



# Memorandum

## MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

DATE: October 18, 2021  
 TO: Board of Directors  
 FROM: Tim Flanagan, District General Manager  
 SUBJECT: GreenWaste Recovery, Inc. Ground Lease – Consent to Change in Control

**RECOMMENDATION:** Approve Assignment of GWR Lease to MIP V Waste, LLC, a Delaware limited liability company and Amendment #1

### **BACKGROUND**

On November 18, 2016 the Monterey Regional Waste Management District (“District”) and GreenWaste Recovery, Inc. (“Contractor”) entered into a Lease, including any duly executed amendments thereto (“Agreement”) for use of the property owned by the District, located at 14207 Del Monte Boulevard, Marina, California to support Contractor’s Franchise Agreements with seven (7) of the District’s member agencies, including the Cities of Del Rey Oaks, Carmel-by-the-Sea, Marina, Pacific Grove, Sand City, Seaside, Marina, and the Pebble Beach Community Services District (“Agencies”).

On September 8, 2021, Contractor notified the District that Contractor, together with its affiliate Zanker Road Resource Management, Ltd. and related subsidiaries/affiliates, had entered into an agreement dated as of August 28, 2021 wherein the current stockholders of GreenWaste and limited and general partners of Zanker will sell their respective stock or partnership interests to MIP V Waste, LLC, a Delaware limited liability company (the “Company”), which would result in a change of control of Contractor (“Transaction”).

Pursuant to Section 14.1 of the Lease, no assignment or other transfer, including a change of control of Contractor, is permitted under the Agreement without the prior consent of District. On September 10, 2021, Contractor submitted its formal request to the District to approve the change of control of Contractor to Company.

### **DISCUSSION**

As a result of the change of control of Contractor to Company, an amendment to the Agreement is necessary. Contractor provided the District with information regarding the proposed change of control Transaction and the District reviewed the information submitted by Contractor.

In addition to the consent to the change in control, Contractor and Company further requested the District’s consideration to consent to a limited assignment in calendar year 2022. After the Transaction is complete, 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.



Assignment GWR Lease to MIP V Waste, LLC, a Delaware limited liability company and Amendment #1  
October 18, 2021  
Page 2

District has considered the proposed change of control, including but not limited to the qualifications of the Company, and is willing to approve the change of control of Contractor to Company pursuant to the terms of this Consent and Amendment.

**FINANCIAL IMPACT**

The Consent and Amendment #1 will not result in any financial impact to the District.

**CONCLUSION**

Recommend approval of Consent and Amendment #1



## CONSENT AND FIRST AMENDMENT TO LEASE

This Consent and First Amendment (“Consent and Amendment”) dated for reference October 22, 2021 is entered into by and among the Monterey Regional Waste Management District, a political subdivision of the State of California (“District”), MIP V Waste, LLC, a Delaware limited liability company (“Company”) and GreenWaste Recovery, Inc., a California corporation (“Contractor”).

### RECITALS

WHEREAS, District and Contractor entered into that certain Lease dated November 18, 2016, including any duly executed amendments thereto (“Agreement”); and

WHEREAS, on September 8, 2021, Contractor notified District 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 Company, which would result in a change of control of Contractor (“Transaction”); and

WHEREAS, pursuant to Section 14.1 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 District; and

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

WHEREAS, pursuant to Section 14.1 of the Agreement, District requested and/or Contractor provided information regarding the proposed change of control from Contractor and Company and its affiliates, Contractor and Company or its affiliates complied with such requests, and District reviewed the information submitted by Contractor and Company and its affiliates; and

WHEREAS, District has considered the proposed change of control, including but not limited to the qualifications of the Company, and 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. The Board of Directors of the Monterey Regional Waste Management District approves and consents to the change of control of Contractor to Company pursuant to Section 14.1 of the Agreement (“COC Approval”) and shall in no event be deemed an “event of default” or cause or result in any default or violation under, termination of, or any other effect on the Agreement. The COC Approval shall become effective immediately upon execution by District of this Consent and Amendment (“Approval Date”) unless Contractor

furnishes written notice to District that it will not consummate the Transaction, at which time the COC Approval shall be deemed null and void.

3. Consent to Future Assignment or Transfer. District 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 14.1 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 SCSp and any special purpose vehicles, portfolio companies or subsidiaries thereof). Effective upon the COC Approval, the Board of Directors of the Monterey Regional Waste Management District approves and consents to any Future Assignment, and such assignment shall in no event be deemed an "event of default" or cause or result in any default or violation under, termination of, or any other effect on the Agreement, upon the satisfaction of the following:

a. Contractor furnishes thirty (30) calendar days written notice to District following the closing of any Future Assignment or Transfer ("Notice"). The Notice shall describe the assignment or transfer in general terms, and identify the Proposed Assignee, as that term is defined herein below.

b. The closing of Future Assignment or Transfer must occur no later than December 31, 2022.

c. By furnishing Notice to District, Proposed Assignee represents and warrants to District that it accepts the assignment of the Agreement from Contractor, and that it assumes all of the rights, interests, and obligations of the Contractor under the Agreement.

4. 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.

5. 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.

6. 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.

7. 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]*

**DISTRICT:**

MONTEREY REGIONAL WASTE  
MANAGEMENT DISTRICT

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

Its: Director

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

**COMPANY:**

MIP V Waste, LLC,  
a Delaware limited liability company

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

Its: \_\_\_\_\_

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

**ATTEST:**

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

Its: Director

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

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

Its: \_\_\_\_\_

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

**APPROVED AS TO FORM:**

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

Its: Director

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

**CONTRACTOR:**

GreenWaste Recovery, Inc.,  
a California corporation

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

Its: \_\_\_\_\_

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