

M I N U T E S

BOARD OF RECREATION AND PARK COMMISSIONERS  
OF THE CITY OF LOS ANGELES

December 13, 2004

The Board of Recreation and Park Commissioners of the City of Los Angeles convened in a special telephonic session at four locations: 1) Garland Building Conference Room 702, 1200 W. 7<sup>th</sup> Street, Los Angeles, CA 90017; 2) Commissioner Mike Roos, 6331 Hollywood Boulevard, Los Angeles, CA 90028; 3) Commissioner Christopher Hammond, Capital Vision Equities, 3055 Wilshire Boulevard, Suite 1120, Los Angeles, CA 90010; and, Commissioner Candy Spelling, Rancho Park, West Area Headquarters Conference Room, 2459 Motor Avenue, Los Angeles, CA 90064, at 10:54 a.m. In attendance were President Mike Roos, Commissioners Christopher Hammond and Candy Spelling. Also present were Jon Kirk Mukri, General Manager and Senior Assistant City Attorney Mark Brown.

GENERAL MANAGER'S REPORT:

04-375

GRIFFITH PARK - TOYON CANYON LANDFILL -  
APPROVAL OF SECOND AMENDMENT TO TOYON  
LANDFILL GAS LEASE (CONTRACT NO. 1937),  
CONSENT TO THE ASSIGNMENT OF THE AMENDED  
LANDFILL GAS LEASE TO TOYON LANDFILL GAS  
CONVERSION, LLC. ("ASSIGNEE"), AND CONSENT  
TO THE ACQUISITION OF THE ASSIGNEE BY GGPENTOY, LP

Cid Macaraeg, Sr. Management Analyst, Real Estate Section, made various revisions to the report as attached.

It was moved by Commissioner Hammond, seconded by Commissioner Spelling that Report No. 04-375 be approved as amended. There being no objections, the Motion was unanimously approved.

NEXT MEETING

The next regularly scheduled meeting of the Board of Recreation and Park Commissioners will be held on Wednesday, January 5, 2005 at 9:30 a.m., Garland Building Auditorium, 1200 W. 7<sup>th</sup> Street, Los Angeles, CA 90017.

ADJOURNMENT

There being no further business to come before the Board, the special telephonic meeting adjourned at 10:57 a.m.

ATTEST

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
EXECUTIVE ASSISTANT

REPORT OF GENERAL MANAGER

NO. 04-325

DATE \_\_\_\_\_

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BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH PARK - TOYON CANYON LANDFILL - APPROVAL OF SECOND AMENDMENT TO TOYON LANDFILL GAS LEASE (CONTRACT NO. 1937), CONSENT TO THE ASSIGNMENT OF THE AMENDED LANDFILL GAS LEASE TO TOYON LANDFILL GAS CONVERSION, LLC. ("ASSIGNEE"), AND CONSENT TO THE ACQUISITION OF THE ASSIGNEE BY GGPENTOY, LP

|                 |                  |
|-----------------|------------------|
| * K. Chan _____ | J. Kolb _____    |
| J. Combs _____  | F. Mok _____     |
| H. Fujita _____ | G. Stigile _____ |

\_\_\_\_\_  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board:

①

1. Approve Amendment No. 2 to landfill gas lease with Covanta ~~Energy Group~~ **Power Pacific, Inc.** (Contract No. 1937), substantially in the form as on file in the Board Office, subject to Council approval, pursuant to Charter Section 373 and subject to GGPentoy, LP acquiring Toyon Landfill Gas Conversion, LLC (TLGC);
2. Upon execution of Amendment No. 2 by the City, consent to the proposed assignment of the landfill gas lease, as amended by Amendment No. 2 from Covanta ~~Energy Group~~ **Power Pacific, Inc.** to TLGC;
3. Consent to the acquisition of TGLC by GGPentoy, LP (GGPLP);
4. Direct the Board Secretary to provide written notification to Covanta and GGPLP of the Board's approval;
5. Direct the Board Secretary to transmit Amendment No. 2 to the Mayor in accordance with Executive Directive No. 16, and concurrently to the City Attorney for review as to form; and,
6. Upon receipt of necessary approvals, authorize the President and Secretary of the Board to execute Amendment No. 2.

