

THIRD 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. The City of Fremont, California (“City”) and BLT Enterprises of Fremont, LLC, (“Contractor”) have previously entered into that certain Agreement between the City of Fremont and BLT Enterprises of Fremont, LLC for Curbside Recyclable Materials and Curbside Organic Waste Services (the “Original Agreement”), as amended by the First and Second Amendment to that Recyclables Agreement (together with the Original Agreement, the “Recyclables Agreement”). All capitalized terms used herein not otherwise defined shall have the respective meanings ascribed to them in the Recyclables Agreement.
2. As a result of catastrophic recycling market conditions precipitated by China’s implementation of its “National Sword” policy, Contractor is currently either unable to sell, able to sell at a substantially reduced price, or must pay for transport and disposition of certain materials such as mixed paper and lower quality plastic.
3. City initiated an Extraordinary Rate Review process on December 19, 2017 as a result of China’s implementation of its National Sword policy and Contractor’s response.
4. Under the terms of the Recyclables Agreement, the City pays the Mixed Municipal Waste (MMW) Service Fee for Residue above a 12% threshold, as determined by biannual waste characterization results. From June 2007 through April 2017, the Residue has ranged from 11.52% to 20.07%. The November 2017 and April 2018 waste characterizations reflected Residue rates of 28.5% and 34.81% respectively.
5. The City asserted in the Extraordinary Rate Review that (a) the higher Residue rates determined in the November 2017 waste characterization were due to BLT’s transition to a positive sorting methodology, and (b) that the use of a positive sorting methodology is a deviation from the waste characterization methodology described in Exhibit C of the Recyclables Agreement.
6. By letter dated May 7, 2018, BLT (a) initiated the requirement for good faith negotiations under Section 3.12 and 8.02 of the Recyclables Agreement due to, among other things, China’s National Sword Policy and Residue exceeding the 12% Contamination Limitation, and (b) notified the City under Section 13.01 of the Recyclables Agreement that BLT disagrees with the City’s allegation that a positive sorting methodology is a deviation from the waste characterization methodology described in Exhibit C (collectively, the “BLT Claims”).
7. City and Contractor have agreed to enter into this Third Amendment to the Recyclables Agreement to temporarily resolve the City Initiated Extraordinary Review and the BLT Claims, the term of which will be in effect for an eighteen (18) month period as described below, with a

potential extension of an additional 6 months upon mutual agreement of the Parties. The City has agreed to accept this temporary processing methodology change and the resulting higher residue rates during this Third Amendment Term.

8. This Third Amendment Term will provide an interim period for the parties to evaluate market conditions, Processing Residue issues and the viability and cost of City recycling programs.

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 Third Amendment as follows:

1. Term

The City and Contractor agree that this Extraordinary Rate Review settlement as described in this Third Amendment will be effective for the 18-month period from December 1, 2017 through May 31, 2019 (the "Term"). All of the provisions in this Third Amendment will expire at the end of the Term on May 31, 2019, unless extended by mutual agreement of the Parties. In the event the parties need additional time to evaluate the market conditions or assess the City's recycling programs, this eighteen (18) month Term may be extended by an additional six (6) months upon mutual written agreement of City and Contractor. Upon such extension, the new time period will be the Term.

Definitions- the following are hereby added to Article 1. Definitions.

Processing Residue Landfill Expense means the applicable Mixed Municipal Waste Fee minus the Curbside Extraordinary Adjustment Fee.

Curbside Mixed Paper Processing Fee means a per ton fee that City pays to Contractor for the mixed paper volumes which currently include mixed paper and newsprint combined in the Delivered Curbside Recyclable Materials, based upon the recovered materials mixed paper percentage as determined by the biannual waste characterizations.

2. Curbside Recyclable Materials Payment

The City agrees to suspend BLT's obligation to pay the Curbside Recyclable Material Payment, as described in Article 8.03 a. of the Recycling Agreement, currently at \$19.09 per ton during the Term. At the end of the Term, Contractor's obligation to pay this Curbside Recyclable Material Payment will resume as described in that Article 8.03, Compensation.

