

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

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, Second and Third Amendments to that Agreement (the Original Agreement, together with the three amendments are collectively referred to herein as the “Transfer Station Agreement”). All capitalized terms used herein not otherwise defined shall have the respective meanings ascribed to them in the Transfer Station Agreement. All references in this Fourth Amendment to the “Transfer Station Agreement” shall mean the Transfer Station Agreement, as amended by this Fourth 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 Curbside Recyclable Materials and Curbside Organic Waste Services (the “Recyclables Agreement”) which will not be amended by this Fourth Amendment but which does address and provide for delivery and processing of Recycling Materials from “Multi-Family Dwelling Units” (as defined in the Recyclables Agreement) to the Facility.

3. The City has modified its agreement with the City’s Collection Contractor, which among other issues, requires the City’s Collection Contractor to deliver Commercial Recyclables (including, without limitation, High Value Commercial Recyclables) and Dry Mixed Recyclables to the Facility upon Notice from City. The City and Contractor desire, among other things, to agree on a formula for determining pricing for High Value Commercial Recyclables and the processing fees for Dry Mixed Recyclables Delivered to the Facility by City and/or the City’s Collection Contractor pursuant to the terms of this Fourth Amendment, as well as revised Maximum Self Haul Fees.

4. The City and Contractor have had a disagreement over the definition of Mixed Municipal Waste as well as the City's and/or its Collection Contractor's delivery obligations to the Facility, and this Fourth Amendment resolves this disagreement.
5. The Board of the Alameda County Waste Management Authority adopted Ordinance 2012-1 in order to reduce the amount of recyclable and organic solid wastes deposited in landfills from businesses, multi-family residences and self haulers (the "County Ordinance").
6. In addition to the County Ordinance, the State of California (Cal Recycle) has mandated certain commercial recycling requirements, which have been implemented through state regulations (the "State Ordinance").
7. In order to address Contractor's concerns regarding competitive pricing, City and Contractor have agreed to new pricing structures on certain materials delivered to the Facility as well as reduced Host Fees for certain materials, and have revised certain material definitions including the addition of Divertable Materials.
8. The City and Contractor have agreed to the following revisions to the Transfer Station Agreement, pursuant to the terms and provisions of this Fourth Amendment.

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

1. Article 1. Definitions

Approved Users *is hereby revised to read as follows:*

are public and/or private haulers from City, Union City and Newark approved by the City to Deliver Permitted Materials to the Facility. As of the Execution Date of this Fourth Amendment, Approved Users include City Vehicles(s), City Collection Contractor(s), Union City Vehicles, Newark Vehicles, Union City Collection Contractor(s), Newark Collection

Contractor(s) and Self Haulers Delivering Permitted Materials generated within the Tri-Cities to the Facility.

Catastrophic Failure means an adverse condition in the commercial recyclables market where Contractor is unable to sell High Value Commercial Recyclables or Dry Mixed Recyclables as a direct result of this condition, and where Contractor must store or dispose of such materials for a minimum period of sixty (60) days. Catastrophic Failure does not include price fluctuations in the market or an interruption of normal market conditions.

City Imposed Fee(s) (also referred to as Host Fee) *is hereby revised to read as follows:*

means the per-ton fee(s) the Contractor shall pay the City for each ton of Mixed Municipal Waste generated outside the City that is Accepted at the Facility from Approved Users, and the per-ton fee (s) the Contractor shall pay the City for each ton of Mixed Municipal Waste, Recyclable Rich Materials, Divertible Materials and other Permitted Materials Contractor Accepts at the Facility from Self Haulers and Other Allowable Users, in accordance with Exhibits 1 and 2.

Commercial Facility means any building, facility or business (other than single family residential buildings and multi family dwelling units) that is owned, leased or operated by a Person, including restaurants, retail facilities, offices, government facility, markets, office buildings, manufacturing facilities, industrial facilities, hotels, motels, shopping centers, hospitals and theaters, and other commercial and industrial facilities located within the boundaries of the City.

Commercial Food Waste means pre and post-consumer organic waste consisting primarily of food scraps generated by Commercial Facilities, which is Source Separated. Commercial Food Waste may also include Source Separated food-soiled paper, biodegradable food service products and floral materials generated by Commercial Facilities.

Commercial Generator means the responsible party for a Commercial Facility (including without limitation, the owner thereof) within the City, which generates Permitted Materials as a result of its business, facility or property activity. Commercial Generator may also include tenants, property managers for facilities with leased space, and employees and contractors of generators.

Commercial Organics means Source Separated Yard Waste generated by or at Commercial Facilities, and does not include Commercial Food Waste.

Commercial Recyclables means Source Separated Recyclable Materials generated by or at Commercial Facilities. For the purposes of this Agreement, Commercial Recyclables do not include those Recyclable Materials that a Generator chooses to sell or donate.

