

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 OR 15(d)  
of The Securities Exchange Act of 1934

Date of report (Date of earliest event reported): **August 14, 2024**

**AGRIFY CORPORATION**  
(Exact name of registrant as specified in its charter)

<b>Nevada</b> (State or other jurisdiction of incorporation)	<b>001-39946</b> (Commission File Number)	<b>30-0943453</b> (IRS Employer Identification No.)
<b>2468 Industrial Row Dr. Troy, MI</b> (Address of principal executive offices)		<b>48084</b> (Zip Code)

Registrant's telephone number, including area code: **(617) 896-5243**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	AGFY	Nasdaq Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 1.01 Entry into a Material Definitive Agreement.**

On August 14, 2024, Agrify Corporation (the “Company”) issued a junior secured promissory note (the “Junior Note”) in favor of CP Acquisitions, LLC (“CP”), an entity that is owned and managed by Raymond N. Chang, the Company’s Chairman and Chief Executive Officer, and I-Tseng Jenny Chan, a member of the Company’s Board of Directors. Pursuant to the Junior Note, CP will lend up to \$1,500,000 to the Company. The Junior Note bears interest at a rate of 10% per annum, will mature in full on July 1, 2025, and may be prepaid without any fee or penalty. The Junior Note is secured by the Company’s assets and ranks junior to existing secured indebtedness of the Company. The Junior Note may be converted into common stock of the Company or, at CP’s election, pre-funded warrants with an exercise price of \$0.001 per share (the “Pre-Funded Warrants”), in each case at a conversion price of \$0.2633.

The foregoing summaries of the Junior Note and the form of Pre-Funded Warrant do not purport to be complete, and are qualified in their entirety by reference to copies of the Junior Note and the form of Pre-Funded Warrant, which are filed as Exhibits 4.1 and 4.2 hereto, respectively.

**Item 2.03. Creation of a Direct Financial Obligation.**

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Junior Note is incorporated herein by reference into this Item 2.03.

**Item 3.02. Unregistered Sales of Securities.**

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the issuance of the Junior Note is incorporated herein by reference into this Item 3.02.

The Junior Note and the shares of common stock and/or Pre-Funded Warrants underlying the Junior Note (collectively, the “Securities”) were, and will be, offered and sold in transactions exempt from registration under the Securities Act in reliance on Section 4(a)(2) thereof and Rule 506(b) of Regulation D thereunder. CP is an “accredited investor,” as defined in Regulation D, and is acquiring the Securities for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. Accordingly, the Securities will not be registered under the Securities Act and the Securities may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

Neither this Current Report on Form 8-K nor the exhibits attached hereto is an offer to sell or the solicitation of an offer to buy shares of common stock, notes, or any other securities of the Company.

**Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.**

On August 14, 2024, the Audit Committee of the Board of Directors (the “Audit Committee”) of the Company, in consultation with management of the Company, concluded that the Company’s previously issued unaudited condensed consolidated interim financial statements as of and for the fiscal quarter ended March 31, 2024 included in the Company’s Quarterly Report on Form 10-Q for such period should no longer be relied upon. Similarly, earnings releases and investor communications describing the financial statements for the period described above should no longer be relied upon.

The Company identified errors in the accounting for a settlement entered into by the Company with Mack Molding Company which became effective in the first quarter of 2024. The Company determined the accounting for the settlement agreement in the first quarter of 2024 was not appropriate. Therefore, the Company misstated notes payable, current, notes payable, net of current, accumulated deficit and total stockholders’ equity (deficit), on the face of the unaudited condensed consolidated balance sheet as of March 31, 2024, and cost of goods sold, general and administrative expenses, gain on settlement of contingent liabilities, and interest income (expense), net, on the unaudited condensed consolidated statement of operations, for the three months ended March 31, 2024.

Based on the foregoing determination, the Company will correct the material misstatements in the Company’s previously issued unaudited condensed consolidated interim financial statements as of and for the fiscal period ended March 31, 2024 in an amended quarterly report for the affected periods. The Company intends to file such amended reports as soon as practicable.

The Audit Committee discussed the matters described in this Item 4.02 with GuzmanGray, the Company’s independent registered public accounting firm.

**Forward-Looking Statements**

Certain statements included in this Form 8-K are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements include statements regarding the effects of the restatement of the Company’s past financial statements and the expected timing of filing of the Company’s amended Quarterly Report on Form 10-Q. Forward-looking statements may involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements of the Company to be materially different from historical results or from any future results or projections expressed or implied by such forward-looking statements. Accordingly, readers should not place undue reliance on any forward-looking statements. In addition to statements that explicitly describe such risks and uncertainties, readers are urged to consider statements in the conditional or future tenses or that include terms such as “believes,” “belief,” “expects,” “estimates,” “intends,” “anticipates” or “plans” to be uncertain and forward-looking. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under Part I, Item 1A. “Risk Factors” in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2023 and the Company’s other filings with the SEC. Except as required by law, the Company assumes no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future.

