

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

**RECITALS**

1. The City of Fremont, California ("City") and BLT Enterprises of Fremont, LLC, ("Contractor") have previously entered into the Agreement Between The City of Fremont and BLT Enterprises of Fremont for Recyclables Diversion and Transfer Services, (the "Transfer Station Agreement"); and 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 the First, Second, Third, Fourth and Fifth Amendments to that Recyclables Agreement.
2. The Third and Fourth Amendments to the Recyclables Agreement were in response to commodities market conditions, material contamination issues, and the viability and cost of City recycling programs as a result of impacts and conditions from China's National Sword policies. The Third and Fourth Amendments to the Recyclables Agreement resolved all Extraordinary Rate Review Claims resulting from China's National Sword policies through May 31, 2020.
3. In the Fifth Amendment to the Recyclables Agreement, the Parties addressed the period from December 1, 2019, through December 31, 2021, and settled all of the above Extraordinary Rate Review Claims through December 31, 2021.
4. In accordance with Section 1 of the Fifth Amendment to the Recyclables Agreement, the Parties have now agreed on a revised rate structure and a settlement of the extraordinary review impacts of China's National Sword policies and its effects on the Recyclables Agreement through end of the term of the Recyclables Agreement. In this Sixth Amendment, the Parties have agreed on changes to the Inbound Volume Processing Fee, the Processing Residue Landfill Expense, and the Curbside Mixed Paper Processing Fee as of January 1, 2022, and these changes will be in effect through the current term of the Recyclables Agreement which expires May 31, 2026, and the payments described below will be retroactive to January 1, 2022.
5. In addition to the above claims, Contractor submitted a claim to City for additional compensation under the terms of the separate Transfer Station Agreement on September 12, 2019, which included compensation for items which are not included in the Recyclables Agreement. However, the parties have now agreed that as consideration for the additional fees in the Recyclables Agreement agreed upon in this Sixth Amendment, Contractor is withdrawing that claim under the Transfer Station 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 Sixth Amendment as follows:

**1. Term**

In accordance with Section 1 of the Fifth Amendment to the Recyclables Agreement, the Parties have agreed upon a revised rate structure that will be in effect from January 1, 2022, until the end of the Recyclables Agreement contract term on May 31, 2026.

**2. Retroactive Payments**

Nothing in this Sixth Amendment modifies or amends Sections 8.03b, 8.0.3c and 8.03d of the Recyclables Agreement **Retroactive Payments in the Fourth and Fifth Amendments** The City and Contractor previously agreed in the Fourth and Fifth Amendments to the Recyclables Agreement on certain additional compensation retroactive to December 1, 2019. Contractor and City agree that all such retroactive payments have been made in full by the City and no additional retroactive compensation is due from City under the Fourth and Fifth Amendments.

**3. Period of June 1, 2020 through December 31, 2021**

City and Contractor previously agreed that in addition to the payment of the Curbside Mixed Paper Processing Fee, the Residue Landfill Payment, and the suspension of the Curbside Recyclable Material Payment, the City would compensate Contractor Seventy-Eight Dollars (\$78) per ton (the "Inbound Volume Processing Fee") from the time curbside processing resumed through the end of the rate setting cycle on December 31, 2021. This \$78 per ton fee was applied to all Delivered Curbside Recyclables Material. This amount of additional compensation of approximately \$110,000 per month for the period of June 1, 2020, through December 31, 2021 has been paid in full by the City.

**4. Processing Fee Per Incoming Ton**

City and Contractor hereby agree to continue until the end of the Recyclables Agreement term, the \$78.00 Inbound Volume Processing Fee on all Delivered Curbside Recycling Material, which was established in the Fifth Amendment. The Parties also agree that the CPI adjustment will be applied to this Inbound Volume Processing Fee as part of the 2024 and 2026 biennial rate setting process as shown in Exhibit 1. The calculation examples shown in Exhibit 1, attached and incorporated herein by reference, will be incorporated into Exhibit A – Compensation of the Recyclables Agreement and updated as part of the City’s biennial rate setting process.

**5. Landfill Residue Payment**

Effective as of January 1, 2022 through the end of the Recyclables Agreement term, the Parties hereby agree that the City shall compensate Contractor \$55.00 per ton (the “Landfill Residue Payment”) on the total amount of Delivered Curbside Recyclable Material that is determined to be Residue and bound for the landfill (exclusive of the other residue types which are not landfilled such as HHW, unaccounted shrink, liquid, and residual 3 mix glass). The Landfill Residue Payment replaces the Processing Residue Landfill Expense set forth in the Third Amendment. The residue percentage will be determined by the most current biannual waste characterization study. The biennial rate setting adjustment in 2024 and 2026 will apply to the \$55.00 per ton fee and will be based on a blended index which will include 65% of the landfill tip fee increase and 35% of the CPI index. The calculation examples shown in Exhibit 1, attached and incorporated herein by reference, will be incorporated into Exhibit A – Compensation of the Recyclables Agreement and updated as part of the City’s biennial rate setting process. In addition, through the end of the Recyclables

Agreement term, (a) Contractor shall have no obligation to pay the Curbside Recyclables Material Payment as described in Article 8.03a of the Recyclables Agreement, and (b) City waives the 12% Residue threshold described in Article 8.02 of the Recyclables Agreement.

#### **6. Curbside Mixed Paper Processing Fee**

City and Contractor agree that the Curbside Mixed Paper Processing Fee will be \$67.00 per ton effective January 1, 2022. The mixed paper percentage will be determined by the most current biannual waste characterization study. The biennial rate setting adjustment in 2024 and 2026 will apply to the \$67.00 per ton fee and will reflect the change in the average material revenue price per ton the Contractor has received for the preceding 12-month period (July 1- June 30) compared to the material revenue incorporated into the most current Curbside Mixed Paper Processing Fee. The calculation examples shown in Exhibit 1, attached and incorporated herein by reference, will be incorporated into Exhibit A – Compensation of the Recyclables Agreement and updated as part of the City’s biennial rate setting process.