Construction and Demolition Waste *is hereby deleted and replaced with the following: Construction and Demolition Debris (Mixed) and Construction and Demolition Debris (Single Commodity)*

Construction and Demolition Debris (Mixed) *is hereby added to read as follows:*

means Permitted Materials generated as a result of construction, remodeling, repair or demolition on pavement, houses, commercial buildings and other structures as well as construction job sites, including without limitation, discarded packaging, containers and waste construction materials, whether brought on site for fabrication or used in construction or resulting from demolition, excluding liquid waste, Hazardous Waste, and Medical and Infectious Waste. Such materials may include, without limitation, brick, mortar, concrete, plaster, scrap wood, scrap metal, sheet rock, packaging, and rubble. All references in the Transfer Station Agreement to Construction and Demolition Waste shall mean Construction and Demolition Debris (Mixed).

Construction and Demolition Debris (Single Commodity) means Recyclable Materials which are Source Separated, and are a result of construction, remodeling, repair or demolition on pavement, houses, commercial buildings, multi-family dwellings and other structures, including construction job sites, and may include single commodity materials such as bricks, mortar, scrap wood, scrap metal, and sheet rock. Single Commodity Soil, Asphalt and Concrete are exempt from this definition.

Curbside Organic Waste is a type of residential Permitted Material that is comprised primarily of leaves, cut grass, tree trimmings or other organic debris such as food scraps that are segregated in a separate container prior to collection; and are Delivered separately to the Facility from other Permitted Material.

Designated Organic Waste Processing Facility means the facility designated by the City to be used by Contractor for Transfer to,

Processing, and Marketing of Curbside Organic Waste and/or Commercial Organics.

Diversion Guarantee *is hereby revised to read as follows:*

means the requirement of Contractor to Recover and Divert the equivalent of a specific percentage by weight of the Mixed Municipal Waste and High Value Commercial Recyclables generated in the City and Delivered to the Facility as specified in Section 8.03 (b.) and measured in accordance with Exhibit 12.

Divertable Materials means Permitted Materials (not including Household Hazardous Waste) Delivered by Self Haulers or by private contract and generated within the Tri-Cities, which (i) have recycling or recovery value, (ii) are not purchased at the Buyback Center or accepted without a fee at the Buyback Center, (iii) are charged a fee by Contractor of Fifty Dollars (\$50) or less per-ton (exclusive of the Household Hazardous Waste Fee, new non-disposal Pass-Through Costs or City Imposed Fees), and (iv) have Residue between 30% and 50% by weight. Such materials have processing costs involved but a significant portion of the materials may be reasonably Recovered and not landfilled. Such materials are eligible for a reduced City Imposed Fee in accordance with Exhibits 1 and 2. The Fifty Dollar (\$50.00) cap set forth herein shall adjust biennially at the same time and in the same percentage that the Mixed Municipal Waste Service Fee adjusts under Section 10.03 of the Transfer Station Agreement.

Dry Mixed Recyclables means Permitted Materials from Commercial Facilities within the City that contains more than fifty percent (50%) by weight of the following uncontaminated material: occ, metal, wood, used beverage containers, mixed paper, rigid and film plastics and glass fines and such other materials as mutually agreed by City and Contractor.

Dry Mixed Recyclables Processing Fee (Processing Fee) means the per-ton processing fee payable for each Designated Load of Dry Mixed Recyclables in accordance with Section 3 of this Fourth Amendment, and which is described in Exhibit 1.

High Value Commercial Recyclables means corrugated cardboard, newspaper, white paper, mixed recyclable paper, recyclable food and

beverage containers, metal (aluminum and steel) food and beverage cans, HDPE bottles and PET bottles that have been Source Separated for Delivery to the Facility by City Vehicles or City's Collection Contractor in loads composed of Eighty Percent (80%) or more of these high value materials by weight. Other Permitted Material may be included as High Value Commercial Recyclables upon the mutual agreement of the City and Contractor. High Value Commercial Recyclables do not include those Commercial Recyclables that a Generator chooses to donate, sell or Self Haul.

High Value Commercial Recyclables Payment is the per-ton fee paid by Contractor to City for High Value Commercial Recyclables Delivered by City Vehicles and/or City Collection Contractor(s).

Maximum Self Haul Service Fee *is hereby revised to read as follows:*

is the maximum fee due to Contractor from Self Haulers for Permitted Materials including but not limited to: Divertable Materials, Construction and Demolition Debris (Mixed), Construction and Demolition Debris (Single Commodity), and Recyclable Rich Materials Delivered to the Facility by Self Haulers as described in Exhibit 2. All Recyclable Materials purchased (or accepted at no cost and not subject to tip fee) by Contractor at Contractor's Buy Back Center and will not be subject to this Maximum Self Haul Service Fee schedule.

