

FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF FREMONT AND BLT ENTERPRISES OF FREMONT, LLC FOR CURBSIDE RECYCLABLE MATERIALS AND CURBSIDE ORGANIC WASTE SERVICES

- 1. WHEREAS, the City of Fremont, California ("City") and BLT Enterprises of Fremont, LLC, ("Contractor") have entered into the Agreement (the "Transfer Station Agreement") and approved the First, Second and Third Amendment to that Agreement; and
- 2. WHEREAS, the City and Contractor have entered into a separate agreement entitled "Agreement between the City of Fremont and BLT Enterprises of Fremont, LLC for Curbside Recyclable Materials and Curbside Organic Waste Services (the "Recyclables Agreement"); and
- 3. WHEREAS, Contractor may enter into contracts to Accept Curbside Recyclables generated outside of the Tri-Cities; and
- 4. WHEREAS, the Recyclables Agreement provides that the City is the most favored customer, and the Contractor will not pay a new user for Curbside Recyclables generated outside of the Tri-Cities more than it pays or credits the City for City Curbside Recyclable Materials if the new user contract is of similar scope and length; and
- 5. WHEREAS, in lieu of requesting review and approval from the City for the tonnage fee payable to Contractor for each new potential recycling contract, Contractor has agreed to pay City \$2.00 for each ton of Recyclables Contractor Accepts for Curbside Recyclables generated outside of the Tri-Cities in consideration for City deleting Section 8.04 (Most favored customer) of the Recyclables Agreement; and
- 6. WHEREAS, such revisions will require City and Contractor to enter into this First Amendment to the Recyclables Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and for good and valuable consideration, the City and Contractor do hereby amend the Recyclables Agreement through this First Amendment as follows:

1. ARTICLE 1. DEFINITIONS *is hereby revised to add the following definition and clarify an existing definition.*

Curbside Recyclables Offset Fee shall mean that per Ton fee agreed to by City and Contractor for Curbside Materials generated outside of the Tri-Cities (Tri-Cities defined as Fremont, Union City and Newark) and Accepted for Processing at the Facility as that fee is described in Section 8.03(e) of this Amendment and Exhibit A.

Curbside Recyclable Materials Payment is the Per-Ton Fee paid to the City for City generated Curbside Recyclable Materials volume as identified and adjusted in Exhibit A.

2. ARTICLE 6. RECORD KEEPING, INSPECTIONS AND REPORTING

6.02 Records *is hereby revised to add the following 6.02 a. (8):*

(8) Records of the quantities of Curbside Recyclables Materials Accepted by Contractor generated outside of the Tri-Cities by tonnage, and records of the quantities of these same materials Processed but ultimately Transferred to the Designated Disposal Facility.

3. 6.02 b. *is hereby revised to read as follows:*

6.02 b. Contractor shall submit monthly and annual reports to City documenting Curbside Materials, Curbside Organic Waste, and Residue by customer source, e.g. Single Family Dwellings, Multi-Family Dwellings, Commercial and those Curbside Materials generated outside of the Tri-Cities and Accepted for Processing at the Facility. Notwithstanding the preceding sentence, the Contractor may not be able to determine the customer source for City generated materials unless the City imposes on its Collection Contractor the requirement that it provide same to Contractor. If Contractor cannot reasonably determine the customer source for City generated materials, it shall not be required to submit information relating to such sources to the City. The monthly reports shall include year to date totals, as well as the totals for the month. (*rest of the paragraph remains the same*) Contractor shall format such reports in accordance with the then current requirements of the California Integrated Waste Management Board ("CIWMB") or other agency(ies) subsequently authorized to administer Federal, State or Local law governing integrated waste management. City, in its reasonable discretion may request additional information in, or modifications to the formatting of, such reports. All data generated for and contained in reports prepared under this Section shall be the property of City.

4. ARTICLE 8. COMPENSATION

8.01 *is hereby revised to read as follows:*

8.01 Collection of Fees The Contractor is responsible for all Processing Fees. The City, through its contract(s) with City Collection Contractor(s) shall set and

maintain residential and other relevant collection rates levied by Collection Contractor(s) at levels and at appropriate times to adequately allow the Contractor to pay the Fees under this Agreement. Nothing herein shall limit City's discretion in using other appropriate funds to fulfill its obligations with Contractor under this Agreement in lieu of raising collection rates. Contractor shall invoice City for the Curbside Organic Waste Transfer Fee for Curbside Organic Waste Deliveries. In each invoice, Contractor shall credit the City for the Curbside Recyclables Materials Fee and for the Curbside Recyclables Offset Fee within 30 days of the end of each calendar month for such materials Accepted during such month. Such amounts shall be credited against Contractor's invoice to City for the Curbside Organic Waste Transfer Fee. All debits and credits shall be detailed in such monthly invoices. Nothing in this paragraph shall limit rights of Contractor or City to pursue all legal, financial and equitable remedies available under Applicable Law. Interest on amounts past due may be assessed at the maximum rate permitted by law.

5. Section 8.04 City is Most Favored Customer *is hereby deleted in its entirety.*

6. Section 8.03 (e) *is hereby added as follows:*

Curbside Recyclables Offset Fee

Contractor agrees to pay to the City a Curbside Recyclables Offset Fee on all Curbside Recyclables tonnage generated outside of the Tri-Cities and Accepted for Processing at the Facility as specified in Exhibit A. This Curbside Recyclables Offset Fee will be a fixed fee adjustable by the 24 month change in the June to June Consumer Price Index on a biennial basis on even numbered years. Each time the figure is modified, the revised figure becomes the basis for subsequent adjustments. The CPI adjusted fee will be effective on January 1 of each even numbered year, the first adjustment to be effective January 1, 2010. This adjusted fixed fee shall remain in effect for the term of the contract unless revised in writing by both Parties.

7. Exhibit A -Curbside Recycling and Curbside Organic Waste Fees *is hereby revised to change the title and add the following:*

EXHIBIT A -Curbside Recycling, Curbside Organic Waste Fees and Curbside Recycling Offset Fee

CURBSIDE RECYCLABLE OFFSET FEE

A Curbside Recyclable Offset Fee Payment for each ton of Curbside Recyclables generated outside of the Tri-Cities and Accepted for Processing at the Facility will

be paid to City in accordance with Article 8.03 (e). The 2008 and 2009 payment per ton is \$2.00.

BIENNIAL ADJUSTMENT TO CURBSIDE RECYCLABLE OFFSET FEE

The Curbside Recyclable Offset Fee Payment shall be adjusted biennially in accordance with Article 8.03 (e).

(the rest of Exhibit A remains the same)

8. Execution

This First Amendment shall be effective upon the date of execution by all parties.

9. Terms

All other terms in the Recyclables Agreement not specifically amended by this First Amendment shall remain in full force and effect. This Amendment is executed in two (2) duplicate originals, each of which is deemed to be an original.

IN WITNESS THEREOF, the Parties have executed this First Amendment on the dates written below.

CITY:

City of Fremont

By: Fred Diaz
Fred Diaz
City Manager

Date: 2/11/09

CONTRACTOR:

BLT ENTERPRISES
OF FREMONT, LLC

By: [Signature]

Date: July 10, 2008

Approved as to Form:

By: [Signature]
Harvey E. Levine
City Attorney