

MEMO



**Discussion/Action
Item #: 8.b**

Meeting Date: January 19, 2024

To: Board of Directors
From: Director of Operations, Jay Ramos
Approved by: General Manager, Felipe Melchor

Subject: Authorize the General Manger to Execute an Agreement with GreenWaste Recovery, LLC. for Single Stream Recycling (SSR) Short-Term Processing Services Subject to Legal Counsel's Concurrence to Form.

RECOMMENDATION: That the Board authorize the General Manager to execute an agreement with GreenWaste Recovery, LLC. (GWR) to provide Single Stream Recycling (SSR) processing services to GWR on behalf of the Santa Cruz County communities served by GWR.

BACKGROUND

ReGen Monterey ("ReGen") has been providing SSR processing services to various communities since the opening of the new Materials Recovery Facility (MRF) in 2018. The SSR processing services provided by ReGen are delivered via contract agreements with the franchise waste collection contractors for those communities. Franchise waste collection contractors such as GWR and WM on behalf of ReGen's nine Member Agencies and Republic Services, Inc. on behalf of the City of Salinas. GWR also provides collections/transfer/recycling/disposal services for various communities in Santa Cruz and Santa Clara counties. The recyclable materials collected in those communities is then transferred to GWR's San Jose MRF where SSR processing is completed to separate the recyclables from non-recyclable waste materials. GWR is requesting access to SSR processing services at ReGen's MRF in the event that there are any 'shutdowns' or MRF maintenance projects. In the event that GWR's San Jose MRF is unable to process SSR materials, GWR would transfer the SSR materials collected from the Santa Cruz County communities they serve to ReGen. The SSR processing services would then be completed at ReGen's MRF until such time that GWR can again use its San Jose MRF.

ReGen staff, together with District Legal staff, recently developed a new recycling agreement template so that a uniform standard agreement can be used by ReGen for all customers using ReGen's MRF SSR processing services. The new ReGen Recycling Agreement template was used for this agreement with GWR.

DISCUSSION

GWR has a franchise waste collection yard facility located in the City of Watsonville from which they provide "curbside" collection services to Capitola, Scott's Valley, and the County of Santa Cruz. The SSR materials collected from those communities are transloaded into transfer trucks at GWR's Watsonville facility and shipped to GWR's San Jose MRF for processing. GWR is seeking to have a recycling

Physical Address

14201 Del Monte Blvd.
Salinas, CA 93908

Mailing Address

P.O. Box 1670
Marina, CA 93933

Phone / Fax

831-384-5313 PHONE
831-384-3567 FAX

Web / Social

ReGenMonterey.org
@ReGenMonterey

Let's not waste this.



agreement in place with ReGen Monterey in the event of any short-term operational ‘outages’ at their San Jose MRF or Watsonville Transfer Station. It is anticipated that approximately 100 tons per day of SSR materials would be delivered by GWR to ReGen for ReGen’s processing of the recyclable materials.

FINANCIAL IMPACT

The attached Recycling Agreement with GWR anticipates that at some point in the future there will be an ‘outage’ at GWR’s San Jose MRF and GWR will need to process the SSR materials at an alternate facility (per the agreement, at ReGen’s MRF). The initial processing rate of \$ 40.00 per ton is consistent with ReGen’s other Recycling Agreements. The initial processing rate will be effective through the initial contract period ending June 30, 2025. In accordance with the negotiated rate process of ReGen’s Recycling Agreement, the contracted parties will agree to a new processing rate for each contract extension adopted. There is a net positive financial impact associated with the Board’s approval of this Recycling Agreement with GWR (attached). The costs of processing any additional SSR materials are ‘incremental costs’ (e.g., relatively small additional expense given the underlying expenses already incurred by ongoing processing of already contracted materials) and thus, proportionally more of the new revenues gained from the SSR processing accrue to the ‘bottom line’. In other words, new revenues will be generated with relatively small additional costs. A financially beneficial impact.