3. Revised Residue Calculations

Under Article 8.02 of the Recyclables Agreement, the City pays the Mixed Municipal Waste (MMW) Service Fee for all Residue above a 12% limit threshold, as determined by biannual waste characterization results. City and Contractor agree that the provisions of Article 8.02 are suspended during the Term of this Amendment. City agrees to accept the current positive sort processing methodology change and the resulting higher Residue rates during this Term, including a waiver of the 12% Residue threshold described in Article 8.02. City and Contractor

agree that Contractor will be compensated for the Processing Residue Landfill Expense (currently \$70.10 per ton) on the total amount of Delivered Curbside Recyclable Material that is determined to be Residue (and therefore subject to landfill disposal) using this revised waste characterization methodology. The current Residue level is 34.81% as of the date of the most recent waste characterization.

4. Curbside Mixed Paper Processing Fee

Contractor and City agree that during the Term, City will pay Contractor \$86.51 per ton as a Curbside Mixed Paper Processing Fee for each ton of mixed paper (including mixed paper and newsprint) contained in the Delivered Curbside Recyclables Material, provided newsprint remains a component of mixed paper and is not marketed independently. This Curbside Mixed Paper Processing Fee will be based upon the recovered materials mixed paper percentage as reflected in the biannual waste characterization results. The current percentage of mixed paper is 35.97%, which is based on the most recent waste characterization of April 19, 2018.

5. Obligation to Process Curbside Materials and retention of existing Transfer Station/ Material Recovery Facility labor force

In consideration of the increased compensation to Contractor in this Third Amendment, Contractor will continue to Process all of the Delivered Curbside Recyclables Materials during the Term, as well as fulfill all other obligations described in the Recyclables Agreement. Subject to Force Majeure, future Uncontrollable Circumstances involving circumstances not addressed by this Third Amendment, or City's suspension or termination of its curbside recyclables program, Contractor agrees not to reduce the labor force currently employed at the Transfer Station/Material Recovery Facility during the Term. However, this agreement not to reduce the labor force does not apply to seasonal fluctuations in the labor force at the Transfer Station/Material Recovery Facility, or the labor force for the Household Hazardous Waste operations.

6. Process for Landfilling Additional Material during Term

In the event Contractor considers it necessary to landfill Recovered Materials or if there are permit or compliance issues as a result of future adverse market conditions, Contractor agrees to provide immediate Notice to the City as described in Article 15.01 of the Recyclables Agreement. After such Notice is given, City and Contractor agree to promptly work in good faith to identify potential economically viable alternative solutions to landfilling materials.

7. Curbside Processing Methodology and Residue

City and Contractor agree that the Term will be an opportunity to evaluate market conditions and potential programmatic changes that may address longer term recycling collection and

marketing challenges. City and Contractor agree that during this Term, the provisions of this Third Amendment constitute a resolution of the compensation, contamination and waste characterization issues alleged in the City Initiated Extraordinary Review and the BLT Claims, which have an effective date of December 1, 2017. City and Contractor agree that the compensation agreed upon in this Third Amendment is the total amount of compensation due to the Contractor for all claims under the City Initiated Extraordinary Review and the BLT Claims during the Term. On behalf of themselves and their respective successors and assigns, 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, cause of actions, suits, claims, demands, liens, interests, debts, contracts, obligations, liabilities, damages, losses, costs and expenses, including attorneys' fees, at law or in equity, arising out of the City Initiated Extraordinary Review and the BLT Claims for the time period of the Term. Neither party has waived any right to assert any or all of the issues raised in the City Initiated Extraordinary Review and/or the BLT/Claims upon the expiration of the Term; provided, however, that except for future Uncontrollable Circumstances involving circumstances not addressed by this Third Amendment (for example, a ban or the imposition of a tariff by China on the importation of old corrugated cardboard), neither party may seek additional compensation for the period of time covered by the Term with respect to any of the issues raised in the City Initiated Extraordinary Review and/or the BLT Claims, or this Third Amendment.

