

AGREEMENT FOR
OPERATION OF THE
PESCADERO SOLID WASTE TRANSFER STATION

County of San Mateo, Department of Public Works
San Mateo County, CALIFORNIA

July 31, 2008

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND ALLIED WASTE FOR
OPERATION OF THE PESCADERO TRANSFER STATION

THIS AGREEMENT, entered into this day of, 2008, by and between the County of San Mateo, hereinafter called "County," and Allied Waste, hereinafter called "Contractor"; having its principal place of business at 225 Shoreway Road, San Carlos, CA, 94070,

WITNESSETH

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing services and equipment necessary to operate, recover and/or dispose of solid waste, recyclables, and recoverables delivered to the Pescadero Transfer Station/Materials Recovery Facility hereafter "TS/MRF". The location of the Pescadero TS/MRF is off Bean Hollow Road in Pescadero, CA 94060,

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent Contractors for the furnishing of such services to or for County or any Department thereof;

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES
HERETO AS FOLLOWS:**

I. Exhibits

- A. Rates for the Operation, Transfer and Processing of Municipal Solid Waste at TS/MRF
- B. Rates for Recycling at TS/MRF
- C. 504 Compliance
- D. Sample calculations for rate increases for illustration purposes only.

II. Services To Be Performed By Contractor

A. Site Improvements

- 1. The County is planning site improvements for the TS/MRF to improve traffic flow and increase recovery/recycling of materials. The Contractor will finance any capital costs required for additional site improvements, containers and equipment beyond the improvements made by the County.
- 2. All site improvements financed by Contractor will require approval from the County. Any site improvements, regardless of who provides and /or finances the improvements, are public works, subject to the California legal requirements applicable to public work, including but not limited to the requirements of the California Public Contracts Code and California Labor Code provisions concerning payment of prevailing wages. At the end of the term of this Agreement, the County will retain ownership of the facility including the capital improvements financed by the Contractor.

3. During the time of TS/MRF site improvements, the TS/MRF may be temporarily closed, unless the Contractor and the County Director of Public Works or the Director's designee mutually agree that it is safe to continue to operate concurrently with construction activities. The Contractor and the County will work together to arrange for a temporary alternative site to continue to serve local residents and businesses in the collection of solid waste, and recyclables (including compostables) if feasible. A likely temporary site may be the County Corporation Yard at the corner of Bean Hollow Road and Pescadero Road. Operations at the temporary site may be reduced to 3 days a week service during the site improvements.
4. Contractor will provide a list to the County of all the operating permits that are required for this facility within 30 days of the execution on this Agreement. Contractor will obtain and maintain all such permits throughout the term of this Agreement, which are required for the Contractor to operate the TS/MRF. Ongoing reporting requirements to the permitting agencies will be the responsibility of the Contractor.
5. The Contractor will participate in meetings with permitting agencies upon request of the County. The Contractor will assist in reviewing all phases of construction of the TS/MRF to assure that the best available construction materials and practices are being used, in accordance with all County specifications and governmental requirements.
6. The County will be responsible for preparing and submitting all environmental documentation and permit applications required to renovate the facility. In its capacity as owner of the site, the County of San Mateo will be designated on all site improvement applications and related permits as the "responsible agency."

B. Scope of Contract

1. The Contractor agrees to manage and efficiently operate the TS/MRF and to process and transfer all non-hazardous solid waste delivered to the TS/MRF to Ox Mountain Sanitary Landfill, located east of Half Moon Bay off Route 92 in San Mateo County in accordance with the provisions of this contract. The Contractor also agrees to process and transfer all recyclable materials to a County approved recycler. The TS/MRF must recover and/or recycle at least 50% of the materials that are delivered to the facility on an annual basis. This 50% requirement must be attained within three years of the start of this agreement, and will be measured based on documentation provided about the tonnage taken to Ox Mountain versus the tonnage taken to recycling/recovery locations.

