RESOLUTION NO. 2005-653

Adopted by the Sacramento City Council

August 2, 2005

APPROVING AMENDMENT #1 TO AGREEMENT CA98-462, EXTENDING THE AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND BLT ENTERPRISES OF SACRAMENTO, INC. AN ADDITIONAL FIVE YEARS

BACKGROUND

A. On September I, 1998 the City of Sacramento, City Council approved Agreement #CA98-462 between the City and BLT Enterprises of Sacramento, Inc. to operate the Sacramento Recycling and Transfer Station.

B. The current term of Agreement #CA98-462 is fifteen years.

C. Article 3, Term of Agreement, Paragraph 3.01 Term gives the City the right to extend the term of the agreement for an additional five-years, for a total of 20-years.

D. BLT Enterprises of Sacramento, Inc, agrees in return for the extension of the agreement for an additional five years, they will site, construct and have operational a North Area Transfer Station within three-years from the date of approval of the five year extension of Agreement #CA98-462.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CIYT COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council authorizes the City Manager to execute Amendment #1 to the Agreement #CA98-462, extending the agreement for an additional five years, for a total of 20-years (Exhibit A).

Section 2. The City Council directs staff to return within 120 days with amendments to Agreement #CA98-462 addressing:

1. A work plan for siting, construction and operation of a North Area Transfer Station.
2. Services to be provided by BLT Enterprises of Sacramento, Inc. in exchange for the benefits gained by the five-year extension of the agreement.

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Exhibit A: Amendment Number One to the Agreement between the City of Sacramento and BLT Enterprises of Sacramento, Inc.

Adopted by the City of Sacramento City Council on August 2, 2005 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters and Mayor Fargo.

Noes: None

Abstain: None

Absent: None

Mayor Heather Fargo

Shirley Concolino, City Clerk

AMENDMENT NUMBER ONE TO THE AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND BLT ENTERPRISES OF SACRAMENTO, INC., FOR MUNICIPAL SOLID WASTE TRANSFER, TRANSPORT, DISPOSAL, PROCESSING AND RECOVERED MATERIALS DIVERSION.

WHEREAS, the City of Sacramento ("City") and BLT Enterprises of Sacramento, Inc., ("Contractor") have entered into the Agreement described in the title hereof (the "Service Agreement") which is City Agreement # 98-131; and,

WHEREAS, pursuant to the Service Agreement, the Contractor designed and constructed a materials recovery and transfer facility as defined therein (the "Facility") and has been operating the Facility since May, 1999; and,

WHEREAS, the Service Agreement provides that the City shall deliver Residential Waste, Commercial Waste and other Permitted Waste (as those terms are defined in the Service Agreement) which is municipally collected by (i) City employees; or, (ii) where City has elected to have all or some portion of such waste collected by one or more private parties, City contractors (collectively, all such Waste is defined as "City Waste") and all such City Waste continues to be delivered to the Facility; and,

WHEREAS, due to the growth of the City, especially in the northern area of the City (the "North Area"), the City could achieve savings in miles driven, fuel consumption and air emissions from solid waste division vehicles if it could use a solid waste transfer facility in the North Area for a portion of the City Waste; and,

WHEREAS, the City and the Contractor have agreed that the Contractor will design, and build (and after completion, operate) such a transfer facility which shall be known as the BLT North Sacramento Recycling & Transfer Station (the "BLT North Facility") to which a portion of the City Waste now delivered to the Facility would thereafter be delivered; and,

WHEREAS, the BLT North Facility is intended to be completed within eighteen to twenty four months from the date of this amendment; and,

WHEREAS, the City wishes to achieve the cost savings and pollution control benefits described above as soon as possible until the BLT North Facility is operational; and,

WHEREAS, the City has acquired the North Area Corporation Yard ("NACY") and now dispatches part of its solid waste collection fleet from the NACY and, until the BLT North Facility is ready to accept solid waste, proposes to divert a portion of the City Waste thereby collected that would otherwise go to the Facility as described above to Sacramento County's (the "County") North Area Recovery Station ("NARS"); and,