CONCLUSION

Staff recommends that the Board of Directors authorize the General Manager to execute a Recycling Agreement with GWR for short-term processing of single stream recycling (SSR) subject to District Legal Counsel’s concurrence to form.

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RECYCLING AGREEMENT

THIS RECYCLING AGREEMENT (the "Agreement") is made this 19th day of January, 2024, by and between GreenWaste Recovery, LLC ("Company"), with a facility located at 375 Industrial Road, Watsonville, CA 95076, and Monterey Regional Waste Management District ("District"), also known as "ReGen Monterey", with a business facility location in Unincorporated County of Monterey at 14201 Del Monte Blvd., Salinas, CA 93908 (the "Facility").

WHEREAS, District owns and operates the Facility for the processing of recyclables; and

WHEREAS, the Company desires to pay District to accept/process certain recyclable materials and District wants to receive such materials for recycling purposes.

NOW, THEREFORE, the parties, for themselves, their successors, and assigns, in consideration of their respective undertakings and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby covenant and agree as follows:

1.0 Term: The term of this Agreement shall commence on February 1, 2024 and end on June 30, 2025. This Agreement shall automatically renew for two (2) consecutive one (1) year terms thereafter, unless either party provides the other party with written notice of termination at least ninety (90) days prior to the expiration of the then current term.

2.0 Services and Rebates.

2.1 Company shall deliver (or cause to be delivered) to District at the Facility, and District shall receive from Company, the entire quantity of loose single stream recyclable material ("Recyclables" or also known as "SSR" materials) received from Company route collections of recyclable materials.

2.2 Company shall pay District for receiving and processing the Recyclables as stated below:

2.2.2 From February 1, 2024 through June 30, 2025 the price will be \$40.00 per ton.

2.2.3 Prior to June 30, 2025, and prior to each subsequent June 30th during the duration of the Agreement, Company and District shall agree upon the new price for Recyclables processing by District for the new Fiscal Year beginning July 1st of each year. In the event the Company and District cannot agree on a price for the Recyclables, the Recyclables price will remain \$ 40.00 per ton on a month-to-month basis until a new price is either agreed upon or the Agreement is terminated. Notwithstanding Section 1, entitled "Term," in the event a price cannot be agreed upon, prior to June 30 of any contract year, either party may terminate this Agreement with ninety (90) days written notice to the other party. In the event a price for the Recyclables is agreed upon, the Agreement will be amended by an "Addendum" to reflect such price. Such amendment can be made in the form of a written addendum to this Agreement setting forth presenting the agreed upon rebate or charge and that shall be signed ~~that is~~ signed and dated by both parties.

2.3 By the 5th day of each month, or the next following business day if the 5th is on a week-end, District will provide a detailed summary of all deliveries of Recyclables delivered by or on behalf of Company in the previous month. Such report shall include an itemized listing of receipts showing date and time of delivery, truck number, net weight, price per ton and amount payable.

2.4 Company shall pay District the amount owed on or before the 15th day of the month following the receipt of the District's report and invoice.

2.5 Title and risk of loss shall be transferred to District at the time of delivery of the recyclable materials and receipt ~~ptved~~ by the District.

2.6 District will make all reports required by the State of California for all of District's jurisdictions from which Recyclables are collected by Company.

2.7 Any benefits received from the State of California Department of Conservation from ~~its~~their Curbside Supplemental payments program during any calendar year shall accrue to the benefit of the Company that registered and operates the designated Curbside Recycling program assigned to receive the supplemental payment.

