

# Attachment D

1 **Tajiguas Resource Recovery Project**  
2 **Materials Delivery Commitment &**  
3 **Processing Services**  
4 **Agreement**  
5 **BETWEEN**  
6 **County of Santa Barbara**  
7 **AND**  
8 **MarBorg Industries, Inc.**

9 **Agreement Date:**  
10 November 17, 2016 – Final

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49 **RECITALS**

50 This Material Processing Services and Delivery Commitment Agreement is made and dated as of the  
51 date on the cover page between the County of Santa Barbara, a political subdivision of the State of  
52 California (the "County"), and MarBorg Industries, Inc, a California corporation and political subdivision  
53 of the State of California (the "City").

54 (A) WHEREAS, MarBorg acting as a Collection Contractor, collects Municipal Solid Waste, Recyclable  
55 Materials, and Organic Materials pursuant to an exclusive franchise agreement with the City of  
56 Buellton; and,

57 (C) WHEREAS, the Parties find it in their mutual economic interest to address solid waste and  
58 recycling issues on a regional level; and,

59 (D) WHEREAS, the California Integrated Waste Management Act (CIWMA) (California Public  
60 Resources Code, §40000 et seq.) required that each jurisdiction reduce by fifty percent (50%)  
61 the amount of Solid Waste they landfill by the end of the Year 2000 and continue to maintain  
62 that reduction going forward; and,

63 (E) WHEREAS, subsequent legislation including Assembly Bills (AB) 32, 341 and 1826 require  
64 reduced air emissions and increased diversion of commercial and multi-family Recyclable  
65 Materials and Organic Materials to achieve a 75% diversion goal by 2020; and,

66 (F) WHEREAS, each jurisdiction has the authority to regulate its solid waste, Recyclable Materials,  
67 and Organic Materials stream, including the collection, transfer, transportation, and Processing  
68 thereof, and has the authority to establish rates for the conduct of such functions; and,

69 (G) WHEREAS, solid waste from the City of Buellton is disposed at the Tajiguas Sanitary Landfill  
70 located off State Highway 101, approximately twenty six (26) miles West of Santa Barbara; and,

71 (H) WHEREAS, the Public Participants developed the Tajiguas Resource Recovery Project ("TRRP") in  
72 order to achieve their goals of: extending the operating life of Tajiguas Landfill; and complying  
73 with State law and local policy that mandate diverting materials from Disposal, and reducing  
74 greenhouse gas emissions; and,

75 (I) WHEREAS, the Public Participants have found that these goals are in the public interest, and,

76 (J) WHEREAS, the City Manager for the City of Buellton has requested that its franchised Collection  
77 Contractor (MarBorg Industries) contract for the use of the TRRP to manage waste generated in  
78 and collected from the City of Buellton; and,

79 (J) WHEREAS, County has determined that the execution of this Agreement will serve the public  
80 health, safety and welfare by providing a more stable, predictable and reliable supply of  
81 Municipal Solid Waste and the resulting service payment revenue, thereby enabling County to  
82 plan, manage, operate and finance the Tajiguas Resource Recovery Project and extend the life of  
83 the Tajiguas Landfill; and,

## Material Delivery Commitment and Processing Services Agreement

84 (k) WHEREAS, this is a necessary financing agreement needed to secure the Certificates used to  
85 finance the TRRP;

86 IT IS THEREFORE AGREED AS FOLLOWS:

87 **ARTICLE 1: DEFINITIONS**

88 "Acceptable Materials", means all of the materials delivered to the Facilities by MarBorg on behalf of  
89 the City of Buellton as its franchised Collection Contractor, as permitted under Applicable Law and the  
90 Facilities' Permits, including Mixed Waste, Source-Separated Organic Materials and Source-Separated  
91 Recyclable Materials. Acceptable Materials may include some Unacceptable Materials that must be  
92 removed by the Service Contractor before Processing or Disposal.

93 "Acceptable Materials Charge; AMC", means the charge established pursuant to Section 4.3.A of this  
94 Agreement.

95 "Agreement", means this Agreement, including all exhibits and attachments, as may be amended.

96 "Agreement Services", means all of County's performance obligations under this Agreement to MarBorg  
97 under Article 3; and all of MarBorg's performance obligations to County under Article 4.

98 "Agreement Term", means the period of time between the Effective Date and the termination date, as  
99 set forth in Sections 2.1 and 2.2, during which this Agreement shall be effective.

100 "Agreement Year", means the fiscal year, July 1 through June 30.

101 "Anaerobic Digestion Facility"; "AD Facility", means the facility as described in Service Contractor's  
102 Proposal and in subsequent documentation, which shall be operated by Service Contractor for Organic  
103 Materials Processing to produce digestate, biogas for electricity generation and Compost.

104 "Annual Budget"; means a budget that will contain an estimate of the Current Revenues and System  
105 Costs payable from Current Revenues for the ensuing Agreement Year (beginning on the upcoming July  
106 1). The Annual Budget will also contain an estimate of the amount of Acceptable Materials expected to  
107 be delivered to the System in such Agreement Year and the resulting Acceptable Materials Charge  
108 required to be imposed in order for the County to meet the Rate Covenant.

109 "Applicable Law", means any law, rule, code, standard, regulation, requirement, consent decree,  
110 consent order, consent agreement, Permit, guideline, action, determination or order of, or legal  
111 entitlement issued or deemed to be issued by, any governmental body having jurisdiction, applicable  
112 from time to time to any activities associated with the siting, design, construction, equipping, financing,  
113 ownership, start-up testing, acceptance, operation, maintenance, repair and replacement of any part of  
114 the Project, the transfer, handling, transportation, Marketing, Disposal or Processing of products and  
115 residuals, and any other obligations of the Parties under this Agreement. Governmental bodies include  
116 local, County, State and federal agencies and all successors thereto.

117 "Assignment", means but is not limited to:

118 (A) A transfer to a third party of at least twenty-five percent (25%) of either Party's assets dedicated  
119 to service under this Agreement; and,

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- 120 (B) A sale, exchange or other transfer to a third party, which may result in a change of control of  
121 City or County; and,
- 122 (C) Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-  
123 issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction  
124 in which either Party are a party and which results in a change of control of either Party; and,
- 125 (D) Any assignment by operation of law, including insolvency or bankruptcy, assignment for the  
126 benefit of creditors, writ of attachment for an execution being levied against this Agreement,  
127 appointment of a receiver taking possession of either Party's property; and,
- 128 (E) Any combination of the foregoing (whether or not in related or contemporaneous transactions),  
129 which has the effect of any such transfer or change of control of either Party.
- 130 "Bond Documents", means the Trust Agreement, 2017 Installment Purchase Agreement, Assignment  
131 Agreement, and all other legal documents necessary to effectuate the issuance of Certificates.
- 132 "Bond Holders Rate Stabilization Fund", means the account established pursuant to the Bond  
133 Documents. On the date of issuance of the Certificates, the County shall make a cash contribution in the  
134 amount of five million dollars (\$5,000,000), and deposit such sum in the Bond Holders Rate Stabilization  
135 Fund. If funds are used due to financial shortfalls (either higher than projected costs or lower than  
136 projected revenues) related to the Facility, the Fund will be replenished with Current Revenues from all  
137 of the participating jurisdictions based on the tons of material delivered to the Facility. If funds are used  
138 due to costs not related to the TRRP but rather related to non-TRRP costs, the Fund will be replenished  
139 with Current Revenues from the County.
- 140 "Business Day", means any day that County Administrative Offices are open to the public to conduct  
141 business. In relation to the Certificates and the County's obligations under the Bond Documents, this  
142 definition is extended to mean any day on which the Trustee is open for corporate trust business at its  
143 Corporate Trust Office and on which the Federal Reserve System is open for business.
- 144 "Bypassed Waste", means any material that is weighed in at the County scale house for acceptance to  
145 the Project Site which could not be Processed at the Facilities prior to Disposal. Examples of Bypassed  
146 Waste could be Unacceptable Waste, waste not Processable due to size, high negative value for  
147 Processing, or unmarketable material. Bypassed Waste includes materials diverted from the Project  
148 before or after unloading but not Processed at the Project Site.
- 149 "Cap Value", means the threshold value of \$3,500,000 in the Jurisdictional Rate Stabilization Fund.
- 150 "Certificates", means all Solid Waste System Revenue Certificates of Participation (including Additional  
151 Certificates) payable from the Net Revenues of the County's Solid Waste Enterprise System. The County  
152 shall issue Solid Waste System Revenue Certificates of Participation, Series 2017 to fund the TRRP.
- 153 "Certificates Issuance Date" means the date on which the Solid Waste System Revenue Certificates of  
154 Participation, Series 2017 are executed and delivered.
- 155 "Change in Law", means any of the following acts, events, or circumstances, with which the Parties must  
156 comply notwithstanding the cost of such compliance, to the extent that compliance therewith materially  
157 increases or decreases the cost of performing a Party's obligations under this Agreement when such



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158 changes exceed fifty thousand dollars (\$50,000) in the aggregate in any one Agreement Year subject to  
159 adjustment using the applicable Adjustment Factor.

160 (A) The adoption, amendment, promulgation, issuance, modification, repeal or written change in  
161 administrative or judicial interpretation of any Applicable Law on or after the Effective Date  
162 (including a new or amended prevailing wage, minimum wage, living wage or similar laws or  
163 regulations), unless such Applicable Law was on or prior to the Effective Date duly adopted,  
164 promulgated, issued or otherwise officially modified or changed in interpretation, in each case  
165 in final form to become effective without any further action by any governmental body;

166 (B) The order or judgment of any governmental body issued on or after the Effective Date (unless  
167 such order or judgment is issued to enforce compliance with Applicable Law which was effective  
168 as of the Effective Date) to the extent such order or judgment is not the result of willful or  
169 negligent action, error or omission or lack of reasonable diligence of the Collection Contractor or  
170 Service Contractor, the County or MarBorg, whichever is asserting the occurrence of a Change in  
171 Law; provided, however, that the contesting in good faith or failure in good faith to contest any  
172 such order or judgment shall not constitute or be construed as such a willful or negligent action,  
173 error or omission or lack of reasonable diligence; or

174 (C) Except with respect to any governmental approval required for the Project as provided in item  
175 (2) below pertaining to exclusions from "Change in Law", the denial of an application for, a delay  
176 in the review, issuance or renewal of, or the suspension, termination, or interruption of any  
177 governmental approval, or the imposition of a term, condition or requirement which is more  
178 stringent or burdensome than the Agreement standards in connection with the issuance,  
179 renewal or failure of issuance or renewal of any governmental approval, to the extent that such  
180 occurrence is not the result of willful or negligent action, error or omission or a lack of  
181 reasonable diligence of the Collection or Service Contractor, the County or MarBorg, whichever  
182 is asserting the occurrence of a Change in Law; provided, however, that the contesting in good  
183 faith or the failure in good faith to contest any such occurrence shall not be construed as such a  
184 willful or negligent action or lack of reasonable diligence.

