

**SIXTH 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, Fourth and Fifth Amendments to that Agreement (the Original Agreement, together with the five 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 Sixth Amendment to the "Transfer Station Agreement" shall mean the Transfer Station Agreement, as amended by this Sixth 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 which will not be amended by this Sixth Amendment, but will be concurrently amended to reflect the settlement of the "ERR Claim".

3. Contractor has executed a new collective bargaining agreement (the "New CBA") with International Longshore and Warehouse Union (ILWU), which was effective as of January 1, 2014 and which addresses, among other things, the Fremont Transfer Station ILWU workers' wages through calendar year 2019. The ILWU workers' wage schedule has been incorporated into this Sixth Amendment as Exhibit 16.

4. On August 29, 2013 Contractor filed a Notice of Extraordinary Rate Review Claim (the "ERR Claim") with the City pursuant to Article 11 of the Transfer Station Agreement, where Contractor has the right to request an ERR when, among other things, labor and health care costs exceed CPI. The ERR Claim was based on, among other things, the New CBA.

5. City and Contractor previously negotiated a settlement to the ERR Claim, other than the portion of the ERR Claim relating to Contractor's transportation costs. The business terms of this partial settlement were approved by the Fremont City Council on December 10, 2013, and the City implemented the fee adjustments on January 1, 2014. As part of its approval, the City Council gave direction to incorporate the settlement terms into this Sixth Amendment.

6. The remaining item in the ERR Claim which was not included in the December 10, 2013 settlement was Contractor's claim on certain transportation cost increases, including costs resulting from changes in environmental air emissions laws, and

Contractor's third party transportation costs.

7. On December 16, 2014, the Fremont City Council approved a settlement of the business terms of the transportation cost portion of the ERR Claim and gave direction to incorporate the settlement terms into this Sixth Amendment.
8. In connection with the resolution of the ERR Claim, City and Contractor have also agreed to revise, among other things, the biennial rate adjustment methodology including health insurance adjustments using a Health Insurance Index.
9. City and Contractor agreed in the Fourth Amendment to certain terms and conditions for the Commercial Food Waste Program, and due to certain delays City and Contractor have agreed to extend the date of continuance of that program to June 30, 2020.
10. The City and Contractor have agreed to the following revisions to the Transfer Station Agreement, pursuant to the terms and provisions of this Sixth 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 Sixth Amendment as follows:

**1. Definitions**

*The following is hereby added to Article 1- Definitions*

**Health Insurance Index** means the All Urban Consumers-US City average Index, Health Insurance Item, Series ID CUUR0000SEME compiled and published by the United States Department of Labor, Bureau of Labor Statistics. However, if in the future Contractor and City reasonably agree that another regional index more closely reflects adjustments to health insurance rates in the San Francisco Bay Area, Contractor and City shall use that new index.

- 2. Settlement of ERR Claim.** This Sixth Amendment constitutes a full and complete settlement of the ERR Claim. The economic terms of the ERR Claim settlement are incorporated in the revisions to Article 10 below and reflect the following:

- a. The City's share of labor and health care costs during the six-year term of the New CBA equals 92%.
- b. City and Contractor agree that the Mixed Municipal Waste Service Fee is hereby adjusted for labor and health care costs as reflected in Exhibit 1. This new base for labor and health care costs was set in

order for future biennial adjustments to be applied to a proper base, and are not retroactive payments of either past labor or health care costs. City and Contractor have agreed this \$4.66 per ton for the ERR ILWU labor and health care adjustment, which includes the 2014-2015 biennial rate adjustment, is based in part upon the implementation costs for the 2014-2019 ILWU Wage Schedule, attached as Exhibit 16 and incorporated by reference. Part of the consideration for this \$4.66 per ton adjustment is Contractor's continued implementation of the wage rates in the ILWU Wage Schedule and payment of the health insurance costs.

- c. The Maximum Self Haul Rates as of January 1, 2014 were increased by the \$4.66 per ton amount as set forth in subparagraph b. above, plus an additional agreed upon \$4.18 per ton, as reflected in the revised Exhibit 2 attached hereto. The Maximum Self Haul Rates for Permitted Materials that are charged by item as opposed to by ton are not increased by the foregoing amounts. The revised Exhibits 1 and 2 will be the basis for the next biennial rate adjustment in 2016.
- d. The Mixed Municipal Waste Service Fee has been increased by an additional \$1.63 per ton to cover increased transportation costs resulting from increased labor costs from Contractor's third party hauler; as well as equipment and payload cost increases resulting from a change in environmental air emissions laws and regulations, as reflected in Exhibits 1 and 2.

