

**FIFTH 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, Third and Fourth Amendments to that Agreement (the Original Agreement, together with the four 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 Fifth Amendment to the "Transfer Station Agreement" shall mean the Transfer Station Agreement, as amended by this Fifth 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 Fifth Amendment.
3. In the Fourth Amendment the City and Contractor modified the Transfer Station Agreement to address the issue of pricing for High Value Commercial Recyclables, and processing fees for Dry Mixed Recyclables.
4. The High Value Commercial Recyclables program has been in operation for over one year, and Contractor and City have reviewed the results including contamination and pricing issues.
5. Based on those results, City and Contractor have agreed to make certain modifications to the Transfer Station Agreement through this Fifth Amendment including a new tiered pricing structure for High Value Commercial Recyclables.
6. The City and Contractor have settled their disagreement on the amount of past compensation for the High Value Commercial Recyclables delivered from June 12, 2012 through December 31, 2013.

The City and Contractor have agreed to the following revisions to the Transfer Station Agreement, pursuant to the terms and provisions of this Fifth 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 Fifth Amendment as follows:

## 1. Article 1 Definitions

**High Value Commercial Recyclables** *is hereby revised to read as follows:*

**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 Seventy Five Percent (75%) or more of these High Value Commercial Recyclables by weight. Other Permitted Material may be included as High Value Commercial Recyclables upon the mutual agreement of the City and Contractor, without the necessity of amending this Agreement. 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 hereby revised to read as follows:*

**High Value Commercial Recyclables Payment** is the per-ton fee paid by Contractor to the City for High Value Commercial Recyclables Delivered by City Vehicles and/or City Collection Contractor(s) in loads composed of 85% or more of the High Value Commercial Recyclables by weight.

**High Value Commercial Recyclables Processing Fee** is the per-ton fee paid by City to the Contractor for High Value Commercial Recyclables Delivered by City Vehicles and/or City Collection Contractor (s) in loads composed of 75-79.99% of the High Value Commercial Recyclables by weight.

**Waste Characterizations** shall mean the waste composition analysis performed by Contractor on specific loads with advance Notice to City, and in accordance with Exhibit 15 in order to determine the level of Residue and other Commercial Recyclables by weight.

## 2. Tiered Pricing Structure for High Value Commercial Recyclables

**Section 4 A** of the Fourth Amendment *is hereby deleted and replaced with the following:*

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 High Value Commercial Recyclables Delivered to the Facility by City Vehicles and/or the City's Collection Contractor (s) in the amounts and in accordance with Exhibit 1, except that in no event shall the High Value Commercial Recyclables Payment be less than Ten Dollars (\$10.00) per ton. The parties further agree that the obligation for Contractor to pay the City the High Value Commercial Recyclables Payment under Section 4A of the Fourth Amendment

only applies to High Value Commercial Recyclables Delivered by City Vehicles and/or City Collection Contractor(s) in loads composed of 85% or more of the High Value Commercial Recyclables by weight, net of Residue and net of Commercial Recyclables other than High Value Commercial Recyclables.

Effective as of January 1, 2014, the High Value Commercial Recyclables Payment was adjusted to \$17.77 per-ton in accordance with Exhibit 1a of the Fourth Amendment. 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 the Contractor the Mixed Municipal Waste Service Fee for any loads of High Value Commercial Recyclables, which contain 75% or more of the High Value Commercial Recyclables by weight, net of Residue and net of Commercial Recyclables other than High Value Commercial Recyclables.

City and Contractor hereby agree that for High Value Commercial Recyclables Delivered by City Vehicles and/or City Collection Contractor(s) in loads composed of less than 85% of the High Value Commercial Recyclables by weight, net of Residue and net of Commercial Recyclables other than High Value Commercial Recyclables, the following tiered pricing shall apply as described below:

- 80-84.99% High Value Commercial Recyclables: No payment shall be due from Contractor to the City, or from the City to Contractor.
- 75-79.99% High Value Commercial Recyclables: The City shall pay Contractor a High Value Commercial Recyclables Processing Fee of \$39.86 per ton. Commencing on January 1, 2016, the High Value Commercial Recyclables Processing Fee shall be escalated by the same percentage and at the same time that the Mixed Municipal Waste Service Fee is adjusted in accordance with Section 10.03 of the Transfer Station Agreement.

City and Contractor acknowledge and agree that if it is determined pursuant to a Waste Characterization performed under Section 3 below that Permitted Material delivered as High Value Commercial Recyclables contain 74.99% or less by weight of the material defined as High Value Commercial Recyclables, all loads of Permitted Material thereafter delivered as High Value Commercial Recyclables shall constitute Dry Mixed Recyclables and be subject to the terms and provisions of Section 3 B. & C. of the Fourth Amendment until the next Waste Characterization is performed.

