

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF
FREMONT AND BLT ENTERPRISES OF FREMONT, LLC FOR
RECYCLABLES DIVERSION AND TRANSFER SERVICES DATED APRIL 20,
2004**

WHEREAS, the City of Fremont, California ("City") and BLT Enterprises of Fremont, LLC, ("Contractor") have entered into the Agreement described in the title hereof (the "Transfer Station Agreement"); and,

WHEREAS, the City and the 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,

WHEREAS, pursuant to the Transfer Station Agreement, the Contractor designed and is constructing a materials recovery and transfer facility as defined therein (the "Facility") whose purpose is primarily to provide for cost effective and long term long-haul transfer and disposal of the City's Mixed Municipal Waste in anticipation of the closure of the landfill currently used by the City, the Tri-Cities Recycling and Disposal Facility (Tri-Cities Landfill); and,

WHEREAS, the City had directed BLT Enterprises to construct the Facility to be operational by January 3, 2006 based upon the previous estimated closure date of the Tri-Cities Landfill; and,

WHEREAS, the Tri-Cities Landfill is currently estimated to have capacity and accept Mixed Municipal Waste until June 30, 2007; where after the landfill gate will be closed to direct haul delivery of Municipal Solid Waste; and,

WHEREAS, the City wishes to postpone delivery of Mixed Municipal Waste to the Facility from January 1, 2006 to July 1, 2007; and,

WHEREAS, the Contractor is willing to accommodate the City's wish to postpone deliveries of Mixed Municipal Waste (but not of Recyclable Materials and Organic Waste pursuant to the Recyclables Agreement) until July 1, 2007 but due to the need to meet its financing and other obligations must be compensated for its limited operations to that date; and,

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

1. DEFINED TERMS, EXHIBITS

Exhibit 13 is hereby added to the Service Agreement. This Exhibit shall reflect the Actual Documented Costs and shall be provided by Contractor no later than August 15, 2006 with costs to date. Such costs shall be documented by Contractor with adequate supporting documentation such as invoices, receipts and subcontractor bills and reviewed and accepted by the City Manager or his/her designee. This Exhibit 13 shall be updated on an annual basis with any Significant additions or deletions of Facility capital or equipment. This Exhibit may be amended with the written agreement of Contractor and the City Manager, or his/her designee.

A) Defined terms indicated by initial capital letters used herein shall have the meaning ascribed thereto in the Service Agreement unless otherwise defined herein.

The following definitions are hereby added to Article I of the Service Agreement:

Actual Documented Costs shall mean those costs for Site acquisition and Facility Construction including fixtures and stationary equipment, as described in Exhibit 13, as it may be amended from time to time.

Phased Operations means those actions or operations at or related to the Facility necessary to maintain it in readiness and to prepare for Limited Operations and curbside recycling services in accordance with the Recyclables Agreement during the period from January 1, 2006 through June 30, 2007 including, without limitation, the payment by Contractor of its Financing Obligations.

Phased Operations Period means the period from January 1, 2006 through June 30, 2007 or prior to the Delivery of Mixed Municipal Waste

Recyclables Agreement shall mean that certain "Agreement Between the City of Fremont and BLT Enterprises of Fremont, LLC for Curbside Recyclable Materials and Curbside Organic Waste Services" between the City and the Contractor.

Tri Cities Landfill shall mean the Tri-Cities Recycling and Disposal Facility in Fremont, California owned by Waste Management, Inc. or a subsidiary thereof, which is used as of the date of the First Amendment to this Agreement by the City for disposal of Mixed Municipal Waste.

B) Article I of the Service Agreement is amended by modifying the following definitions contained therein:

Base Term means the thirty (30) year period commencing from July 1, 2007.

Full Operations Date means July 1, 2008 unless an extension of time has been granted by the City and in such case written Notice shall be provided from Contractor to the City that the Facility is ready for Full Operations on which Contractor shall commence Facility Operations including Transfer and materials Processing and Recovery activities.

Limited Operations Date means July 1, 2007 unless an extension of time has been granted by the City and in such case the date shall be not later than ten (10) Working Days after receipt of written Notice from the City on which Contractor shall commence Limited Operations.

Facility Development Schedule

In addition to the other changes made by this First Amendment to the Development Schedule for the Facility, Exhibit 7 is deleted in its entirety and replaced by a new Exhibit 7-1 to the Agreement and this First Amendment.