### **3. Past Due Compensation.**

- a. Upon execution of this Sixth Amendment, City shall pay Contractor an amount equal to \$265,103.82 for the unpaid portion of the transportation adjustment under this Transfer Station Agreement consistent with section 2d for the period January 1, 2014 through December 31, 2014.
- b. For the period January 1, 2015 through May 31, 2015, the additional compensation will be fully paid to Contractor through the monthly reconciliation process. Future biennial adjustment will be based on the Fees shown in the attached Exhibits 1 and 2.

- 4. Extraordinary Review of Transportation Costs.** For the six (6) year period commencing on January 1, 2014, Contractor agrees that it shall not be entitled to an Extraordinary Review of its transportation labor and health care costs under Article 11 of the Transfer Station Agreement, as a result of (a) unionization, (b) extension, modification and/or termination of

Contractor's third party contract with its current transportation subcontractor, (c) Contractor entering into a third party contract with a different transportation subcontractor, and/or (d) Contractor's election to have transportation labor performed by Contractor's employees (whether pursuant to the New CBA or otherwise).

5. **ARTICLE 10 Compensation.** As a result of the settlement of the ERR Claim, **Article 10** of the Transfer Station Agreement *is hereby revised as follows:*

**10.01 Service Fees.** *The language remains the same.*

**10.02 Contractor Compensation**

**Section 10.02** *is hereby replaced in its entirety to read as follows:*

- a. **Service Fee for Mixed Municipal Waste.** Exhibit 1 provides the Mixed Municipal Waste Service Fee that is the compensation to the Contractor for Acceptance of Mixed Municipal Waste Delivered by the City and its Collection Contractor(s) subject to adjustments in accordance with Section 10.03. The Mixed Municipal Waste Service Fee shown on Exhibit 1 will be in effect from January 1, 2014 through December 31, 2015, and incorporates the January 1, 2014 biennial adjustment and the settlement of the ERR Claim. The Mixed Municipal Waste Service Fee has ten components: the Equipment Component-Transfer, the Fixed Component-Other, the Variable Component-Transfer, the Variable Component-Other, the Fuel Component, the Disposal Component, the Pass-Through Component, the Transportation Wage Component, the ILWU Wage Component, and the Health Insurance Component as shown in Exhibit 1.

These ten components are described below.

**(1) Equipment Component-Transfer** is that portion of the Mixed Municipal Waste Service Fee comprised of the Contractor's equipment costs that are related to Transfer of Residue to the Designated Disposal Facility. The Equipment Component-Transfer shall be adjusted biennially over the Term in accordance with Section 10.03; any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11.

**(2) Fixed Component-Other** is that portion of the Mixed Municipal Waste Service Fee comprised of the Contractor's fixed costs for the Facility that are not related to Transfer of Residue to the Designated Disposal Facility. The Fixed Component-Other may be adjusted only as the result of an Extraordinary Review as provided in Article 11.

**(3) Variable Component-Transfer** is that portion of the Mixed Municipal Waste Service Fee comprised of the Contractor's variable costs related to Transfer of Residue to the Designated Disposal Facility. The Variable Component-Transfer shall be adjusted biennially over the Term as specified in Section 10.03; any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11.

**(4) Variable Component-Other** is that portion of the Mixed Municipal Waste Service Fee comprised of the Contractor's costs that are not related to Transfer of Residue to the Designated Disposal Facility. The Variable Component-Other also includes costs of providing workers compensation insurance to Contractor's employees. The Variable Component - Other shall be adjusted biennially over the Term as specified in Section 10.03; any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11; provided, however, the workers compensation portion of this Variable Component - Other is only eligible for Extraordinary Review in years seven (7), thirteen (13) and nineteen (19) of this Agreement.