2. Subject to the possibility of a reduction to 3 days per week as set forth in section II.A.3, the Contractor shall staff the premises with personnel five (5) days a week unless the County determines a reduction in service is necessary. The Contractor's personnel will accept the receipt of solid waste, collect all fees for disposal, manage the reuse and recyclables area, provide assistance in unloading the vehicles, and follow operational procedures that prevent any undue off-site impacts of odor, noise, vectors, litter, surface or groundwater quality. Waste and segregated materials brought to the site will be visually inspected to determine load composition, to identify any hazardous wastes, and to assess what payment should be made to the gate attendant. The Contractor's employee at the gate will direct all vehicles to facilitate traffic flow at the site.
3. The Contractor has agreed to provide and maintain an administrative office for the Contractor's staff with space for record keeping, computing, collection and secure storage of fees, and monitoring of equipment and all other site activities. Contractor will submit all reports electronically to the County, as required under the Agreement. It is the Contractor's responsibility to provide reasonable oversight and audits of all fees collected at the gate. All users of the facility are required to pay the County adopted gate fee rates in advance, or set up an account with the Contractor and keep the account payments current, and the account in good standing with the Contractor.
4. All gate fees will be recorded electronically and submitted to the County on a monthly basis. The gate attendant is not allowed to reduce the gate fee rates without prior County approval. The Contractor will provide monthly reports in a form specified by the County. The Contractor will pay all costs for these operations (including maintenance). Each of the Contractor's employees who work at the facility will be bonded to protect against fraud, waste, or mismanagement. The Contractor shall provide and maintain in good working order, a cash register or electronic device capable of issuing receipts to customers and of recording on paper tape the following information for each transaction:
 - a) Date of transaction
 - b) Origin of Waste.
 - c) Cash sale, ticket redemption, or charge account.
 - d) Fee for cubic yards and for special handling to the appropriate dumping locations.
5. The Contractor agrees to provide a roll-off area where users unload waste and recyclables (including compostables) into large roll-off containers and/or compactors. All equipment shall be uniform and maintained by Contractor to the satisfaction of the County. . Contractor will remove and dispose of the existing solid waste compactor and damaged roll-off bins. These items must be

inventoried by the County Surplus Property officer before removal. Contractor may install a compactor and/or baler for recycled materials to maximize the efficiency of hauling such materials to markets.

6. The Contractor will provide an area for users to unload separated recyclable materials and designated household hazardous wastes such as latex paints, oil, batteries, and fluorescent tubes, into bins that are accessible pursuant to the Americans with Disabilities Act. The designated bins for such materials will have signs provided above each of them clearly delineating to the satisfaction of the County what materials are to be deposited. If Contractor wishes to charge by weight for any materials, or buyback materials from the public, a certified portable scale may be included for the weighing of recycled materials. The household hazardous waste (HHW removed by facility employee(s) from arriving waste loads under the load-checking program must be stored safely in the approved storage bins. The Contractor will make arrangements with the County HHW program and all involved regulatory agencies to comply with all appropriate HHW regulations and to coordinate with the County HHW program for pick-up services.
7. The Contractor will be responsible for acquiring all needed stationary equipment and rolling stock and bins to accomplish the tasks stated in this agreement. The Contractor will also be responsible for all maintenance of the building(s) and equipment, as well as insurance, self-insurance, or a combination thereof in amounts set forth by the County Risk Manager Contractor shall provide any other amenities or necessities necessary to the operation of the facility. As there are no sanitary sewage treatment capacities on-site, Contractor will provide a portable toilet that is accessible to both the public and to staff on site. Storage of bins, rolling stock, and equipment will not be permitted outside of the TS/MRF gates. Contractor must include sufficient storage capacity for up to 3 days of incoming wastes and recyclables (including compostables) to be stored on-site. This site will also be a possible location for transferring disaster debris, upon request of the County.
8. The Contractor shall submit to the County, for prior approval, manufacturer performance specifications and exterior dimensions of all vehicles, which the Contractor proposes to use in the performance of the contract work.
9. With the sole exception of rolling stock, the County will obtain clear ownership and title to site improvements, the facility and equipment upon termination of the Agreement, and contractor agrees to execute all necessary documents to effect the transfer. The disposal charges paid over the life of the contract will cover all the capital, financing and operating costs for the facility not covered by the County's site improvements budget. In the event of an early

termination of this Agreement, the County will negotiate a reasonable buy-out provision for the remaining useful life of the facility and equipment.

10. The Contractor will provide and maintain a reuse area where separated reusable furniture, appliances, clothing, supplies, and other reusable items are unloaded by users into a trailer, truck or container for transport to a thrift store or other reuse operation. The Contractor is encouraged to enter into an agreement with local charities to allow them to obtain reusable items to support the local charities' efforts for the community.
11. The County may adopt reasonable rules and regulations with reference to the day-to-day operation of the transfer station after consultation with Contractor.
12. For fire protection services, Contractor shall provide two fire extinguishers on site: one back pump filled with water for trash fires and one non-toxic dry chemical type with an Underwriters Laboratory rating of 10 BC or better for electrical fires. The Contractor shall also provide the necessary equipment to handle any liquid spills.
13. Contractor shall arrange for and pay the expense of directional and informational signs at the transfer station, telephone service, electricity, and potable water. The County shall provide an identification sign at entrance to the site.
14. The Contractor shall maintain the TS/MRF in good working condition, including, but not limited to the structural parts of the transfer station, the electrical system, and the drainage system. Contractor shall at its expense, immediately retain properly skilled people to repair the equipment or premises improvements if they are damaged by any cause including Contractor's operations, except Acts of God. The County will be responsible for maintaining the pavement, general repainting, and major damage not caused by Contractor's negligence or deliberate actions. Major damage does not include broken windows, damaged screens or guard rails. In the event of damage, which Contractor considers to be the responsibility of County, Contractor shall notify County of said damage no later than one working day after discovery. Any dispute as to what constitutes major damage or County responsibility shall be resolved as set forth in Section TT. herein.
15. The County may require changes in existing services or schedule and Contractor shall comply. If such changes result in increased costs or decreased revenues to Contractor, Contractor shall have the right to apply for a special fee adjustment pursuant to Section HH of this Agreement. If changes in existing services or New Services required by the County result in decreased costs or increased