#### **7. Release of Claims for Recyclables and Transfer Station Agreements**

The Parties agree that the compensation described in this Sixth Amendment is in effect as of January 1, 2022 until the end of the Recyclables contract term of May 31, 2026 . As a result of consideration for this settlement and fee agreement and payment in full by City for all claims under the Third, Fourth and Fifth Amendments, Contractor and City (on behalf of themselves and their respective successor and assigns) 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 that December 1, 2017 Extraordinary Rate Review Claim under the Recyclables Agreement (including, without limitation, the City Initiated Extraordinary Review and the BLT Claims described in the Third Amendment) as well the Extraordinary Rate Review Claim dated September 12, 2019 under the Transfer Station Agreement (collectively, the “Released Claims”) and such claims are hereby withdrawn.

The parties and each of them do hereby assume the above mentioned risks and agree that this agreement shall apply to all unknown or unanticipated results of the Released Claims, as well as those known and anticipated, and upon advice of counsel, each party does hereby knowingly waive any and all rights and protections under [California Civil Code Section 1542](#), which section has been duly explained and read as follows: “*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.*”

#### **8. Retroactive Payment.**

The Parties agree that the retroactive payment currently due to Contractor for the compensation period January 1, 2022 through April 30, 2022 is \$649,304.60, using the methodology described in this Sixth Amendment and illustrated in Exhibit 1. This payment will be processed within thirty days after Fremont City Council approval of this Sixth Amendment.

#### **9. Paycheck Protection and other assistance**

This negotiated agreement for the period beginning on January 1, 2022, through the end of the contract term has considered any forgivable proceeds from the Paycheck Protection Program and other federal and state assistance provided to Contractor in accordance with Section 7 of the Fifth

Amendment to the Recyclables Agreement. Contractor has provided to the City accurate reports of all such assistance.

**10. Complete Agreement**

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

**11. Terms**

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

**CITY:**

City of Fremont

DocuSigned by:  
By: Brian Stott  
Brian Stott

Assistant City Manager  
Date: 06/27/2022 | 1:03 PM PDT

**CONTRACTOR:**

BLT Enterprises of Fremont, LLC

DocuSigned by:  
By: Shawn Gutteresen

Date: 06/07/2022 | 3:06 PM PDT

Approved as to Form:

DocuSigned by:  
By: Rafael E. Alvarado Jr.  
Rafael E. Alvarado, Jr.

City Attorney  
Date: 06/27/2022 | 10:15 AM PDT

**Exhibit 1  
Compensation  
January 1, 2022 – December 31, 2023**

INBOUND VOLUME PROCESSING FEE

An inbound volume processing fee will be charged to the City for each ton of curbside recyclables delivered to the Facility. The fee per ton is **\$78.00**

LANDFILL RESIDUE PAYMENT

A landfill residue payment will be charged to the City for each ton of curbside material determined to be residue as defined in section 5 of Amendment 6 to the Agreement. The fee per ton is **\$55.00**.

MIXED PAPER PROCESSING FEE

A mixed paper processing fee will be charged to the City for each ton of curbside material determined to be mixed paper as defined in section 6 of Amendment 6 to the Agreement. The fee per ton is **\$67.00**.

Inbound Volume Processing Fee  
Calculation Example

Revised Inbound Volume Processing Fee = Current Inbound Volume Processing Fee x (most recent CPI Index /prior CPI Index)

Adjustment Index Used	2022/2023 Fee	Most Recent June CPI Index*	12 Month Prior June CPI Index	2024/2025 Fee*
CPI	\$78.00	324.971	309.497	\$81.90

Landfill Residue Payment Calculation  
Calculation Example

Revised Landfill Residue Payment = Current Landfill Residue Payment x (1 + Blended CPI/Landfill Payment Index)

Blended Index = CPI component plus Landfill component

- 1) CPI component - most recent CPI Index / prior CPI Index = CPI percentage increase
- 2) CPI percentage increase \* 35% = CPI component increase
- 3) Assuming CPI indexes of 324.971 and 309.497
- 4)  $(324.971/309.497) = 5.0\%$  increase \* 35% = 1.75% CPI increase
- 5) Landfill component - Revised landfill fee per ton / prior landfill fee per ton = landfill percentage increase
- 6) Landfill percentage increase \* 65% = landfill component increase
- 7) Assuming landfill fee of \$37.42 and \$35.98
- 8)  $(\$37.42/\$35.98) = 4\%$  increase \* 65% = 2.60% landfill increase
- 9) Blended CPI/landfill index = 1.75% CPI component plus 2.60% landfill component = 4.35% blended CPI/landfill increase

2022/2023 Fee	Blended Index Increase	2024/2025 Fee*
\$55.00	4.35%	\$57.39

Mixed Paper Processing Fee  
Calculation Example

Revised Mixed Paper Processing Fee = Mixed Paper Material Revenue Previous - Mixed Paper Material Revenue Revised + Previous Mixed Paper Processing Fee

	Example 1 - Increased Material Value	Example 1 – Decreased Material Value
Previous Mixed Paper Material Revenue	\$64.86	\$64.86
Mixed Paper Material Revenue Revised	<u>\$75.00</u>	<u>\$55.00</u>
Change in Mixed Paper Material Revenue	-\$10.14	\$9.86
Mixed Paper Processing Fee 2022 2023	<u>\$67.00</u>	<u>\$67.00</u>
Revised Paper Processing Fee	<u><u>\$56.86</u></u>	<u><u>\$76.86</u></u>