

REPORT OF GENERAL MANAGER

**APPROVED**  
APR 18 2012

NO. 12-114

DATE April 18, 2012

C.D. 6

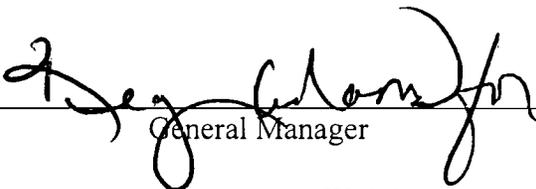
BOARD OF RECREATION  
AND PARK COMMISSIONERS

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: SEPULVEDA GOLF COMPLEX PROFESSIONAL CONCESSION – RECOMMENDATION THAT THE BOARD OF RECREATION AND PARK COMMISSIONERS DIRECT THE GENERAL MANAGER TO DEMAND THE OUTSTANDING PRINCIPAL BALANCE OWED TO THE DEPARTMENT BY READY GOLF CENTER FOR THE TEMPORARY SUSPENSION OF THE UTILITY PAYMENTS FROM MAY, 2004 THROUGH JANUARY 2012, LESS THE AMOUNT PAID FOR AUGUST, 2011, IN THE TOTAL AMOUNT OF \$184,000 (ONE HUNDRED EIGHTY FOUR THOUSAND DOLLARS) PLUS INTEREST AT 18% PER ANNUM AND OUTSTANDING UTILITY PAYMENTS AND INTERESTS DUE FOR FEBRUARY, MARCH AND APRIL, 2012

R. Adams \_\_\_\_\_  
H. Fujita \_\_\_\_\_  
V. Israel \_\_\_\_\_

K. Regan \_\_\_\_\_  
M. Shull \_\_\_\_\_  
\*N. Williams NW

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

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board direct the General Manager to demand the outstanding principal balance owed to the Department of Recreation and Parks (RAP) by Ready Golf Centers for the Sepulveda Golf Complex Professional Concession (Concession) for the temporary suspension of the utility payments from May, 2004 through January, 2012, less the amount paid for August, 2011, in the total amount of \$184,000 (One Hundred Eighty-Four Thousand Dollars) plus interest at 18% per annum and outstanding utility payments and interest due for February, March, and April, 2012.

SUMMARY:

The Sepulveda Golf Complex is located at 16812 Burbank Blvd., Encino CA 91436 and includes two 18-hole golf courses: Encino Golf Course and Balboa Golf Course. The Department operates and maintains both courses. The Concession provides professional golf lessons to patrons, and maintains and operates the golf professional shop, range shop and the golf driving range. This Complex is on Army Corps of Engineer (ACOE) property that is leased to RAP. The ACOE must approve all contracts between RAP and other entities when the contract involves use of ACOE property. The Concession has been operated by Michael Leslie

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Productions, Inc. dba Ready Golf Centers (Ready Golf) on an expired month-to-month interim permit since February 17, 2004 while RAP conducted several Requests for Proposals (RFP) processes to select a concessionaire for this concession. In 2001, Ready Golf was issued this interim permit as a result of the prior concessionaire's bankruptcy, all other RAP Golf Concessionaires declined to assume the management of the Concession through a "mini-bid" process.

A summary of the history and status of the Concession and the utility issue is detailed below:

- March 18, 1998                      RAP Board approves the RFP for the Concession (Board Report No. 66-98) with revisions (Board Report No. 99-89). The RFP contains a requirement that the selected operator pay RAP a monthly charge of \$2,000 for utilities (water and electricity).
- September 2, 1998                RAP Board approves the award of the proposed concession agreement to Family Golf Centers (FGC) (Board Report No. 363-98).
- August 10, 1999                  Council approves the award of the proposed concession agreement to FGC.
- November 9, 1999                Concession Agreement No. 249 with FGC is executed. Section 8.M of Concession Agreement No. 249 obligates FGC to pay the Department a monthly charge of \$2,000 for utilities.
- May 4, 2000                        FGC files for bankruptcy.
- January 17, 2001                 As part of a Board report to release an RFP for the Concession (Board Report No. 01-13), RAP Board directs staff to conduct a "mini-bid" of the existing golf professionals and Ready Golf.
- February 17, 2001                The three (3) year Interim Permit, with a 30 day written notice to revoke, entered into between the City of Los Angeles Department of Recreation and Parks and Ready Golf is effective and Ready Golf commences the interim operation of the concession. Section 11.F of the Interim Permit obligates Ready Golf to pay the Department a monthly charge of \$2,000 per month for utilities.
- February 16, 2004                The three (3) year Interim Permit expires and Ready Golf continues to operate the Concession on a month-to-month basis under the same terms and conditions of the expired interim permit.

