

SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF FREMONT AND BLT ENTERPRISES OF FREMONT, LLC FOR CURBSIDE RECYCLABLE MATERIALS AND CURBSIDE ORGANIC WASTE SERVICES DATED JUNE 1, 2006

RECITALS

1. The City of Fremont, California ("City") and BLT Enterprises of Fremont, LLC ("Contractor") have entered into the agreement described in the title (the "Original Agreement") and have executed the First Amendment to the Original Agreement (the Original Agreement, together with the first Amendment are collectively referred to herein as the "Recyclables Agreement"). All capitalized terms used herein not otherwise defined shall have the respective meanings ascribed to them in the Recyclables Agreement. All references in this Second Amendment to the "Recyclables Agreement" shall mean the Recyclables Agreement, as amended by this Second Amendment.
2. The City and Contractor have entered into a separate agreement entitled "Agreement between the City of Fremont and BLT Enterprises of Fremont, LLC for Recyclables, Diversion and Transfer Services dated April 20, 2004, as amended by five amendments (collectively, the "Transfer Station Agreement").
3. On August 29, 2013 Contractor filed a Notice of Extraordinary Rate Review Claim (the "ERR Claim") with the City pursuant to Article 11 of the Transfer Station Agreement and Section 8.03d of the Recyclables Agreement.
4. City and Contractor previously negotiated a settlement to the ERR Claim, other than the portion of the ERR Claim relating to Contractor's transportation costs. The business terms of this partial settlement were approved by the Fremont City Council on December 10, 2013, and the City implemented the fee adjustments on January 1, 2014.
5. On December 16, 2014, the Fremont City Council approved the terms of a settlement of the transportation cost portion of the ERR Claim.
6. The City and Contractor have agreed to the following revisions to the Recyclables Agreement to incorporate the terms of the resolution of the ERR Claim which are applicable to the Recyclables Agreement including a new Exhibit A dated June 1, 2015 which includes the 2014/2015 biennial adjustment, pursuant to the terms and provisions of this Second Amendment.

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 Second

Amendment as follows:

1. Settlement of ERR Claim.

This Second Amendment and the Sixth Amendment to the Transfer Station Agreement constitute a full and complete settlement of the ERR Claim. The economic terms of the ERR Claim settlement applicable to this Recyclables Agreement are incorporated in the revisions to Article 8 below and reflect the following:

- a. The City's share of labor and health care costs during the six-year term of the New CBA equals 92%.
- b. City and Contractor agree that the Curbside Recyclable Material Payment and the Curbside Organic Waste Transfer Fee is hereby adjusted for labor and health care costs as reflected in Exhibit A. This new base for labor and health care costs was set in order for future biennial adjustments to be applied to a proper base, and are not retroactive payments of either past labor or health care costs. City and Contractor have agreed this \$4.66 per ton for the ERR ILWU labor and health care adjustment, which includes the 2014-2015 biennial rate adjustment, is based in part upon the implementation costs for the 2014-2019 ILWU Wage Schedule, attached as Exhibit 16 to the Sixth Amendment of the Transfer Station Agreement. Part of the consideration for this \$4.66 per ton adjustment is Contractor's continued implementation of the wage rates in the ILWU Wage Schedule and payment of the health insurance costs. For Curbside Recyclable Material this \$4.66 adjustment is credited against all amounts owed by Contractor to the City for Curbside Recyclable Material and is reflected in Exhibit A attached hereto. For the Organic Waste Transfer Fee this \$4.66 adjustment is incorporated in the Curbside Organic Waste Transfer Fee, as reflected in Exhibit A attached hereto.
- c. The revised Exhibit A attached hereto and dated June 1, 2015 will be the basis for the next biennial rate adjustment in 2016.
- d. The Curbside Organics Transfer Fee has been increased by an additional \$.78 per ton to cover increased transportation costs resulting from increased labor costs from Contractor's third party hauler, as well as equipment and payload cost increases resulting from a change in environmental air emissions laws and regulation, as reflected in Exhibit A.