**(5) 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 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.

**(6) Disposal Component** is subject to adjustment only as necessary to reflect changes in the per-ton Disposal fee charged by the Designated Disposal Facility Contractor, which shall typically be adjusted biennially over the Term to reflect the biennial change in the per-ton Disposal fee, as specified in Section 10.03. 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. The adjustments shall be rounded to the nearest cent per-ton. If adjustments are made to Disposal Component at times other than the biennial adjustment time, the City shall adjust the Mixed Municipal Waste Service Fee as of the date of imposition of the increased per-ton Disposal fee by adjusting the Disposal Component of the Mixed Municipal Waste Service Fee in effect on the date immediately preceding the imposition of the new per-ton

Disposal fee pursuant to this Article, unless the City compensates Contractor through an alternative compensation mechanism approved by the Contractor, which approval shall not be unreasonably withheld.

**(7) Pass-Through Component** is that portion of the Mixed Municipal Waste Service Fee comprised of the Contractor's Pass-Through Costs. The Pass-Through Component is subject to adjustment only as necessary to reflect changes in Pass-Through Costs required by third parties as provided in Section 10.03, or as the result of a Change in Law as provided in Article 11. City shall adjust the Pass-Through Component at a time other than during a biennial adjustment period if the adjustment to the Pass-Through Component would result in a significant adjustment to the Mixed Municipal Waste Service Fee Pass-Through Component. If adjustments are made to Pass-Through Component at times other than the biennial adjustment time and the amount thereof is Significant, City shall adjust the Mixed Municipal Waste Service Fee as of the date of imposition of the increased Pass-Through Component (by adjusting the Pass-Through Component of the Mixed Municipal Waste Service Fee in effect on the date immediately preceding the imposition of the new Pass-Through Cost pursuant to this Article) unless the City compensates Contractor through an alternative compensation mechanism approved by the Contractor, which approval shall not be unreasonably withheld.

**(8) Transportation Wage Component** is that portion of the Mixed Municipal Waste Service Fee associated with transportation labor expenses related to Transfer of Residue to the Designated Disposal Facility. The Transportation Wage Component shall be adjusted biennially over the Term as specified in Section 10.03; any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11.

**(9) Health Insurance Component** is that portion of the Mixed Municipal Waste Service Fee comprised of the Contractor's workforce health insurance costs. The Health Insurance Component shall be adjusted biennially over the Term using the Health Insurance Index as defined and as specified in Section 10.03. Any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11 of the Transfer Station Agreement.

**(10) ILWU Wage Component.** The ILWU Wage Component is that portion of the Mixed Municipal Waste Service Fee comprised of the negotiated labor rates outlined in Exhibit 16, and City recognized related labor expenses. The ILWU Wage Component shall be adjusted biennially over the Term as specified in Section 10.03; any other

adjustments will only be as the result of an Extraordinary Review as provided in Article 11.

**b. Service Fee for Small Self Haulers.** Contractor acknowledges that in entering into this Agreement the City intends to provide an inexpensive and low-cost Disposal option for Small Self Haulers for reasons including discouraging illegal dumping. In accordance with such acknowledgment and understanding, Contractor agrees to charge Small Self Haulers no more than reasonable fees in the amounts described in Exhibit 2, which shall be adjusted in accordance with Section 10.04. Small Self Haulers shall be charged by weight for the Permitted Materials Delivered to the Facility based on an inbound vehicle weight and outbound vehicle weight measured at the scale house with the exception of White Goods, Tires, Bulky Goods, and other similar items that will be charged on a per-item basis. Contractor agrees that the Facility will not accept self-hauled Mixed Municipal Waste (other than Recyclable Rich Materials) from outside the Tri-Cities without City's written consent and approval, but Contractor agrees to use best efforts to avoid turning away materials so as to avoid illegal dumping and creating risks in the surrounding area.

Exhibit 2 provides the Maximum Self Haul Service Fees Contractor may be compensated for Accepting Permitted Materials Delivered by Small Self Haulers. Contractor may establish Self Haul Service Fees less than or equal to the Maximum Self Haul Service Fees at its own discretion and may establish Service Fees for Permitted Materials which do not appear on the list of Maximum Self Haul Service Fees. The Maximum Self Haul Service Fees shown on Exhibit 2 will be in effect from June 1, 2015 through December 31, 2015, and incorporates the January 1, 2014 biennial adjustment and the settlement of the ERR Claim.

