMORANDUM

DATE: December 8, 2015

TO: Honorable Board of Supervisors

FROM: Michael j. Johnson, AICP, Agency Director

BY: Brett Storey, Senior Management Analyst

SUBJECT: Amendment to Cabin Creek Biomass Facility Developer Agreement

## **Action Requested**

1. Approve a first amendment to the Developer Agreement with the Tahoe Regional Power Company for up-front payment by the County of up to \$15,000 in property taxes and administrative charges, with reimbursement from the Tahoe Regional Power Company, for the Cabin Creek Biomass facility.

## **Background**

In order to continue to assist in the development of the proposed Cabin Creek Biomass Facility, the Board approved a Ground Lease Agreement (December 2013) on County property and a Developer Agreement (August 2014) with the Tahoe Regional Power Company (TRPC). The Developer Agreement with TRPC was negotiated to ensure that a strong relationship remains for the future of the project, and that the citizens of Placer County receive the potential for recovering the investment in the project. The Developer Agreement provides for the County to pay to TRPC on a reimbursement basis up to \$1.5 million in United States Department of Energy grant funds for the purpose of developing and constructing the facility. In exchange, TRPC agrees to pay to the County on an annual installment basis up to \$2 million based on the financial performance of the facility.

Additionally, in April 2014, TRPC and Liberty Utilities reached an agreement on a tentative term sheet to develop a full Power Purchase Agreement (PPA) to sell 2MW of green electricity from the facility to Liberty Utilities. These negotiations have been ongoing (not finalized) and therefore TRPC is pursuing alternative options to sell the power. Whether TRPC sells the power to Liberty or another group, staff's understanding is that the power sale will be neutral to the private investors and the County. Because of this delay in the sale of energy and the subsequent PPA process, the facility's Conditional Use Permit (CUP) was set to expire and TRPC submitted a request for a three-year extension. This request was approved by the Placer County Planning Commission on August 13, 2015.

The need for amendments to both the Ground Lease Agreement and the Developer Agreement was triggered by the need for the time extension and State law requirements regarding taxation of a possessory interest. Even though TRPC has not

broken ground on the leased property, it has been determined that a possessory interest is now in effect, thus requiring property tax to be paid for the parcel. TRPC has no operating funds until a PPA is signed, and the private investor's funds are allocated to construction of the project. County staff has reviewed these facts, determined that the original intent of the Developer Agreement was to limit TRPC costs until the facility becomes operational and therefore developed the amendments before you today. These amendments would allow the County to pay the up-front costs of the property taxes and related administrative costs for up to five years and a total of \$15,000.00 and, in turn, TRPC will fully reimburse the County at the time of the operational capability of the Cabin Creek facility.

The amendment to the Developer Agreement deals with the up-front property tax payments and the process for reimbursement to the County. An amendment to the Ground Lease to provide for extensions to the project timeline is being brought to the Board separately by the Department of Public Works and Facilities. The lease amendment also contains revisions to possessory interest provisions consistent with the amended Developer Agreement. Copies of both amendments are on file with the Clerk of the Board.

County staff reviewed these amendments along with current and prior discussions with TRPC as the County's developer, and determined that these amendments are in the County's interests to keep the project moving forward. In addition, staff has determined that the payment of possessory interest taxes is an appropriate use of County funds given that the developer, TRPC, will not have any operating funds during the development timeframe. As part of the Development Agreement, TRPC will repay the funds to the County once the facility becomes operational. Should the facility not become operational, staff will return to your Board with options for repayment of the tax payments to the County from other sources.

### **Environmental Impact**

The Board of Supervisors certified the Final Environmental Impact Report, including the Addendum for the Cabin Creek Biomass Facility, on May 7, 2013. The proposed actions are consistent with the previously-approved Environmental Review process.

### **Fiscal Impact**

The total taxes and penalties owing to date are approximately \$5,700.00. The Developer Agreement amendment will allow this payment to be made, with the remaining \$9,300.00 available for payment over a total of five years. Upon the construction and operational status of the Cabin Creek facility, TRPC will re-pay Placer County amounts paid. The resources to pay the up-front costs are from the Biomass Operations Fund within Planning Division's appropriation.

Developer Agreement Amendment No. 1 – Delivered under separate cover and available at the Clerk of the Board's Office, 175 Fulweiler Ave., Auburn, CA 95603

cc: Holly Heinzen, Chief Assistant CEO  
Rob Sandman, Deputy County Counsel