- e. The Health Insurance Component includes a new definition for the Health Insurance Index as follows:
 - **Health Insurance Index** means the All Urban Consumers-US City average Index, Health Insurance Item, Series ID CUUR0000SEME compiled and published by the United States Department of Labor, Bureau of Labor Statistics. However, if in the future Contractor and City reasonably agree that another regional index more closely reflects adjustments to health insurance rates in the San Francisco Bay Area, Contractor and City shall use that new index.

2. Past Due Compensation

- a. **For the period January 1, 2014 through December 31, 2014.**
Upon execution of this Second Amendment, City shall pay Contractor an amount equal to \$19,939.34 for the unpaid portion of the transportation adjustment under this Recyclables Agreement as reflected in subparagraph d. above for the period January 1, 2014 through December 31, 2014.
- b. **For the period January 1, 2015 through May 31, 2015.**
The additional compensation for this Curbside Extraordinary Adjustment Fee and the Curbside Organic Waste Transfer Fee for the period of time from January 1, 2015 through May 31, 2015 will be fully paid to Contractor through the monthly reconciliation process. Future biennial adjustment will be based on the Fees shown in the attached Exhibit A.

3. Extraordinary Review of Transportation Costs.

For the six (6) year period commencing on January 1, 2014, Contractor agrees that it shall not be entitled to an Extraordinary Review of its transportation labor and health care costs under the terms of this Recyclables Agreement as well as Article 11 of the Transfer Station Agreement, as a result of (a) unionization, (b) extension, modification and/or termination of Contractor's third party contract with its current transportation subcontractor, (c) Contractor entering into a third party contract with a different transportation subcontractor, and/or (d) Contractor's election to have transportation labor performed by Contractor's employees (whether pursuant to the New CBA (as defined in the Sixth Amendment or otherwise)).

4. Extraordinary Review.

Pursuant to Section 8.03d of the Recyclables Agreement, any Extraordinary Reviews under the terms of the Recyclables Agreement will be conducted

pursuant to Article 11 of the Transfer Station Agreement, as amended by the Sixth Amendment to the Transfer Station Agreement.

5. Article 8. COMPENSATION

Section 8.03a. Curbside Recyclable Material Payment. The amount of the Curbside Recyclables Materials Payment is specified in Exhibit A dated June 1, 2015 attached hereto.

Section 8.03(f) is hereby added as follows:

f. Curbside Extraordinary Adjustment Fee. Effective as of June 1, 2015 and continuing during the Term, the City shall pay Contractor a curbside extraordinary adjustment fee for each ton of Curbside Recyclable Materials delivered to the Facility (the "Curbside Extraordinary Adjustment Fee"). The amount of the Curbside Extraordinary Adjustment Fee is set forth in Exhibit A attached hereto. The Curbside Extraordinary Adjustment Fee shall be increased biennially starting January 1, 2016 by the same dollar amount that the "ILWU Wage Component" and the "Health Insurance Component" of the "Mixed Municipal Waste Service Fee" in the Transfer Station Agreement are adjusted, as shown in the June 1, 2015 Exhibit A.

Section 8.03(c) is hereby replaced in its entirety:

c. Curbside Organic Waste Transfer Fee. City shall pay Contractor a Curbside Organic Waste Transfer Fee for each ton of Curbside Organic Waste delivered to the Facility as shown on Exhibit A attached hereto. The Curbside Organic Waste Transfer Fee shall be increased biennially starting January 1, 2016 in accordance with this Section and consistent with the example shown in the attached June 1, 2015 Exhibit A. The adjustment shall reflect 24 months of change for each component of the fee using the same indexes that are used for calculating the same components of the Mixed Municipal Service Fee. Each time the figures are modified, the revised figures become the basis for subsequent adjustments.