**c. Miscellaneous Fees.** Exhibit 1 has been revised to include Miscellaneous Fees, which include Host Fees, Extended Facility Receiving Hours Fees, Report Preparation costs, Waste Characterization Costs and other fees as described in more detail in Exhibit 1. Miscellaneous Fees will be adjusted by CPI on a biennial basis using the most recent June CPI Index and the CPI Index which is twenty four months prior; any other adjustments will only be as the result of an Extraordinary Review as provided in Article 11.

**d. Dry Mixed Recyclables.** The Dry Mixed Recyclable Processing Fees effective as of January 1, 2014 are updated in Exhibit 1, and the definitions, terms and obligations for the Dry Recyclables Program are described in the Fourth Amendment.

**e. Commercial Food Waste.** The Commercial Food Waste Fees effective as of January 1, 2014 are updated in Exhibit 1, and definitions, terms and

obligations for the CFW Program are described in the Fourth Amendment, as amended by this Sixth Amendment.

**f. High Value Commercial Recyclables.** The High Value Commercial Recyclables Compensation as of January 1, 2014 are updated in Exhibit 1, and the definitions, terms and obligations of the High Value Commercial Recyclables program are described in the Fourth and Fifth Amendment. However, as a result of the settlement of the ERR Claim, effective as of January 1, 2014 and continuing during the Term, an amount equal to \$4.66 per ton as identified on Exhibit 1 as the High Value Commercial Recycling Extraordinary Adjustment shall be credited against all amounts owed by Contractor to the City for High Value Commercial Recyclables (or if no amount is owed by Contractor, City shall pay Contractor such amount). The High Value Commercial Recycling Extraordinary Adjustment shall be adjusted biennially by the same dollar amount that the ILWU Wage Component and the Health Insurance Component are increased in accordance with Exhibit 1b.

**g. Only Compensation.** The fees described in this Section 10.02 and Exhibits 1 and 2 and fees for the operation of the household hazardous waste facility are the only compensation due the Contractor from the City and City Collection Contractor(s) for services provided under the Transfer Station Agreement, unless mutually agreed to by the Parties. Nothing contained herein alters or amends Contractor's right to receive compensation from Approved Users and Other Allowable Users.

**10.03 Adjustment of Mixed Municipal Waste Service Fee is hereby deleted in its entirety and replaced to read as follows:**

**a. 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 (i.e., the next biennial increase will be effective January 1, 2016). The biennial increases will be calculated to reflect changes that have occurred since the prior biennial adjustment in the CPI, OPIS Diesel Fuel Index and the Health Insurance Index, as follows (an example of which is shown on Exhibit 1a):

1. **Equipment Component – Transfer:** The biennial change shall be calculated using the prior June CPI and the CPI which is twenty four (24) months prior.
2. **Variable Component – Transfer:** The biennial change shall be calculated using the prior June CPI and the CPI which is twenty four (24) months prior.



3. **Variable Component – Other:** The biennial change shall be calculated using the prior June CPI and the CPI which is twenty four (24) months prior.
4. **Fuel Component:** The biennial change shall be calculated using the average of the most recent 12 month OPIS Diesel Fuel Index ending in June compared to the same average 12 month index used in the prior adjustment period.
5. **Transportation Wage Component:** The biennial change shall be calculated using the prior June CPI and the CPI which is twenty four (24) months prior. However, if during the biennial rate review effective January 1, 2016, transportation wages have increased by an amount greater than CPI. The City may determine in its sole discretion that a more appropriate index is available and should be used for this Transportation Wage Component. The City reserves the right to implement a more accurate index for that biennial adjustment, as long as the actual increase in this Transportation Wage Component is considered by the City to be fair and reasonable.
6. **Health Insurance Component:** The biennial change shall be calculated using the prior June Health Insurance Index and the Health Insurance Index which is twenty four (24) months prior, provided, however that in no event shall any biennial change to the Health Insurance Component be less than the biennial change in CPI for the same period, with a minimum floor of three percent (3%) for the applicable two year period.
7. **ILWU Wage Component:** The biennial change shall incorporate the proportional scheduled wage adjustments as shown in Exhibit 16. The adjustment for the 2016 rate setting shall be 14.10%. The adjustment for the 2018 rate setting shall be 14.17%. The adjustment for the rate settings for 2020 and beyond shall revert to the biennial CPI as described in this Article 10 and Exhibit 1, unless Contractor and City mutually agree at that time to a different adjustment mechanism.