revenues to Contractor, the County shall reduce Contractor's payments accordingly.

16. At the County's request, and subject to the following, Contractor shall provide any other exclusive or non-exclusive services (New Service) not covered by this agreement upon receiving a written request from the County and subject to establishment of an appropriate fee for such New Service. Contractor may also submit unsolicited written proposals to the County for any other exclusive or non-exclusive services not included in this agreement. Authorization to provide such services shall be contingent upon County approval, and subject to establishment of an appropriate fee for such New Service. If a mutually acceptable fee for such New Service cannot be negotiated between the County and Contractor within a reasonable timeframe, the County shall maintain the right to solicit other bids for such New Service.

C. Duration of Contract/Termination

1. The term of this agreement is for eighty-four (84) months beginning on August 15, 2008 and ending on August 14, 2015. At the expiration of the eighty-four (84) month term, this agreement may be extended by the parties execution of a written amendment, which extends the term on an annual basis for a period not to extend beyond 36 months.
2. This Agreement may be terminated by Contractor, the Director of Public Works or his/her designee at any time without a requirement of good cause upon ninety (90) days written notice to the other party.
3. In the event of termination, all finished or unfinished documents, data, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.
4. Termination for Cause

This contract may be terminated at the option of County if Contractor becomes insolvent, is adjudged bankrupt, or makes an assignment for the benefit of creditors, or if Contractor materially or repeatedly breaches any term or condition of this contract. Such termination in the case of insolvency, bankruptcy, or assignment for the benefit of

creditors, may be made by County by giving Contractor thirty (30) calendar days written notice of termination. In the case of a material or repeated breach, County shall notify Contractor in writing of the material breach, and Contractor shall reply and correct said breach within fifteen (15) calendar days. If said material breach is not corrected or if repeated breaches occur, County may terminate this contract with thirty (30) calendar days written notice.

5. Operation of Contractor's Facilities and Equipment in the Event of Termination

If contract is terminated by County for any of the afore stated reasons, County or its agents may utilize all or any portion of Contractor's equipment and facilities as is necessary to carry out all or any portion of its assigned work. However, County or its agents may not utilize Contractor's equipment for more than one calendar year from the effective date of contract termination. During periods when County or its agents operates Contractor's equipment, Contractor shall have the option to either maintain said equipment under a maintenance schedule to be mutually agreed upon, or have County perform all maintenance.

6. Operation in Lieu of Termination

In the event Contractor becomes insolvent, is adjudged bankrupt, or makes an assignment for the benefit of creditors, or if Contractor materially or repeatedly breaches any term or condition of this contract, County or its agents shall have the right after one (1) day written notice, to operate all or any portion of the equipment which Contractor had used in performance of this contract and utilize Contractor's facilities as required to perform the work necessary to properly receive, handle, transport and dispose of solid waste, reusables and recyclables (including compostables), until such time the Contractor has demonstrated to the satisfaction of County it is again capable of performing the work required by this contract. At that time, County or its agents, shall return operation and use of Contractor's equipment and facilities to Contractor, who again will be required to perform the work required by this contract. If Contractor cannot resume performance, County may at any time elect to terminate this contract in accordance with Section C, 1-7.

7. Termination or Suspension for Permit Revocation

In the event the California Integrated Waste Management Board or the Local Enforcement Agency suspends or revokes the Solid Waste Facility permit at this site, the County reserves the right to terminate the contract or temporarily suspend the performance under the contract at its option. In the event of said termination or suspension, Contractor shall be entitled to reasonable compensation for services rendered to the effective date of termination or suspension of the contract.