185 It is specifically understood, however, that none of the following shall constitute a "Change in Law":

186 (1) A change in the nature or severity of the actions typically taken by a governmental body to  
187 enforce compliance with Applicable Law which was effective as of the Effective Date;

188 (2) All matters relating to the Service Contractor's assuming the Permitting risk for the Project in  
189 connection with obtaining and maintaining federal, State or local governmental approvals of the  
190 design, construction and operation of the Project; and

191 (3) Any event that affects generally applicable working conditions or standards that is not specific to  
192 the solid waste management industry.

193 "Collection Contractor", means anyone that collects Acceptable Materials for City by any or all of the  
194 following: 1) contract (including franchise contracts); 2) license; 3) permit; and, 4) any other obligation.

195 "Compost" means soil amendment material that is the result of the controlled aerobic decomposition  
196 process of Organic Materials (e.g., composting).

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197 “Construction and Demolition Debris” means used or discarded construction materials removed from a  
198 premises during the construction or renovation of a structure resulting from construction, remodeling,  
199 repair, or demolition operations on any pavement, house, commercial building, or other structure  
200 including, but not limited to, concrete, brick, wood, dirt, rock, cardboard, packaging materials, etc.

201 “County”, means the County of Santa Barbara, California, a political subdivision of the State of California.

202 “County Agreement Representative”, means the individual named by County under Exhibit B.

203 “Current Revenues”, means all gross income and revenue received or receivable by the County from the  
204 ownership, operation or use of the Solid Waste System, determined in accordance with Generally  
205 Accepted Accounting Principles, including all rates, fees, charges and revenue (including tipping fees,  
206 recovered materials revenue, power revenues and salvage income) received by the County for the use  
207 of Solid Waste System and all other income and revenue howsoever derived by the County from the  
208 ownership, operation or use of the Solid Waste System, but excluding in all cases any proceeds of taxes  
209 and any refundable deposits made to establish credit and advances or contributions in aid of  
210 construction. Current revenues also include direct federal subsidy payments received by the County  
211 relating to the Certificates issued as New Clean Renewable Energy Bonds.

212 “County Service Cost”, means a component of the overall facility Acceptable Material Charge that is  
213 comprised of the following four (4) programs: Program 1200 (Tajiguas Landfill), Program 1101 (South  
214 Coast Recycling and Transfer Station), Program 1301 (Santa Ynez Recycling and Transfer Station) and  
215 Program 1850 (TRRP Contract Management, Environmental Monitoring and Regulatory Compliance). In  
216 addition, County Service Cost will include overhead costs allocated to these programs.

217 “Day”, means calendar day of twenty-four (24) hours measured from midnight to the next midnight.

218 “Delivery Covenant”, means the obligation of the Public Participants to deliver Acceptable Materials to  
219 the TRRP, pursuant to and as described in Section 4.1 and 4.2.

220 “Direct Costs”, means the sum of the following: 1) payroll costs (including compensation, vacation, sick  
221 leave, holidays, retirement, workers compensation insurance, federal and State unemployment taxes  
222 and medical and health insurance benefits), *plus*; 2) the costs of materials, services, direct rental costs  
223 and supplies, *plus*; 3) travel and subsistence costs, *plus*; 4) the reasonable costs of consultants,  
224 (sub)contractors, and counsel (necessary in connection with enforcement of the other Party’s  
225 performance under this Agreement), *plus*; 5) any other cost or expense which is directly or normally  
226 associated with that enforcement or exercise, which direct costs are substantiated to the satisfaction of  
227 the other Party.

228 “Dispose”; “Disposal” means the final disposition of Residue and Bypassed Waste from the Project Site  
229 as restricted by Permit conditions for Unacceptable Waste.

230 “Effective Date” means the date of this Agreement’s execution by the last of the Parties.

231 “Excess Tonnage”, means Tonnage of Acceptable Material delivered (or caused to be delivered) by  
232 MarBorg to the Facilities in excess of the MarBorg’s Maximum Annual Delivery Allowance, and/or in  
233 excess of the Maximum Facility Capacity.

234 “Facility” or “Facilities”, means the building, equipment and all activities related to the MRF and/or the

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235 AD Facility.

236 "Food Scraps", means all Organic Materials generated during or resulting from the storage, sale,  
237 preparation, cooking, or handling of food stuffs, including: (i) all kitchen and table food waste; (ii) animal  
238 or vegetable waste; (iii) discarded paper and cardboard that is contaminated with food; and, (iv) fruit  
239 waste, grain waste, dairy waste, meat and fish waste. Food Scraps are a subset of Organic Materials and  
240 contain less than 2% contamination by weight.

241 "Hazardous Waste", means any waste which is defined or regulated as a hazardous waste, toxic waste,  
242 hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

243 (1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; all  
244 substances defined as acutely hazardous waste, extremely hazardous waste or hazardous waste  
245 by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California  
246 Hazardous Waste Control Act), and future amendments to or recodification of such statutes or  
247 regulations promulgated thereunder;

248 (2) "Hazardous Substances" as defined under Chapter 6.8 of the California Health and Safety Code,  
249 Division 20, Sections 25316 and 25317;

250 (3) Materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as  
251 amended, and related Federal, State of California, and local laws and regulations, including the  
252 California Toxic Substances Account Act, California Health and Safety Code Section 25300 et  
253 seq.;

254 (4) Materials regulated under the Comprehensive Environmental Response, Compensation and  
255 Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder;

256 (5) Materials regulated under The Resource Conservation and Recovery Act and the regulations  
257 contained in 40 CFR Parts 260-281; and,

258 (6) Materials regulated under any future additional or substitute Federal, State or local laws and  
259 regulations pertaining to the identification, transportation, treatment, storage or Disposal of  
260 toxic substances or hazardous waste.

261 If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous  
262 waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation,  
263 Processing and/or Disposal, the broader, more restrictive definition shall be employed for purposes of  
264 this Agreement.

265 "Jurisdictional Rate Stabilization Fund", means the fund held by the County for the purpose of enhancing  
266 System liquidity and providing stability to the Public Participants in setting rates including making  
267 payments to the Service Contractor resulting from lower than expected Recovered Materials revenues.

268 "Landfill", means the Tajiguas Landfill, a Subtitle D Disposal facility.

269 "MarBorg", means MarBorg Industries, Inc. a California corporation.

270 "MarBorg Agreement Representative", means the individual named by MarBorg under Exhibit B:

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271 Communications.

272 “MarBorg’s Maximum Annual Delivery Allowance,” means the maximum total annual Tonnages of  
273 Acceptable Materials, described in Section 4.2.A, that MarBorg may deliver on behalf of the City of  
274 Buellton for each Agreement Year.

275 “MarBorg’s Minimum Annual Delivery Requirement”, means the minimum total annual Tonnage of  
276 Acceptable Materials, described in Section 4.2.A, that the MarBorg will deliver on behalf of the City of  
277 Buellton for each Agreement Year.

278 “MarBorg’s Revenue Share”, means the amount of TRRP Revenue that MarBorg receives from County  
279 for the City of Buellton’s waste managed under this Agreement.

280

281 “Market” (or “Marketed” or “Marketing” or other variations thereof), means providing for the sale or  
282 placement of Recyclable Materials, electricity and Compost for the purpose of beneficial use.

283 “Material Recovery Facility” or “MRF”, means the Project Facility as described in Service Contractor’s  
284 Proposal and in subsequent documentation to be developed and operated by Service Contractor in  
285 which Processing equipment and systems are used to Process Acceptable Materials.

286 “Maximum Facility Capacity”, means the maximum number of Tons the Facility is designed, and the  
287 Contractor’s operating expenses are assumed, to Process.

288 “Mixed Waste”, means Municipal Solid Waste that is available for delivery for Processing and may be  
289 Processed at the Project, and is not Unprocessable Waste or Unacceptable Waste. Mixed Waste also  
290 includes commercial and industrial waste that meets the criteria defined herein, Construction and  
291 Demolition Debris, agricultural plastic, and tires. Mixed Waste does not include materials that are  
292 collected or delivered in a source-separated form.

293 “Municipal Solid Waste”; “MSW”, means generally the components of Mixed Waste, and specifically all  
294 substances or materials that are discarded or rejected as being spent, useless, worthless or in excess of  
295 the owner’s needs at the time of discard or rejection including, without limitation, all putrescible and  
296 non-putrescible solid and semi-solid waste including garbage, rubbish, maintenance waste, Yard  
297 Trimmings, bulky wastes, industrial wastes, Construction and Demolition Debris, and grit and sweepings  
298 from a water pollution control plant, which are generated by residential, commercial, industrial,  
299 institutional, municipal, agricultural and other activities and which are not otherwise restricted in a Class  
300 III landfill by State or federal regulations and which are delivered to the Project Site as Mixed Waste.  
301 Municipal Solid Waste does not include: (i) Hazardous Waste; (ii) medical waste; (iii) ash; (iv) Source-  
302 Separated Recyclable Materials; (v) Source-Separated Yard Trimmings; (vi) Source-Separated Food  
303 Scraps; or (vii) other materials collected separately from Municipal Solid Waste for Processing at the  
304 Project Site.

305 “Net Current Revenues” means for any Agreement Year, the Current Revenues during such Agreement  
306 Year less the System Costs during such Agreement Year.

307 “Net Revenues”, means for any Agreement Year, the Revenues during such Agreement Year less System  
308 Costs during such Agreement Year.