2. (A) A new Section 7.15.c Holding Fee is hereby added to the Service Agreement as follows:

7.15 c. City and Contractor have agreed on a lump sum payment of \$226,515 (Two Hundred Twenty Six Thousand, Five Hundred Fifteen dollars) as a total amount which consists of \$91,514.75 (Ninety one thousand five hundred fourteen dollars and seventy five cents) for verified Development Notice holding fees and \$135,000 (One Hundred Thirty Five Thousand) of Construction Notice holding fees for a full and complete settlement of a holding fee claim for the period up through execution of this First Amendment to this Agreement. Contractor hereby releases and discharges the City from all rights, claims and demands Contractor may have for additional compensation for holding fees through the date of execution of the First Amendment to this Agreement. This amount will be paid within fifteen (15) days after this First Amendment is executed by both Contractor and City. Contractor acknowledges that they may hereinafter discover facts or law different from, or in addition to that which they now believe to be true with respect to their release of claims for the Holding Fee as set forth in this Agreement, and understands that by executing the First Amendment to this Agreement, it is waiving any rights of claims for any damages to which it may be entitled which are not specifically exempted herein.

B) A new Section 7.15 d is hereby added to the Service Agreement as follows:

7.15 d. The City's right to delay commencement of Operations beyond July 1, 2007 otherwise provided in this Section 7.15 shall terminate upon the effective date of the First Amendment hereto, unless agreed to in writing by both parties.

C) Section 8.03 b is hereby replaced to read as follows:

8.03 b. Diversion Guarantee. Beginning on July 1, 2008, or the date twelve months from the commencement of acceptance of Mixed Municipal Waste from the City if the date thereof is later than July 1, 2007 through no fault of the Contractor, Contractor shall annually Divert the equivalent of twelve (12) percent by weight of the City's Delivered Mixed Municipal Waste as determined in accordance with Measurement Diversion Guarantee procedures in Exhibit 12. Contractor shall use Reasonable Business Efforts to divert before July 1, 2008 but is not obligated to meet the Diversion Guarantee until after that date. During the Full Operations Period if the Diversion Guarantee is not met for the twelve-month period, then Contractor shall notify the City of the failure to achieve such Diversion Guarantee. The Parties agree to first meet in good faith to analyze the incoming waste stream, including waste diversion studies, to determine the reason for the failure to meet the Diversion Guarantee. Contractor shall provide a plan to City within 60 days outlining the options to achieve the Diversion Guarantee to the contractually required levels, as well as identifying any potential associated reasonable cost impacts. Contractor shall also provide, upon City request, a plan for alternative diversion rates. If the plan and any reasonable costs, or an alternative diversion rate are approved by the City, then Contractor shall thereafter be obligated to meet the Diversion Guarantee as approved by the City. In the event the plan for Diversion and any reasonable costs are not approved by the City, then the City may declare the Contractor in breach of the Diversion Guarantee and the provisions of Section 13.01 a (2) shall apply. City shall not declare the Contractor in breach of this Agreement unless and until the process in the subsection (b) has been completed. Notwithstanding the above, City shall not declare Contractor in breach of this Agreement if Contractor has used Reasonable Business Efforts to achieve the Diversion Guarantee.

D) Section 8.05 Delivery of Permitted Material is amended to read as follows:

8.05 a. (5) City Responsibility Commencing on Limited Operations Date.

The City, through its contracts with its Collection Contractor(s) and/or in any other manner consistent with Applicable Law, shall cause all Mixed Municipal Waste generated within the City (including, without limitation, Mixed Municipal Waste collected by the City if the City should choose to provide collection services in addition to, or in lieu of using a Collection Contractor at some future date) to be Delivered to the Facility commencing no later than July 1, 2007.

However, nothing in this Agreement shall be construed to mean that the City makes... **[the balance of this Section remains the same]**

(E) Section 8.05.a (6) of the Service Agreement is hereby deleted.