D. Compliance with laws; payment of Permits/Licenses

1. All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws including, but not limited to: Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended and all Federal regulations promulgated there under, the Americans with Disabilities Act of 1990 as amended, and Section 504 of the Rehabilitation Act of 1973 as amended, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.
2. In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.
3. The Contractor shall abide by the terms of the Solid Waste Facilities Permit as originally issued or thereafter modified by the Local Enforcement Agency or other responsible agency; and shall bear the cost of any fines and/or re-inspections levied for any violations by the Contractor of any of the terms of the permit. Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance with the Permit and the laws, regulations, stated in D.1., above.

E. Notice to Proceed/Commencement of Work

Contractor shall neither commence operations work nor allow its employees or anyone to commence operations work at the transfer station site until a final contract has been issued which prescribes the starting date of the contract. The Notice to Proceed may be issued to Contractor following its submittal of the necessary bonds, insurance certificates, and permits, County approval of said documents, and Contractor having made available equipment necessary to operate the transfer station and haul solid waste and recyclable materials.

F. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

County:

Director of Public Works
Attn: Solid Waste & Environmental Services
County of San Mateo
555 County Center, 5th Floor
Redwood City, CA 94063
Email: jporter@co.sanmateo.ca.us

Contractor:

Allied Waste Industries, Inc.
225 Shoreway Road
San Carlos, CA 94070
Email: evan.boyd@awin.com

In order to expedite communications, the parties will also send such communications by electronic mail to the addresses indicated above.

G. Site Controls

Contractor shall be responsible for opening and closing the site in accordance with Section P of this Agreement. Contractor shall keep gates locked during the times when the transfer station is not open. Contractor shall supply both the Director of Public Works and the Local Enforcement Agency (LEA) with a gate key to allow access on days when the transfer station is not open to the public. Contractor need not supply County with a key to the administration room except at the expiration or termination of the contract.

H. Acceptance of Premises

The taking of possession of the transfer station by Contractor shall constitute acknowledgement that the premises are in good condition. Taking possession shall occur when Contractor opens the gate to the public to operate the transfer station.

I. Use of Premises/Monitoring

1. Contractor shall use the transfer station only for the receipt, transfer and shipment of non-hazardous solid waste, recyclables (including compostables) and reusable items that are brought to the facility. Contractor may store a roll-off vehicle and permit employee parking on site only in locations which do not impede public ingress and egress.
2. Contractor shall take steps necessary to allow two vehicles to back up simultaneously and to direct traffic for expeditious ingress and egress. The Contractor may not use the site for storage of additional debris boxes and recycling containers not included in the Agreement without prior County approval. The Contractor will submit to the LEA, on a quarterly basis a report giving the total

tonnage of all Solid Waste handled per month at the transfer station along with the number of operating days for that month.

3. The Contractor will allow the County and the LEA to inspect any phase of the operation during normal working hours. Records shall be kept and made available to the LEA upon request.
4. **Monitoring Program:**
It is the Contractor's responsibility to provide reasonable oversight and audits of all fees collected at the gate. The operator of this facility or its agent shall monitor the following items and all records shall be kept and made available to the County:
 - a. Dates of transactions
 - b. Origin of Wastes.
 - c. Cash sales, ticket redemptions, or charge accounts.
 - d. Fees collected for cubic yards and for special handling to the appropriate dumping locations.

J. Specific Agreement to Receive Wastes

1. It will be the responsibility of the Contractor to identify markets for materials and the most cost effective system of sorting those materials from the waste stream. Contractor may direct or remove materials (e.g., mattresses and furniture) from the solid waste stream to improve the efficiency of loading of roll-offs, to facilitate reuse and recovery, or both.
2. The Contractor may dump some "clean" loads in a designated area or container that the site staff may sort through (on-site or off-site) to divert as many materials as possible, subject to the LEA approval.
3. The Contractor shall cooperate with County in developing workable procedures in the event special circumstances arise which in County's judgment, require exceptions to normal operating rules.
4. Contractor may charge discounted rates for certain recyclable materials that do not generate sufficient revenues upon sale to pay for the costs of processing and shipping of these materials. Such discounted rates must be at least 25% less than corresponding waste disposal rate, as the rate structure must encourage reuse, recycling and composting. The County must approve all gate fees charged to the public. If any source-separated materials can be recovered for a lower cost than transport to landfill, Contractor shall reuse or recycle them. The County may periodically hold special events at the site to capture additional recyclable materials. Organics collected at the TS/MRF should not be used as alternative daily cover for a landfill.

K. Acceptable Materials

All yard waste, bottles, cans, papers, plastic agricultural tubing, appliances, bedsprings, mattresses, textiles, scrap metals, tires, demolition materials (including dirt, rocks and broken concrete not over nine inches in diameter, boards and timbers not over eight feet in length and small tree stumps) and other bulky items may be deposited into designated open containers upon payment of appropriate gate fees established by this agreement. Putrescible waste may not be dumped into open containers except in emergencies.