### **3. Waste Characterizations**

*Section 4 B. of the Fourth Amendment is hereby deleted and replaced with the following:*

City and Contractor agree to perform a Waste Characterization two (2) times a year in order to evaluate the High Value Commercial Recyclables unless both parties agree to a less frequent timeframe. Each Waste Characterization shall be conducted pursuant to protocols attached hereto as Exhibit 15 and shall be at Contractor's sole cost. Each Waste Characterization 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 each Waste Characterization will be the basis for calculating the compensation due under Rate Exhibit 1, until the next Waste Characterization. The City shall have the right to request up to two (2) additional Waste Characterizations each year provided however, the City agrees to compensate Contractor as specified in Rate Exhibit 1 for each additional Waste Characterization. Further, Contractor shall have the right to perform up to two (2) additional Waste Characterizations each year at its sole cost. City may also request additional single load or loads evaluation of High Value Commercial Recyclables for informational purposes only, provided such evaluations do not adversely impact the operation of the Facility, and City agrees to compensate Contractor for those loads as specified in Rate Exhibit 1.

City and Contractor agree that each Waste Characterization on the High Value Commercial Recyclables will generally be done on a six-month schedule, with at least seven (7) business days advance Notice to City. The results of each of these Waste Characterizations will be the basis for the tiered pricing system on High Value Commercial Recyclables until the next Waste Characterization. Contractor retains the right to do additional random waste characterizations for Contractor's own benefit; however, these will not change the compensation due from or to Contractor. Contractor agrees to advise City of the results of any of these random waste characterizations.

In the event of any dispute as to the results or the applicability of any Waste Characterizations, dispute provisions of this Agreement shall apply.

### **4. Past Compensation for High Value Commercial Recyclables and Waiver of Claims**

City and Contractor agree that 5,167.17 tons of High Value Commercial Recyclables delivered between June 12, 2012 and December 31, 2013 met the 75-79.99% High Value Commercial Recyclables material composition standard and is subject to the \$39.86 per ton processing fee specified above and in Rate Exhibit 1. City and Contractor agree that this compensation amount of \$205,963 is the total amount of compensation due to Contractor for these materials for that period of time and that payment to Contractor of this amount will be addressed in the first reconciliation

period immediately following the City Council approval of this Fifth Amendment. City and Contractor acknowledge and agree that from and after January 1, 2014 until the next Waste Characterization is performed under Section 3 above, the High Value Commercial Recyclables contain 75-79.99% of the designated High Value Commercial Recyclables. 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 claim the City owed Contractor the Mixed Municipal Waste Service Fee for loads of High Value Commercial Recyclables that were composed of less than Eighty Percent (80%) of these high value materials by weight during the period of time from June 12, 2012 through December 31, 2013.

**5. Terms**

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

**CITY:**  
City of Fremont

**CONTRACTOR:**  
BLT Enterprises  
of Fremont, LLC

By: Mark Danaj  
~~Fred Diaz~~ **MARK DANAJ**  
~~City Manager~~ **Assistant City Manager**  
Date: 6-25-14

By: [Signature]  
Date: 02-05-2014

Approved as to Form:

By: Harvey E. Levine  
Harvey E. Levine  
City Attorney  
Date: 6/24/14

LIMITED LIABILITY COMPANY CERTIFICATE

February 4, 2014

TO: THE CITY OF FREMONT ("City")

The undersigned do hereby certify that this company, BLT ENTERPRISES OF FREMONT, LLC, is a manager-managed limited liability company, that we are all of the managers thereof, and that this company has entered into or proposes to enter in that certain Fifth Amendment to the Transfer Station Agreement with respect to the City's High Value Commercial Recyclables Program (the "Agreement").

The undersigned further certify 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 Gutteresen	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 certify 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: Daniel B. Rosenthal

Title: Manager

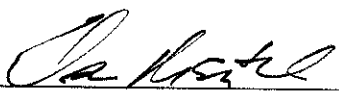
By:  \_\_\_\_\_

Name: Bernard H. Huberman

Title: Manager

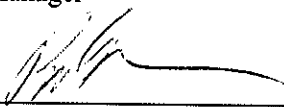


BLT ENTERPRISES OF FREMONT, LLC,  
a California limited liability company

By: 

Name: Daniel B. Rosenthal

Title: Manager

By: 

Name: Bernard H. Huberman

Title: Manager