Mixed Municipal Waste *is hereby revised to read as follows:*

means all "municipal solid waste" including putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, street sweepings and catch basin residue, discarded Bulky Goods, discarded Brown Goods, dewatered, treated or chemically fixed sewage sludge which is not Hazardous Waste, Household Hazardous Waste, manure, vegetable, or animal solid and semisolid wastes, Residues from recycling, composting and similar processes, and any other other discarded wastes and any other materials defined in Section 40191 of the California Public Resources Code, as may be amended from time to time. For the purposes of the Transfer Station Agreement, Mixed Municipal Waste includes Construction and Demolition Debris (Mixed), Construction and Demolition Debris (Single Commodity), Divertable Materials, Dry Mixed Recyclables, Commercial Food Waste (with exceptions noted in Section 5), Recyclable Rich Materials, Commercial Organics, and Commercial Recyclables (other than High Value Commercial Recyclables).

Mixed Municipal Waste does not include abandoned vehicles, Hazardous Waste, or Unpermitted Waste. For the purposes of the Transfer Station Agreement, Mixed Municipal Waste does not include residential Source Separated Recyclable Materials and residential Source Separated Yard Waste, which are addressed in the Recyclables Agreement. Mixed Municipal Waste also does not include High Value Commercial Recyclables and Single Commodity Soil, Asphalt and Concrete.

Newark Collection Contractor(s) means the entity or entities that are contracted, licensed, permitted or otherwise designated by the City of Newark to collect Permitted Materials within the City of Newark.

Newark Vehicle(s) means vehicles owned and operated by the City of Newark.

OPIS (Oil Price Information Service) Diesel Fuel Index *is hereby revised to read as follows:*

means the diesel fuel rack pricing index for Northern California including San Jose, Stockton, San Francisco and Sacramento. A different pricing index for Northern California may be substituted for OPIS upon mutual agreement of City and Contractor.

Other Allowable Users *is hereby revised to read as follows:*

means any private and public entity that Delivers Source Separated Recyclable Materials, Commercial Recyclables, Commercial Organics, or Recyclable Rich Materials to the Facility subject to Permits and applicable law.

Permitted Materials *is hereby revised to read as follows:*

means wastes or other materials that the Facility may receive under its Permits and Applicable Law.

Recyclable Rich Materials *is hereby revised to read as follows:*

are a type of Permitted Materials that are comprised primarily of Recyclable Materials, Construction and Demolition Debris (Mixed), Construction and Demolition Debris (Single Commodity), soil, asphalt, concrete, leaves, cut grass, tree trimmings, and other organic debris such that loads Delivered to

the Facility are composed of less than thirty (30) percent Residue by weight. Recyclable Rich Materials do not include Commercial Food Waste.

Self Haulers (or Self Haul) *is hereby revised to read as follows:*

means Persons who Deliver Permitted Material on their behalf, and not as a commercial enterprise collecting Permitted Materials for third parties or on behalf of a municipality.

Service Fee (s) include the Mixed Municipal Waste Service Fee, Maximum Self Haul Service Fees, Household Hazardous Waste Fee, and Dry Mixed Recyclable Processing Fee, which are compensation to be provided to the Contractor for services provided under the Transfer Station Agreement, as specified in Article 10 and this Fourth Amendment.

Single Commodity Soil, Asphalt and Concrete means soil, concrete and asphalt resulting from construction, remodeling, repair or demolition on pavement, houses, commercial buildings, multi-family dwellings and other structures that is Source Separated from each other and any other Permitted Materials and contain a de-minimus amount of Residue. For example, in order for a load of soil to constitute Single Commodity Soil, Asphalt and Concrete, it must be Source Separated, and placed in a container that contains only soil (other than a de-minimus amount of Residue).

Source Separated or Source Separation means the process of segregating Recyclable Materials from other Permitted Materials by the generator thereof prior to collection for the purposes of Recycling or Diversion; are designated by the generator for purposes of Diversion; and are collected and delivered separately from other Permitted Material.

Union City Collection Contractor(s) means the entity or entities that are contracted, licensed, permitted or otherwise designated by the Union City to collect Permitted Materials within the Union City.

Union City Vehicle(s) means vehicles owned and operated by the Union City.

2. Exhibit 1 and Exhibit 2 Revisions

Exhibit 1 (City of Fremont Mixed Municipal Waste Service Fee) attached to the Transfer Station Agreement is hereby revised to include High Value Commercial Recyclables Payments, Dry Mixed Recyclables Processing Fees, and revised Host Fees. **Exhibit 2** (Maximum Self Haul Fees) attached

to the Transfer Station Agreement is hereby replaced and superseded by this new Exhibit 2. Exhibits 1 and 2 are attached to this Fourth Amendment and incorporated herein by reference. Except as otherwise permitted under the Transfer Station Agreement, the rates set forth in Exhibit 1 and Exhibit 2 will remain in effect for the biennial period January 1, 2012 through December 31, 2013 and thereafter adjusted pursuant to the terms of the Transfer Station Agreement.

