



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

---

File #: 21-1038, Version: 1

---

### **REPORT TO COUNCIL**

#### **SUBJECT**

Consent and First Amendment to Agreement with Zanker Road Resource Management, Ltd to Process Organic Materials from the SMaRT Station®

#### **REPORT IN BRIEF**

Authorize the City Manager to execute a consent to assignment and the first amendment to the agreement between the City of Sunnyvale and Zanker Road Resource Management Limited.

#### **EXISTING POLICY**

Consistent with the provisions of Sunnyvale Municipal Code Chapter 2.08, contracts for procurements of service are awarded pursuant to a Request for Proposals (RFP) process, unless otherwise exempt from the competitive bidding process. Additionally, City Council approval is required for the procurement of goods and/or services exceeding \$250,000 in any one transaction. The Zanker Agreement was awarded pursuant to those policies. The assignment procedures in Section 12.7 of the Agreement are in accordance with existing City policy.

#### **ENVIRONMENTAL REVIEW**

Delivery of organics to Zanker's facilities would be accomplished by reloading the organics into transfer trucks at the SMaRT Station in the same manner that garbage is transferred to Kirby Canyon Landfill and other recyclables are shipped to markets in the US and abroad. The amount of tonnage and trips to Kirby Canyon Landfill has decreased since the initiation of these services. Operation of the SMaRT Station and marketing of these organic materials would be performed consistent with the Final Environmental Impact Report "Sunnyvale Material Recovery and Transportation Station (SMART)" dated September 14, 1990 and a subsequent addendum dated July 21, 1992 (SCH #89022812).

#### **BACKGROUND AND DISCUSSION**

On May 25, 2021, City Council awarded a fifteen (15) year contract (Agreement) for processing of three organic material streams, specifically, Source-Separated Residential Yard Trimmings, SMaRT Station 2-inch minus Material Recovery Facility (MRF) Fines, and Compostable Food-Soiled Paper products captured by the SMaRT Station mixed waste processing to Zanker Resource Management, LTD (Zanker). On October 18, 2021, the City received a formal written request from Zanker (Attachment A) for City approval of a change in control (ownership) pursuant to Section 12.7 of the Agreement.

#### **Consent to Assignment**

The proposed transaction will result in a change in control, wherein the general partners of Zanker will sell their partnership interests to a private investment fund vehicle, MIP V Waste, LLC. Zanker

has assured staff that there are no expected changes to their operations or management team, or to the planned expansion of their Z-Best composting facility. Zanker's legal name will remain the same. While Zanker does not consider this change in control to technically be an "Assignment" of the Agreement, Zanker acknowledges that prior City approval is required pursuant to Section 12.7 of the Agreement. Zanker has met, to staff's satisfaction, all of the requirements necessary for City approval of the change in control, including payment of the \$20,000 transfer fee. The recommended amendment to the Agreement (Attachment B) specifies the terms of the assignment/change in control of the Agreement. Zanker has indicated it may make a future assignment of the Agreement to an affiliate as part of this transaction. This amendment allows Zanker to do so without paying another transfer fee and under shorter review timelines by the City than generally required.

#### **Amendment to the Principal Agreement**

In addition to the consent to assignment, staff recommends amending the Agreement to make minor changes concerning the composting of MRF fines (fine particles of organic material recovered from solid waste at the SMaRT Station). Staff utilized Zanker's request for assignment to negotiate an increase in the amount of MRF fines that Zanker will accept prior to the planned expansion of their Z-Best Composting Facility. Previously Zanker had agreed to accept up to 1,000 tons per month of MRF fines from the SMaRT Station prior to the Z-Best expansion. They have now agreed to accept up to 3,000 tons per month, except for a period of up to six months when the Z-Best facility is under construction. In addition, staff recommends amending the Agreement to correct a clerical error. Both parties agree that Zanker will accept MRF Fines that contain up to 25% of non-compostable contaminants. However due to a clerical error there are two instances in which the Agreement states 20% contamination instead of 25%. The proposed First Amendment corrects that error.

#### **FISCAL IMPACT**

Zanker has remitted the required \$20,000 transfer fee and will reimburse the City for third party attorney's fees utilized to draft the Consent and First Amendment to the Agreement.

#### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. In addition, the agenda and report are available at the Office of the City Clerk and on the City's website.

#### **RECOMMENDATION**

Authorize the City Manager to Execute the Consent and First Amendment to the Agreement between the City of Sunnyvale and Zanker Road Resource Management, Ltd, in substantially the same form as Attachment 2 to the report, to Process Organic Materials from the SMaRT Station.

Prepared by: David Krueger, Solid Waste Programs Division Manager  
Reviewed by: Ramana Chinnakotla, Director of Environmental Services  
Reviewed by: John Nagel, City Attorney  
Reviewed by: Tim Kirby, Finance Director  
Reviewed by: Jaqui Guzmán, Deputy City Manager  
Approved by: Kent Steffens, City Manager

#### **ATTACHMENTS**

1. Request for Consent to Change in Control
2. Consent and First Amendment to the Agreement between the City of Sunnyvale and Zanker Road Resource Management, Ltd to Process Organic Materials from the SMaRT Station