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- April 7, 2004 RAP Board approves an RFP for the Concession (Board Report No. 04-87). The RFP contains a requirement that the selected operator pay RAP a monthly charge of \$441.67 for utilities.
- May 1, 2004 Ready Golf disputes the payment of the amount of \$2,000 per month for utilities as required in the Interim Permit. Ready Golf ceases making any utility payments as the operator of the Concession.
- June 1, 2004 RAP staff provides the first settlement offer to Ready Golf to resolve the utility dispute. The settlement offer reduces the amount from \$2,000 per month to \$750 per month; and, no payments from April 2004 (alleged overpayment of \$76,857.04) until the overpayment is eliminated based on the proposed revised utility amount of \$750 per month.
- December 14, 2005 RAP Board rejects all proposals received under Board Report No 04-87 in response to the RFP on March 17, 2004 and directs staff to revise and release a new RFP (Board Report No. 05-316).
- August 9, 2006 RAP Board approves the release of an RFP for the Concession (Board Report No. 06-217). The RFP contains a requirement that the selected operator pay the Department a monthly charge of \$750 for utilities.
- September 17, 2006 Ready Golf sends the Department a letter alleging an overpayment of utility payments; claims utilities should have been \$335.78 per month; and demands a full refund plus interest. (Paid \$76,857.04; claims utilities should have been \$22,497.26; Demands \$54,359.74 plus interest).
- November 14, 2006 Three (3) proposals are received in response to the RFP approved on August 9, 2006, including a proposal from Ready Golf. Ready Golf's proposal does not protest the RFP requirement to pay a monthly charge of \$750 for utilities. All three proposals fail the Level I evaluation and are found non-responsive to the RFP.
- April 5, 2007 RAP Board rejects all three (3) proposals and directs staff to prepare and release a new RFP (Board Report No. 07-86).

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- July 5, 2007  
Three (3) proposals are received in response to the RFP approved on April 5, 2007, including a proposal from Ready Golf. Ready Golf submits a proposal and does not protest the RFP requirement to pay a monthly charge of \$750 for utilities. Ready Golf proposed two (2) options regarding rent and capital improvements. An independent panel of reviewers ranks and scores Option II in the proposal submitted by Ready Golf as the best responsive proposal. RAP staff recommended Option II to the Board (Board Report No 08-37).
  
- February 6, 2008  
RAP Board approves the award of the proposed concession agreement (Board Report No 08-37) with Option II, substantially in the form as on file in the Board Office, to Ready Golf. Due to comments by the public at the RAP Commission Task Force for Concessions meeting regarding rent and capital improvements, the RAP Board approved the award with specific instructions:  
  
“To instruct the City Attorney to add a provision to the contract that would accomplish allowing the parties to continue their discussion and upon mutual agreement propose an amendment to the RAP Board and to Council with a suggested time limitation for these discussions of December 31, (2008).”
  
- November 26, 2008  
Following RAP Board direction, staff met with Ready Golf. One of the items discussed was the alleged overpayment of utilities by Ready Golf. At the request of Ready Golf, RAP staff agrees to replace the \$750 per month utility charge as listed in the RFP with a \$335 per month utility charge.
  
- June 8, 2009  
RAP staff transmits a new unapproved, revised, proposed concession agreement to the RAP Board Office for processing through the City of Los Angeles’ standard contract review and approval procedures. This new agreement was never presented to nor approved by the Board.
  
- June 15, 2009  
RAP staff sends an unapproved, revised and proposed concession agreement to the ACOE for review and approval which included the \$335 per month utility change.
  
- November 9, 2009  
The Mayor’s Office transmits the unapproved, revised and proposed concession agreement to the Council.

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- November 24, 2009 The Council's Arts, Parks, Health and Aging Committee voted to transmit the unapproved, revised and proposed concession agreement to City of Los Angeles Council (Council File No. 09-2740).
- December 10, 2009 Upon continued disputes regarding the utility payment, RAP staff provides a second settlement offer to Ready Golf to resolve the utility dispute: to revise the \$2,000 utility charge per month with \$335 per month utility charge (February 2001 through February 2010) and \$350 per month (March 2010 onward). This settlement offer was never accepted by Ready Golf.
- December 11, 2009 The Council approves the award of the unapproved, revised and proposed concession agreement with Ready Golf (Council File No. 09-2740).
- September 20, 2010 Ready Golf sends the Department a letter regarding the utility Dispute, stating: "We are hereby making a final demand for repayment in full...Ready Golf is owed approximately \$227,028..." The amount claimed by Ready golf includes interest at 18% per annum.
- December 14, 2010 Ready Golf sends the Department a letter requesting a final offer and to meet and confer on the utility matter and the demands made in the letter dated September 20, 2010.
- January 13, 2011 RAP staff meets with Ready Golf. Ready Golf presents information in an attempt to support its alleged claim of overpayment of utilities.
- January 28, 2011 RAP General Manager sends a letter to Ready Golf, stating that: 1) Department disputes the claim presented on January 13, 2011 by Ready Golf, and 2) provides a third proposed settlement offer (a reduction in monthly utility payments to \$335 and Ready Golf would receive rental credit for unpaid utility payments) to resolve the utility dispute. The due date to accept the proposed settlement is February 18, 2011.
- February 18, 2011 Ready Golf sends a letter to the Department which states, "We do not concur with your letter..."