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- 309 "Notice"; "Notify", means notice given in accordance with Section 9.6 and Exhibit A.
- 310 "Operating Committee"; means a committee comprised of each Public Participant (including the  
311 County). Each Public Participant (including the County) will be allocated one representative on the  
312 Operating Committee. The Operating Committee can be called to order as necessary. The  
313 representative will be the City Manager or his/her designee who is authorized to vote on behalf of the  
314 represented Public Participant. Each representative will have a weighted vote proportionate to the  
315 amount of Acceptable Materials such Participant delivered during the Agreement Year as compared to  
316 the total amount of Acceptable Materials delivered by all Public Participants during the prior Agreement  
317 Year. A two-thirds vote is necessary to support a decision by the Operating Committee.
- 318 "Operating Reserve", means the minimum balance of ten million dollars (\$10,000,000) to be maintained  
319 within the County Solid Waste Enterprise Fund or other fund established by the County necessary to  
320 operate the Solid Waste System, which includes the TRRP. Such minimum balance shall be consistent  
321 with the County's Enterprise Fund Reserve Policy adopted by the County prior to the issuance of the  
322 Certificates.
- 323 "Organic Materials", means: (i) materials intended for Processing by the AD Facility, which may include  
324 organics sorted out of Mixed Waste, Yard Trimmings, and Food Scraps; and, (ii) sludge and residuals  
325 from water and wastewater treatment, as further defined in the Service Contractor's subcontract with  
326 the AD Facility Operator.
- 327 "Other County Costs" means other System Costs that are not in programs 1200, 1101, 1301, 1850 and  
328 the overhead allocated to these programs.
- 329 "Other Users", means any Person delivering Spot Market Materials to the Facility as authorized by the  
330 Service Contractor, and approved by the County, as applicable.
- 331 "Party; Parties", means County and City, individually and together.
- 332 "Permit(s)" means all Federal, State, City, other local and any other governmental unit permits, orders,  
333 licenses, approvals, authorizations, consents and entitlements of whatever kind and however described  
334 which are required under Applicable Law to be obtained or maintained by any Person with respect to  
335 the Facilities or the performance of any obligation under this Agreement, as renewed or amended from  
336 time to time.
- 337 "Person", means any individual, firm, association, organization, partnership, corporation, trust, joint  
338 venture, the United States, the State, a county, a municipality or special purpose district, or other entity  
339 whatsoever.
- 340 "Process"; "Processing" (or any other variation thereof), means the picking, pulling, sorting, separating,  
341 classifying and recovery of Recovered Materials from Acceptable Materials by the Service Contractor at  
342 the Project Site. Processing also means the baling, crushing, shredding, chipping, grinding or any other  
343 method of preparing Acceptable Materials for further Processing (for example, at the AD Facility) or  
344 Marketing.
- 345 "Project"; "TRRP", means all aspects of the Tajiguas Resource Recovery Project as conducted at the  
346 Project Site.

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347 "Project Site"; "Site", means the area at the Tajiguas Landfill property to be used by the County and  
348 Service Contractor for development of the Facility, including one or more discrete sites including, but  
349 not limited to the "Operations Deck" and a composting area ("Top Deck").

350 "Promptly", means as soon as possible, and no longer than three (3) Business Days unless the Parties  
351 otherwise agree in writing.

352 "Public Participants", means any jurisdiction which enters into an individual Material Delivery  
353 Commitment and Processing Service Agreement with the County, excluding Other Users. The City is a  
354 Public Participant.

355 "Reasonable Business Efforts", means those efforts that a reasonably prudent business Person would  
356 expend under the same or similar circumstances in the exercise of such Person's business judgment,  
357 intending in good faith to take steps calculated to satisfy the obligation which such Person has  
358 undertaken to satisfy; provided that such Person and/or any enterprise by which such Person is  
359 employed would not incur a financial loss (other than time expended or otherwise compensated for  
360 such efforts herein) by reason of having expended or expending such efforts.

361 "Recovered Materials", means Recyclable Materials and Organic Materials recovered through  
362 Processing of Acceptable Materials.

363 "Recyclable Materials", means materials having economic value or a beneficial reuse which are  
364 commonly recovered in comparable materials recovery facilities and organics Processing facilities in  
365 California.

366 "Reimbursement Costs", means the Direct Costs that the Party incurs to enforce its rights or exercise its  
367 remedies under this Agreement *plus* an amount equal to the average interest rate payable on the  
368 California Local Agency Investment Fund in effect when the Direct Costs were incurred.

369 "Revenue Fund" means the funds and accounts in the County Solid Waste Enterprise Fund (Fund No.  
370 1930) in which Current Revenues are deposited.

371 "Revenues" means Current Revenues plus deposits to the Revenue Fund from amounts on deposit in the  
372 Bond Holders Rate Stabilization Fund, but only as and to the extent specified in the Bond Documents.

373 "Service Agreement", means the contract between the County of Santa Barbara and MSB Investors, LLC  
374 for development and operation of the TRRP.

375 "Service Contractor", means the Contractor defined in the Service Agreement between the County of  
376 Santa Barbara and MSB Investors, LLC.

377 "Service Contractor's Proposal", means the Service Contractor's document(s) included in Exhibit J to the  
378 Service Agreement, and all related materials submitted subsequently prior to the Effective Date.

379 "Shortfall Charge", means the charge incurred by the City for failure to meet the City's Minimum Annual  
380 Delivery Requirement (i.e., if the actual tonnage delivered and paid for is less than the committed tons).  
381 The charge will equal the number of tons short of the City's Minimum Annual Delivery Requirement  
382 multiplied by the effective Acceptable Material Charge.

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383 "Solid Waste System"; "System", means all solid waste collection, processing, diversion, composting,  
384 recycling, disposal and power generation facilities (including related equipment) for solid waste and any  
385 other facilities related thereto now owned by the County, and all other facilities (including related  
386 equipment) for solid waste collection, processing, diversion, composting, recycling, disposal and power  
387 generation hereafter acquired and constructed by the County and such other facilities, which may or  
388 may not be owned by the County, determined by the County to be a part of the Solid Waste System.  
389 Solid Waste System shall not include any Special Facilities.

390 "Source-Separated Food Scraps", means Food Scraps, containing less than two percent (2%)  
391 contamination by weight, segregated from other Municipal Solid Waste prior to collection. Source-  
392 Separated Food Scraps may be collected separately or commingled with Yard Trimmings. Source-  
393 Separated Food Scraps are Organic Materials.

394 "Source-Separated Organic Materials", means Source-Separated Food Scraps, or combined Food Scraps  
395 and Yard Trimmings, containing less than two percent (2%) contamination by weight, that are collected  
396 separately from Municipal Solid Waste.

397 "Source-Separated Recyclable Materials", means Recyclable Materials, containing less than 15%  
398 contamination by weight, that are separated by the generator from Municipal Solid Waste, provided for  
399 collection by individual material type or as combined materials in a single-stream program, and are  
400 delivered to the Project for Processing and transport to Market.

401 "Source-Separated Yard Trimmings", means Yard Trimmings, containing less than two percent (2%)  
402 contamination by weight, segregated from other Municipal Solid Waste prior to collection. Source-  
403 separated yard trimmings are not included in the City's Minimum Annual Delivery Requirement.

404 "Spot Market Material", means Acceptable Material generated within Santa Barbara County and  
405 delivered to the Facility by or on behalf of Other Users.

406 "State", means the State of California.

407 "System Costs", means all reasonable and necessary costs paid or incurred by the County for  
408 maintaining and operating the Solid Waste System, determined in accordance with Generally Accepted  
409 Accounting Principles, including all reasonable expenses of management and repair and other expenses  
410 necessary to maintain and preserve the Solid Waste System in good repair and working order, state  
411 mandated surcharges, and the annual costs of any permits or licenses, but excluding debt service costs,  
412 and including all administrative costs of the County that are charged directly or apportioned to the  
413 operation of the Solid Waste System, such as salaries, wages, and pension and other post-employment  
414 benefits of employees, overhead, taxes (if any) and insurance premiums, and including all other  
415 reasonable and necessary costs of the County or charges required to be paid by the County to comply  
416 with the terms hereof or of any resolution authorizing the issuance of any Certificates (as defined in the  
417 Bond Documents) or of such Certificates, or of any resolution authorizing the execution of any contract  
418 (as defined in the Bond Documents) or of such contract, such as compensation, reimbursement and  
419 indemnification of the trustee for any such Certificates or contracts and fees and expenses of  
420 independent certified public accountants and independent engineers, insurance consultants, but  
421 excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor,  
422 amortization of intangibles and intergovernmental transfers by the County which are not  
423 reimbursements or payments for overhead or other administrative expenses incurred by the County.

## Material Delivery Commitment and Processing Services Agreement

424 System Costs do not include payments by the County from funds in the Jurisdictional Rate Stabilization  
425 Fund (i) to the Public Participants pursuant to the terms and provisions of this Agreement, and (ii) to the  
426 Service Contractor.

427 "Target Value", means the targeted amount of funds to be kept in the Jurisdictional Rate Stabilization  
428 Fund of \$3,000,000.

429 "Ton"; "Tonnage", means a short Ton of 2,000 pounds.

430 "TRRP Revenue(s)", means revenue from the sale of any or all of the following, without regard to source:

431 (A) Sale of Recyclable Materials

432 (B) Sale of Compost

433 (C) Sale of electricity

434 (D) Share of Spot-Market tipping fees

435 "TRRP Service", means any or all of Service Contractor's obligations that are described in the Service  
436 Agreement, including development, operations (throughput, recovery, residue, electric output, net  
437 electricity generated, and environmental performance), maintenance, Marketing, etc.