WHEREAS, Contractor is willing to accommodate the City in exchange for the City's agreement to negotiate in good faith a further amendment to the Service Agreement or a

new agreement providing for the use by the City of the BLT North Facility upon completion and to extend the term of the Service Agreement and for other good and valuable consideration described herein;

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

1.01 AMENDMENT, DEFINED TERMS

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

b. *The following terms are added to Exhibit 1.01 of the Service Agreement as Definitions*:

BLT North Facility shall mean a municipal solid waste transfer station and materials recovery facility located at a site chosen by Contractor and acceptable to City to be owned, permitted, constructed and operated by Contractor which will be capable of accepting and, as applicable, processing, transporting and/or disposing of City Waste, Recyclable Materials and Green Waste.

Green Waste shall mean a type of Permitted Waste that is comprised primarily of leaves, cut grass, tree trimmings or other organic debris such as food scraps that are segregated prior to delivery to the Facility and are suitable for composting.

NARS Facility shall mean Sacramento County's (the "County") North Area Recovery Station ("NARS").

1.02. TERM OF AGREEMENT

The City hereby exercises its option to extend the Term of the Agreement for five (5) years pursuant to Section 3.01 of the Agreement.

1.03 DEVELOPMENT OF BLT NORTH FACILITY

A new section 4.07 is added to the Agreement as follows:

4.07. Development of the BLT North Facility.

a. Contractor's Obligations. Contractor will site, permit and construct the BLT North Facility and make it available to accept City Waste from the North Area as soon as possible using Reasonable Business Efforts but in no event later than two years from the execution of an amendment to this Agreement or a separate agreement which shall be incorporated into this Agreement by reference (the "BLT North Agreement") which amendment or agreement shall describe specific terms and

conditions for the construction, operation and use of the BLT North Facility and the compensation to BLT therefor unless such development shall be delayed due to delays in permitting including, without limitation, compliance with the California Environmental Quality Act in which case the Contractor shall make the BLT North Facility available to accept City Waste, Recyclable Materials and Green Waste as soon as is possible using Reasonable Business Efforts. In addition, the Contractor shall negotiate in good faith with City the BLT North Agreement. Such negotiations are to begin by July 15, 2005 and Contractor agrees to use its best efforts to conclude the negotiations and agree with City on the language of the BLT North Agreement by November 15, 2005.

b. City's Obligations. City shall cooperate with Contractor in the development and permitting of the BLT North Facility. Upon notification of the BLT North Facility's readiness to accept City Waste, City shall cease deliveries of City Waste to the NARS Facility and instead deliver such City Waste to the BLT North Facility as described in Section 6.01(g) hereof. In addition, City shall negotiate in good faith with Contractor the BLT North Agreement as described in Subsection 'a' above. Such negotiations are to begin by July 15, 2005 and City agrees to use its best efforts to conclude the negotiations and agree with Contractor on the language of the BLT North Agreement by November 15, 2005.

c. **Failure to Agree on BLT North Agreement**. In the event that the parties have not agreed on the BLT North Agreement by November 15, 2005, then upon request of BLT, the Department agrees to re-direct all City Waste which was being delivered to the NARS Facility back to the Facility as soon as possible (but no longer than thirty days) until such time as the parties have executed the BLT North Agreement. If BLT shall give such notice, then as of the date when all City Waste which had been diverted from the Facility pursuant to Section 6.01(f) is again redirected to the Facility, City may cease the deliveries required of the City pursuant to Section 6.01(i) until such time as the BLT North Agreement is executed.

d. Use of BLT North Facility. The BLT North Facility shall be designed and is expected by the parties to be used to accept, transfer, transport and dispose of City Waste including, without limitation, commercial and Neighborhood Cleanup Waste and to accept, transfer, process and transport to purchasers and/or users thereof Recyclable Materials and Green Waste. Specific terms relating to those activities will be set out in the BLT North Agreement.