**b. Verification of Pass-Through Costs.** The following steps shall be used to determine if an adjustment in the Mixed Municipal Waste Service Fee should include any adjustment in the Pass-Through Component:

- (1) No later than thirty (30) calendar days prior to the City's determining a biennial adjustment to the Service Fees, the Contractor shall provide written verification and documentation of the specific

costs (listed separately) comprising the then-current Pass-Through Component, and indicate if they have increased, decreased, or remained the same.

(2) Based on the information submitted by the Contractor, and any additional information the City may reasonably request and/or separately collect for its independent verification, the City shall adjust the Pass-Through Component to reflect any verified increases or decreases in Pass-Through Costs.

(3) The biennial adjustments provided for in this Section shall not occur until the City has to its satisfaction verified current Pass-Through Costs, except that the City shall not unreasonably delay an adjustment of the Service Fee.

**c. Limitation.** If during any biennial adjustment period, the CPI change for the biennial period exceeds twelve and thirty-six hundredths (12.36) percent, the City will adjust the Variable Component-Other, the Variable Component-Transfer, and the Transportation Wage Component (unless an alternative index is selected by the City) of the Mixed Municipal Waste Service Fee in excess of twelve and thirty-six hundredths (12.36) percent only to the extent that the Contractor provides documentation demonstrating that the Contractor's actual Direct Costs for the period being adjusted increased in excess of twelve and thirty-six hundredths (12.36) percent. If during any adjustment period other than a biennial adjustment period, the average monthly CPI change during the adjustment period exceeds one half (0.5) percent, the City will adjust the Variable Component-Other, the Variable Component-Transfer and the Transportation Wage Component (unless an alternative index is selected by the City) of the Mixed Municipal Waste Service Fee in excess of an average of one half (0.5) percent only to the extent that the Contractor provides documentation demonstrating that the Contractor's actual Direct Costs for the adjustment period being adjusted increased in excess of one half (0.5) percent per month. The City may, at its sole discretion, review and approve some, all or none of the Direct Costs submitted by the Contractor. In making a determination with regard to this subsection, the City may request that the Contractor develop and provide, at its own cost, any reasonably necessary financial, cost or technical data, or other documentation needed in reaching a decision.

**10.04 Adjustment of Maximum Self Haul Service Fees** *is hereby deleted in its entirety and replaced to read as follows:*

**a. Adjustments.** The Maximum Self Haul Service Fees will be adjusted on the same calendar schedule as the Mixed Municipal Waste Service Fees. The Maximum Self Haul Service Fees, exclusive of City per-ton imposed Fees will

be adjusted by the percentage change the Mixed Municipal Waste Service Fee is adjusted for the same adjustment period. The adjustments shall be rounded to the nearest cent.

*The remainder of Article 10 in the Transfer Station Agreement remains unchanged and in full force and effect.*

## **6. Commercial Food Waste Program**

The Fourth Amendment, Sections 5 A and the first two sentences of Section 5B are hereby revised to read as follows:

- a. City and Contractor acknowledge that City 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 until June 30, 2020, and that City has the right to expand this CFW Program to a monthly tonnage cap of 250 tons (the "CFW Bypass Cap"). If during the period until June 30, 2020, 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. City and Contractor expect that other food waste processing options will be available to the City by June 30, 2020. City and Contractor agree to discuss in good faith the processing alternatives available at that time. On June 30, 2020, City will have the following options (*the rest of this Paragraph 5 B remains the same*).

## **7. Extraordinary Review of Compensation - Unionization**

*Section 11.03g. is hereby amended to read as follows:*

**Unionization.** In the event Contractor's employees and/or employees of the transportation subcontractor are organized pursuant to a collective bargaining agreement, Contractor may apply for an extraordinary rate review, subject to all of the following:

- (1) The combined wage and benefit package of all employees who are members of the union must increase Contractor's wage and benefit costs beyond the CPI adjustment calculated under this Agreement. However, if the

extraordinary rate review is a result of a union agreement between a recognized union and the employees of Contractor's subcontractor, the City must determine that there are actual documented cost impacts to Contractor which show that such subcontractor's wage and benefit costs exceed the CPI for that rate period, and that those wage and benefit costs exceeding CPI have been passed on to Contractor.