L. Excluded Wastes and Responsibility Therefore

1. The Contractor agrees to receive all inert wastes, solid waste, recyclables (including compostables), subject to volume and size limitations set forth by the County, from residents and businesses delivered to the transfer station. Contractor shall not accept delivery at the transfer station of any loads aggregating over five (5) cubic yards. Loads will not be accepted if they contain hazardous waste as defined by state laws and regulations, or hot ashes, septic tank pumpings, sludge, dead animals, engine blocks, large items such as car bodies, large rocks or concrete, tree limbs over 9" in diameter, or any other wastes County specifies to Contractor. This restriction on hazardous waste does not apply to designated household hazardous wastes being recycled as stated in Section B.6.
2. Contractor shall exercise reasonable care in viewing each vehicle entering the transfer station and tipping area. Reasonable care consists of looking in the vehicle and at its contents, walking around the vehicle when necessary, but does not include either climbing onto the vehicle for the purpose of viewing waste or touching waste material. Contractor may require a person who succeeds in dumping a prohibited item, to retrieve and remove from the premises said item, and shall have a rake available for such purpose.

M. Frequency of Removal of Wastes

Contractor shall be responsible for removing containers when they are full or nearly so. In arranging for hauls to Ox Mountain Sanitary Landfill, or County approved recyclers, Contractor shall be cognizant of the hours of operation of said facilities and allow sufficient time for transfer vehicles to reach said facilities before closing time. For logistical reasons Contractor may switch filled and empty containers at the transfer station site without hauling the filled containers away, provided the filled containers do not remain on site more than 48 hours or such other period as the LEA may direct. Any open container containing flammable material remaining at the site at closing time shall be completely covered with metal sheets or placed into the appropriate Hazardous Waste container on site, for protection against fire.

N. Resource Recovery

1. Contractor shall make estimates of the volume of each material recycled weekly and shall provide County with copies of said estimates and receipts from sale of recycled materials when submitting invoices for monthly payments.
2. The County reserves the right to terminate Contractor resource recovery operations if, after a reasonable period, resource recovery is determined to be impractical or economically infeasible. County termination of resource recovery operations shall not provide Contractor cause either to terminate all or any other portions of this contract or to request amendments to other portions of this contract.

O. Title to Waste

Except for those wastes placed in recycling containers, all rights, legal title and interest in and to all solid waste shall remain with County until said solid waste is accepted for disposal at Ox Mountain Sanitary Landfill.

P. Hours of Operation

The transfer station shall be open from 9:00 a.m. to 4:30 p.m. five days a week, Friday through Tuesday, except for the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, unless otherwise determined by the County. Contractor shall be responsible for unlocking and locking the gate to the site at the opening and closing times. If an emergency occurs at the site which requires the Contractor to close the site, a sign shall be posted in a visible location to notify customers, and the County shall be notified by phone prior to closing. If the County has not been notified, the Contractor is subject to a reduction in the monthly operating cost fees for the time period in which the TF/MRF has been closed.

Q. Haul Route

Because of the width and alignment of Bean Hollow Road, all roll-off trucks, loaded or unloaded, shall enter and leave the transfer station site by way of the southerly segment of Bean Hollow Road, unless otherwise agreed upon by the County.

R. Miscellaneous Fees and Services

1. The County will continue to pay the fees associated with the State Water Resource Board and the Bay Area Air Quality Management District permits; all other fees and permits for operation and transfer of waste materials, will be the responsibility of the Contractor.

2. Contractor shall be responsible for the cost of utilities at the TF/MRF and any fines, late charges, or other costs resulting from Contractor's laxity or failure to abide by regulations or official notices.

S. Alterations

Contractor shall not alter the premises without the County's consent. Any alterations made shall remain on the premises and be surrendered to County on the expiration or termination of this contract.

T. Health and Safety

1. Contractor shall operate the TS/MRF at all times in a manner that protects the health and safety of all persons employed and/or otherwise on the site, including the general public. Contractor shall require children and pets to remain in vehicles, and shall prohibit any member of the general public from entering a container, except if directed by Contractor to retrieve prohibited materials. Smoking shall be prohibited within 25 feet of any unloading area.
2. All flammable material shall be removed and dead vegetation cleared within the perimeter of the fence, unloading areas and any container. The grounds and roads immediately adjacent to the facility shall be checked once each operating day for litter and illegal dumping. Any litter discovered will be promptly removed and properly recycled or disposed of.

