

MEMO



**Discussion/Action
Item #: 7.c.**

Meeting Date: October 18, 2024

To: Board of Directors
From: David Ramirez, Director of Engineering and Compliance
Approved by: Felipe Melchor, General Manager

Subject: Authorize the General Manager to Execute a 15-Year Base Term Compost Operations and Lease Agreement with Keith Day Company, Inc. of Monterey County, CA Subject to Approval of Form by District Legal Counsel

RECOMMENDATION

Authorize the General Manager to Execute a 15-Year Base Term Compost Operations and Lease Agreement with Keith Day Company, Inc. of Monterey County, CA Subject to Approval of Form by District Legal Counsel.

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 that time 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, Board and staff have discussed abandoning the current limited term lease agreement for a long-term operations agreement. ReGen's interests are for long-term security of

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compost operations 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. 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 long-term agreement is common in waste industry practice as it secures the services for the long-term and provides revenue stability to both the Operator and ReGen. Notably, the long-term agreement was mutually considered by the parties as necessary for ReGen to be conveyed "Owner" designation on the facility permits. This is a significant benefit for the public's interests and their interests for long-term continuation of this organic materials recycling process. This is also of significance given ReGen's current and future grant funding interests for the compost facility.

The Finance Committee has discussed this draft agreement most recently at its September and October committee meetings and the Board at its September meeting. The minor comments received have been incorporated into the final draft of the agreement. The final draft agreement is attached for the Board's review and consideration of approval subject to approval of form by District Legal Counsel.

FISCAL IMPACT

There is no financial impact or material change anticipated with adopting the proposed Compost Operations and Lease Agreement and terminating the existing limited-term 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. In the new long-term agreement, the lease rate paid to the District by KDCI and the processing rates charged by KDCI to the District remain the same for the current fiscal year (as the current rates are effective through June 30, 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 processing rates would be the same, or very similar to, rates that might have developed over the same time thru the continuation of an annual extension process of the current limited-term 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 final draft of the Compost Operations and Lease Agreement and consider authorizing the General Manager to execute the 15-year base term Compost Operations and Lease Agreement with Keith Day Company, Inc. of Monterey County, CA subject to approval of form by District Legal Counsel.

Attachments:

1. Final Draft Compost Operations Agreement

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