**Item 9.01. Financial Statement and Exhibits.**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
4.1	<a href="#">Junior Secured Convertible Promissory Note dated as of August 14, 2024</a>
4.2	<a href="#">Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.2 to the Company’s Current Report on Form 8-K filed on May 22, 2024)</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**AGRIFY CORPORATION**

Date: August 14, 2024

By: /s/ Raymond Nobu Chang  
Raymond Nobu Chang  
Chief Executive Officer

## JUNIOR SECURED CONVERTIBLE PROMISSORY NOTE

\$1,500,000.00

August 14, 2024  
Boston, Massachusetts

FOR VALUE RECEIVED, **AGRIFY CORPORATION**, a Nevada corporation (“Maker”), promises to pay to the order of **CP ACQUISITIONS, LLC**, a Delaware limited liability company with an office at 675 VFW Parkway, Suite 152, Chestnut Hill, Massachusetts 02467-3656 (“Holder”), the principal sum advanced to Maker from time to time up to a maximum of **ONE MILLION FIVE HUNDRED THOUSAND AND 00/00 DOLLARS (\$1,500,000.00)** in lawful money of the United States of America, under the terms and at the times stated herein.

The principal and interest due under this Junior Secured Convertible Promissory Note (this “Note”) shall be payable in full on July 1, 2025 (the “Maturity Date”).

This Note may be prepaid, in whole or in part, at any time without any penalty, fee, or premium of any kind.

This Note represents a junior security interest in Maker secured by the security granted under that certain Security Agreement, dated as of October 27, 2023, by and between the Maker and the Holder, and such junior security interest herein granted and provided for is made and given to secure, and shall secure, the payment and performance of this Note, *provided that* such security interest and any payments due under this Note shall be subordinate to any obligations of and interests granted in those certain senior secured notes previously issued by Maker (the “Senior Secured Notes”).

The principal balance outstanding under this Note from time to time shall bear interest at the rate of ten percent (10%) per annum computed on the basis of a 360 day year.

Upon the occurrence a payment default, and at all times thereafter until this Note is paid in full, the principal balance of this Note shall bear interest at the default rate of eighteen percent (18%) per annum computed on the basis of a 360 day year.

This Note may be converted in part, but only in an Authorized Denomination (as defined below). Provisions herein relating to the conversion of this Note in whole will equally apply to conversions of any permitted portion of this Note. The Holder may convert this Note at any time until the close of business on the second (2nd) Scheduled Trading Day (as defined below) immediately before the Maturity Date. To convert this Note, the Holder must complete, sign and deliver to the Maker the conversion notice attached to this Note on Exhibit A or portable document format (.pdf) version of such conversion notice (at which time such conversion will become irrevocable) (a “Holder Conversion Notice”). For the avoidance of doubt, the Holder Conversion Notice may be delivered by e-mail. If the Maker fails to deliver, by the related Conversion Settlement Date (as defined below), any shares of common stock, par value \$0.001 per share, of the Maker (“Common Stock”) forming part of the Conversion Consideration (as defined below) of the conversion of this Note, the Holder, by notice to the Maker, may rescind all or any portion of the corresponding Holder Conversion Notice at any time until such shares of Common Stock are delivered. The person in whose name any shares of Common Stock is issuable upon conversion of this Note will be deemed to become the holder of record of such shares as of the close of business on the Conversion Date (as defined below) for such conversion, conferring, as of such time, upon such person, without limitation, all voting and other rights appurtenant to such shares. If the Holder converts all or any portion of this Note, the Maker will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon such conversion.

The consideration (the “Conversion Consideration”) due in respect of any portion of the outstanding principal amount of this Note, to be converted (the “Conversion Amount”) will consist of the following:

(1) a number of shares of Common Stock determined by dividing the Conversion Amount by the Conversion Price (as defined below);  
and

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(2) cash in an amount equal to the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date for such conversion or, at the election of the Maker, a number of validly issued, fully paid and Common Stock (the “Conversion Consideration Interest Shares”) equal to the quotient (rounded up to the closest whole number) obtained by dividing the aggregate accrued and unpaid interest on this Note to, but excluding, the Conversion Settlement Date by the Conversion Price.

The total number of shares of Common Stock due in respect of any conversion of this Note will be determined on the basis of the total principal amount of this Note to be converted with the same Conversion Date; *provided, however*, that if such number of shares of Common Stock is not a whole number, then such number will be rounded up to the nearest whole number.

The Maker will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of this Note, to the Maker on or before the second (2nd) business day (or, if earlier, the standard settlement period for the primary Eligible Exchange (as defined below) (measured in terms of trading volume for its Common Stock) on which the Common Stock are traded) immediately after the Conversion Date for such conversion (the “Conversion Settlement Date”).

If this Note is converted in full, then, from and after the date the Conversion Consideration therefor is issued or delivered in settlement of such conversion, this Note will cease to be outstanding and all interest will cease to accrue on this Note.