3. Dry Mixed Recyclables

A. The City has implemented a program (the “**Dry Recyclables Program**”) for the collection of Dry Mixed Recyclables. The City’s goal of the Dry Recyclables Program is to increase diversion rates by providing the Facility with cleaner material, which is more capable of being Processed and Recovered. City and Contractor agree that the Dry Recyclables Program is still in transition and program changes may continue to be made with City’s Collection Contractor. As part of the Dry Recyclables Program, the City may require Commercial Generators to separate their Permitted Material into wet or dry containers as well as separately bagging wet materials which bags may be commingled with dry material. Contractor acknowledges and agrees that the Dry Recyclables Program as agreed upon and implemented to the date of execution of this Fourth Amendment shall not be considered a change in collection service for purposes of Extraordinary Review. Nothing contained herein waives Contractor’s right to initiate Extraordinary Review under Article 11 of the Transfer Station Agreement as a result of future changes to the Dry Recyclables Program.

B. Process and Recovery. At the direction of the City (in its sole discretion), Contractor shall Process and Recover any or all loads of Dry Mixed Recyclables designated by the City that are Delivered to the Facility by the City and/or its Collection Contractor (the “**Designated Loads**”). City may choose to identify these loads by route, by delivery days of the week, or by individual loads. Contractor shall make reasonable efforts to Divert the Designated Loads; provided, however, that there is no minimum Diversion percentage required.

C. Compensation. The City and Contractor agree that Dry Mixed Recyclables are not High Value Commercial Recyclables, and therefore the City shall pay Contractor the Mixed Municipal Waste Service Fee for all loads of Dry Mixed Recyclables Delivered to the Facility. In addition to the Mixed Municipal Waste Service Fee, the City shall pay Contractor the Dry Mixed Recyclables Processing Fee set forth in Exhibit 1 for all Designated

Loads. The Processing Fee shall be escalated biennially to reflect the CPI increase at the same time the Mixed Municipal Waste Service Fee is adjusted in accordance with Section 10.03 of the Transfer Station Agreement. The Processing Fee will be based on the amount of Residue contained in the Designated Loads as described in Exhibit 1.

D. Waste Characterizations. Contractor agrees to perform a standard waste characterization study on the Dry Mixed Recyclables at Contractor's cost four (4) times a year in order to evaluate the Residue content of the loads of Dry Mixed Recyclables. The City shall have the right to request up to eight (8) additional standard waste characterization studies each year; provided, however, the City agrees to compensate Contractor Three Thousand Dollars (\$3,000) per each additional waste characterization. City may also request additional single load or loads evaluation of Dry Mixed Recyclables, provided such evaluations do not adversely impact the operation of the Facility. City agrees to compensate Contractor in the amount of Eight Hundred Dollars (\$800) per load, such compensation to be in addition to the applicable Mixed Municipal Waste fee and the Dry Mixed Recyclables Processing Fee. These rates are included in Exhibit 1 and adjusted biennially. The information obtained from these waste characterization studies conducted pursuant to this Section will be the basis for calculating the applicable Processing Fees.

E. Catastrophic Failure. City and Contractor agree that Contractor's obligation to Process and Recover Designated Loads of Dry Mixed Recyclables shall be suspended during periods of Catastrophic Failure. Contractor shall Notify City as soon as Contractor becomes aware of the occurrence of an adverse market condition that may become a Catastrophic Failure. In the event this adverse condition continues for a minimum period of sixty (60) days, Contractor agrees to Notify City of the date that the period of suspension based on Catastrophic Failure will commence.

City agrees to relieve Contractor of the obligation to Process and Recover the Designated Loads of Dry Mixed Recyclables during this suspension period and Contractor will relieve City of its obligation to pay a Processing Fee for such materials until Contractor Notifies City that the Catastrophic Failure has ended. Processing and Recovery obligations will resume upon the effective date of Contractor's Notice to City, and these obligations will apply to those materials Delivered to Contractor after the effective date of the Notice. City's obligations to pay the Processing Fee will also resume on the effective date of such Notice.

4. High Value Commercial Recyclables

A. Compensation. Despite any language to the contrary contained in Section 6.06 of the Transfer Station Agreement, Contractor shall pay the City the High Value Commercial Recyclables Payment for all High Value Commercial Recyclables Delivered to the Facility by City Vehicles and/or the City's Collection Contractor(s) in the amount and in accordance with the provisions of Exhibit 1, except that in no event shall the High Value Commercial Recyclables Payment be less than Ten Dollars (\$10.00) per-ton.

The High Value Commercial Recyclables Payment will be based on weight, net of Residue and net of Commercial Recyclables other than High Value Commercial Recyclables.

The per-ton payment to the City shall be adjusted biennially in accordance with Exhibit 1a, which adjustment will reflect the percentage change between (a) the twelve (12) month average Official Board Market Index (OBM) available, using the San Francisco High-side pricing for the July to June period occurring immediately prior to the adjustment, and (b) the twelve (12) month average OBM used for the prior rate setting. Adjustments will be applied according to the weighted average commodity percentage.

