

# MEMO

## Discussion / Action

Item #: 9

Meeting Date: June 23, 2023



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

**Subject: Limited Term Recycling Processing Agreement with Waste Connections**

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### RECOMMENDATION

That the Board approves the Limited Term Recycling Processing Agreement with Waste Connections

### BACKGROUND

Waste Connections owns and operates the Cold Canyon Waste Disposal and Recycling facility in San Luis Obispo. The Cold Canyon facility provides Waste Processing and Diversion service for the San Luis Obispo area. Located at Cold Canyon is a Material Recovery Facility (MRF) that processes 170 tons of recyclables a day from the area. The 25 ton per hour MRF was constructed in 2010 and processes about 50,000 tons of material per year.

### DISCUSSION

Cold Canyon Processing (MRF) is planning to shut down for a three-week period for plant upgrades. Based on the manufacturer's production schedule the shutdown will occur in Q3 of 2023. Cold Canyon Processing has requested that staff seek Board approval to receive and process 100 tons of recyclables during this period. The Limited Term Recycling and Processing Agreement outlines the terms and conditions and is included in the Board packet.

### FINANCIAL IMPACT

See attached Limited Term Recycling Processing Agreement with Waste Connections.

### CONCLUSION

It is therefore recommended that the Board approve the Limited Term Recycling Processing Agreement with Waste Connections.

#### 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.*

## RECYCLING AGREEMENT

**THIS RECYCLING AGREEMENT** (the "Agreement") is made this 23 day of June, 2023, by and between Cold Canyon Landfill, Inc., for the Cold Canyon Processing Facility ("Cold Canyon Processing Facility"), and Monterey Regional Waste Management District dba ReGen Monterey ("ReGen") with a location at 14201 Del Monte Blvd. in unincorporated Monterey County, CA 93908 (the "Facility").

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

**WHEREAS** COLD CANYON PROCESSING FACILITY desires to sell to ReGen certain recyclable materials and ReGen wants to buy such recyclable materials.

**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 July 1, 2023, and end on June 30, 2024. This Agreement shall terminate at that time, unless either party provides the other party with written notice at least thirty (30) days prior to the expiration of the then current term requesting a proposed extension of this Agreement. Acceptance of the proposed extension by the other party shall cause there to be an issuance of an amendment to the Agreement and, once approved by both parties, shall amend this Recycling Agreement. Notwithstanding the preceding conditions, either party may terminate this Agreement with a minimum sixty (60) days written notice to the other party.

**2.0 Services and Rebates.**

2.1 ReGen shall purchase from COLD CANYON PROCESSING FACILITY the entire quantity of loose single stream recyclable materials ("Recyclables") received from COLD CANYON PROCESSING FACILITY's recycling route collections.

2.2 ReGen shall pay COLD CANYON PROCESSING FACILITY for the Recyclables as stated below:

2.2.1 COLD CANYON PROCESSING FACILITY shall transfer the Recyclables into transfer vehicles and ReGen shall thereafter be responsible for the transportation of the Recyclables from the COLD CANYON PROCESSING FACILITY to the ReGen Facility.

2.2.2 From July 1, 2023 through June 30, 2024, the price will be \$ 10.00 per ton of Recyclables.

2.2.3 During the term of this Agreement, the Recyclables price will remain \$ 10.00 per ton until such time as an alternate price is either mutually agreed upon in writing or the Agreement is terminated.

2.3 By the 5<sup>th</sup> of each month, ReGen will provide a detailed summary of all Recyclables transferred by or on behalf of COLD CANYON PROCESSING FACILITY 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 extended amount payable.

2.4 ReGen shall pay COLD CANYON PROCESSING FACILITY the amount owed on or before the 15<sup>th</sup> of the month following the month of receiving the transfer of Recyclables.

2.5 Title and risk of loss of the Recyclables shall become ReGen's at time of transfer of the Recyclables to the transfer vehicle for delivery to ReGen's Facility.

2.6 During the term of the Agreement, ReGen will prepare and submit all reports required by the State of California for all jurisdictions from which Recyclables are collected by COLD CANYON PROCESSING FACILITY.