438 "Unacceptable Waste" means wastes that the TRRP may not receive under its Permits, including but not  
439 limited to:

440 (A) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely  
441 to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances,  
442 which may be a Hazardous Waste if it contains more than one percent (1%) asbestos;

443 (B) Ash residue from the incineration of Municipal Solid Wastes, including infectious waste  
444 described in item (G) below, wood waste, sludge, and agricultural wastes.;

445 (C) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances  
446 which remains after the shredding of automobiles;

447 (D) Large dead animals;

448 (E) Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials;

449 (F) Industrial solid or semi-solid wastes resulting from industrial processes and manufacturing  
450 operations, including cement kiln dust, ore process residues and grit or screenings removed  
451 from waste water treatment facility;

452 (G) Infectious wastes which have disease transmission potential and are classified as Hazardous  
453 Wastes by the State Department of Health Services, including pathological and surgical wastes,  
454 medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings,  
455 bottles, drugs, patient care items such as linen or personal or food service items from



## Material Delivery Commitment and Processing Services Agreement

456 contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical  
457 purposes or with known infectious diseases;

458 (H) Liquid wastes which are not spadeable, usually containing less than fifty percent (50%) solids,  
459 including cannery and food processing wastes, landfill leachate and gas condensate, boiler  
460 blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings,  
461 rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous  
462 Wastes;

463 (I) Radioactive wastes as defined in Section 114710 of the California Health and Safety Code and  
464 any waste that contains a radioactive material, the storage or Disposal of which is subject to any  
465 other State or federal regulation;

466 (J) Special wastes designated from time to time by the Department of Resources Recycling and  
467 Recovery (CalRecycle), including contaminated soil;

468 (K) Bulky items that cannot fit within standard roll-off containers or Mixed Waste/Municipal Solid  
469 Waste collection vehicles unless otherwise approved by Service Contractor.

470 The Parties shall Promptly conform this definition of "Unacceptable Waste" to the extent necessary to  
471 comply with Applicable Law, should a Change in Law or in Permits and Permit requirements necessitate.

472 "Uncontrollable Circumstances", means any act, event or condition that is beyond the reasonable  
473 control of the Party relying thereon as justification for not performing a County Obligation or a City  
474 Obligation as defined in Article 3 and 4 respectively, or complying with any condition required of such  
475 Party under this Agreement, and that materially interferes with or materially increases the cost of  
476 performing its obligations hereunder (other than payment obligations), to the extent that such act,  
477 event or condition is not the result of the willful or negligent act, error or omission, failure to exercise  
478 reasonable diligence, or breach of the this Agreement on the part of such Party. The only effect of such  
479 Uncontrollable Circumstance is that it allows for a temporary cessation of delivery of materials and/or  
480 provision of service by the County to the extent that the delivery of materials by the City or the  
481 provision of service by the County is prevented by the Uncontrollable Circumstance. The occurrence of  
482 an Uncontrollable Circumstance expressly does not allow for a cessation of payment of the Monthly  
483 Service Payment. Such acts or events may include, but shall not be limited to, the following:

484 (A) Naturally occurring events (except weather conditions normal for the Santa Barbara area) such  
485 as landslides, underground movement, earthquakes, fires, tornadoes, tidal waves, floods,  
486 epidemics, storms, and other acts of God, ionizing radiation, nuclear, radioactive, chemical or  
487 biological contamination;

488 (B) Explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, civil  
489 war, armed conflict, terrorism, blockade, embargo, or insurrection, riot or civil disturbance;

490 (C) Labor disputes, except labor disputes involving employees of the Service Contractor, its  
491 affiliates, or subcontractors that affect the performance of the TRRP Services;

492 (D) The failure of any subcontractor or supplier (other than the Collection Contractor, Service  
493 Contractor, Service Contractor's guarantor, or any affiliate of either) to furnish services,  
494 materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of

## Material Delivery Commitment and Processing Services Agreement

495 an event which would constitute an Uncontrollable Circumstance if it affected the Collection  
496 Contractor, or Service Contractor directly, and the Collection Contractor or the Service  
497 Contractor are not able after exercising all Reasonable Business Efforts to timely obtain  
498 substitutes;

499 (E) The failure of any private utility to provide and maintain utilities to the TRRP which are required  
500 for the performance of this Agreement;

501 (F) Any failure of title to the Project Site or any enforcement of any encumbrance on the Project  
502 Site not consented to in writing by, or arising out of any action or agreement entered into by,  
503 the Party adversely affected thereby;

504 (G) The preemption of materials or services by a governmental body in connection with a public  
505 emergency or any condemnation or other taking by eminent domain of any material portion of  
506 the Facility;

507 (H) The temporary suspension of operations due to supervening authority of law, such as the  
508 designation of all or a portion of the TRRP as a crime scene or as the site of an investigation by  
509 law enforcement;

510 (I) A Change in Law.

511 It is specifically understood that, without limitation, none of the following acts, events or circumstances  
512 shall constitute Uncontrollable Circumstances:

513 (1) Any act, event or circumstance with respect to which the Service Contractor has assumed the  
514 "as-is" risk under the Service Agreement;

515 (2) Any act, event or circumstance that would not have occurred if the affected Party had complied  
516 with its obligations under the this Agreement;

517 (3) Changes in interest rates, inflation rates (other than those provided for in this Agreement), labor  
518 costs, insurance costs, commodity prices, currency values, exchange rates or other general  
519 economic conditions, with the exception of changes resulting from a Change in Law;

520 (4) Changes in the financial condition of the County or MarBorg affecting the ability to perform  
521 their respective obligations;

522 (5) The consequences of error, neglect or omissions by the Service Contractor in the performance  
523 of the TRRP Services;

524 (6) Union or labor work rules, requirements or demands, which have the effect of increasing the  
525 number of employees employed, or overtime hours required, at the Project or otherwise  
526 increasing the cost to the Service Contractor for meeting Service Contractor obligations under  
527 the Service Agreement, provided that such are not the result of a Change-in-Law;

528 (7) Mechanical failure of equipment not itself due to an Uncontrollable Circumstance;

529 (8) Power outages not caused by third party utilities;

## Material Delivery Commitment and Processing Services Agreement

- 530 (9) Reasonably anticipated weather conditions for the geographic region of Santa Barbara County;
- 531 (10) Any act, event, circumstance or Change-in-Law occurring outside the United States of America,  
532 unless it has a clear, direct and measurable impact on the ability of a Party to perform its  
533 contractual obligations;
- 534 (11) Failure of the Service Contractor to secure applicable patents, provided that such failure is due  
535 to the acts, omissions or negligence of the Service Contractor;
- 536 (12) A Change-in-Law pertaining to taxes, which does not discriminate against Service Contractor; or
- 537 (13) Any Change-in-Law (including the issuance of any governmental approval, the enactment of any  
538 statute, or the promulgation of any regulation) the terms and conditions of which do not impose  
539 more stringent or burdensome requirements on the Service Contractor than are imposed by the  
540 Service Agreement.
- 541 “Unprocessable Waste”, means materials that Service Contractor cannot Process due to size or other  
542 characteristics (e.g., oversized, bulky items) and that may be delivered to the Landfill for Disposal.
- 543 “Yard Trimmings”, means those discarded materials that will decompose and/or putrefy, including, but  
544 not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree  
545 trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste.  
546 Yard Trimmings are Organic Materials.
- 547 “Year”, means a calendar year of January 1 through December 31, *unless* an Agreement Year is explicitly  
548 specified.

549 **ARTICLE 2: TERM OF AGREEMENT**

550 **2.1 Effective Date**

551 This Agreement shall be dated as of, and become effective on, the date of its execution by the last of the  
552 Parties.

553 **2.2 Agreement Term**

554 This Agreement shall terminate December 31, 2038 (approximately 22 Years from the Effective Date)  
555 and shall include the construction periods (allowing for Facility construction and acceptance testing) as  
556 well as twenty (20) Years of operation; provided, however in no event shall this Agreement terminate  
557 while any Certificates are outstanding.

558 **2.3 Survival of Certain Provisions**

559 The following provisions survive this Agreement's term:

- 560 (A) Parties' representations, certifications, warranties and acknowledgements;
- 561 (B) Amounts that MarBorg owes County, and County owes MarBorg;
- 562 (C) Any other rights and obligations of the Parties accrued prior to expiration or termination of this  
563 Agreement; and,
- 564 (D) Any other rights and obligations of the Parties expressly stated to survive this Agreement's term.

**565 ARTICLE 3: COUNTY'S OBLIGATIONS****566 3.1 Solid Waste Management Services**

567 Commencing in July 1, 2017 (based on the June 2016 schedule attached as Exhibit C of the Service  
568 Agreement), the County shall provide or cause the provision of the service of receiving and processing,  
569 treating, and/or disposing of Acceptable Materials from the Public Participants at the System (including  
570 such other facilities, including transfer stations, as the County may determine to use in the event that  
571 the Project or other existing components of the System are unavailable for any reason, as described in  
572 Section 3.5). The County, to the maximum extent permitted under Applicable Law, shall use its  
573 Reasonable Best Efforts to keep the Project and the existing landfill open for the receipt of waste for  
574 processing, transfer or disposal of Acceptable Materials pursuant to this Agreement. The County shall  
575 do and perform all acts and things which may be necessary or desirable in connection with its covenants  
576 in this subsection, including without limitation all planning, development, administration,  
577 implementation, construction, operation, maintenance, management, financing and contract work  
578 related thereto or undertaken in connection therewith. The County shall exercise all reasonable efforts  
579 to minimize the costs incurred in complying with its obligations and responsibilities under this  
580 Agreement, Applicable Law, the Bond Documents, and prudent solid waste management practice and  
581 environmental considerations. The County shall enforce the provisions of all agreements with third  
582 parties relating to the Project.

**583 3.2 Facility Revenues****584 A. Jurisdictional Rate Stabilization Fund**

585 Annually, the County will deposit into the Jurisdictional Rate Stabilization Fund amounts held in the  
586 Surplus Fund (as established under the Bond Documents) net of (i) payment of System subordinate  
587 obligations; (ii) capital improvements of the System; (iii) any replenishment of the Operating Reserve;  
588 and (iv) the payment by or reimbursement of revenue to the County of any non County Service Costs or  
589 revenues that are excluded from this Agreement.

590 County shall continue to contribute, solely from the amounts held in the Surplus Fund established under  
591 the Bond Documents, to the Jurisdictional Rate Stabilization Fund with the goal of maintaining a  
592 minimum fund balance of three million dollars (\$3,000,000) (Target Value). If at the end of any  
593 Agreement Year, the Jurisdictional Rate Stabilization Fund exceeds three million five hundred thousand  
594 dollars (\$3,500,000) (Cap Value), the Public Participants will receive a dividend to return the fund to  
595 three (3) million dollars (\$3,000,000) based upon the actual amount and type of Tons delivered to the  
596 Facilities in the given year as identified in the Service Agreement. The County shall separately account  
597 for expenses made from and contributions to the Jurisdictional Rate Stabilization Fund and shall present  
598 these to the City during the Annual Settlement Process (as described in Section 4.3.B). Any funds  
599 remaining in the Jurisdictional Rate Stabilization Fund at the end of the Agreement Term shall be  
600 accounted for during the final Annual Settlement Process.