The adjusted payment will be effective on January 1 of each even numbered year. Each time the figures are modified, the revised figures become the basis for subsequent adjustments. The Contractor shall retain all revenue from the sale of High Value Commercial Recyclables. The City shall not pay Contractor the Mixed Municipal Waste Service Fee for High Value Commercial Recyclables.

B. Waste Characterization. City and Contractor agree to perform a waste characterization study two (2) times a year in order to evaluate the High Value Commercial Recyclables. The characterizations shall be conducted pursuant to protocols attached hereto as Exhibit 15 and incorporated herein by reference. The characterizations shall identify the shares of total weights for all High Value Commercial Recyclables and the share of total weight for Residue and Commercial Recyclables (other than High Value Commercial Recyclables). The information from these characterizations will be the basis for calculating the material percentages for the High Value Commercial Recyclables Payments from Contractor in accordance with Section 4.A. above. The High Value Commercial Recyclables Payment identified in Exhibit 1 will be initially based on an agreed upon Residue rate of 8%, until the first waste characterization has been performed, which the parties agree

shall occur within thirty (30) days after the Execution Date of this Fourth Amendment. The Residue rate determined by the first waste characterization will be in effect for the following six (6) month period. Subsequently, the Residue rate (and the basis for the High Value Commercial Recyclables Payment) will be adjusted every six (6) months based on the latest waste characterization performed. In the event the Residue rate exceeds fifteen percent (15%) based on any waste characterization, Contractor shall Notify City within thirty (30) calendar days. City shall have the opportunity to reduce the Residue rate through the efforts of City or the Collection Contractor. However, City shall compensate Contractor at the Mixed Municipal Waste Service Fee for its incremental transportation and disposal costs above a fifteen percent (15%) Residue rate retroactively to the date of Contractor's Notice to City. City shall reimburse Contractor for these costs until such time as the Residue rate returns to fifteen percent (15%) or less, as shown through a subsequent Waste Characterization study. In the event City is unable to reduce the Residue rate to fifteen percent (15%) or less within six (6) months after the date of Notice from Contractor, City and Contractor shall meet and negotiate in good faith appropriate changes to the High Value Commercial Recyclables Payment.

In the event of any dispute as to the amount of such adjustment, dispute provisions of this Agreement shall apply.

C. Catastrophic Failure. City and Contractor agree that Contractor's obligation to pay City the High Value Commercial Recyclables Payment shall be suspended during periods of Catastrophic Failure as defined. Contractor shall Notify City as soon as Contractor becomes aware of the occurrence of an adverse market condition that may become a Catastrophic Failure. In the event this adverse condition continues for a minimum period of sixty (60) days, Contractor agrees to Notify City of the date that the period of suspension based on Catastrophic Failure will commence.

City agrees to relieve Contractor of the obligation to pay City the High Value Commercial Recyclables Payment during this suspension period until Contractor Notifies City that the Catastrophic Failure has ended.

Contractor's obligation for the High Value Commercial Recyclables Payment will resume upon the effective date of Contractor's Notice to City, and these obligations will apply to those materials Delivered to Contractor after the effective date of the Notice.

4. Extraordinary Review

Either party shall have the right to request an Extraordinary Review of the High Value Commercial Recyclables Payment and the Dry Mixed Recycling Processing Fee under the same conditions and in the same manner as adjustments to the Mixed Municipal Waste Service Fee or Maximum Self Haul Service Fees may be requested as provided in Article 11 of the Transfer Station Agreement, with the following change. Section 11.04, Items Ineligible for an Extraordinary Review, subsection (g) shall be added as follows: (g) Variations or fluctuations in the market value or prices paid to Contractor for Commercial Recyclables (other than due to a Catastrophic Failure) including High Value Commercial Recyclables, and Recovered Materials from Dry Mixed Recyclable Processing.

5. Commercial Food Waste Program

A. City and Contractor acknowledge that City currently has a Commercial Food Waste program (the “CFW Program”) where Commercial Food Waste is separately collected by the City’s Collection Contractor and processed for composting at Newby Island Recyclery. City and Contractor agree that this CFW Program is expected to continue for an additional five (5) years from the date of execution of this Fourth Amendment, and that City has the right to expand this CFW Program to a maximum monthly tonnage cap of 250 tons (the “CFW Bypass Cap”). If during this five (5) year period, City is able to expand this program to the point where it exceeds this CFW Bypass Cap, City agrees to pay Contractor a bypass fee (the “CFW Bypass Fee”) as described in Exhibit 1 for each ton of Commercial Food Waste above the CFW Bypass Cap that is not Delivered to the Facility. No CFW Bypass Fee will be paid by the City until the tonnage volume exceeds the CFW Bypass Cap.