Each share of Common Stock delivered pursuant to this Note will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder or the Person to whom such share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Maker will cause each share of Common Stock issued pursuant to this Note, when delivered, to be admitted for listing on such exchange or quotation on such system.

If there occurs:

(1) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(2) consolidation, merger, combination or binding or statutory share exchange involving the Maker;

(3) sale, lease or other transfer of all or substantially all of the assets of the Maker and its subsidiaries, taken as a whole, to any person; or

(4) other similar event,

and, in each case, as a result of such occurrence, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities or other property (including cash or any combination of the foregoing) (such an event, a “Common Stock Change Event,” and such other securities or other property, the “Reference Property,” and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue fractional shares of securities or other property), a “Reference Property Unit”), then, notwithstanding anything to the contrary in this Note, at the effective time of such Common Stock Change Event, (x) the Conversion Consideration due upon conversion of any Note will be determined in the same manner as if each reference to any number of shares of Common Stock were instead a reference to the same number of Reference Property Units; and (y) each reference to any number of shares of Common Stock herein will instead be deemed to be a reference to the same number of Reference Property Units;

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Maker will notify the Holder of such weighted average as soon as practicable after such determination is made.

At or before the effective date of such Common Stock Change Event, the Maker and the resulting, surviving or transferee Person (if not the Maker) of such Common Stock Change Event (the "Successor Person") will execute and deliver such instruments or agreements that (x) provides for subsequent conversions of this Note in the manner set forth herein; and (y) contains such other provisions as the Maker reasonably determines are appropriate to preserve the economic interests of the Holder and to give effect to the provisions of this Note. If the Reference Property includes shares of stock or other securities or assets of a person other than the Successor Person, then such other person will also execute such instruments or agreements and such instruments or agreements will contain such additional provisions the Maker reasonably determines are appropriate to preserve the economic interests of the Holder. As soon as practicable after learning the anticipated or actual effective date of any Common Stock Change Event, the Maker will provide written notice to the Holder of such Common Stock Change Event, including a brief description of such Common Stock Change Event, its anticipated effective date and a brief description of the anticipated change in the conversion right of this Note.

Notwithstanding anything herein to the contrary, the Holder shall have the right, in its sole discretion, to elect to receive the shares of Common Stock due in respect of any conversion of this Note in the form of Pre-Funded Warrants (as defined below).

As used herein, the following capitalized terms shall be defined as follows:

"Authorized Denomination" means, with respect to this Note, a principal amount equal to \$1,000 or any integral multiple of \$1,000 in excess thereof, or, if the principal amount then-outstanding is less than \$1,000, then such outstanding principal amount.

"Conversion Date" means the first business day on which the requirements to convert this Note are satisfied.

"Conversion Price" means an amount equal to \$0.2633 per share of Common Stock; provided, however, that if after the date of this Note the Company effects any stock split, reverse stock split, share combination or similar transaction, the Conversion Price shall be equitably adjusted to reflect the ratio of such split or similar transaction.

"Eligible Exchange" means any of The New York Stock Exchange, The NYSE American LLC, The Nasdaq Capital Market, The Nasdaq Global Market or The Nasdaq Global Select Market (or any of their respective successors).

"Market Disruption Event" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"Pre-Funded Warrants" means the pre-funded common share purchase warrants in the form of Exhibit B, which may be issued pursuant to this Note.

"Scheduled Trading Day" means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal, in terms of volume, Eligible Exchange on which the Common Stock is listed for trading. If the Common Stock is not so listed or traded, then "Scheduled Trading day" means a business day.

“Trading Day” means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then “Trading Day” means a business day.

Maker waives presentment, demand, notice, protest, and delay in connection with the delivery, acceptance, performance, collection, and enforcement of this Note.

No delay or omission on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. A waiver on anyone occasion shall not be construed as a bar to or a waiver of any such right and/or remedy on any future occasion.

Holder shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, reasonable attorney’s fees, incurred in enforcing and collecting the amounts due under this Note.

This Note shall be governed by the laws of the Commonwealth of Massachusetts.

Maker will take all reasonably necessary steps to publish and file any financing statements associated with the security interest contained herein under applicable law.

[Signature Page Follows]



IN WITNESS WHEREOF, Maker has executed this Note as a sealed instrument as of the date first hereinabove written.

**AGRIFY CORPORATION**

By: /s/ David Kessler

Name: David Kessler

Title: Executive Vice President

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**Exhibit A**

Conversion Notice

**AGRIFY CORPORATION**

Junior Secured Convertible Note due 2025

Subject to the terms of this Note, by executing and delivering this Conversion Notice, the undersigned Holder of this Note directs the Maker to convert the following principal amount of this Note: \$\_\_\_\_\_,000 in accordance with the following details.

Shares of Common Stock to be delivered (the "**Delivered Shares**"): \_\_\_\_\_

Accrued interest amount: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Legal Name of Holder)

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

**Exhibit B**

Form of Pre-Funded Warrants

*See attached.*

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