**601 B. Materials Revenue Shares****602 1. Calculation**

603 Subject to satisfying the requirements of the Bond Documents, in the event that the Jurisdictional Rate  
604 Stabilization Fund balance exceeds the Cap Value, the County shall, during the Annual Settlement

605 Process (described in Section 4.3.B), distribute an allocable amount of any additional TRRP Revenues to  
 606 the Public Participants (in proportion to the amount of annual Tons delivered by waste stream  
 607 responsible for the material revenues), in an amount calculated as follows, and as further described in  
 608 Exhibit D:

- 609 a. City of Buellton's Tons of Acceptable Materials by material type (e.g., Mixed Waste, Source-  
 610 Separated Recyclable Materials, Source-Separated Organic Materials) actually delivered to the  
 611 TRRP;
- 612 b. Multiplied by an equivalent tonnage factor based on actual market values of the materials from  
 613 the previous Agreement Year (e.g. if Source-Separated Recyclable Materials commodity values  
 614 are twice as high as Mixed Waste commodity values, the Source-Separated Recyclable Materials  
 615 equivalent tonnage factor would be "2", and Mixed Waste equivalent tonnage factor would be  
 616 "1");
- 617 c. Summed for all material types, to arrive at a single equivalent tonnage value per City;
- 618 d. Divided by the aggregate Tons of Acceptable Materials actually delivered to the TRRP, and  
 619 adjusted by the equivalent tonnage factors, to arrive at a percentage;
- 620 e. Multiplied by the total available disbursement amount;
- 621 f. Minus any money that MarBorg owes the County.

622 **2. Example**

623 For example, as applied to Source-Separated Recyclable Materials and as defined in B. 1 a – f above:

624 Assumptions:

- 625 a. **10 Tons:** MarBorg delivers 10 Tons of Source-Separated Recyclable Material.
- 626 b. **2:** Source-Separated Recyclable Materials equivalent Tonnage factor, assuming Source-Separated  
 627 Recyclable Materials commodity values were agreed to be twice as high as Mixed Waste  
 628 commodity values.
- 629 c. **1000 Tons:** Aggregate of 1000 Tons of adjusted equivalent Tonnage from all sources and material  
 630 types delivered by Public Participants to the Project.
- 631 d. **\$3,500,000:** Jurisdictional Rate Stabilization Fund Balance has reached the Cap Value of  
 632 \$3,500,000.
- 633 e. **\$500,000:** County's available disbursement amount to return the Jurisdictional Rate Stabilization  
 634 Fund to the Target Value is \$500,000 (assuming the funds identified in Section 3.2.A are fully  
 635 funded).
- 636 f. **\$500:** MarBorg owes County outstanding balance of Shortfall Charge of \$500.

637 Equation:

638 
$$((10 \text{ Tons} * 2) / 1,000 \text{ equivalent Tons}) = 2\%$$

639 
$$(2\% * \$500,000) - \$500 = \$9,500 = \text{MarBorg's dividend amount}$$

640 **C. Payment Dates**

641 County will distribute any TRRP Revenues that are due to the Public Participants in accordance with the  
642 Materials Revenue Share as described in Section 3.2 B and the Annual Settlement Process (described in  
643 Section 4.3.B) within thirty (30) Days of receipt of revenues from Service Contractor, subject to  
644 confirmation that the City has satisfied the requirements of the Bond Documents and Operating  
645 Reserve, and has met preconditions related to any Shortfall Charges, prior to distribution.

646 **D. Limited Obligation**

647 County's obligation with respect to materials revenue sharing is limited to TRRP Revenues that County  
648 receives and which are not subsequently recovered from County by a trustee in bankruptcy, creditor of  
649 the Service Contractor or other Person. City acknowledges that County may not receive any TRRP  
650 Revenues from Service Contractor for multiple reasons, including:

- 651 1. Service Contractor's failure to generate revenues from identified sources, or  
652 2. Attachment of those revenues by creditors of Service Contractor who have a secured interest  
653 prior to the County's interest.

654 **3.3 Exercise of Contractual Rights**

655 **A. Notification**

656 County will notify MarBorg, no later than thirty (30) Days prior, of any upcoming County Board meeting  
657 prior to exercising County's rights and obligations under the Service Agreement that the County does  
658 not delegate to the County Agreement Representative. The obligation to notify the City does not  
659 prevent the County from unilaterally exercising such rights and obligations. Examples include:

- 660 1. Giving Notices to proceed, and full or partial Facility acceptance; and,  
661 2. Exercising certain enforcement actions and remedies.

662 **B. City's Individual Rights**

663 County authorizes MarBorg to exercise the following rights of the County under the Service Agreement,  
664 at MarBorg's option:

- 665 1. Entering Facility during normal hours of Facility operation, and/or,  
666 2. Accessing Service Contractor's books and records during normal business hours as well as access  
667 to electronic records available on-line from the Contractor and County.

668 **C. No Modification Without City Consent**

669 Except for routing change orders necessary for the construction and operation of the Facility as  
670 described in the Service Agreement, County will not modify the Service Agreement in any way that  
671 changes MarBorg's obligations, or MarBorg's rights under this Section 3.3, without MarBorg's consent.

672 **3.4 Annual Facility Review Meeting**

673 County shall hold an annual meeting with MarBorg and the Public Participants to review the Service  
674 Contractor's Processing efforts, and overall performance under this Agreement. The purpose of such

675 meeting is to provide for a discussion and review of technological, economic, and regulatory changes in  
676 collection, source reduction, Processing and Disposal to achieve a continuing, advanced materials  
677 Processing and Disposal system; and to ensure services are being provided by County and the Service  
678 Contractor with adequate quality, effectiveness and economy, and in full compliance with the terms of  
679 this Agreement.

680 County shall notify MarBorg of its intent to hold an annual review meeting at least sixty (60) days in  
681 advance thereof.

682 In addition, MarBorg may request a meeting with County to discuss the issues described herein at any  
683 time during the Agreement Term, and County shall arrange such meeting within thirty (30) Days of  
684 MarBorg request.

### 685 **3.5 Services During Uncontrollable Events**

686 In the event of an Uncontrollable Circumstance, County shall make Reasonable Business Efforts to  
687 receive materials delivered by MarBorg, and to promptly and cost effectively provide materials  
688 processing and disposal services either through facilities within the County's Solid Waste System or  
689 using alternative waste management facilities. The County commits to seeking all reimbursable funds  
690 from any and all insurance policies providing coverage for loss or damage resulting from such events to  
691 return the TRRP and Landfill to operations. If the cost to repair the TRRP and landfill exceed the available  
692 insurance proceeds, the County will prepare a plan and budget to return the facilities to operational  
693 status and submit this information to the Operating Committee for consideration under Section 4.3.D.3.  
694 Moreover, since the type, scope and limits of the required insurance coverage secured by the Contractor  
695 and the County for the TRRP was determined after review and consultation by the City of Santa Barbara,  
696 any significant changes in the type, scope or limits of insurance coverage for the TRRP will be subject to  
697 review by the Operating Committee.  
698

#### 699 **A. Disposal Facility Available**

700 In the event an Uncontrollable Circumstance occurs which prevents Processing of materials by the TRRP  
701 but does not preclude Disposal in the Landfill, County shall Dispose of the materials and shall make  
702 Reasonable Business Efforts to provide alternative material Processing capacity.

#### 703 **B. Disposal Facility Not Available**

704 In the event an Uncontrollable Circumstance occurs which prevents Processing of materials by the TRRP  
705 and Disposal in the Landfill, the County, shall not abandon the Solid Waste System and shall continue to  
706 provide disposal capacity sufficient to enable it to comply with the terms hereof; provided, that, the  
707 County may provide such capacity by making available transfer and/or disposal facilities owned and  
708 operated by the County or by making contractual or other arrangements for the use of transfer and/or  
709 disposal facilities (either inside or outside the geographic boundaries of the County) owned or operated  
710 by persons other than the County. In the event of loss or damage to any material portion of the Solid  
711 Waste System or the occurrence of any other event which prevents the County from accepting solid  
712 waste at the facilities or the Solid Waste System, the County will use Reasonable Business Efforts to take  
713 whatever actions are within its powers to provide other facilities or services necessary to provide the  
714 solid waste management services necessary to maintain Net Current Revenues and Net Revenues as  
715 required under the Bond Documents. If the efforts necessary to replicate the performance of the TRRP  
716 are not economically feasible based on the Current Revenues and any available insurance proceeds, the



717 County shall convene a meeting of the Operating Committee to discuss the options available to provide  
718 disposal and processing services that most closely replicate the performances of the TRRP within the  
719 limits of the Current Revenues and any available insurance proceeds.

**720 ARTICLE 4:MARBORG'S OBLIGATIONS****721 4.1 Acceptable Materials Delivery Requirement and Monthly Payments**

722 Commencing on July 1, 2017, MarBorg will deliver to the System all Acceptable Materials (except source  
723 separated recyclables and yard trimmings) that the Collection Contractor collects under its contract with  
724 the City of Buellton. Upon Full Operations of the TRRP, MarBorg will deliver source separated  
725 recyclables collected under its franchise agreement with the City of Buellton. MarBorg shall also pay the  
726 then-applicable Monthly Service Payment based on the Acceptable Materials Charge established  
727 pursuant to this Agreement. The obligations of MarBorg pursuant to this section shall be referred to  
728 here as the "Delivery Covenant."

729 In order to meet the Delivery Covenant, MarBorg deliver Acceptable Materials which it collects from the  
730 City of Buellton to the County System, or to alternate facilities designated by the County in the event the  
731 County System is unavailable for any reason as discussed in Section 3.5, while the Certificates are  
732 outstanding.

**733 4.2 MarBorgMarBorg's Annual Deliveries****734 A. Tonnage**

735 MarBorg will deliver (or cause to be delivered) its Minimum Annual Delivery Requirement up to its  
736 Maximum Annual Delivery Allowance (as described in Figure I, below) to the MRF, AD Facility or  
737 composting operations area on the Project Site (or other site designated by the County), as  
738 Service Contractor directs.