**3.0 Quality.**

3.1 COLD CANYON PROCESSING FACILITY warrants that at the time of transfer to ReGen, all Recyclables shall be of the type of single stream recyclable material collected from residential and commercial locations ("Specifications"). In the event a load of Recyclables fails to meet such Specifications, then ReGen shall promptly notify COLD CANYON PROCESSING FACILITY. Prior to rejecting or downgrading any Recyclables, ReGen shall immediately notify COLD CANYON PROCESSING FACILITY of such rejection, and hold such load (the "Questioned Load") for two (2) business days after such notification for COLD CANYON PROCESSING FACILITY's visual inspection. ReGen's shall also digitally photograph the Questioned Load being 'held', forward such photographs to COLD CANYON PROCESSING FACILITY via email. If a Questioned Load is determined by both ReGen and COLD CANYON PROCESSING FACILITY not to meet the Specifications, and the parties are unable to reach agreement as to an adjustment in price, COLD CANYON PROCESSING FACILITY shall, at its own cost and expense, cause the rejected load to be either transported to a location designated by COLD CANYON PROCESSING FACILITY or be disposed of by ReGen by the least costly means reasonably available to ReGen. If the parties are unable to agree or COLD CANYON PROCESSING FACILITY fails to respond in a timely manner, ReGen may reject the load and COLD CANYON PROCESSING FACILITY shall, at its own cost and expense,

cause the rejected load to be either transported to a location designated by COLD CANYON PROCESSING FACILITY or be disposed of by ReGen by the least costly means reasonably available to ReGen. If a Questioned Load was improperly rejected, all transportation and other fees or costs incurred by COLD CANYON PROCESSING FACILITY to transfer and dispose of the Questioned Shipment shall be borne by the ReGen. Failure to timely provide such notification, provide photographs, or processing of the Recyclables shall be deemed acceptance and the amount owed as set forth above shall be paid in full of no deductions.

3.2 EXCEPT AS SET FORTH ABOVE, COLD CANYON PROCESSING FACILITY 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. COLD CANYON PROCESSING FACILITY 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 COLD CANYON PROCESSING FACILITY OF ITS WARRANTY. ReGen’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 COLD CANYON PROCESSING FACILITY shall transfer (or cause to be delivered) the Recyclables to ReGen. ReGen guarantees that the wait time at its facility for deliveries shall be no more than fifteen (15) minutes. Facility shall accept Recyclables delivered by COLD CANYON PROCESSING FACILITY Monday through Friday during its 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 ReGen will provide all necessary equipment and supplies associated with weighing trucks under this Agreement. ReGen agrees to weigh all inbound deliveries and outbound trucks on a State Certified Scale with a current State Certified Seal.

4.3 ReGen 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. ReGen 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, ReGen warrants that all its employees have validated identity and authorization-to-work documents pursuant to U.S. Immigration and Naturalization laws and to maintain Employment Eligibility Verification Forms (“I-9’s”) on all its employees.

4.4 ReGen shall handle, store and process the Recyclables in accordance with all applicable laws, rules and regulations promulgated by any government authority having jurisdiction over ReGen as it relates to ReGen’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). ReGen shall obtain and keep in effect any and all governmental licenses or permits required by law and provide COLD CANYON PROCESSING FACILITY copies evidencing compliance with those laws upon request.

4.5 COLD CANYON PROCESSING FACILITY makes no commitment or guarantee to the minimum or maximum quantity of Recyclables to be delivered under this Agreement.

4.6 ReGen 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 by COLD CANYON PROCESSING FACILITY, 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. ReGen 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.** ReGen shall procure and maintain at its own expense, during the term of this Agreement at least the following insurance covering ReGen’s activities performed under this Agreement.

<u>Coverage</u>	<u>Limits</u>
Workers’ Compensation	Statutory
Employer’s Liability	\$1 Million each occurrence
Commercial Gen. Liability	\$2 Million per occurrence
(Including Completed Operations, Contractual Liability, Broad Form Property Damage)	\$3 Million annual aggregate



## **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 COLD CANYON PROCESSING FACILITY or ReGen, and no refusal or neglect of COLD CANYON PROCESSING FACILITY or ReGen 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 matter 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.** Neither party shall disclose the terms of this Agreement or any proprietary and other confidential information in connection with this Agreement (including without limitation financial, volume or pricing data) 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 (including the Calif. Public Records Act, to which ReGen as a local public agency is subject, with ReGen here agreeing to give Cold Canyon ten (10) days advance notice of any disclosure under the Act), 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 parties shall be entitled to all remedies available at law or in equity to enforce, or to seek relief regarding, this confidentiality obligation.

**Monterey Regional Waste Management District  
dba ReGen Monterey ("ReGen")**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Cold Canyon Landfill, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_