1.04 DELIVERY AND ACCEPTANCE OF PERMITTED WASTE.

New Sections 6.01 (f) through (h) are added to the Agreement as follows:

(f) City may divert up to 25,000 tons per year of City Waste that would otherwise be delivered to the Facility pursuant hereto to the County's NARS facility for a period of no longer than two years commencing July 15, 2005 unless such period shall be extended by BLT at its option due solely to delay in development of the

BLT North Facility caused by permitting delays including compliance with the California Environmental Quality Act ("CEQA") in which case the City may continue to divert City Waste to the NARS Facility for an additional period of no more than one year. In the event that the BLT North Facility is never developed or is delayed beyond the period described herein, then no later than July 15, 2008, the City shall cease delivery of City Waste which was being delivered to the NARS Facility to the NARS Facility and shall again direct it to the Facility unless both parties have agreed otherwise in writing.

(g) Notwithstanding the provisions of Subsection (f) above, the City shall cease deliveries of City Waste to the NARS Facility within thirty days of receipt of notification from BLT that the BLT North Facility is ready to receive such City Waste and shall instead deliver all such City Waste previously delivered to the NARS Facility to the BLT North Facility. In the event that either a further amendment to this Agreement or a new agreement relating to the development of the BLT North Facility is not agreed to by the Parties hereto by December 1, 2005, then either party may terminate the right of the City described in subsection (f) above and thereafter the City shall cease deliveries of City Waste to the NARS Facility which was being delivered to the NARS Facility and thereafter shall revert to delivering all such City Waste to the Facility.

(h) In the event that the City delivers more than 25,000 tons per year of City Waste to the NARS facility, it shall compensate BLT for each delivered ton in excess of 25,000 tons per year in accordance with Section 18.11 hereof.

1.05. GREEN WASTE DELIVERIES

New Section 6.01 (i) is added to the Agreement as follows:

(i) Commencing as of July 15, 2005 and continuing as long as the City is delivering City Waste to the NARS Facility pursuant to this Section 6.01, City shall deliver or cause the delivery of at least 5,000 tons per year of Green Waste to BLT. BLT shall be compensated for acceptance of such Green Waste as provided in Section 18.12 hereof.

1.06. RECORD KEEPING, REPORTS

A New Section 14.01.c is added to the Service Agreement as follows:

c. City Records and Reporting. As long as the City is delivering City Waste to the NARS Facility pursuant to Sections 6.01(f) and (h), the City shall keep accurate records and shall also cause the County to keep accurate records of all City Waste including, without limitation, Green Waste and Recyclable Materials delivered to the NARS facility sufficient to allow the Contractor to determine and confirm the amounts of City Waste including, without limitation, Green Waste and Recyclable Materials that were delivered to, and accepted by the County at

the NARS Facility. City shall prepare such records on a quarterly basis and shall transmit those records to the Contractor no later than the 20th day after the end of each calendar quarter during any such quarter in which the City has delivered any materials described above to the NARS Facility.

1.07. COMPENSATION

New Sections 18.11 and 18.12 are added to the Service Agreement as follows:

18.11 Compensation to Contractor for Excess Diverted Tonnage. If the City delivers, pursuant to Sections 6.01(f) through (g) hereof, more than 25,000 tons per year of City Waste to the NARS Facility then within sixty days of the end of each year in which such deliveries are made to the NARS Facility the City shall pay to Contractor an amount equal to the number of tons of City Waste so delivered which exceed 25,000 tons per year multiplied by an amount equal to the Service Fee then in effect for the period (pro rated if the Service Fee shall have changed during the period).

18.12. Compensation to Contractor for Acceptance of Green Waste. City shall pay to Contractor an amount equal to $27.75 per ton of Green Waste delivered by the City pursuant to Section 6.01(i) which amount shall be escalated in the same manner and at the same times as the Service Fee is escalated pursuant to Article 18 hereof.

BLT ENTERPRISES OF SACRAMENTO, INC.

By:_____ **Date:**_____

CITY OF SACRAMENTO
UTILITIES DEPARTMENT
SOLID WASTE DIVISION

By:_____ **Date:**_____