**739 1. Contamination**

740 The TRRP Revenues are based on the receipt of Mixed Waste, Source-Separated Recyclable  
741 Materials, and Source-Separated Organic Materials. Each of the Source Separated materials have  
742 limits of the contamination they may contain as described in the Definitions. Should higher levels of  
743 contamination occur, more material will be classified as Mixed Waste and less TRRP Revenue will be  
744 received.

745 If County demonstrates a material increase in contamination of Source Separated Recyclable  
746 Materials and Source Separated Organic Materials delivered to the TRRP, the County and the Service  
747 Contractor shall attempt to determine the source and cause of the increased contamination. If the  
748 source of the contamination cannot be identified, the County will prepare proposed actions (e.g.,  
749 targeted public outreach programs, tagging of containers and collection of materials in the tagged  
750 containers as solid waste, etc.) to be implemented uniformly by all users of the Facility. The  
751 Operating Committee shall consider the Service Contractor's and County's findings and  
752 recommendations and either adopt those recommended actions or modify them and adopt the  
753 modified actions and all users of the Facility shall uniformly implement such actions within six (6)  
754 months.

755 If the County demonstrates by substantial evidence that the increased contamination is attributable  
756 to material collected from the City of Buellton, then the County will notify MarBorg. If the MarBorg  
757 does not agree with the County's findings as to the cause of the contamination, a third party that is  
758 mutually agreeable to MarBorg and the County will be hired to review the County's evidence and

759 make a determination of the cause of the increased contamination. If MarBorg does not dispute the  
760 County’s original finding as to the cause of the increased contamination or if the third party  
761 attributes the cause of the increased contamination to MarBorg, then MarBorg will have ninety (90)  
762 days to prepare a course of action (e.g., targeted public outreach programs, tagging of containers and  
763 collection of materials in the tagged containers as solid waste, etc.) to address the identified  
764 contamination including a description of the change(s), the timeline for the change(s), and the  
765 anticipated impact(s) of the change(s). Within sixty (60) days of receipt of MarBorg’s proposed  
766 actions (Proposal) to correct the contamination, County shall prepare and deliver to MarBorg a  
767 written response to the proposed change (Response). If MarBorg does not agree with the original  
768 findings of the County or Service Contractor or the County does not agree to the Proposal prepared  
769 by MarBorg to address the contamination issue, a third party that is mutually agreeable to MarBorg  
770 and the County will be hired to review the County or Service Contractor’s findings and MarBorg’s  
771 Proposal, and make a recommendation to address the issue. The cost for the third party will be split  
772 between the County and MarBorg and the third party’s decision shall be binding upon MarBorg and  
773 the County. MarBorg will implement actions associated with the third party’s decision within six (6)  
774 months.

775 **2. Quantities**

776 In the event that in any Agreement Year MarBorg delivers (or causes to be delivered) Tons in excess  
777 of MarBorg’s Minimum Annual Delivery Requirement but less than MarBorg’s Maximum Annual  
778 Delivery Allowance, MarBorg shall be charged for each additional Ton at the then current Acceptable  
779 Materials Charge, during the Annual Settlement Process, as described in Section 4.3.B.

780 In the event that in any Agreement Year MarBorg delivers (or causes to be delivered) Tons in excess  
781 of the MarBorg’s Maximum Annual Delivery Allowance but the facility has received fewer Tons than  
782 the Facility Maximum Annual Delivery Allowance, MarBorg shall be charged for each additional Ton  
783 at the then current Acceptable Materials Charge, during the Annual Settlement Process, as described  
784 in Section 4.3.B.

785 In the event that in any Agreement Year MarBorg anticipates or is projected by the County or the  
786 Service Contractor to deliver (or cause to be delivered) Tons in excess of the Facility Maximum  
787 Annual Delivery Allowance, MarBorg may be allowed to deliver (or cause to be delivered) the  
788 additional Tons at the Acceptable Materials Charge based on the terms determined in accordance  
789 with Section 4.3.C.

790

791

**Figure I - City’s Minimum Annual Delivery Requirement**

“MarBorg’s Minimum Annual Delivery Requirement” means at least the following Total Tons of Acceptable Materials relating to waste collected from the City of Buellton. (Specific Tons of Mixed Waste, Source-Separated Recyclable Materials and Source-Separated Organic Materials are listed separately only for the purpose of calculating revenue shares under Section 3.2.B.)\*

	Mixed Waste (Tons)	Source-Separated Recyclable Materials (Tons)	Source-Separated Organic Materials (Tons)**: • Source-Separated Food Scraps, or • Source-separated Food Scraps and Yard Trimmings (combined)	Total
City’s Minimum Annual Delivery Requirement Total Tons	4,064	868	0	4,932
City’s Maximum Annual Delivery Allowance Total Tons	4,958	1098	0	6,056

792 \* The Minimum Annual Delivery Requirement(s) shall be increased to reflect City annexation of any  
 793 property subsequent to the execution of this Agreement.  
 794 \*\* While Source-Separated yard trimmings may be delivered to the Anaerobic Digestion Facility, such  
 795 material is not included in the tonnage commitment of each jurisdiction.

796 **B. Collection Contract Obligations**

797 MarBorg must comply with the following.

798 **1. Delivery of All Acceptable Materials**

799 MarBorg must deliver to the Project Site (or other site designated by the County) all Acceptable  
 800 Materials that it collects under its collection contract with the City of Buellton.

801 **2. Tajiguas Landfill Tip Fee Increase Beginning July 1, 2017**

802 Beginning, July 1, 2017, MarBorg agrees to pay a tipping fee increase for disposal of waste at the  
 803 Tajiguas Landfill at a rate of ninety nine (99) dollars per ton. The revenue generated by this increase will  
 804 fund the Jurisdictional Rate Stabilization Fund.

805 **3. Monthly Service Payment Requirement Upon Commencement of Operations**

806 MarBorg shall pay County a Monthly Service Payment as provided in this Section 4.2.B.2.

807 The Monthly Service Payment is calculated and paid monthly based on MarBorg’s Minimum Annual  
 808 Delivery Requirement shown in Section 4.2.A multiplied by the applicable Acceptable Materials Charge  
 809 shown in Section 4.3.A divided by twelve (12). The Monthly Service Payment shall be the monthly  
 810 amount represented in the following formula.

811 + Acceptable Material Charge  
812 x City's Minimum Annual Delivery Requirement (Total Tons)  
813 / 12 months  
814 = Monthly Service Payment

815 The Annual Settlement Process, defined in Section 4.3.B, identifies any necessary adjustments to the  
816 twelve (12) Monthly Service Payments made for the previous Agreement Year to reflect actual Tonnages  
817 delivered and other payments owed to, or by MarBorg. Should MarBorg's actual Tonnages delivered  
818 during the Agreement Year significantly exceed what would be expected based on MarBorg's Minimum  
819 Annual Delivery Requirement and should this materially affect the County's cash flow payments to the  
820 Service Contractor, or the County's ability to comply with the Bond Documents, then the Parties shall  
821 meet and confer to compensate the County for such an impact and/or adjust the future Minimum  
822 Annual Delivery Requirement to minimize the cash flow impact on the County in the future.

### 823 **C. Consent to Changes**

824 MarBorg may not amend its collection programs that it offers to the City of Buellton in any way that  
825 alters its contractual provisions required in Section 4.2 without County consent, as there is the potential  
826 for changes to affect costs and revenues of other Parties. General examples of "change" include  
827 expiration/termination, extension, re-procurement/replacement and amendments to collection  
828 agreements. Specific examples of "change" are stopping collection of Source-Separated Recyclable  
829 Materials; or delivering Acceptable Materials in a different configuration such as a "Wet/Dry" collection  
830 system.

#### 831 **1. Refuse, Recyclable and Organic Materials Other Than Yard Trimmings**

832 If MarBorg wishes to propose a change to its collection program, MarBorg and County shall abide by the  
833 following procedures:

834 • MarBorg shall send County and other Public Participants a written proposal detailing the  
835 proposed change(s) to the collection contract. The proposal shall: describe the change(s),  
836 identify the timeline for the change(s), identify the anticipated impact(s) of the change(s), and  
837 include the methods by which it proposes to use to cause no new current and future negative  
838 financial impacts to the County and other Public Participants. The proposal shall be sent to the  
839 County and other Public Participants at least twelve (12) months before the intended effective  
840 date of the proposed changes, which shall coincide with an Agreement Year.

841 • Within ninety (90) days of receipt of MarBorg's proposal, County (which may consult with the  
842 Service Contractor) shall (and other Public Participants may) prepare and deliver to MarBorg a  
843 written response to the proposed change as it relates to the TRRP (Response) including any  
844 additional impacts and possible mitigation measures not considered by Mar  
845 Borg but required of MarBorg or the County, to fully mitigate the impact on the County and the  
846 other Public Participants and to generate sufficient revenue for the County to meet the  
847 requirements of its Bond Documents.

848 • Thereafter, MarBorg and County (and as appropriate the other Public Participants and Service  
849 Contractor) shall meet, for a period not to exceed six (6) months, to negotiate the terms

850 related to the implementation of MarBorg's requested change (based upon analysis performed  
851 by MarBorg, the County, other Public Participants and the Service Contractor). Should MarBorg  
852 and County reach agreement, then MarBorg shall implement the change according to their  
853 original schedule but not sooner than thirty (30) days following agreement.

854 • Should MarBorg and County (and as appropriate the other Public Participants and Service  
855 Contractor) not reach agreement, within the six-month negotiating period or upon either party  
856 declaring an impasse then within thirty (30) days of reaching impasse, the County (and as  
857 appropriate, the Operating Committee) shall submit to MarBorg, the terms related to  
858 MarBorg's requested change to which the County is unable to agree. Once MarBorg receives  
859 the list of terms to which the County is unable to agree, MarBorg may submit the points of  
860 disagreement to a third party that is mutually agreed upon by MarBorg and County. The third  
861 party shall evaluate the points of disagreement and shall develop a set of proposals that would  
862 enable the adoption of MarBorg's requested change while mitigating revenue losses or cost  
863 increases related to the proposed change in order to enable the County to continue to meet  
864 the requirements of the Bond Documents. The Party submitting the proposal to affect a change  
865 shall pay the direct costs for the third party and MarBorg and County will each be responsible  
866 for other costs associated with analyzing the proposal.