(F) Section 9.01 is hereby amended to read as follows:

Designated Disposal Facility. As of the Phased Operations Period, the Designated Disposal Facility shall be the Tri-Cities Recycling and Disposal Facility, located in Fremont, California. Contractor shall Deliver all Residue to the Designated Disposal Facility for Disposal during Disposal Facility Receiving Hours. The City may designate the new Designated Disposal Facility (Altamont Landfill), located in Livermore, California effective upon ninety (90) calendar days Notice to Contractor, provided however in cases of emergency, the City may immediately change the Designated Disposal Facility and shall provide such Notice to Contractor. The Contractor's Service Fees will be adjusted as provided in a Rate Resolution to be adopted by the City Council in March 2006. This Rate Resolution will reflect the change in the cost of Transferring Residue to the Designated Disposal Facility and the disposal fee charged by the Disposal Facility Contractor. If after the expiration of the contract for disposal at the Altamont Landfill, the City designates a new Disposal Facility other than the Altamont Landfill, the Contractor's Service Fees will be adjusted at that time to reflect any increase or decrease in the cost of Transferring Residue to the new Designated Disposal Facility and the disposal fee charged by the new Disposal Facility Contractor.

(G) Section 9.02 is hereby amended to read as follows:

Disposal Fee payment.

Disposal Facility Contractor shall invoice Contractor for Residue Disposed at the Designated Disposal Facility ... **(the balance of this Section remains the same)**

3(A) Section 10.02 shall be amended to read as follows:

10.02 (6) Fuel Component. The Fuel Component is that portion of the Mixed Municipal Waste Service Fee comprised of the Contractor's fuel costs. The Fuel Component shall be adjusted biennially over the Term to reflect the change in the 12 month average OPIS Diesel Fuel Index as specified in Section 10.03. In years not scheduled for a biennial adjustment, Contractor may provide the calculation of the OPIS Index for the previous twelve months based upon the June OPIS Index, and if the change in the Index is greater than twenty five (25) percent upward or downward, and that year is not the year for the biennial adjustment, that change shall be subject to the Extraordinary Review process as provided in Article 11.

(B) Section 10.03 shall be amended to read as follows:

b. Biennial Adjustment. The intent of this Agreement is to provide for a biennial adjustment to the Mixed Municipal Waste Service Fee every other year during even numbered years. The first biennial increase will be effective January 1, 2006. The biennial increase will reflect changes in the CPI and their effect on the three Variable Components, change in the twelve month average OPIS Index and its effect on the Fuel Cost Component, change in the per-Ton Disposal fee and its effect on the Disposal Component, and changes in Pass-Through Costs that have occurred since the prior adjustment. The biennial change to the Variable Component will be calculated using the prior June CPI and the CPI which is twenty-four (24) months prior. The biennial change to the Fuel Cost Component shall be calculated using the average of the most recent 12 months OPIS Diesel Fuel Index ending in June compared to the same average twelve month index used the prior adjustment period. The then-current Disposal Component shall be calculated as the product of the then-current per-Ton Disposal fee charged by the Disposal Facility Contractor times 0.88 except for Tri-Cities Landfill Disposal which shall be times .94. The adjustments shall be rounded to the nearest cent per Ton. The specific biennial adjustments shall be made as follows:

Adjusted Mixed Municipal Waste Service Fee =(Fixed Component-Other in Exhibit 1 + (Variable Component-Transfer + Variable Component- Other + Variable Component- Workers Compensation Insurance) x (most recent CPI / previous 24-month CPI) + Fuel Cost Component x (most recent 12 months OPIS Index average/OPIS Index average used initially or for the prior adjustment) + Equipment Component –Transfer x (most recent CPI/previous 24 months CPI) + Then-current Disposal Component + Then-current Pass-Through Component provided that the then-current Pass-Through Costs shall be verified in accordance with procedures described in Section 10.03.c.

For example, assume:

1. Date of biennial adjustment is January 1, 2006
2. Equipment Component- Transfer per Exhibit 1 is \$1.63 per Ton
3. Fixed Component- Other per Exhibit 1 is \$13.26 per Ton
4. The Variable Component- Transfer is \$5.56 per Ton
5. The Variable Component- Other is \$6.67 per Ton
6. The Variable Component- Workers Compensation

- Insurance is \$5.88 per Ton
- 7. Fuel Component is \$0.63 per Ton
- 8. Then-current Disposal Component is \$23.05 per Ton
- 6. Then-current Pass-Through Component = \$4.50 per Ton
- 7. Most recent CPI (June 2005) = 200.3
- 8. Previous 24-month CPI (June 2003) = 193.2
- 9. Prior OPIS Index average used = \$0.81
- 10. OPIS Index average July 2005 to June 2005 = \$0.92