(2) The City has the right to review the wage and benefit contracts between the Contractor and the union representing Contractor's employees; the wage and benefit contracts between the Contractor's subcontractor and the union representing subcontractor's employees, and the contracts between Contractor and subcontractor for transportation services to ensure that all contracts are fair and reasonable. These contracts must provide adequate detail and cost breakdowns including but not limited to capital costs, labor, benefits and overhead in order for the City to make that determination.

(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, or a union agreement between Contractor's subcontractor and a recognized union representing subcontractor's employees, subject to the limitations in Section 3 of this Sixth Amendment.

(4) Any rate adjustment granted by the City for this purpose shall be for future labor and benefit cost impacts only, and shall not include any compensation to Contractor for labor cost increases in excess of CPI incurred by Contractor, prior to City granting of a rate adjustment under this Section.

#### **8. Conflicting Provisions.**

The Parties have agreed in this Sixth Amendment to expand Exhibits 1, 1a, 1b and 2 to include more refined rate calculations and to delete certain descriptive rate calculation language in the Articles. Therefore, in the event of any conflict between the Articles and the Exhibits 1, 1a, 1b and 2, these Exhibits will prevail. In the event of a conflict between the Articles and any other Exhibits, the language in the Articles will prevail.

#### **9. Release of Claims**

City and Contractor agree that the Mixed Municipal Waste Service Fee and Maximum Self Haul Service Fees increases described herein and in the revised Article 10 and revised Exhibits 1, 1a, 1b, 2, and the rate adjustments in the Second Amendment to the Recycling Agreement are the total amount of compensation due to Contractor for all claims under (a) the ERR Claim, and (b) the biennial adjustment for the period 2014/2015. On behalf of themselves and their respective successors and assigns, except for the terms of the settlement of the ERR Claim set forth in this Sixth Amendment,

Contractor and City hereby completely release, absolve and forever discharge each other (including, without limitation, their respective employees, officers and council members) from any and all actions, 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 the ERR Claim and biennial rate adjustment for 2014/2015.

**10. Complete Agreement.**

The Transfer Station Agreement and the First, Second, Third, Fourth, Fifth and Sixth Amendment contain the entire agreement between Contractor and the City with respect to the subject matter hereto and supersedes any and all prior and contemporaneous negotiations, representations, understandings and agreements, whether written or oral.


**11. Terms.**


All other terms in the Transfer Station Agreement including Amendments One through Five 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

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

By:   
Fred Diaz Jessica von Borck  
Asst. City Manager

By:   
Shawn Gutteresen

Approved as to Form:

By:   
Harvey E. Levine  
City Attorney

Date: 5/5/2015

EXHIBIT 1  
CITY OF FREMONT – REVISION 2 (1)  
MIXED MUNICIPAL WASTE SERVICE FEE  
June 1, 2015-  
DECEMBER 31, 2015

The Mixed Municipal Waste Service Fee and its components are presented in this Exhibit for four service fee scenarios related to the City of Fremont's Mixed Municipal Waste delivered to the Facility. All Mixed Municipal Waste Service Fee information shall be adjusted periodically in accordance with Section 10.03 of the Agreement.

Service Fee Component	City of Fremont's Mixed Municipal Waste Facility Fee			
	Fremont Only	Fremont and Newark	Fremont and Union City	Tri-Cities
Equipment component – transfer	2.04	2.04	2.04	2.04
Fixed component –other	13.26	13.11	12.29	12.20
Variable component – transfer	2.12	2.10	2.11	2.11
Variable component –other	2.09	1.79	1.85	1.79
Wage component - transfer	6.48	6.48	6.47	6.45
Wage component - ILWU	12.74	11.15	11.45	11.13
Health Insurance component	5.49	5.14	5.21	5.14
Fuel Component	1.99	1.99	1.99	1.99
Disposal Component (2)	29.21	29.18	29.18	29.15
Alameda County LEA inspection Fee	0.33	0.33	0.33	0.33
Fuel Tax – transfer	0.45	0.45	0.45	0.45
<b>Total Service Fee/ Ton</b>	<b>\$76.20</b>	<b>\$73.76</b>	<b>\$73.37</b>	<b>\$72.78</b>