867 Following receipt of the third party's proposals, MarBorg shall have thirty (30) days to elect to proceed  
868 with its proposed change in a manner consistent with one of the third party's proposals or to  
869 elect to not implement the change. If MarBorg elects to proceed with the change, the  
870 consultant's proposal shall be binding upon MarBorg and the County

### 871 4.3 Compensation

#### 872 A. Acceptable Materials Charge

873 Notwithstanding anything to the contrary contained in this Agreement, the County shall establish, and  
874 each System Participant shall pay, a per-ton charge (the Acceptable Materials Charge) which, in the  
875 aggregate, shall be sufficient to generate Revenues (after taking into account revenues from the sale of  
876 Recyclable Materials, the proceeds of insurance and Current Revenues and other receipts) in an amount  
877 at least equal to all amounts required to be paid or incurred by the County to provide the services set  
878 forth in Section 3.1, to meet the requirements of the Bond Documents, and to replenish any reserves  
879 established hereunder.

880 At the time of the execution of this Agreement, the Acceptable Materials Charge is estimated to be no  
881 more than one hundred twenty dollars (\$120) per ton, however in no event shall the actual Acceptable  
882 Materials Charge be less than the reasonably estimated amount necessary to generate Net Revenues  
883 and Net Current Revenues as described in the preceding sentence. The County may make adjustments  
884 from time to time to such charges, fees and rates and may make such classification thereof as it deems  
885 necessary, but shall not reduce the charges, fees and rates then in effect unless the Net Revenues and  
886 Net Current Revenues from such reduced charges, fees and rates will at all times be sufficient to meet  
887 the requirements set forth above. The parties acknowledge that the obligation of the County to require  
888 each System Participant to deliver waste to the System and to pay the Acceptable Materials Charge is  
889 absolute and unconditional as long as the County performs its obligations under Section 3.1 to receive  
890 and process, treat or dispose of Acceptable Materials, regardless of whether all or any portion of the  
891 Facility (i) is completed by the scheduled completion date, (ii) operates in accordance with the  
892 specifications set forth in the Service Agreement, (iii) generates the products that are identified in the

893 Service Agreement, (iv) generates products that in fact have an actual market or market value, or (v)  
894 achieves diversion levels consistent with the projections contained in the proforma of the Service  
895 Agreement.

896 **B Annual Settlement Process**

897 The Annual Settlement Process is used to reconcile the Monthly Service Payments paid over a full  
898 Agreement Year, with the amount due based on the actual Tonnage delivered multiplied by the  
899 Acceptable Materials Charge.

900 Within forty-five (45) Days of the conclusion of each Agreement Year, County shall provide MarBorg an  
901 "Annual Settlement Process Statement" setting forth the determination of outstanding payments,  
902 amounts due, or financial obligations of MarBorg with respect to the given Agreement Year. The Annual  
903 Settlement Process Statement shall include a reconciliation of the amount owed with the amounts  
904 actually paid by MarBorg with respect to the given Agreement Year including tonnage of material  
905 delivered by type, TRRP revenues from the Contractor and allocated to MarBorg, and the statement of  
906 any necessary contributions to the Jurisdictional Rate Stabilization Fund. The Annual Settlement Process  
907 Statement shall also identify any excess reserves which MarBorg may use to defer future rate increases  
908 to its ratepayers, or working jointly with the County, choose to replace or renew equipment, and/or  
909 defease a portion of the outstanding Facility Certificates. In the event that MarBorg desires to review or  
910 contest the contents of the Annual Settlement Process Statement, within thirty (30) days of receipt of  
911 the Statement, MarBorg may request to meet with County, and County shall arrange to meet with  
912 MarBorg within thirty (30) Days of MarBorg request. If there continues to be a difference between the  
913 County's and MarBorg's calculation of the amounts due, the Parties will meet and confer to resolve their  
914 differences for a period of not more than thirty (30) days. The obligation to have such a meeting does  
915 not confer on MarBorg a right to revise or stop the settlement payment. If there is not a dispute, the  
916 amount due from either Party will be paid within forty five (45) days of receiving or sending the  
917 Statement. If there is a dispute and if the Certificates issued for the Facility financing are outstanding  
918 the Parties shall use the process described in Section 5.2 below; if the Certificates issued for the Facility  
919 financing are not outstanding then the Parties shall use the process described in Section 5.3 below.

920 **C. Exceedance of Maximum Annual Delivery Allowance**

- 921 1. Should the Tonnage attributable to MarBorg that can be delivered to the Facility exceed  
922 MarBorg's Maximum Annual Delivery Allowance but not cause the Facility to exceed its  
923 Maximum Facility Capacity, the County, MarBorg, and other Public Participants shall meet to  
924 determine, under what terms MarBorg may deliver the Excess Tonnage.
- 925 2. Should the Tonnage attributable to the Public Participants that can be delivered to the  
926 Facility exceed the Maximum Facility Capacity, the County, Public Participants, and Service  
927 Contractor shall meet to determine if the Service Contactor can accommodate the Excess  
928 Tonnage, and if so at what adjustment to the Acceptable Materials Charge. County and  
929 MarBorg shall meet to determine what other adjustments might be made to the Acceptable  
930 Material Charge (e.g., a reduction to the annual debt service component of the Acceptable  
931 Material Charge). If the County and MarBorg agree, then MarBorg may deliver the Excess  
932 Tonnage to the Facility.

933 **D. Adjustments**

934 Each January, the County will distribute a draft Annual Budget for the System. The Annual Budget will

935 contain an estimate of the Current Revenues and System Costs payable from Current Revenues for the  
936 ensuing Agreement Year, (beginning on the upcoming July 1). The Annual Budget will disaggregate the  
937 cost and revenue components into four categories including 1) Contractor cost, 2) debt service cost, 3)  
938 County Service Cost, and 4) Other County Costs (that will not be a component of the Acceptable  
939 Material Charge for the Facility). The Annual Budget will also contain an estimate of the amount of  
940 Acceptable Materials expected to be delivered to the System in such Agreement Year, and the resulting  
941 Acceptable Materials Charge required to be imposed in order for the County to meet the requirements  
942 of the Bond Documents.

943

944 In the case of any financial shortfalls (either higher than projected costs or lower than projected  
945 revenues) related to the Facility, the replenishment of funds by the jurisdictions shall only be included as  
946 part of the annual budget process pursuant to the limitations discussed below.

947 1. If the proposed change in the Acceptable Materials Charge is equal to or less than seven and  
948 one-half percent (7.5%), the City shall adjust collection rates a commensurate amount and  
949 direct its Collection Contractor to pay the corresponding Monthly Service Payment effective  
950 the following Agreement Year. In no case shall the Acceptable Materials Charge be adjusted  
951 by a negative value. If the calculated adjustment is a negative value, the adjustment shall be  
952 set to "one" (1). For example, if the Acceptable Material Charge is \$116 per ton and the  
953 calculated adjustment was - 0.3 percent, then the \$116 per ton would be multiplied by 1 and  
954 result in \$116 per ton.

955 2. If the change in the Acceptable Materials Charge is greater than seven and one-half percent  
956 (7.5%), or the cumulative adjustments total fifteen percent (15%) or more in the past three  
957 (3) consecutive years, and if two-thirds of the Public Participants representing at least two-  
958 thirds of the annual amount of Acceptable Materials delivered during the previous year  
959 object to the rates proposed by the County, the Operating Committee shall be convened  
960 (within 30 days of receipt of Annual Budget) and shall be charged with establishing rates  
961 sufficient to generate (after taking into account revenues from the sale of Recyclable  
962 Materials, the proceeds of insurance and other receipts), Net Current Revenues during each  
963 Agreement Year equal to 100% of Debt Service for such Agreement Year, Net Revenues  
964 during each Agreement Year equal to one hundred fifty percent (150%) of the Debt Service  
965 for such Agreement Year plus, in each case, all other amounts required to be paid by the  
966 County to provide the services set forth in Section 3.1 and to meet the requirements of the  
967 Bond Documents.

968 3. If two-thirds of the total votes of the Operating Committee vote to adopt the rates proposed  
969 by the Operating Committee, such rates shall be utilized. If at least two-thirds of the votes of  
970 the Operating Committee do not approve such alternate rates, or should the alternate rates  
971 not be approved by two-thirds of the Operating Committee within forty five (45) Days of  
972 convening the Operating Committee, then the initial rates proposed by the County shall be  
973 approved. The resolution of the Acceptable Materials Charge must be complete by April 1 of  
974 the preceding Agreement Year before its effective date.

#### 975 **E. Only Form of Compensation**

976 The Monthly Service Payment, as adjusted through the Annual Settlement Process (including but not  
977 limited to additional charges described herein such as Shortfall or Excess Tonnage Charges) shall be the  
978 only compensation owed to County by MarBorg. Following such procedures, the County shall establish



979 the Acceptable Materials Charge by the start of each Agreement Year commencing on July 1.

**980 ARTICLE 5: SUSPENSION AND TERMINATION****981 5.1 Notice of Default**

982 Should either Party default in the performance of Articles 3 or 4 of this Agreement or materially breach  
983 any of its provisions, except as the result of an uncontrollable circumstance, the Party claiming such  
984 default shall provide the Party a notice of default to the Party claimed to have defaulted. In such Notice,  
985 the Party claiming such default, shall provide a description of the specific incidents giving rise to such  
986 default or breach and identify the requested cure. Upon receipt of notice, the Party claimed to be in  
987 default shall notify the Party claiming such default as to the status of its performance. Thereafter, the  
988 Parties shall meet and confer in an attempt to remedy such incidents.