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### SUMMARY:

On November 17, 2004, the Board through Report No. 04-350, approved in concept the proposed amendment to the terms and conditions of the current landfill gas lease (Contract No. 1937) with Covanta Energy Group Power Pacific, Inc. (Covanta) and the proposed assignment of the amended landfill gas lease to Toyon Landfill Gas Conversion, LLC. The proposed amendment and the assignment affects the Toyon Canyon Landfill, which is located in the Department's Griffith Park.

Since 1984, a landfill gas recovery system has been in operation at the site in order to use the methane gas collected from the landfill to generate electricity for sale to Southern California Edison. Cambrian Energy Systems, Inc. a Limited Partnership, not the original Lessee but through a series of assignments, Covanta Energy Group (Covanta), the current operator and Lessee, acquired the rights to the operation in 1997 was the initial Lessee. Covanta acquired the rights to the operation and became the Lessee in 1997 through a series of assignments and two name changes.

Initially, the Toyon Canyon Landfill Gas Recovery and Generation Project (Toyon Project) consisted of five engines. Natural gas was piped into the site to insure consistent operation by supplementing the methane gas recovered. At present, however, it is only possible to operate two of the engines due to the reduced quantities of methane gas being recovered from the Landfill. The quantity of gas recoverable from the Landfill will continue to decline over time, but it is expected that one or two engines can be run profitably for an additional five to seven years.

Since 2003, Covanta has expected that it would have to shut down the Toyon Project by the end of 2004 because of Rule 1110.2 (Rule) adopted by the South Coast Air Quality Management District (AQMD). The Rule requires all engines, such as the ones at the Toyon Project, to reduce the level of NOx emissions to less than 36 parts per million. If an engine cannot meet the reduced emissions requirements, then it has to be removed from service by December 31, 2004.

In June 2004, a number of parties including GreenGen Management, LLC (GreenGen), contacted Covanta to see if it was interested in selling its landfill gas projects. Covanta believed there were no credible technology options available to retrofit the engines. However, recently, GreenGen identified a retrofit solution that would enable the engines to meet the reduced NOx requirements at a cost (estimated at approximately \$250,000.00 per engine) that would allow the Toyon Project to remain financially viable (provided certain concessions in the Lease agreement would be made). Covanta has agreed to sell the Project to GreenGen at a sales price that is nominal and is expected to only cover Covanta's transaction costs relating to the sale to GreenGen. The transaction will also require that Covanta assign its interest in the lease to Toyon Landfill Gas Conversion, LLC (TLGC), a special purpose entity. TLGC will own all the assets, permits, and contract rights and become

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**the Lessee under the Lease. GreenGen will become the owner of TLGC by a purchase through which will then be purchased by GGPLP, which is owned by GreenGen.**

Based on the capital expenditures necessary to retrofit the engines, the permitting costs, the cost of securing the variance from the AQMD and certain other costs, GGPLP made its offer to purchase the Toyon Project subject to a number of conditions, including a reduction in the royalty that is payable to Recreation and Parks under the Lease. The reduction is necessary to allow GGPLP to recover its investment with a fair return over the limited remaining life of the gas supply from the Landfill, taking into account the expected revenue and cost constraints of the 20-year old Toyon Project that is approaching the end of its profitable life.