The components of the Curbside Organic Waste Transfer Fee are as follows:

- 1) CPI Component** is that portion of the Curbside Organic Waste Transfer Fee that is not the Transportation Wage Component, the Health Insurance Component, or the ILWU Wage Component. This CPI Component shall be adjusted biennially over the term and this biennial change shall be calculated using the prior June CPI and the CPI which is twenty four (24) months prior. Any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11 of the Transfer Station Agreement.

- 2) **Transportation Wage Component** is that portion of the Curbside Organic Waste Transfer Fee associated with transportation labor expenses related to Transfer of Residue to the Designated Disposal Facility. The Transportation Wage Component shall be adjusted biennially over the Term and this biennial change shall be calculated using the prior June CPI and the CPI which is twenty four (24) months prior. However, if during the biennial rate review effective January 1, 2016, transportation wages have increased by an amount greater than CPI, the City may determine in its sole discretion that a more appropriate index (that increased more than CPI) is available and should be used for this Transportation Wage Component. The City reserves the right to implement a more accurate index for that biennial adjustment, as long as the actual increase in this Transportation Wage Component is considered by the City to be fair and reasonable. Any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11 of the Transfer Station Agreement.
- 3) **Health Insurance Component** is that portion of the Curbside Organic Waste Transfer Fee comprised of the Contractor's workforce health insurance costs. The Health Insurance Component shall be adjusted biennially over the Term using the Health Insurance Index as defined. The biennial change shall be calculated using the prior June Health Insurance Index and the Health Insurance Index which is twenty four (24) months prior, provided, however that in no event shall any biennial change to the Health Insurance Component be less than the biennial change in CPI for the same period, with a minimum floor of three percent (3%) for the applicable two year period. Any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11 of the Transfer Station Agreement.
- 4) **ILWU Wage Component.** The ILWU Wage Component is that portion of the Curbside Organic Waste Transfer Fee comprised of the negotiated labor rates outlined in Exhibit 16 of the Transfer Station Agreement and City recognized related labor expenses. The biennial change shall incorporate the proportional scheduled wage adjustments as shown in Exhibit 16 to the Transfer Station Agreement. The adjustment for the 2016 rate setting shall be 14.10%. The adjustment for the 2018 rate setting shall be 14.17%. The adjustment for the rate settings for 2020 and beyond shall revert to the biennial CPI as described in Article 10 and Exhibit 1 of the Transfer Station Agreement, unless Contractor and City mutually agree at that time to a different adjustment mechanism.

Any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11 of the Transfer Station Agreement.

6. Release of Claims

City and Contractor agree that the increases described in this Second Amendment including Article 8 and Exhibit A, as well as the rate adjustments in Sixth Amendment to the Transfer Station Agreement including revised Exhibits 1, 1a, 1b, 2 thereto, are the total amount of compensation due to Contractor for all claims under (a) the ERR Claim, and (b) the biennial adjustment for the period 2014/2015. On behalf of themselves and their respective successors and assigns, except for the terms of the settlement of the ERR Claim set forth in this Second Amendment and the Sixth Amendment to the Transfer Station Agreement, Contractor and City hereby completely release, absolve and forever discharge each other (including, without limitation, their respective employees, officers and council members) from any and all actions, causes of actions, suits, claims, demands, liens, interests, debts, contracts, obligations, liabilities, damages, losses, costs and expenses, including attorneys' fees and costs of any nature whatsoever, at law or in equity, arising out of the ERR Claim and biennial rate adjustment for 2014/2015.

7. Complete Agreement.

The Recyclables Agreement, as amended by this Second Amendment, contain the entire agreement between Contractor and the City with respect to the subject matter hereto and supersedes any and all prior and contemporaneous negotiations, representations, understandings and agreement, whether written or oral.

8. Execution

This Second 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 Second Amendment shall remain in full force and effect. This Second 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 Second Amendment on the dates written below.