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- July 26, 2011 Ready Golf files a Claim for Damages with the City Clerk (Claim No. C-12-0378) on the utility issue.
  
- August 26, 2011 The Department sends Ready Golf a letter stating ACOE approval has been received and RAP is prepared to execute the proposed concession agreement upon the resolution of the outstanding utility issue.  
  
The Department letter also:
  - 1) Rescinds all previous offers by Department to settle the utility dispute;
  - 2) Instructs Ready Golf to resume payments of \$2,000 per month for utilities beginning with August 2011 until the proposed agreement is executed; and,
  - 3) Demands payment of \$174,000 on the temporarily suspended unpaid utility payments (May 2004-July 2011).
  
- September 2, 2011 RAP staff speaks to Ready Golf and is informed that Ready Golf will meet with Council District 6 on September 7, 2011 and Ready Golf will file a lawsuit on September 12, 2011 for specific performance on the proposed concession agreement.
  
- September 7, 2011 Ready Golf sends an e-mail to the Department requesting additional time to comply with the August 26, 2011 letter and to meet to discuss a possible resolution to the Claim for Damages (Claim No. C-12-0378).
  
- September 21, 2011 Ready Golf pays August, 2011 utility charge of \$2,000.
  
- October 12, 2011 Department staff and a City Attorney meet with Ready Golf and its legal representatives. A representative from Council District 6 is present at the request of Ready Golf over the objection of RAP and the City Attorney. Ready Golf presents a settlement offer to resolve the Claim for Damages (Claim No. C-12-0378 regarding utilities) and two other proposals regarding the operation of the Concession (see below).

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- October 13, 2011      Ready Golf's legal representative sends RAP a letter which memorializes the settlement offer and the two proposals presented on October 12, 2011.  
  
Proposal – to change the terms of the unapproved, revised and proposed ten-year concession agreement so that Ready Golf would pay 20% of gross driving range revenue as rent and to exercise the two five-year renewal options now. The proposal included no revenue to RAP from lessons and pro-shop sales nor any capital improvements.  
  
Ready Golf also provided two other “options” which were to meet with “all personnel necessary with the authority to reach an agreement” or to execute the proposed concession agreement and both parties would agree to binding arbitration on the utility claim.
- December 8, 2011      The City Attorney sends the Ready Golf legal representative a letter stating the October 13, 2011 offer of settlement will be heard in closed session by the RAP Board on December 14, 2011.
- December 12, 2011      Ready Golf legal representative sends the Department a letter which: 1) requests the contract proposed by Ready Golf on October 13, 2011 be executed to include the October 13, 2011 Revisions; and 2) denies threatening litigation, and, attempts to portray the second offer by the Department staff (December 10, 2009) to settle the utility dispute as an agreement that Ready Golf had expressly rejected.
- April 10, 2012      RAP staff completes a study which estimates that the actual cost to provide utilities to the area occupied and utilized by Ready Golf is \$2,800 per month.

Due to threats of litigation by Ready Golf and a claim for damages filed by Ready Golf regarding this and other matters, the Board met in Closed Session on December 14, 2011 to confer with its legal counsel. At that meeting, the Board, among other actions not contested herein, voted “to demand the outstanding principal balance owed to RAP by Ready Golf Center (RGC) for the temporary suspension of utility payments from May, 2004 through January, 2012, less the amount paid for August, 2011, in the total amount of \$184,000 (ONE HUNDRED EIGHTY-FOUR THOUSAND DOLLARS) plus interest at 18% per annum.”

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RAP staff is now recommending that the Board direct the General Manager to demand the outstanding principal balance owed to the Department by Ready Golf Center for the Sepulveda Golf Complex Professional Concession for the temporary suspension of the utility payments from May, 2004 through January, 2012, less the amount paid for August, 2011, in the total amount of \$184,000 (One Hundred Eighty-Four Thousand Dollars) plus interest at 18% per annum and outstanding utility payments and interest due for February, March, and April, 2012.

FISCAL IMPACT STATEMENT:

The impact to the RAP General Fund would at a minimum be the receipt of \$184,000 and potentially \$190,000 plus interest.

Report prepared by Noel D. Williams, Chief Management Analyst, Finance Division.