U. Service Complaints

Contractor shall maintain telephone service satisfactory to the County for receiving and answering complaints. Contractor shall record in a log, all complaints, including date, complainant name and address, nature and resolution of complaint. This log shall be available for inspection by County representatives during Contractor's regular office hours. Contractor shall present a copy of this log to the Director of Public Works annually together with Contractor's fee adjustment statement. Complaints received by County shall be transmitted to Contractor if, in the judgment of the Director of Public Works, they reflect upon the performance of Contractor.

V. Revenues

All revenues collected by Contractor from the users of the TS/MRF are the property of County. After establishment of the initial gate fees by October 1, 2008, the County Public Works Director reserves the right to annually increase all gate fees by up to the increase in the CPI, throughout the term of this agreement. The CPI is defined in section BB.3. c) of this agreement. Revenues that Contractor receives from the sale of recyclable materials are the property of Contractor unless determined otherwise by the County.

Revenues that Contractor receives from the sale of recyclable materials are the property of Contractor unless determined otherwise by the County. Gate Fees charged at the TS/MRF for waste and recyclables (including compostables) will count towards revenue to the County.

i. Load Recording Procedure

Contractor shall provide consecutively numbered and dated load slips (segregated as to type of container and approved as to form by the County), signed by the operator and the driver, for each load taken from the site. On delivery of the load to disposal or recycling facilities, the roll-off vehicle and container shall be weighed and the driver shall obtain a receipt showing the net weight and the disposal fee incurred or revenue received.

X. Payment for Transfer Station Operation and Solid Waste Hauling/Availability of Funds

1. In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein, County shall make payment to Contractor based on the fees and in the manner specified in Exhibits "A" and "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed \$340,000 per year. In the event that Contractor estimates fees will exceed this amount, Contractor will contact County to meet and confer on whether to reduce services or to revise the budget for those services.

The disposal and recycling fees, which Contractor collects on behalf of County, shall be shown as a credit on Contractor's invoices. The County may terminate this Agreement or a portion of the services referenced in the Exhibits to this agreement, if Federal, State, or County funds are no longer available, by providing written notice to Contractor as soon as is reasonably possible after the County learns that these funds are no longer available.

2. All payments by County shall be made in arrears after the service has been provided. County shall make payment no more than thirty (30) days from County's receipt of the Contractor's invoice.

Y. Payment Formula

Contractor must submit monthly invoices in order to receive payments from the County. County will provide Contractor with an invoice form for the Contractor to request payment. Monthly payments will be composed of the sum of one-twelfth of the annual Fixed Operating

Costs as identified in Exhibit "A", plus the number of tons for each of the Variable Cost items times the rate for each item as listed in Exhibits "A" and "B." The total gate fees collected during the month covered by the invoice, will be deducted from the above calculation to arrive at the amount due from the County to the Contractor.

Z. Contractor's Invoices

Contractor's monthly invoices must be accompanied by the following:

1. Daily record of fees collected on a form approved by County.
2. Each load slip for the billing period.
3. Each disposal receipt for the billing period.
4. Each receipt for recyclables and reusables (including compostables) for the billing period.
5. Total number of load trips for the billing period for each.
6. Total number of tons for the billing period for each material.

AA. Fee Modifications and Adjustments

1. Adjustments. Starting on July 1 of 2010, and on each July 1st thereafter during the term of this agreement, the Service Fees may be adjusted upward or downward depending on changes in the Consumer Price Index (CPI) and the Producer Price Index (PPI). Adjustments will only be considered if the Contractor is satisfying all of its performance obligations as detailed in this agreement.
2. Data Required. On or before January 1 of each year starting on January 1, 2010, Contractor will submit to the County a request for adjustments to the Service Fee. The following information must be provided with the request in order to be considered by the County:
 - a) The current Service Fee Rate.
 - b) The Consumer Price Index (CPI) Unadjusted Percent Change from October to October for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated.
 - c) The Producer Price Index (PPI) Unadjusted Percent Change from October to October for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated.
 - d) The calculation of the adjustments to the Service Fee Rate that is based on the instructions detailed in 3. which follows.
3. Calculation. The calculation of the Service Fee Rate

adjustments will be determined as follows:

- a) The Fixed Operating Cost represents the on-going costs to operate the TS/MRF. The Fixed Operating Cost Rate, as identified in Exhibit A to this agreement and as adjusted in subsequent years starting on July 1, 2010 and each July 1 thereafter, will be multiplied by the Unadjusted Percent Change in the CPI for the period of October to October for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated. This amount will be added to the Fixed Operating Cost Rate that was used for this calculation.
- b) The Variable Costs represent the costs for transporting the solid waste and recyclables to other facilities. The Variable Cost Rates for Solid Waste and Recycling will be calculated in two steps:
 - 1) The Variable Cost Rates for Solid Waste and Recycling, as identified in Exhibits "A" and "B" to this agreement and as adjusted in subsequent years starting on July 1, 2010 and each July 1 thereafter, will first be multiplied by 90%. That result will then be multiplied by the Unadjusted Percent Change in the CPI for the period of October to October for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated.
 - 2) The Variable Cost Rates for Solid Waste and Recycling, as identified in Exhibits "A" and "B" to this agreement and as adjusted in subsequent years starting on July 1, 2010 and each July 1 thereafter, will first be multiplied by 10% and that result will then be multiplied by the Unadjusted Percent Change in the PPI for the period of October to October for the twelve months preceding the year in which the Contractor's rate adjustment is being calculated.
 - 3) The two calculations explained in the preceding 1) and 2) will then be added to the Variable Cost Rate that was used for these calculations. The final number will be the new Variable Cost Rate.
 - 4) The calculations specified in the preceding 1), 2), and 3) will be repeated for each of the Variable Cost Rates listed in Exhibits "A" and "B" to this Agreement to arrive at the new rates. These adjusted rates will become effective the July 1st following the approval of the calculations by the County.
- c) For the purpose of these calculations, "**CPI Index**" means the Consumer Price Index for all Urban Consumers (National CPI-U) compiled and published

by the United States Department of Labor, Bureau of Labor Statistics, or any other measure hereafter employed by the Federal Bureau of Labor Statistics in lieu of the consumer price index that measures the cost of living in U.S. cities. “**PPI Index**” means Producer Price Index Series WPU057303 for #2 diesel fuel published by the Bureau of Labor Statistics or, if that index is no longer published, a substitute or replacement employed by the Federal Bureau of Labor Statistics in lieu thereof that measures the cost of diesel fuel in the United States.

BB. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of:

- a) Injuries to or death of any person, including Contractor, or,
- b) Damage to any property of any kind whatsoever and to whomsoever belonging,
- c) Any sanctions, penalties, or claims of damages resulting from Contractor’s failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated there under, as amended, or,
- d) Any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement. Provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

CC. Relationship of Parties/Independent Contractor

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees. County shall not be liable for any acts of Contractor or its employees for the opening, managing, maintaining, operating, and closing of the TS/MRF, or for hauling of solid waste or recycling to the approved destinations.

DD. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of

County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

EE. Notice of Corporate Officials/Merger Clause

Contractor, if incorporated, shall furnish County at the beginning of the term of this Agreement the names and positions of the officers and directors of the corporation. It shall promptly notify the County in writing of any changes which occur in its officers or Board. Contractor shall furnish County a copy of any annual report made by the corporation.

FF. Sole Agreement

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

GG. Fee Adjustments

If the Contractor can demonstrate to the satisfaction of County that significant and costly changes in Contractor's operation are required as the result of changes in State or Federal regulations, or requests from the County for changes in service, one or more fees in this contract may be amended with the mutual consent of both parties to reflect actual increased costs incurred by Contractor. In such an event County may require and Contractor shall provide at its expense, any financial records and/or analysis services which County deems necessary to substantiate and quantify Contractor's fee amendment request. In the event County and Contractor do not mutually consent to adjust the fee or fees, Contractor may pursue its request in accordance with Section TT. herein.

HH. Retention of Records, Right to Monitor and Audit

1. Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters or audits are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.
2. Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate

Federal, State and local agencies, and as required by the County.

3. Contractor agrees to provide the County, any Federal or State department having monitoring or review authority, County's authorized representatives, and/or their appropriate audit agencies, and upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

II. Insurance

1. The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by the County, and Contractor shall use diligence to obtain such insurance and to obtain such approval.
2. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or any cancellation of the policy.

a) **Worker's Compensation and Employer's Liability Insurance.**

The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement. All Workers' Compensation policies shall be endorsed with the following specific language: "This policy shall not be cancelled without first giving thirty (30) days prior notice to County by mail."

b) **Liability Insurance**

The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while

performing work covered by this Agreement. From any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-Contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

Comprehensive General Liability ...	\$2,000,000
Motor Vehicle Liability Insurance ...	\$1,000,000

3. County and its officers, agents, employees and servants shall be shown as additional insured on any such policies of insurance. Policies shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only. In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.
4. Documentation
Contractor shall submit the following documentation of insurance to County Department of Public Works before the Notice to Proceed will be issued:
 - a) A Certificate of Insurance for Worker's Compensation Insurance for Contractor.
 - b) Certificates of Insurance showing the limits of Insurance provided.