CITY:
City of Fremont

By Jessica von Borck
Fred Diaz Jessica von Borck

CONTRACTOR:
BLT Enterprises of
Fremont, LLC

By [Signature]

Asst. City Manager

Date: May 27, 2015

Date: May 5, 2015

APPROVED AS TO FORM:

By Harvey E. Levine
Harvey E. Levine
City Attorney

EXHIBIT A

COMPENSATION

June 1, 2015 – December 31, 2015

CURBSIDE RECYCLABLE MATERIAL

A Curbside Recyclable Material Payment for each ton of curbside recyclables delivered to the Facility (net of waste residuals) will be paid to the City in accordance with Article 8.03. The 2014 and 2015 payment per ton is **\$18.01**.

A Curbside Extraordinary Adjustment Fee will be charged to the City for each ton of curbside recyclables delivered to the Facility. The 2014 and 2015 fees per ton is **\$4.66** and comprised of the following components:

ILWU Wage component	\$1.57
Health Insurance component	\$3.09
Total	\$4.66

CURBSIDE ORGANIC WASTE TRANSFER FEE

A Curbside Organic Waste Transfer Fee will be charged to the City for each ton of curbside organic waste delivered to the Facility. The 2014 and 2015 fee per ton is **\$21.74** and is comprised of the following components:

CPI component	\$2.21
Transportation Wage component	\$3.26
ILWU Wage component	\$11.13
Health Insurance component	\$5.14
Total	\$21.74

CURBSIDE RECYCABLES OFFSET FEE

A Curbside Recyclables Offset Fee will be paid to the City for each ton of curbside recyclables generated outside of the Tri-Cities and processed at the Facility. The 2014 and 2015 fee per ton is **\$2.27**

BIENNIAL ADJUSTMENT TO CURBSIDE RECYCLABLE MATERIAL PAYMENT

The Curbside Recyclable Materials Payment shall be adjusted biennially in accordance with Article 8 with a minimum of \$10.00. The calculation for the compensation adjustment is shown below.

Official Board Market (OBM) Price Adjustment

24 Month Index Calculation

Paper Grades	2011 Base OBM	June 2013 OBM	Change	Weighted Average %	Index Change	Percent Change
Newsprint #8	\$175.00	\$90.00	(\$85.00)	60.00%	(\$51.00)	-29.14%
Mixed Paper	\$115.00	\$75.00	(\$40.00)	25.00%	(\$10.00)	-8.70%
OCC	\$175.00	\$120.00	(\$55.00)	15.00%	(\$8.25)	-4.71%
Percent Change						-14.18%
2012 & 2013 Curbside Recyclable Material Payment						\$20.99
Price adjustment based upon 24 month index						(\$2.98)
Revised Curbside Recyclable Material Payment for 2014 and 2015						\$18.01

**BIENNIAL ADJUSTMENT TO CURBSIDE RECYCLABLE EXTRAORDINARY
ADJUSTMENT**

Calculation Example

Current Curbside Extraordinary Adjustment Fee	\$4.66
MMW Service Fee ILWU Wage Component Adjustment*	\$1.58
MMW Service Fee Health Insurance Component Adjustment*	<u>\$.51</u>
Revised High Value Commercial Recycling Extraordinary Adjustment	\$6.75

*from Transfer Station Agreement

**BIENNIAL ADJUSTMENT TO CURBSIDE ORGANIC WASTE TRANSFER FEE
Calculation Example**

Component	Adjustment Index Used	Current Fee	Most Recent Index	Prior Index	Adjusted Fee
CPI Component	CPI	\$2.21	258.232	245.935	\$2.32
Transportation Wage Component	CPI	\$3.26	258.232	245.935	\$3.42
ILWU Wage Component	ILWU Wage schedule, average wage	\$11.13	\$19.36	\$16.96	\$12.71
Health Insurance Component	Health Insurance Index	\$5.14	135.3	123	\$5.65
Total		\$21.74			\$24.10

BIENNIAL ADJUSTMENT TO CURBSIDE RECYCABLE OFFSET FEE
Calculation Example

Component	Adjustment Index Used	Current Fee	Most Recent Index	Prior Index	Adjusted Fee
CPI Component	CPI	\$2.27	258.232	245.935	\$2.38