Miscellaneous Fees

Host Fee – franchise tonnage from Newark & Union City	\$7.81/ton
Host Fee – self haul tonnage charged per ton	\$9.19/ton
Host Fee – self haul tonnage charged per load	\$4.04/load
Host Fee – divertible recycling per ton	\$5.00/ton
Host Fee – recyclable rich materials	\$2.63/ton
Contractor compensation for extended Facility Receiving Hours	\$366.97/hour
Amount regarded as Significant	\$25,057.06
Report preparation costs considered in Section 8.11.b.3.	\$7,339.10
Waste Characterization – Standard	\$3,379.34
Waste Characterization – Single Load	\$901.16

- (1) Revision 2 incorporates the extraordinary transportation adjustment of \$1.63 per ton in MMW Facility Fee and provides additional breakdown of service fee components.
- (2) 88% of City Council approved landfill disposal rate

Dry Mixed Materials Processing Fee

0-30% residual level = no fee  
30.01-35% residual level = \$23.57/ton  
35.01-40% residual level = \$33.94/ton  
40.01-45% residual level = \$46.09/ton  
45.01-50% residual level = \$57.61/ton

Commercial Food Waste

Commercial Food Waste Bypass Fee = \$21.74/ton  
Commercial Food Waste Transfer Fee = \$21.74/ton

High Value Commercial Recyclables Compensation

Material Composition	Payment/Ton to City	Processing fee
85% or more high value commercial recyclables*	\$17.77/ton	\$0/ton
80-84.99% high value commercial recyclables*	\$0/ton	\$0/ton
75-79.99% high value commercial recyclables*	\$0/ton	\$39.86/ton
74.99% or less high value material - dry mixed material processing fees apply		
High Value Commercial Recycling Extraordinary Adjustment (3)		\$4.66/ton

- (3) Extraordinary adjustment applies to material delivered in the categories marked with \*

EXHIBIT 1 a  
 BIENNIAL ADJUSTMENT TO HIGH VALUE COMMERCIAL RECYCLABLES  
 COMPENSATION

Payment Calculation Example (4)

	2014 Base OBM	2016 OBM	Index change/ton	Weighted Average	Index Change	Percent Change
Mixed Paper	76.25	98.33	\$22.08	43.00%	\$ 9.49	12.45%
OCC	117.5	150.88	\$33.33	57.00%	\$ 19.00	16.17%
Change						14.31%
Current Payment						\$17.77
Adjusted Payment						\$20.31

(4) For illustrative purposes only



EXHIBIT 1 b  
EXAMPLE BIENNIAL ADJUSTMENT CALCULATIONS

Mixed Municipal Waste Service Fee

Component	Adjustment Index Used	Current Fee	Most Recent Index	Prior Index	Adjusted Fee(5)
Equipment Component - transfer	CPI	\$ 2.04	258.232	245.935	\$ 2.14
Fixed Component - other	no adjustment	\$ 12.20	n/a	n/a	\$ 12.20
Variable Component - transfer	CPI	\$ 2.11	258.232	245.935	\$ 2.22
Transportation Wage Component	CPI	\$ 6.45	258.232	245.935	\$ 6.77
ILWU Wage Component	ILWU Wage schedule, average wage	\$ 11.13	\$19.36	\$16.96	\$ 12.71
Health Insurance Component	Health Insurance Index	\$ 5.14	135.3	123.0	\$ 5.65
Variable Component - other	CPI	\$ 1.79	258.232	245.935	\$ 1.88
Fuel Component	OPIS Index	\$ 1.99	Pass-through if applicable		\$ 1.99
Disposal Component	Pass-through	\$ 29.15	Pass-through - 3.8% estimated		\$ 30.27
Alameda County LEA inspection fee	Pass-through	\$ 0.33	Pass-through if applicable		\$ 0.33
Fuel Tax - transfer	Pass-through	\$ 0.45	Pass-through if applicable		\$ 0.45
<b>Total Service Fee/Ton</b>		<b>\$ 72.78</b>			<b>\$ 76.61</b>