JJ. Performance Bond

Upon award of the Agreement, a Performance Bond and Letter of Credit shall be obtained by the Contractor with the following components:

1. The amount of the TS/MRF performance bond is three hundred forty thousand dollars (\$340,000), plus the amount of capital and financing

costs that the Contractor has agreed to finance for improvements to the TS/MRF.

2. The amount of the Letter of Credit will be equal to 45 days operating expenses, to be used by the County in the event of a Contractor default.

KK. Right to Require Performance

The failure of County at any time to require performance by Contractor of any provision in this agreement, shall in no way waive the right of County hereinafter to enforce the same. Nor shall waiver by County of any breach of any previous provision be taken or held to be waiver of any succeeding breach of such provision or as a waiver of any provision itself.

LL. Non-Discrimination and Other Requirements

1. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
2. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
3. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to the County upon request.
4. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: termination of this Agreement; disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; liquidated damages of \$2,500 per violation, imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.
 - a) To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this

paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

- b) Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

5. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

6. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

MM. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

NN. Emergency Procedures

In the event of a local emergency that has been declared in accordance with applicable laws and regulations, Contractor, upon the request of the Director, shall make solid waste transportation equipment available to the degree possible for emergency assistance. Contractor shall follow instruction of County in such circumstance. Emergency use of transportation equipment may include operating the TS/MRF during hours or on days not included in this contract. In such an event, Contractor shall be compensated on the basis of fair, equitable, and

prompt reimbursement of Contractor's actual costs.

OO. Destruction

If, during the term the premises are totally or partially destroyed by Acts of God rendering the premises totally or partially inaccessible or unusable, County may, at its option, restore the transfer station to substantially the same condition as it was immediately before destruction. If the restoration can be made within 360 days, such destruction shall not terminate this contract. If restoration cannot be made within the stated period, this contract shall become null and void and Contractor shall have no further rights hereunder.

PP. Temporary Closure of Transfer Station

In the event of a temporary emergency at the transfer station involving Acts of God, human error or mechanical failure, Contractor shall make every reasonable effort to maintain close-to-normal operations. With approval of County, Contractor may limit loads or direct loads to Ox Mountain Sanitary Landfill.

QQ. Default

1. The occurrence of any of the following shall constitute a default by Contractor.
 - a) Failure to staff the transfer station if such failure continues for one calendar day after notice has been given, except holidays recognized in this contract;
 - b) Failure to properly transfer all non-hazardous and inert solid waste and reusables and recyclables delivered to the TS/MRF;
2. Failure to perform any other provision of this agreement if the failure to perform is not cured within 15 calendar days after notice has been given to Contractor. If the default cannot reasonably be cured within 15 calendar days Contractor shall not be in default if Contractor commences to cure the default within 3 calendar days after notice has been given and diligently and in good faith, as determined by County, continues to cure the default.

RR. Payment of County Costs

For each month in which County or its agents has utilized Contractor's equipment and facilities to carry out any portion of the assigned work, County shall maintain an itemized accounting of all direct and indirect costs to County associated with the required work, and provide Contractor with said accounting. In the event that itemized expenses

exceed payments due Contractor Contractor's performance bond or cash on deposit shall be liable for the remainder. Contractor expressly waives the right to assert that County's expenses were unnecessary or unreasonably incurred.

SS. Acts of God

Regardless of any other provision of this contract, Contractor shall not be in default of any provision hereof if its performance is prevented by an Act of God, which prevents or makes more difficult its performance. Such events may include forest or range fires, road closures that render the transfer station inaccessible via County or State maintained highways, earthquakes, and floods.

TT. Disputes/Controlling Law

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the County Public Works Director, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Contractor. The decision of the County Public Works Director shall be final and conclusive unless within ten (10) calendar days from the date of Contractor's receipt of such copy Contractor mails or otherwise furnishes to County a written appeal. The decision of the County Manager for determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith; or not supported by evidence. In connection with any appeal proceeding under this clause, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of the contract and in accordance with the Public Works Director's decision. This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law. The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

UU. Taxes and Assessments

Contractor shall pay all taxes, licenses, fees and other charges that are levied and assessed against the Contractor's personal property.

VV. Entire Contract

This contract constitutes the entire contract and understanding between the parties hereto.

WW. Illegal Provisions

If any provisions of this contract shall be declared illegal, void or unenforceable, the other provisions shall not be affected and shall remain in full force and effect.

XX. Incorporation in Contract

All attached Exhibits (“A,” “B,” “C,” and “D”) are part of this contract and shall be considered incorporated into the contract.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
Adrienne Tissier, President
Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Allied Waste Industries

Contractor’s Signature

Date: _____