

**MEMORANDUM
DEPARTMENT OF PUBLIC WORKS AND FACILITIES
COUNTY OF PLACER**

To: Honorable Board of Supervisors Date: December 8, 2015
From: Ken Grehm, Director of Public Works and Facilities
By: Laurie Morse, Property Manager
Subject: Property Management / Ground Lease Amendment / Tahoe Regional Power Company, LLC / Cabin Creek Biomass Facility

ACTION REQUESTED

Approve an Amendment to the Ground Lease Agreement CN028198, between the County of Placer and Tahoe Regional Power Company, LLC, a California Limited Liability Company, to provide additional time for due diligence and improvement plan processing and to address the County's payment of possessory interest taxes until the Certificate of Occupancy for the Biomass Facility is issued.

BACKGROUND

The County owns 292 acres, comprised of four parcels, located at the northern end of Cabin Creek Road in Truckee. This former landfill site is used for the Eastern Regional Materials Recovery Facility (MRF) and Transfer Station and the County's Tahoe Area Regional Transit operations and maintenance facility. On May 7, 2013, your Board certified the Final Environmental Impact Report for the Cabin Creek Biomass Facility Project and approved the Conditional Use Permit (CUP) for construction and operation of a biomass electric generating plant (Biomass Facility Project) on a 2.76-acre portion of the Cabin Creek Property (Biomass Site). On August 13, 2015, the Planning Commission approved a three-year Extension of Time for the CUP, which extended the right to exercise the permit to May 7, 2018.

On December 10, 2013, your Board approved a Ground Lease for the construction and operation of the Biomass Facility on the Biomass Site between the County and Tahoe Regional Power Company, LLC (TRPC). The Lease provides for a 15-year term with two (2) 5-year options. The Ground Lease's rental structure incorporates a developmental period, a facility construction period, and an operational period where different rent amounts are paid by TRPC. Thereafter, the rent is subject to annual adjustment based on the Consumer Price Index. The Lease allows TRPC to cancel the Ground Lease at three distinct milestones: during TRPC's Due Diligence Period at no cost; and during the Improvement Plan Processing Period, or following TRPC's delivery of a Notice of Approval of Biomass Facility Improvement Plans to County with a payment of liquidated damages. An amendment to the Ground Lease is now necessary to address a delay in the project and the current requirement regarding payment of possessory interest taxes.

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 green electricity from the biomass facility to Liberty Utilities. However, since these negotiations have been ongoing and not finalized, TRPC is pursuing alternative options to sell its power. The Lease Amendment addresses this delay and the CUP Extension of Time by extending the Due Diligence Period until necessary PPA's are received by TRPC, or until July 7, 2017, whichever comes first. This extension automatically extends out the subsequent Improvement Plan Processing Period. The Improvement Plan Processing Period is followed by the Construction Period and the Operational Period. The original expiration date of the Due Diligence Period was September 9, 2014.

Even though TRPC has not broken ground yet on the Biomass Site, the Ground Lease requires TRPC to pay any possessory interest taxes since the Lease became effective. To allow TRPC to forgo these payments until funds become available from the Biomass Facility's operation, Staff has revised this provision in the Lease Amendment enabling the County to pay current taxes and be reimbursed by TRPC after the Biomass Facility's Certificate of Occupancy is issued. After operation begins, TRPC will be responsible for all payments of all possessory interest taxes.

The Lease Amendment is approved as to form by County Counsel and is acceptable to Risk Management. To continue proceeding with the Cabin Creek Biomass Facility Project your Board's approval of the Lease Amendment is requested. Amendment to the Developer Agreement is being brought to your Board separately today by the Community Development Resource Agency.

ENVIRONMENTAL CLEARANCE

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 and were contemplated in this prior Environmental Review process.

FISCAL IMPACT

There is no separate fiscal impact associated with the Lease Amendment. The Lease Amendment is consistent with the possessory interest payment provisions of the proposed Developer Agreement amendment. Fiscal impact of the Developer Agreement amendment is addressed in the accompanying CDRA item.

On File with Clerk of the Board: Lease Agreement CN028198,
Lease Amendment No.1