B. Upon the expiration of this five (5) year period, City and Contractor expect that other food waste processing options will be available to City. City and Contractor agree to discuss in good faith the processing alternatives available at that time. Upon the expiration of this five (5) year period, City will have the following options: (1) Deliver or cause to be Delivered all Commercial Food Waste to the Facility to be Processed under terms and conditions agreed upon by City and Contractor; (2) if Contractor can transfer and transport Commercial Food Waste commingled with Curbside Organic Waste (as defined in the Recyclables Agreement), to a Designated Organics Waste Processing Facility, Deliver or cause to be Delivered all Commercial

Food Waste to the Facility and pay Contractor a per-ton transfer fee in the amount set forth in Exhibit 1 (with the understanding that the processing/tip fee charged by the Designated Organics Waste Processing Facility shall be the responsibility of the City); or (3) Pay Contractor a CFW Bypass Fee which is set forth in Exhibit 1 for each ton of Commercial Food Waste which is not Delivered to the Facility.

6. Commercial Organics

City has the right at any time to direct Commercial Organics to a Designated Organics Processing Facility. If the City directs such material, City and Contractor agree to negotiate in good faith at that time adjustments, if any, to the Mixed Municipal Waste Service Fee to be applied to such materials, which adjustments shall take into consideration, among other things, distance to the Designated Organics Processing Facility and the processing fee charged thereby, if applicable.

7. Section 6.06 Other Allowable Users *is hereby revised to read as follows:*

6.06 Other Allowable Users. Other Allowable Users are hereby permitted to use the Facility. Contractor's compensation for Acceptance of Source Separated Recyclable Materials, Commercial Organics, or Recyclable Rich Materials Delivered by Other Allowable Users shall be such payment as Contractor determines and collects directly from such Persons. The City shall in no way be responsible for compensating Contractor for such materials; however City and Contractor agree that City Imposed Fees will be applied to Recyclable Rich Materials Delivered to the Facility by Other Allowable Users as described in Exhibit 2.

8. Construction and Demolition Debris

City and Contractor acknowledge and agree that Construction and Demolition Debris (Mixed) and Construction and Demolition Debris (Single Commodity) constitutes Mixed Municipal Waste and shall be Delivered to the Facility in accordance with Section 8.05a. (5) of the Transfer Station Agreement.

9. Facility Diversion Guaranty *The first two sentences of Section 8.03b of the Transfer Station Agreement are replaced to read as follows:*

Contractor shall annually Divert the equivalent of twelve percent (12%) by weight of all Mixed Municipal Waste and High Value Commercial Recyclables required to be Delivered by the City and/or its Collection Contractor(s) pursuant to the Transfer Station Agreement as determined in accordance with Measurement Diversion Guarantee procedures in Exhibit 12. Contractor and the City acknowledge that all Recyclable Materials (a) generated in the City, and (b) that are Delivered to the Facility by the City, the City's Collection Contractor(s), and Self Haulers and (c) are Diverted, constitute Recyclable Material that is Diverted by Contractor for purposes of calculating the Diversion Guaranty. Commercial Food Waste tonnage will not be credited toward the Facility Diversion requirements until such time the Commercial Food Waste material is Delivered to the Facility.

10. Delivery of Permitted Material

Section 8.05 a. Paragraphs (2), (3), (5) and (7) shall be revised to read as follows:

8.05 a. (2) Acceptance of Permitted Materials from Approved Users. Subject to Permit limitations, during Full Operations, except during periods of an Uncontrollable Circumstance that prevent Contractor from Accepting Permitted Materials, and actions or inactions of the City that prevent Contractor from Accepting Permitted Materials, Contractor shall Accept all Permitted Materials Delivered by the Approved Users during Facility Receiving Hours. If Contractor refuses or is unable to Accept such materials Delivered by City, City's Collection Contractor or Self Haulers from within the TriCities during any portion of the Term, Contractor shall be liable to the City for any damages payable and remedies available under Articles **10, 13, and 14**. As specified in Article 8, Contractor shall not Accept Mixed Municipal Waste from any Party other than Approved Users without prior written approval of City.

8.05 a. (3) Acceptance of Source Separated Materials and Recyclable Rich Materials from Other Allowable Users. Subject to Permit limitations, during Facility Operations, except during periods of an Uncontrollable Circumstance that prevent Contractor from Accepting Permitted Material and actions or inactions of the City that prevent Contractor from Accepting Permitted Material, Contractor may Accept Commercial Recyclables, Commercial Organics, and Recyclable Rich Materials Delivered by Other Allowable Users during Facility Receiving

Hours. Contractor shall diligently visually inspect loads and periodically shall manually characterize loads to confirm that materials Accepted as Commercial Recyclable Materials, Commercial Organics, and Recyclable Rich Materials conform to the definitions provided in Article 1 for such materials particularly with regard to verification that the loads meet Residue limitations. City has the right to periodically conduct studies at the Site to confirm that these loads Accepted by Contractor comply with the definition of such materials and meet the Residue limitations. In the event the Contractor Accepts these materials that originate from outside the Tri-Cities area and are composed of more Residue by weight than specified in Article 1 definitions, Contractor will be subjected to Liquidated Damages for each ton Accepted as described in Section 10.07 and Exhibit 10.