3.0 Quality.

3.1 Company warrants that at the time of delivery to District, all Recyclables shall be of the type of single stream material collected from residential and commercial locations (the "Specifications") defined in the Franchise Contract for said location and acceptable to the District's processing services. The parties acknowledge that the District desires that the deliveries contain 90% or more of recyclable materials (e.g., 10% or less of non-recyclable materials (aka "contaminants" or "contamination")). In the event a load of Recyclables fails to meet such Specifications, then District shall promptly notify Company. Prior to rejecting or downgrading any Recyclables, the District shall immediately notify Company of

such ~~proposed rejection, and rejection and~~ hold such load (the “Questioned Load”) for two (2) business days after such notification for Company’s visual inspection. District shall also digitally photograph the Questioned Load and forward such photographs to Company via email. If a Questioned Load is determined by both parties not to meet the Specifications, and the parties are unable to reach agreement as to an adjustment in price, Company shall, at its own cost and expense, cause the rejected load to be either transported to a location designated by Company or be disposed of by District by the least costly means reasonably available to District. If the parties are unable to agree or Company fails to respond in a timely manner, District may reject the load and Company shall, at its own cost and expense, cause the rejected load to be either transported to a location designated by Company or be disposed of by District by the least costly means reasonably available to District. If a Questioned Load was improperly rejected, all transportation and other fees or costs incurred by Company to transfer and dispose of the Questioned Shipment shall be borne by District. Failure to provide timely notification, provide photographs, or processing of the Recyclables shall be deemed acceptance by the District and the amount owed as set forth above in Section 2 entitled “Services and Rebates” shall be paid by the District in full with no deductions.

3.2 EXCEPT AS SET FORTH ABOVE, COMPANY HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED WITH RESPECT TO THE RECYCLABLES, THEIR MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY SHALL NOT BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS OR LOST SALES, OR ANY DUTY TO DEFEND, BY REASON OF ANY DEFECTS IN THE RECYCLABLES, OR BREACH BY COMPANY OF ITS WARRANTY. District’s sole remedy for claims related to quality of the Recyclables shall be as set forth in Section 3.1 above.

4.0 Operations.

4.1 Company shall deliver (or cause to be delivered) the Recyclables to District. District guarantees that the wait time at its truck scale facility to weigh deliveries shall be no more than fifteen (15) minutes. The Facility shall accept Recyclables delivered by Company Monday through Friday during the District’s normal receiving hours or as otherwise agreed by the parties. The Facilities will be closed for the following Holidays: New Year’s Day, July 4th, Thanksgiving and Christmas.

4.2 District will provide all necessary equipment and supplies associated with weighing trucks under this Agreement. District agrees to weigh all inbound deliveries and outbound trucks on a State Certified Scale with a current State Certified Seal.

4.3 District assumes the legal obligation to ensure that all its employees are legally authorized to work in the United States pursuant to all applicable immigration laws, child labor laws, and any other applicable labor or employment law. District warrants that it operates in accordance with and complies with the Immigration Reform and Control Act of 1986, and all other citizenship and immigration laws and regulations and complies with all other state and federal employment laws. Specifically, District warrants that all its employees have validated identity and authorization-to-work documents pursuant to U.S. Immigration and Naturalization laws and District shall maintain Employment Eligibility Verification Forms (“I-9’s”) on all its employees.

4.4 District shall handle, store and process the Recyclables in accordance with all applicable laws, rules and regulations promulgated by any government authority having jurisdiction over District as it relates to District’s obligations set forth herein, including, but not limited to all health and environmental laws, 40 CFR parts 257 and 258 (Subtitle D. Regulations), 49 CFR (Federal Transportation Regulations), and 29 CFR (OSHA Regulations). District shall obtain and keep in effect any and all governmental licenses or permits required by law and provide Company copies evidencing compliance with those laws upon request.

4.5 Company makes no commitment or guarantee as to the minimum or maximum quantity of Recyclables to be delivered under this Agreement.

4.6 District shall recycle the Recyclables for reuse and shall not deposit any Recyclables in landfills, except such residue left after appropriate processing of such Recyclables. Unless specifically authorized in writing, all material shall be Recycled and not Remarketed. “Recycled” means prior to resale or reuse all materials are (a) rendered unfit for their original use or (b) dismantled into component materials such as plastic, steel, aluminum, and glass. “Remarketed” means the resale as a product or as an operating component of a product or reuse of the material for use as it was originally intended. District shall sell 100% of the Recyclables for use by pulp processing mills and other markets for non-fiber Recyclables and shall not sell for any other purpose, including but not limited to, use as animal bedding.