The Adjusted Service Fee is calculated as follows:

$$\begin{aligned} \text{Adjusted Service Fee} = & \$1.63 \times (156.1/148.7) \\ & + \$13.26 + (\$5.56 + \$6.67 + \$5.88) \times (200.3/193.2) \\ & + \$0.63 \times (\$0.92/\$0.81) + \$23.05 + \$4.50 \end{aligned}$$

Adjusted Service Fee = \$62.01

(C). A new Section 10.18 is hereby added to the Service Agreement as follows:

10.18 Payment to Contractor During Phased Operations Period.

Notwithstanding Section 10.02.d. or any other provision of this Article 10, during the Phased Operations Period, in consideration of relieving the City of its obligation to deliver Mixed Municipal Waste to the Facility and in order to compensate Contractor for the Cost of Phased Operations, the City will pay to the Contractor the sum of Two Hundred Fifty Two Thousand Dollars (\$252,000) per month for each month during the Phased Operations Period upon receipt of an invoice therefore from Contractor. This payment shall be in lieu of the Contractor's right to receive the Mixed Municipal Waste Service Fee from the City or its Collection Contractor(s) during that period.

(D) Section 11.03 g. (3) is hereby amended to read as follows:

EXTRAORDINARY REVIEW OF COMPENSATION- Unionization.

11.03 g. (3)

Contractor may request an extraordinary rate review due to unionization a maximum of four times during the term of the agreement and no more frequently than once every six years after inception of a union agreement between Contractor and a recognized union representing Contractor's employees, and **(Sections (1), (2), and (4) remain the same)**

(E) Section 12.04 is hereby amended to read as follows:

12.04 Performance Bonds.

Prior to May 1, 2006, and for the first six months from that date, until October 31, 2006, Contractor shall furnish and maintain a performance bond, (in a form reasonably Acceptable to the City and commercially available), and/or comparable instrument(s) approved by the City, or any combination thereof, (the "Surety Instruments") in the principal sum of Two Million Five Hundred Thousand (\$2,500,000) dollars. Beginning on November 1, 2006, the principal sum of that performance bond shall be increased to Five Million (\$5,000,000) dollars and shall be maintained throughout the Term of this Agreement. If the performance bond described herein is not commercially available, the parties shall meet and negotiate in good faith a substitute method of securing Contractor's performance. Contractor may fulfill its obligation under this Section with the Performance Bond provided under the Recyclables Agreement, provided the conditions in that bond cover all of the obligations under this Agreement as well as the Recyclables Agreement. The bond conditions shall be subject to the written approval of the City Attorney.

All bonds or other Surety Instruments shall be executed by a corporation authorized to issue such Surety Instruments in the State, subject to regulation by the California Insurance Commissioner, rated not less than "(A-VII)" by A.M. Best Company, Inc. as applicable, and having a financial condition and record of service reasonably satisfactory to the City. The company (ies) executing such Surety Instruments shall be financially and organizationally independent of, and in no manner an affiliate of the Contractor.

The term of each Surety Instrument shall be issued for a three (3) year period if commercially available to Contractor, but not less than one (1) year or the remaining period in the Term hereof, whichever is less. Not less than ninety (90) calendar days before the expiration of each such Surety Instrument, Contractor shall either extend such Surety Instrument as evidenced by a continuation certificate in a form reasonably Acceptable to the City, or furnish a replacement Surety Instrument in the principal sum in the table above. The terms and obligations of this Section shall survive termination of this Agreement, if such termination is due to Contractor default.

(F) Section 14.01.c is hereby amended in its entirety to read as follow:

c. Termination for Convenience. The City may terminate this Agreement for convenience at any time provided that the effective date of termination occurs no earlier than the twentieth (20th) anniversary of the Limited Operations Date and prior to the expiration of the Base Term; provided that the City Notices Contractor one (1) year prior to effective date of such termination; and provided that no later than ninety (90) calendar days following the effective termination date of such termination the City makes payments to Contractor as follows:

(1) Convenience termination payment if City does not purchase Site and Facility. Payment shall include:

(a) A payment equal to the City's proportional share of any amounts outstanding and owed to Contractor's Lender(s) as of the effective date of such termination for convenience in respect to the Financing Obligations including, without limitation principal and accrued interest on any construction or term loan or bonds, prepayment penalties, and other fees of the Lender(s) where the City's proportional share shall be calculated as the tonnage of Mixed Municipal Waste Delivered by the City and its Collection Contractor(s) to the Facility over the preceding eighteen (18) month period divided by the total tonnage of Permitted Materials Delivered to the Facility over the preceding eighteen (18) month period, and

(b) A payment of six million dollars (\$6,000,000) in 2010 dollars if City exercises this right during the five year period commencing on the twentieth (20th) year anniversary of the Limited Operations Date, or of four million five hundred thousand dollars (\$4,500,000) in 2010 dollars if City exercises this right during the five year period commencing on the twenty fifth (25) year anniversary of the Limited Operations Date.