8.05 a. (5) City Responsibility

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 and all High Value Commercial Recyclables generated within the City (including, without limitation, the above materials 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; provided, however, that the obligation to Deliver or cause to be Delivered (i) High Value Commercial Recyclables shall commence no later than Fifteen (15) days after the Execution Date of this Fourth Amendment, and (ii) delivery and compensation obligations for Commercial Food Waste are specifically addressed in Section 5 of this Fourth Amendment. However, nothing in this Agreement shall be construed to mean that the City makes any guarantee regarding the fitness, quality, constituency, or quantity of these materials Delivered to the Facility. Contractor shall negotiate in good faith...*(rest of paragraph remains the same)*.

(7) No Representation. The City makes no representation, and is under no obligation, regarding the quantity and/or composition of the Permitted Materials Delivered to the Facility by Approved Users or Other Allowable Users.

11. Single Commodity Soil, Asphalt and Concrete

City and Contractor agree that (i) Single Commodity Soil, Asphalt and Concrete are excluded from the franchise agreement with the City's

Collection Contractor, and (ii) Single Commodity Soil, Asphalt and Concrete are not required to be Delivered to the Facility. These materials will be competed for in the open market, in which Contractor has the right to participate. The exemption of Single Commodity Soil, Asphalt and Concrete from the Collection Contractor's franchise agreement will be included in City's revisions of the Fremont Municipal Code to occur as soon as feasible after the Execution Date of this Fourth Amendment.

12. City Imposed Fees.

The following is added to Section 10.09, as revised by the Third Amendment:

City and Contractor agree that City Imposed Fees (also referred to as Host Fees) will be applied to the following categories: Recyclable Rich Materials and Divertable Materials. These City Imposed Fees will be assessed on a per-ton basis in the amounts described in Exhibit 1 and Exhibit 2, effective as of the execution date of this Fourth Amendment. In addition, if the City approves an anaerobic digestion facility at the Facility, the City will negotiate in good faith an appropriate City Imposed Fee for Commercial Food Waste. Further, if the Facility is approved by the City to accept Mixed Municipal Waste from outside the Tri-Cities, then the City will negotiate in good faith an appropriate City Imposed Fee for such material.

13. Waiver of Claims

Contractor, on behalf of itself and its successors and assigns, hereby completely releases, absolves and forever discharges the City and its 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 Contractor's allegations that the City failed to Deliver or cause to be Delivered all Mixed Municipal Waste generated within the City to the Facility prior to the execution of this Fourth Amendment (the "**Waived Claims**").

14. Terms

All other terms in the Transfer Station Agreement and the First, Second and Third Amendments not specifically amended by this Fourth Amendment shall remain in full force and effect. This Amendment is executed in three (3) duplicate originals, each of which is deemed to be an original.

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


CITY:

City of Fremont

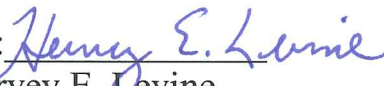
By: 
Fred Diaz
City Manager

CONTRACTOR:

BLT Enterprises
of Fremont, LLC

By: 

Approved as to Form:

By: 
Harvey E. Levine
City Attorney

Date: 6.12.12

EXHIBIT 1
CITY OF FREMONT
MIXED MUNICIPAL WASTE SERVICE FEE
JANUARY 1, 2012 - DECEMBER 31, 2013

Miscellaneous Fees		
Host Fee – Franchise Tonnage from Newark & Union City(1)		\$7.42/ton
Host Fee – Divertible Material		\$4.75/ton
Host Fee – Recyclable Rich Material		\$2.50/ton
Host Fee – self haul tonnage charged per-ton(1)		Exhibit 2
Host Fee – self haul tonnage charged per load(1)		Exhibit 2
Contractor compensation for extended Facility Receiving Hours(1)		\$348.63/hour
Amount regarded as Significant (1)		\$ 23,805.00
Report preparation costs considered in Section 8.11.b.3. (1)		\$ 6,972.38
Dry Mixed Recyclables Processing Fees(1)		
0-30% residual level		no fee
31-35% residual level		\$20.92/ton
36-40% residual level		\$30.13/ton
41-45% residual level		\$40.92/ton
46-40% residual level		\$51.14/ton
Waste Characterization Fee		
Single Load	\$800	
Standard	\$3,000	
Commercial Food Waste Bypass Fee		\$15.49/ton (3)
Commercial Food Waste Transfer Fee		\$15.49/ton (3)(4)
High Value Commercial Recyclables Payment		(2) \$20.00/ton

(1) Fees adjusted by CPI as specified in Section 10

(2) Payment adjusted as specified in Section 4A of Amendment 4 and Exhibit 1a

(3) Fees adjusted at the same time and by the same percentage as the Curbside Organic Waste Transfer Fee is adjusted under the Recyclables Agreement

