

## **CONSENT AND FIRST AMENDMENT TO AGREEMENT FOR ORGANIC MATERIALS PROCESSING SERVICES**

This Consent and First Amendment to the Agreement for Organic Materials Processing Services (“Consent and Amendment”) dated for reference [DATE], 2021 is entered into by and between the City of Sunnyvale, a municipal corporation (“City”) and Zanker Road Resource Management, LTD (“Contractor”).

### **RECITALS**

WHEREAS, City and Contractor entered into that certain Agreement for Organic Materials Processing Services dated June 21, 2021, including any duly executed amendments thereto (“Agreement”); and

WHEREAS, on October 18, 2021, Contractor notified the City that Contractor had entered into an agreement dated as of August 28, 2021 to sell all or substantially all of its outstanding capital stock to MIP V Waste, LLC, a Delaware limited liability company (“Company”), which would result in a change of control of Contractor (“Transaction”); and

WHEREAS, pursuant to Section 12.7 of the Agreement, no assignment or other transfer, including a change of control of Contractor, is permitted under the Agreement without the prior consent of City; and

WHEREAS, Contractor has requested that City approve the change of control of Contractor to Company; and

WHEREAS, City has considered the proposed change of control, including but not limited to the qualifications of the Company, and City is willing to approve the change of control in reliance on the information provided by Contractor and Company, including, but limited to, Contractor’s representation that no material change in key personnel or operations will occur due to this change in control; and

WHEREAS, the City is willing to approve the change of control of Contractor to Company pursuant to the terms of this Consent and Amendment; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals; Definitions. The foregoing recitals are true and correct, and incorporated into this Consent and Amendment by this reference. Capitalized terms used in this Consent and Amendment and not otherwise defined herein shall have the meaning assigned to them in the Agreement.

2. Approval of Change of Control. City approves and consents to the change of control of Contractor to Company pursuant to Section 12.7 of the Agreement (“COC Approval”). The COC Approval shall become effective immediately upon execution by City of this Consent and Amendment (“Approval Date”) unless Contractor furnishes written notice to City on or before December 31, 2021 that it will not consummate the Transaction, at which time the COC Approval

and Section 3 shall be deemed null and void.

3. Consent to Future Assignment. City acknowledges that Company may cause Contractor and its affiliates to undergo a reorganization and, in connection therewith, Contractor may assign the Agreement to an affiliate of the Company (“Proposed Assignee”) in a manner that would otherwise constitute an assignment pursuant to Section 12.7 of the Agreement (“Future Assignment”). In the case of the Company, “affiliate” shall only include MIP V Waste (ECI) AIV, L.P. (together with Macquarie Infrastructure Partners V, L.P., Macquarie Infrastructure Partners V SCS and any special purpose vehicles, portfolio companies or subsidiaries thereof). In the event of a future assignment, the following shall apply:

a. Contractor will furnish thirty (30) calendar days written notice to City of the proposed Future Assignment along with all information required to evaluate the assignment under Section 12.7 (“Notice”). The City Contract Manager shall, within five (5) business days of receipt of the Notice, review and provide approval or denial of the Future Assignment.

b. The City shall not require Contractor pay the transfer fee set forth in Section 12.7.F of the Agreement. All other provisions of Section 12.7 shall apply.

c. These provisions shall apply to a single Future Assignment which shall occur on or before December 31, 2022.

4. Amendment. Notwithstanding any COC Approval or Future Assignment, Contractor agrees to the following:

a. The maximum contamination percentage for MRF Fines in the table located at Line 1276 of the Agreement is hereby amended from 20% to 25%.

b. The maximum contamination percentage for MRF Fines in Table D1 of Exhibit D is hereby amended from 20% to 25%.

c. Table D3 of Exhibit D is hereby amended to read in full as follows:

***Table D3 Temporary Tonnage Limitations (before facility expansion)\****

Acceptable Material	Daily Tonnage Maximum	Monthly Tonnage Maximum	Annual Tonnage Maximum
Yard Trimmings (Processed + Unprocessed)	125	2,083	25,000
All Other Acceptable Materials (MRF Fines + Food Soiled Paper + Food Scraps)	75 Monday-Friday 50 Saturday 250 Sunday	3,000	36,000

\*This limit shall apply beginning January 1, 2022 until the Z-Best Expansion is completed, expected to be in 2nd Quarter of 2022, then limits revert to Table D2 above. There may be a period of no more than six months during the construction phase of the expansion in which the monthly tonnage

maximum of All Other Acceptable Materials may be reduced to 1,000 tons per month. In this instance Contractor would provide City with at least 90 days' notice of the reduced tons.
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5. Due Execution. The person(s) executing this Consent and Amendment on behalf of a party hereto warrant(s) that (i) such party is duly organized and existing; (ii) such person(s) are duly authorized to execute and deliver this Consent and Amendment on behalf of said party; (iii) by so executing this Consent and Amendment, such party is formally bound to the provisions of this Consent and Amendment; and (iv) entering into this Consent and Amendment does not violate any provision of any other agreement to which said party is bound.

6. Entire Amendment. This Consent and Amendment contains the entire agreement and understanding between the parties with respect to the subject matter of this Consent and Amendment and supersedes any and all prior or contemporaneous oral and written representations, warranties, agreements, and understandings between the parties concerning the subject matter of this Consent and Amendment.

7. Full Force and Effect. Other than as set forth in this Consent and Amendment, the terms of the Agreement shall remain unchanged and in full force and effect. In the event of any conflict between the Agreement and this Consent and Amendment, this Consent and Amendment shall apply.

8. Counterparts. This Consent and Amendment may be executed in counterparts, each of which shall be considered an original.

TO EFFECTUATE THIS CONSENT AND AMENDMENT, each of the parties has caused this Consent and Amendment to be executed by its authorized representative as of the date set forth below the authorized signature.

*[signatures begin on next page]*

CITY:

CITY OF SUNNYVALE,  
a municipal corporation

By: \_\_\_\_\_  
Its: City Manager  
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its: City Clerk  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

CONTRACTOR:

ZANKER ROAD RESOURCE  
MANAGEMENT, LTD,  
a California limited partnership

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_