Covanta wants to transfer the amended Lease, with the City's consent, to a newly formed entity, Toyon Landfill Gas Conversion, LLC ("TLGC"), with the understanding that TLGC will be acquired by GGPLP on or before December 13, 2004. The proposed Lease Amendment stipulates: (i) no royalty payment shall be made for the month of January, 2005; (ii) as of February 2005, the royalty payable on the gross electricity sales of the Project will be reduced to a level not below 5 percent; (iii) ~~however, if 5% of gross electricity sales is less than the monthly royalty specified in (ii), then a minimum monthly royalty of not less than~~ **regardless of the gross electricity sales, a monthly royalty of Four thousand dollars (\$4,000.00) per month will be payable by GGPLP so long as the Landfill gas volumes are sufficient to allow the operation of two engines or if the Landfill gas volumes are sufficient to operate only one engine, the minimum monthly royalty for such month shall be Two thousand dollars (\$2,000);** (iv) **at the end of the year, if 5% of the gross electricity sales exceeds the total amount of the monthly payments to the Department, Lessee shall pay the amount of such difference to the Department.** (v) if Lessee enters into a contract with LADWP as contemplated and the actual revenues during any calendar year received by Lessee from the sale of electricity to LADWP plus the savings from not paying LADWP the cost of wheeling the power generated by the two (2) engines for such year is greater than the revenues that would have been derived from the sale of all of the electricity to Southern California Edison, the City shall be entitled to forty percent (40%) of such excess revenues as an additional royalty; (vi) the term of the Landfill gas lease shall extended by a period not to exceed ten (10) years from and after the date the original lease was executed for a total term of thirty (30) years, so long as Landfill gas is produced in Paying Quantities. The Lessee shall be given an additional six months from the time of termination to perform site restoration as required; and (vi) GGPLP will provide a performance bond security in the amount of \$200,000.00 ~~or an irrevocable letter of credit in a form from a bank that is reasonably acceptable to the City Attorney as discussed further below which will also serve as a form of financial security~~ to ensure the removal of the Toyon Project at the end of the Lease as stipulated in Section 15.02 of the Lease. These terms are somewhat different from the terms discussed in the conceptual approval granted by the Board in that the monthly royalty payments are less but the annual royalty percentage is higher. Therefore, the final negotiated terms are more favorable to the Department. It should also be noted that should GGPLP fail to purchase TLGC, then the City will

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not be obligated to execute the amendment. Further, the City's consent to assign the Lease to TLGC will not be effective until Amendment No. 2 is executed by the City.

The ~~Toyon Project~~ collection system and flare will continue to be operated by Covanta or GGPLP TLGC while the engines are being retrofitted. It is anticipated that this should take approximately thirty (30) days **provided the AQMD expedites the processing of the permit applications.** GGPLP TLGC will provide a performance bond in the amount of \$200,000.00 or an irrevocable letter of credit **in the amount of \$200,000.00** in a form from a bank that is reasonably acceptable to the City Attorney, to ensure the performance of all Lease requirements and to ensure the removal of all Toyon Project improvements at the end of the Lease. It should be noted that should the proposed retrofit of the Toyon Project not occur, then the Bureau of Sanitation will be required to take over the Toyon Project and begin flaring the methane gas that would otherwise escape from the landfill. Sanitation does not currently have the funding for this work, and flaring gas is less environmentally responsible than capturing the gas for the generation of electricity.

Covanta and GGPLP are requesting expedited processing of the consent to the Assignment, Acquisition, and the Lease Amendment by the City because the purchase must be completed by December 13, 2004, and GGPLP does not want to proceed with closing the acquisition unless the consent to the Assignment, Acquisition, and Lease Amendment have been approved by the Board. Notwithstanding the Board's approval, if it is given, all parties have been informed and understand that, pursuant to Charter Section 373, approval of the City Council is required to amend the Landfill Gas Lease.

If the proposed sale and the requested Lease amendments are not acceptable to the Board, then Covanta will proceed with closure of the Toyon Project as indicated in the notice previously sent to the City.

Staff recommends that the Board approve the requested actions and instruct the Board Secretary to notify Covanta and GGPLP in writing of the Board's approval.

Staff has determined that the subject project will consist of the issuance of a lease to use an existing structure or facility involving negligible or no expansion of use, and rehabilitation of mechanical equipment and systems to meet current standards for environmental protection. Therefore, the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 1 (4, 14) of the City CEQA Guidelines.

The Superintendent of Griffith/Metro and staff from the Bureau of Sanitation concur with these staff recommendations.

This report was prepared by Cid Macaraeg, Senior Management Analyst I. and John Barraza,

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**Management Analyst II of the Real Estate and Asset Management Unit.**