5.0 **Insurance.** Both parties shall procure and maintain at its own expense, during the term of this Agreement at least the following insurance covering activities performed under this Agreement.

<u>Coverage</u>	<u>Limits</u>
Workers’ Compensation	Statutory

Employer's Liability	\$1 Million each occurrence
Commercial Gen. Liability (Including Completed Operations, Contractual Liability, Broad Form Property Damage)	\$2 Million per occurrence \$3 Million annual aggregate
Automobile Liability	\$2 Million per occurrence \$3 Million annual aggregate
Umbrella/Excess Liability	\$5 Million per occurrence

~~Each~~The policy shall be endorsed to name the other party, its parents, subsidiaries and affiliates, as additional insureds to the extent of liability assumed hereunder and shall provide for thirty (30) days prior written notice of termination, cancellation, or material change in coverage.

6.0 Indemnification. Each party agrees to indemnify, save harmless, and defend the other, its affiliates, officers, directors, shareholders, employees and agents (each an "indemnitee") from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which an indemnitee may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any personal property, or any violation of governmental laws, regulations, or order to the extent caused by the other's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the other, its agents, employees or subcontractors in the performance of this Agreement. The obligations described in this paragraph shall survive termination or expiration of this Agreement.

7.0 Default. If a party defaults in the performance of any warranty, representation, term, condition, or provisions contained in this Agreement, the non-defaulting party shall notify the defaulting party of the default. The defaulting party shall have thirty (30) days to remedy the default, except that if the default is in the payment of money, the defaulting party shall have ten (10) days to remedy the default. In the event of an uncured default, in addition to any other remedies available under law, the non-defaulting party may terminate this Agreement immediately upon written notice. In addition, if a party fails to pay any sums when due hereunder more than two (2) times during the term hereof, the other party shall not be required to allow the defaulting party to remedy the default and can terminate the Agreement immediately upon written notice.

8.0 Insolvency. If a party or if any company owning more than fifty (50%) percent of such party: (i) does not pay its debts as they become due; or (ii) admits in writing its inability to pay its debts; or (iii) becomes insolvent; or (iv) makes a general arrangement or assignment for the benefit of creditors; or (v) undertakes any action or other proceedings seeking relief as a debtor or otherwise under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or any such action or proceedings is brought against it; or (vi) seeks appointment of a receiver, liquidator, trustee, custodian or similar official for it or for all or any substantial part of its property or such a receiver, trustee, custodian, or similar official is appointed, whether sought by it or not, in addition to any other remedies available to it at law or otherwise, the other party may immediately terminate this Agreement by giving written notice to such party.

9.0 Notices. All notices, requests, demands and other communications hereunder (including notices of all asserted claims or liabilities) shall be in writing and shall be either delivered personally, or mailed by certified U.S. Mail, postage prepaid, return receipt requested, or sent by reputable overnight courier to the addresses herein designated or such other address as may be designated in writing by notice given in the manner provided herein, and shall be effective upon personal delivery thereof or upon receipt if sent by certified mail or 24 hours after deposit with an overnight courier.

If to Company:		610 E. Gish Road, San Jose, CA 95112
	To the address set forth above, Attn.: President	
and to:		375 Industrial Road, Watsonville, CA 95076
	To the address set forth above, Attn.: Vice President	
If to District:	DELIVERY SERVICE:	14201 Del Monte Blvd., Salinas, CA 93908
	USPS MAIL DELIVERY:	P.O. Box 1670, Marina, CA 93933-1670
	To an the address set forth above, Attn.: General Manager	

Either party may change its contact person or address by giving the other notice thereof in the manner provided in this Section.

