

MEMO



Item #: 7.c

Meeting Date: September 20, 2024

To: Finance Committee
From: Guy R. Petraborg, Director of Engineering & Compliance
Approved by: Felipe Melchor, General Manager

Subject: Discuss Draft Compost Operations Agreement

RECOMMENDATION

Information Only.

Discuss the proposed draft Compost Operations Agreement that provides a 25-year base term and two (2) optional five (5) year contract extensions with the Keith Day Company, Inc. for contracted operations of the compost Facility (Subject to Final Review by Legal Counsel). The Finance Committee provided guidance to staff to bring this agenda item to the Board for discussion at the September 20, 2024, regular meeting. Staff requests that the Board provide guidance to staff for the purpose of finalizing the Compost Operations Agreement for subsequent review and approval consideration by the Board at the October Board Meeting.

BACKGROUND AND DISCUSSION

Windrow composting operations have been performed at ReGen's site for more than 36 years. The current operator/permit holder, the Keith Day Company, Inc. (KDCI), assumed operations of the Compost Facility in 2009 which was located on a leased 60-acre parcel since 1998. Since 2009 the size of the lease area 'in use' has decreased to approximately 30 acres due in part to the 2015-16 construction of the Franchise Truck Yard lease facility and the former 2013 Pilot Study Anaerobic Digester facility (closed August 2019). The current lease agreement (2021) for the Compost Facility has an initial 3-Year base term with a supplemental 1-Year extension term clause that can be used annually to extend the lease agreement one more year. For the ten years prior to 2021, ReGen and KDCI have agreed to extend the lease every year so that the processing of wood, yard, and food wastes can continue at the Composting Facilities operated by KDCI.

Since 2009, KDCI has been operating the composting facility at ReGen. They took over the operation when the Venture Capital group that had bought out the prior permit holder went bankrupt and abandoned the operations of the compost facility. Since then, ReGen and KDCI have periodically negotiated the processing rate charged to operate the compost facility due to inflationary costs and certain costs associated with agreed upon changes in the scope of the services. Over that time, KDCI has almost seamlessly expanded its services of yard waste, clean wood waste, and most recently, following the planned termination of the AD Pilot Project in 2019, food scraps upon the request of, and for the benefit of, ReGen and its member communities. KDCI has made strategic hires of both an operations manager and CFO. They have three (3) facilities in Monterey County including the ReGen site.

Over the past year, the Board and staff have discussed abandoning a limited term lease agreement for a long-term Operations Agreement. ReGen's interests are for long-term security of compost operations

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services and quality compost and landscape products that are necessary to process the yard debris and food scraps generated by the communities served by ReGen. KDCI's interests are for business stability and sustainability associated with the yard debris and food scraps generated by the communities served by ReGen. ReGen and KDCI both parties have interests in a long-term business circumstance as both have made, and will make, capital investments in land and equipment, respectively. The table below presents some of the agreement terms proposed for a compost operations agreement between the parties. The draft agreement is attached for review.

Parameter	Current Operations Lease Agreement	Proposed Compost Operations Agreement
Permit Owner	Gabilan Ag Services (Keith Day Company)	MRWMD (ReGen Monterey)
Permit Operator	Gabilan Ag Services (Keith Day Company)	Gabilan Ag Services (Keith Day Company)
Agreement Type	Operating Lease (2021)	Operating Lease
Base Term	2 years	15 years
Optional Extension Term	three @ 1 year each	two @ 5 years each
Term - Totals	5 years	25 years
Notice to Cure	No	Yes - variable period depending on issue to cure (<12 months)
Contract Termination Clause	No	Yes - 3 years (or 2 years if a Notice to Cure period expires without "cure" accomplished)
Applicable Laws & Regulations	Yes	Yes
Compliance Responsibilities	Yes - all	Yes - all (w/ limited ReGen Review Participation)

FISCAL IMPACT

There is no financial impact or material change anticipated with adopting the proposed Compost Operations Agreement and terminating the existing compost lease agreement. Lease and Processing Rates change over time and that change process is managed similarly in both agreements. In the absence of significant changes to the operations, these rates are primarily affected by inflation and capital investments in fixed or mobile assets. The lease rate paid to the District by KDCI and the processing rate charged by KDCI to the District both remain the same as the current rate until July 1, 2025. The lease rate is proposed to continue to be adjusted annually on July 1st in accordance with a specified San Francisco Bay regional inflation index. Staff estimates that future rates would be the same, or very similar to, rates that might have developed over the same time through the annual extension process of the current lease agreement. The parties negotiate these rates in an 'open books' process and have had 15 years of experience as contracted parties. Staff anticipates that there is no significant change to the future financial conditions under the proposed draft operations agreement that would otherwise have occurred under the current lease agreement, all aspects being equal.

CONCLUSION

Staff requests that the Board review the proposed draft Compost Operations Agreement and provide guidance to staff for the purpose of finalizing the Compost Operations Agreement for subsequent review and approval consideration by the Board at the October Board Meeting.

Attachments:

1. Discuss Draft Compost Operations Agreement – Presentation Slides
2. Draft Compost Operations Agreement