8. Retroactive compensation to Contractor

Upon execution by all Parties of this Third Amendment, the City agrees to the retroactive portion of this Extraordinary Rate Review settlement which will cover the period of time from December 1, 2017 to the last day of the month prior to the date of execution of this Third Amendment. This retroactive portion of the settlement will be paid as a lump sum payment within 15 business days of this Third Amendment execution by all Parties. This payment will include compensation for those items described in Paragraphs 3, 4, and 5 of this Third Amendment.

9. Waste Characterization of Residue

In order to identify and implement effective programmatic changes that may be necessary for improving the material quality of the various recycling streams (high value, curbside, dry mixed recycling), the City desires to understand the Residue composition of the various recycling streams. City and Contractor agree that a detailed characterization of Residue will be conducted upon City request and at City expense. This Residue characterization may occur as part of the scheduled biannual waste characterizations or may be done independently in a process mutually agreed upon by the Parties.

10. Complete Agreement

The Recyclables Agreement, as amended by this Third Amendment, contains the entire agreement between Contractor and City with respect to the subject matter herein, and

supersedes any and all prior and contemporaneous negotiations, representations, understandings and agreements, whether written or oral.

11. Terms

All other terms in the Recyclables Agreement including the First and Second Amendments not specifically amended by this Third Amendment shall remain in full force and effect. This Third 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 Third Amendment on the dates written below.

CITY:

City of Fremont




By: Brian Scott

Date: 7/6/18

CONTRACTOR:

BLT Enterprises

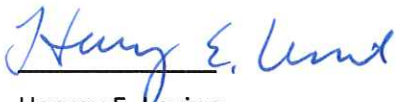
of Fremont, LLC



By: Steve Miller

Date: 8-20-2018

Approved as to Form:



Harvey E. Levine

City Attorney

LIMITED LIABILITY COMPANY CERTIFICATE

August 20, 2018

TO: THE CITY OF FREMONT ("City")

The undersigned does hereby certify that this company, BLT ENTERPRISES OF FREMONT, LLC, is a manager-managed limited liability company, that I am a manager thereof, and that this company has entered into or proposes to enter in that certain Third Amendment to the Agreement for Curbside Recyclable Materials and Curbside Organic Waste Services (the "Agreement").

The undersigned further certifies that any one of the following named persons whose positions are set forth opposite their names:

<u>Name</u>	<u>Position</u>
Bernard Huberman	President
Daniel B. Rosenthal	Vice President and Secretary
Shawn Gutterson	Vice President
Steve Perry	Vice President

be and they are hereby authorized and empowered for and on behalf of and in the name of this company and as this company's act and deed:

(a) To enter into the Agreement, in such form and on such terms and conditions as shall be agreed upon by those authorized above and City.

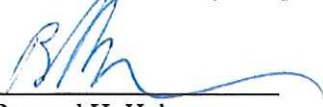
(b) To perform all acts and to execute and deliver all documents described above and all other contracts and instruments which City deems necessary or convenient to accomplish the purposes of this certificate.

The authority hereby conferred is in addition to that conferred by any other certificate heretofore or hereafter delivered by this company to City and shall continue in full force and effect until City shall have received notice in writing from this company of the revocation hereof. Any such revocation shall be effective only as to actions which are taken by this company pursuant to the certifications contained herein, subsequent to City's receipt of such notice. The authority hereby conferred shall be deemed retroactive, and any and all acts authorized herein which were performed prior to the execution of this certificate are hereby approved and ratified.

The undersigned further certifies that the activities covered by the foregoing certifications constitute duly authorized activities of this company; that said certifications are now in full force and effect; and that there is no provision in any document pursuant to which this company is organized and/or which governs this company's continued existence limiting the power of the undersigned to make the certifications set forth herein, and that the same are in conformity with the provisions of all such documents.

[Signature page follows.]

BLT ENTERPRISES OF FREMONT, LLC,
a California limited liability company

By: 
Name: Bernard H. Huberman
Title: Manager