(5) For illustrative purposes only

(6) All components, with the exception of the fixed component, shall be adjusted as follows: current fee X (most recent index/prior index) = adjusted fee

## EXHIBIT 2 REVISION 3 (1)

## MAXIMUM SELF-HAUL SERVICE FEES

## ALTAMONT LANDFILL DISPOSAL

June 1, 2015- DECEMBER 31, 2015

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	Total		
		Base	Host Fee	Fee
Garbage (minimum charge) (2)	Load	\$ 42.12	\$ 4.04	\$ 46.16
Garbage	Ton	\$ 89.77	\$ 9.19	\$ 98.96
Green Waste/Wood Waste	Ton	\$ 88.16	\$ 2.63	\$ 90.79
Soil	Ton	\$ 88.16	\$ 2.63	\$ 90.79
ADC	Ton	\$ 88.16	\$ 9.19	\$ 97.35
Asphalt	Ton	\$ 88.16	\$ 2.63	\$ 90.79
Concrete	Ton	\$ 88.16	\$ 2.63	\$ 90.79
Concrete with Rebar	Ton	\$ 88.16	\$ 2.63	\$ 90.79
Demolition Debris	Ton	\$ 88.16	\$ 9.19	\$ 97.35
Compacted loads-Mixed Municipal Waste	Ton	\$ 89.77	\$ 9.19	\$ 98.96
Divertible Materials	Ton	\$ 63.71	\$ 5.00	\$ 68.71
Tree Stumps and Poles	Ton	\$ 88.16	\$ 2.63	\$ 90.79
Certificate of Destruction (documents)	Ton	\$ 88.58	\$ 9.19	\$ 97.77
Certificate of Destruction (condemned)	Ton	\$ 88.58	\$ 9.19	\$ 97.77
Mattress/Box Spring (per set) (3)	Set	\$ 28.22	N/A	\$ 28.22
Tires (16" or less)	Item*	\$7.44	N/A	\$7.44
Tires (>16" & < 21")	Item*	\$14.86	N/A	\$14.86
Tires (Tractor/off road)	Item*	\$24.74	N/A	\$24.74
Tires (Bulk load)	Item*	\$14.86	N/A	\$14.86
White Goods – Base	Item*	\$9.13	N/A	\$9.13
White Goods – Freon Removal	Item*	\$27.40	N/A	\$27.40
White Good – Per Mercury Switch	Item*	\$6.48	N/A	\$6.48

(1) Revision 3 incorporates the revised 2015 Altamont Landfill regulatory fees.

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

(3) Fee collected to facilitate mattress and box spring recycling. Fee applied at \$14.11 per piece.

## SCHEDULE 16

CLASSIFICATION	EFFECTIVE DATES					
	14	15	16	17	18	19
<b>Mechanic</b>	\$26.93	\$27.94	\$29.00	\$30.11	\$31.27	\$32.49
<b>Equipment Operator</b>	\$21.33	\$22.34	\$23.40	\$24.51	\$25.67	\$26.89
<b>PM Maintenance Tech</b>	\$17.83	\$18.89	\$20.02	\$21.21	\$22.48	\$23.82
<b>Scale House</b>	\$17.82	\$18.87	\$19.98	\$21.16	\$22.41	\$23.74
<b>Laborer (Site Maintenance, Spotters, Rakers)</b>	\$14.66	\$15.75	\$16.93	\$18.19	\$19.55	\$21.01
<b>Laborers trained and authorized to use the riding sweeper</b>	\$14.89	\$15.98	\$17.16	\$18.42	\$19.78	\$21.24
<b>Sorter</b>	\$14.59	\$15.68	\$16.86	\$18.12	\$19.48	\$20.94
<b>Baler Operator</b>	\$17.69	\$18.74	\$19.85	\$21.03	\$22.28	\$23.61
<b>Buyback Operator/HHW</b>	\$17.51	\$18.56	\$19.67	\$20.85	\$22.10	\$23.43
<b>Forklift Operator</b>	\$17.69	\$18.74	\$19.85	\$21.03	\$22.28	\$23.61

**Foreperson:**

A Foreperson will receive \$1.25 per hour above the highest rate working in his/her group.