(4) Based on transportation to Newby Island

Exhibit 1a

Biennial Adjustment to High Value Commercial Recyclables Payment

Paper Grades	<i>(Base Year)</i>		<i>(Example)</i>		Weighted Average	Index Change	Percent Change
	July 2010 to June 2011 Average OBM	July 2012 to June 2013 Average OBM	Change				
Mixed Paper	\$ 98.33	\$120.00	\$21.67		43.00%	\$9.32	9.47%
OCC	\$ 150.83	\$175.00	\$24.17		57.00%	\$13.78	9.13%
Total Change-							9.30%
2012 & 2013 High Value Commercial Recyclables Payment							\$ 20.00
Price Adjustment based on 24 month index							\$ 1.86
Revised High Value Commercial Recyclables Payment (example only)							\$ 21.86

EXHIBIT 2
MAXIMUM SELF-HAUL SERVICE FEES
ALTAMONT LANDFILL DISPOSAL
JANUARY 1, 2012 – DECEMBER 31, 2013
Revised June 2012

The maximum Self Haul Service Fees are presented in this Exhibit and shall be adjusted periodically in accordance with Section 10.04 of the Agreement.

	Unit	Base	Host Fee	Total Fee
Garbage (minimum charge) (1)	Load	\$ 33.68	\$ 3.84	\$ 37.52
Garbage	Ton	\$ 76.10	\$ 8.73	\$ 84.83
Green Waste/Wood Waste (2)	Ton	\$ 74.67	\$ 4.75	\$ 79.42
Soil (2)	Ton	\$ 74.67	\$ 4.75	\$ 79.42
ADC	Ton	\$ 74.67	\$ 8.73	\$ 83.40
Asphalt (2)	Ton	\$ 74.67	\$ 4.75	\$ 79.42
Concrete (2)	Ton	\$ 74.67	\$ 4.75	\$ 79.42
Concrete with Rebar (2)	Ton	\$ 74.67	\$ 4.75	\$ 79.42
Demolition Debris	Ton	\$ 74.67	\$ 8.73	\$ 83.40
Compacted Mixed Municipal Waste	Ton	\$ 76.10	\$ 8.73	\$ 84.83
Divertible Material (2)	Ton	\$53.00	\$ 4.75	\$ 57.75
Tree Stumps and Poles (2)	Ton	\$ 74.67	\$ 4.75	\$ 79.42
Certificate of Destruction (documents)	Ton	\$ 75.04	\$ 8.73	\$ 83.77
Certificate of Destruction (condemned)	Ton	\$ 75.04	\$ 8.73	\$ 83.77
Mattress/Box Spring (per set)(3)	Set	\$ 25.00	N/A	\$ 25.00
Tires (16 "or less)	Item*	\$6.59	N/A	\$ 6.59
Tires (>16" & < 21")	Item*	\$13.17	N/A	\$ 13.17
Tires (Tractor/off road)	Item*	\$21.93	N/A	\$ 21.93
Tires (Bulk load)	Item*	\$13.17	N/A	\$ 13.17
White Goods – Base	Item*	\$8.09	N/A	\$ 8.09
White Goods – Freon Removal	Item*	\$24.28	N/A	\$ 24.28
White Good – Per Mercury Switch	Item*	\$5.74	N/A	\$ 5.74

(1) Contractor may round maximum self haul service fee for permitted materials charged by type to the nearest whole dollar (upward or downward)

(2) Loads designated as Recyclable Rich are eligible for a reduced host fee of \$2.50 per-ton.

(3) Fee collected to facilitate mattress and box spring recycling. Fee applied at \$12.50 per piece.

Exhibit 15

The following shall be used as protocols for the Characterization for High Value Commercial Recyclables and Dry Mixed Recyclables.

At least fifty (50) tons of the High Value Commercial Recyclables or Dry Mixed Recyclables received over a series of consecutive days of the study must be processed completely. All material tonnage must be processed in the same manner as any other normal operating day, using the same equipment, labor, conveyor belt speeds, etc. Verification and documentation of these normal operating day conditions may be accomplished through unannounced facility inspections by City staff or representative during normal operating hours, and Contractor shall accommodate these unannounced inspections by City staff, provided however that City staff shall, upon entering the Facility, announce and identify itself to Contractor's reception staff and shall be accompanied by a member of Contractor's staff during any such inspection.

The tare of all bins, cages, containers, etc. to be used for the composition study shall be determined prior to the start of the study. Any sorted materials of like-type already existing in bins, cages, containers, etc. may remain, but must be part of the tare. Any bins, cages, containers, etc. for which the tare cannot be determined prior to commencement of the study must be completely emptied prior to use for the study.

Upon completion of processing of the material, all individual sorted materials shall be weighed and/or baled and recorded by type for composition determination.

If Contractor is unable to perform the composition study using this methodology due to operating constraints, then Contractor shall propose an alternative methodology, subject to approval by the City in good faith.