10.0 Miscellaneous.

10.1 Assignment. This Agreement is not assignable by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. A transfer by a party of substantially all of its assets to another entity (whether in one transaction or a series of transactions), or the merger or consolidation of a party with another entity, or the transfer of a controlling ownership interest of such party, will be deemed to constitute an assignment of this Agreement. Subject to the foregoing, this Agreement is binding upon the successors and assigns of each party.

10.2 Force Majeure. Neither party to this Agreement shall be responsible for any delays, losses, damages or failures of performances of any of its obligations under this Agreement where such delays, losses, damages or failures are due to causes beyond the control of either party. Force Majeure events include, without limitation, acts of God, act of public enemy, riot, disorder, epidemic, landslide, lightning, earthquake, fire, storm, flood, civil disturbance, explosion, interference by civil or military authorities, strike, statute, ordinance, government order or ruling or similar cause beyond the control of either party. Force Majeure shall not include financial inability to perform.

10.3 Relationship of Parties. Nothing contained in this Agreement shall be intended to create, or does create, a partnership, joint venture, fiduciary or agency relationship.

10.4 Waiver. Except as otherwise provided herein, neither party's waiver of any default or failure to enforce, the observance and performance of any term or condition of this Agreement at any time shall in any way affect, limit or waive such party's right thereafter to enforce or compel strict compliance herewith and with every such term and condition. No course of dealings between the parties, no waiver by Company or District, and no refusal or neglect by Company or District to exercise any right hereunder or to enforce compliance with the terms of this Agreement shall constitute a waiver of any provision herein with respect to any prior or subsequent breach, actions or omissions hereunder, unless such waiver is expressed in writing and signed by the waiving party.

10.5 Rights and Remedies. Any specific right or remedy provided in this Agreement shall not be exclusive but will be cumulative of all other rights and remedies set forth herein or allowed by law.

10.6 Litigation. If there is any litigation between the parties with respect to this Agreement, then the prevailing party (the party entitled to recover costs of suit at such time as all appeals have been exhausted or the time for making such appeals has expired) shall be entitled to recover court costs and reasonable attorneys' and experts' fees in addition to such other relief as the court may award. These rights and obligations will survive the expiration and termination hereof.

10.7 Survival. Any term or condition of this Agreement intended by its terms to be observed or performed by either party after the expiration or termination hereof shall survive such expiration or termination and continue thereafter in full force and effect.

10.8 Governing Law. This Agreement shall be governed by and construed according to the laws of the state of California.

10.9 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which together shall be deemed an original, and all of which together shall constitute one and the same instrument.

10.10 Entirety of Agreement; Modification. This Agreement constitutes the entire agreement and understanding between the parties with respect to the matters contained herein. This Agreement may be modified or amended by a written instrument executed by both parties hereto. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision.

10.11 Confidentiality. The District is a public entity and a member of the California Special District Association. As a public entity, the terms of this Agreement are both public and non-confidential. The Company may request in advance, prior to delivery to the District, that any proprietary or other confidential information in connection with this Agreement (including without limitation financial, volume or pricing data) be treated as private and confidential and not disclosed to a third party (other than such party's employees, lenders, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential), except in order to comply with any applicable law, regulation or rule or in connection with any court or regulatory proceeding; provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit any such required disclosure. The District will receive a legal opinion as to whether the documents to be provided by the Company qualify to be designated as proprietary and confidential, and will notify the Company of the findings of the legal opinion. For the accidental or unauthorized disclosure of any documents designated as proprietary and confidential by joint agreement of the parties, the parties shall be entitled to all remedies available at law or in equity to enforce, or to seek relief regarding, this confidentiality obligation.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement in duplicate on the dates next hereinafter stated.

Monterey Regional Waste Management District

By: _____

Name: _____

Title: _____

Date: _____

(Company)

By: _____

Name: _____

Title: _____

Date: _____

DRAFT