(2) Convenience termination payment if City purchases the Site and Facility. Payment shall include the following amount:

(a) A payment equal to Actual Documented Costs for Site acquisition and Facility Construction including fixtures and stationary equipment, described in Exhibit 13, adjusted to reflect changes in CPI provided that the change in CPI shall in no case exceed 12.36 percent for any two consecutive years. The CPI adjustment for the purchase price shall be performed in the same manner as the CPI adjustment for liquidated damages as described in Section 10.07, and

(b) A payment of nine million dollars (\$9,000,000) in 2010 dollars if City exercises this right during the five year period commencing on the twentieth (20th) year anniversary of the Limited Operations Date, or of seven million two hundred fifty thousand dollars (\$7,250,000) in 2010 dollars if City exercises this right during the five year period commencing on the twenty fifth (25th) year anniversary of the Limited Operations Date

(3) Payment if City purchases the Site and Facility and Contractor continues as operator. In the event that City decides to purchase the Site and Facility, and continues to have Contractor operate the Facility pursuant to the Agreement, the purchase price would be as follows:

(a) City's right to purchase commences in year twenty (20) of this Agreement. The purchase price will be adjusted to reflect changes in CPI, provided that the change in CPI shall in no case be less than three (3) percent or more than five (5) percent, calculated on an annual basis.

(b) The purchase price shall include the following amounts:

A payment equal to Actual Documented Costs for Site acquisition and Facility Construction including fixtures and stationary equipment, as described in Exhibit 13, plus applicable CPI, plus the following in 2010 dollars:

Year 21 = \$ 8,000,000
Year 22 = \$ 7,111,112
Year 23 = \$ 6,222,224
Year 24 = \$ 5,333,336
Year 25 = \$ 4,444,448
Year 26 = \$ 3,555,560
Year 27 = \$ 2,666,672
Year 28 = \$ 1,777,784
Year 29 = \$ 888,896
Year 30 = \$ 0

(c) At the end of year thirty (30) of the Agreement, the City may acquire the Site and Facility for an additional twenty (20) percent reduction, off its then current purchase price, for an extension of the Agreement of 10 years or more.

4. INTERPRETATION, CONFLICTS

It is the intent of the parties that after the effective date of this First Amendment, that the Service Agreement be interpreted so as to carry out the intent of the parties as expressed by the recitals and provisions of this First Amendment. Any conflict between the terms of this First Amendment and the Service Agreement or any ambiguities created therein shall be resolved in favor of the First Amendment and the intent of the parties as expressed therein.

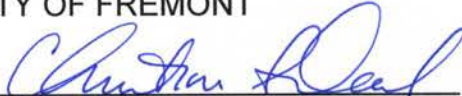
5. EFFECTIVENESS OF THIS AMENDMENT

This First Amendment shall be effective upon the date of execution by all parties. However, since the following are conditions subsequent to the effectiveness of this Amendment, in the event the following actions have not been completed within 90 days from the execution of this amendment, the parties agree to meet in good faith to negotiate an acceptable resolution. The three conditions subsequent to the effectiveness are: (i) execution of this First Amendment; (ii) the execution of the Recyclables Agreement and, (iii) the execution of a binding agreement between the City and Waste Management, Inc. and/or the subsidiary thereof owning and/or operating the Tri-Cities Landfill ("WMI-Tri-Cities") obligating WMI-Tri-Cities to permanently close the Tri-Cities Landfill to direct haul deliveries of municipal solid waste no later than midnight on June 30, 2007.

All other terms in the Service Agreement not specifically amended by this First Amendment shall remain in full force and effect.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement on the dates written below.

CITY:
CITY OF FREMONT



By: City Manager
Deputy

Date: April 13, 2006

APPROVED AS TO FORM:



City Attorney

Date: April 13, 2006

CONTRACTOR:
BLT ENTERPRISES OF FREMONT, LLC



By:

Date: MARCH 17, 2006