**989 5.2 Resolution When Facility Financing Certificate(s) Outstanding**

990 While the Certificates for the Facility financing are outstanding, the only remedy for default shall be  
991 specific performance and there shall be no suspension or termination of the Agreement. If the Parties  
992 cannot agree on such remedies and the claimed default or breach occurs while any Certificates issued  
993 for the financing of the Facility are outstanding, the matter shall be submitted to binding arbitration  
994 using an independent arbitrator. If either Party wishes to select an arbitrator, each Party shall prepare a  
995 separate list of five (5) independent arbitrators having experience, as applicable in the Development of,  
996 or operation of similar solid waste-related facilities, in numerical order with the first preference at the  
997 top, and exchange and compare lists. The independent arbitrator ranking highest on the two (2) lists by  
998 having the lowest total rank order position on the two (2) lists shall be the Independent Arbitrator. In  
999 case of a tie in scores, the Independent Arbitrator having the smallest difference between the rankings  
1000 of the two (2) Parties shall be selected; other ties shall be determined by a coin toss. If no independent  
1001 arbitrator appears on both lists, this procedure shall be repeated. If selection is not completed after the  
1002 exchange of three (3) lists or sixty (60) Days, whichever comes first, then each Party shall select one  
1003 independent arbitrator having experience described above and the two (2) arbitrators so selected shall  
1004 together select an Independent Arbitrator. The Independent Arbitrator shall make its determination  
1005 based on the submissions of the Parties, the provisions hereof, and other factual determinations it may  
1006 make regarding the matter in dispute, but in any case such determination must not adversely impact the  
1007 County's ability to comply with the terms of the Bond Documents. The determination of the  
1008 Independent Arbitrator shall be binding. The Parties shall share the costs of the Independent Arbitrator  
1009 equally for the first three dispute resolutions brought in any twelve (12) month period commencing on  
1010 July 1, and thereafter shall be borne by the loser, as determined by the Independent Arbitrator.

**1011 5.3 Resolution When Facility Financing Certificate (s) Not Outstanding**

1012 If the Parties cannot agree on such remedies and the claimed default or breach does not occur during  
1013 the period when any Certificates issued for the financing of the Facility are outstanding, the Parties may  
1014 exercise any legal rights they have under the Agreement and under Applicable Law, including to secure  
1015 specific performance.

1016 **ARTICLE 6: RECORDS AND REPORTS**

1017 **6.1 Records**

1018 **A. Contents**

1019 County will keep records of its administration and enforcement of the Service Agreement. An example  
1020 is Tonnage of each type of Acceptable Material that MarBorg delivers to the TRRP, as well as aggregate  
1021 Tonnage of materials delivered on a Spot-Market Materials basis to the TRRP.

1022 **B. Access**

1023 Upon MarBorg request, County shall make operational and business records (including scale house data)  
1024 available to MarBorg during Landfill hours, and shall provide on-line access or printed copies of records  
1025 as described in 3.3.B.

1026 **6.2 Reports**

1027 County will report to MarBorg on administration and enforcement of the Service Agreement. An  
1028 example is a report on results of the Annual Settlement Process.

1029 **ARTICLE 7: ENFORCEMENT**

1030 **7.1 Enforcement**

1031 **A. Law and Equity**

1032 If either County or MarBorg does not meet its obligations under this Agreement, the other Party may  
1033 exercise any and all available remedies under law and equity, including specific performance. Specific  
1034 performance is an appropriate remedy to enforce MarBorg's obligation to deliver Acceptable Materials  
1035 to the TRRP, for the same reasons described under Section 4.2.C above with respect to the Collection  
1036 Contractor.

1037 **B. Shortfall Charges**

1038 If MarBorg does not meet MarBorg's Minimum Annual Delivery Requirement it will pay any consequent  
1039 Shortfall Charge within thirty (30) Days of County request. County may do either or both of the  
1040 following:

- 1041 1. Deduct the Shortfall Charge or any other money that MarBorg owes the County from any TRRP  
1042 Revenue shares that the County owes City, or
- 1043 2. Exercise any other remedy under Section 7.1.A, above.

1044 **7.2 Uncontrollable Circumstances**

1045 **A. General**

1046 Either Party's failure to meet its contract obligations, other than the payment of money such as the  
1047 Shortfall Charge, will *not* be deemed an event of default if all of the following conditions are met:

- 1048 1. The event of default is caused by Uncontrollable Circumstances;
- 1049 2. The event of default is explicitly subject to Uncontrollable Circumstances under this Agreement;  
1050 and,
- 1051 3. The party relying on the Uncontrollable Circumstance exerted Reasonable Business Efforts to  
1052 prevent the occurrence and mitigate the effects of the Uncontrollable Circumstance.

1053 Despite a Party claiming that an Uncontrollable Circumstance prevents it from fulfilling its obligations,  
1054 such Party shall remedy the problem and perform its obligations as soon as possible.

1055 **B. Notice**

1056 The Party experiencing an Uncontrollable Circumstance will give immediate Notice to the other Party,  
1057 including all of the following:

- 1058 1. Describing performance under this Agreement for which it seeks to be excused;
- 1059 2. The expected duration of the Uncontrollable Circumstance;
- 1060 3. The extent to which Agreement Services may be curtailed; and,
- 1061 4. Any requests or suggestions to mitigate the adverse effects of the Uncontrollable Circumstance.

1062 **7.3 Jurisdiction, Venue, Service of Process**

1063 **A. Exclusive State Court Jurisdiction**

1064 County and MarBorg will bring any lawsuits arising out of this Agreement in State courts, which will have  
1065 exclusive jurisdiction over the lawsuits.

1066 **B. Venue**

1067 Venue is made and will be performed in courts sitting in the County of Santa Barbara.

1068 **C. Location**

1069 County and City will conduct any other hearing or action (such as mediation or arbitration), of whatever  
1070 nature or kind regarding this Agreement, in the City of Santa Barbara.

1071 **D. Service of Process**

1072 County and City will accept service of process at the address where they receive Notices.

1073 **7.4 Governing Law**

1074 This Agreement is governed by, and construed and enforced under, the laws of the State of California,  
1075 without giving effect to the State's principles of conflicts of laws.

1076 **7.5 Costs**

1077 Subsequent to a judicial decision upholding the complaining Party's complaint, the other Party will pay  
1078 the complaining Party's Reimbursement Costs reasonably incurred to enforce its rights or exercise its  
1079 remedies for the other Party's failure to meet its obligations under this Agreement. This obligation is a  
1080 general, not limited or special, obligation of each Party.

1081 **ARTICLE 8: ASSIGNMENT**

1082 **8.1 Assignment**

1083 Neither Party shall Assign its rights nor delegate or otherwise transfer its obligations under this  
1084 Agreement to any other Person without the prior written consent of the other Party to the Assignment.  
1085 Any such Assignment made without the consent of the other Party shall be void and the attempted  
1086 Assignment shall constitute a material breach of this Agreement.

**1087 ARTICLE 9: MISCELLANEOUS PROVISIONS****1088 9.1 Entire Agreement**

1089 This Agreement contains the entire agreement between the Parties with respect to their rights and  
1090 obligations under this Agreement, including the enforcement and administration of this Agreement.  
1091 This Agreement supersedes all prior understandings and agreements between the Parties with respect  
1092 to their rights and obligations, including those contained in drafts, memorandums, correspondence,  
1093 telephone calls, meetings and their respective County Board and City Council sessions.

1094 However, if words defined in this Agreement conflict with definitions in the Service Agreement, the  
1095 definition under the Service Agreement governs.

**1096 9.2 Amendments**

1097 The Parties may make changes in this Agreement after the Effective Date, effective only upon signing a  
1098 written amendment to this Agreement.

**1099 9.3 Severability****1100 A. Court Rulings Generally**

1101 If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or  
1102 unenforceable in any respect, then such provision or provisions shall be deemed severable from the  
1103 remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other  
1104 provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable  
1105 provision had never been contained herein.

**1106 B. Court Rulings: Delivering Materials to TRRP**

1107 However, in the ruling of invalidity, illegality, non-binding nature or unenforceability of any Agreement  
1108 Provision, under Section 9.3.A, with respect to the City's Minimum Annual Delivery Requirements,  
1109 obligations of County, or obligations of City's Collection Contractor to deliver materials to the TRRP; then  
1110 the County Board of Supervisors may, in its sole discretion, do any of the following:

- 1111 1. Accept the ruling without deleting or enforcing that Agreement Provision;
- 1112 2. Delete that Agreement Provision and construe and enforce this Agreement under this Section;  
1113 or,
- 1114 3. Terminate this Agreement if Service Contractor accedes.

**1115 9.4 Interpretation**

1116 MarBorg acknowledges the following:

- 1117 1. It commented on the form of this Agreement with advice of its attorneys.
- 1118 2. It entered into this Agreement upon its own choice and initiative, in order to meet its goals  
1119 described in the Recitals above.
- 1120 3. It agrees that no one can construe any provision in this Agreement against County solely  
1121 because County prepared this Agreement in its executed form.

1122 4. It understands that this Agreement is an essential aspect of the Certificate financing process,  
1123 and agrees to cooperate in providing information required for the financing process, including  
1124 information for the official statement and rating process.

1125 County represents and warrants as follows:

1126 a. It has reviewed and commented upon this Agreement with advice of its attorneys.

1127 b. It entered into this Agreement upon its own choice and initiative, in order to meet its goals  
1128 described in the Recitals above.

1129 Therefore, this Agreement must be interpreted and construed reasonably and neither for nor against  
1130 either Party, regardless of the degree to which had either Party participated in its drafting.

## 1131 9.5 Timely Performance

### 1132 A. Specified Days on Weekdays

#### 1133 1. Performance

1134 If a Party must perform an obligation under this Agreement within a specified number of Days, and the  
1135 last Day falls on a weekend or holiday, the obligated Party may perform that obligation on the next  
1136 weekday following the weekend or holiday. For example, if MarBorg must provide documentation to  
1137 County within thirty (30) Days of County request and the 30<sup>th</sup> Day falls on a Sunday, MarBorg must give  
1138 County the documentation by the next Day, Monday.

#### 1139 2. Counting

1140 Each calendar Day is counted when determining the last Day of the specified number of Days. For  
1141 example, if County must provide documentation to MarBorg within one (1) week of MarBorg's request  
1142 on a Friday, MarBorg must give County the documentation by the next Friday.

### 1143 B. Specified Hours on Any Day

1144 If a Party must perform an obligation under this Agreement at a specified time, in any of the following  
1145 events the obligated Party must perform that obligation within the specified time, *even if* the time for  
1146 performance falls on a weekend or holiday:

1147 1. The specified time is measured in hours;

1148 2. The County specifies the time (for example, on a Saturday even though performance would  
1149 otherwise occur on Monday); or,

1150 3. County determines that there is a threat to public health or safety.

## 1151 9.6 Notices, Etcetera

### 1152 A. Location

1153 Parties must give Notices at the addresses that they identify in Exhibit A.

### 1154 B. Notice

1155 Parties may give Notices such as Notice of default, only by any of the following ways:



- 1156 1. Email or facsimile followed as soon as possible (but no more than two (2) Days) by personal or  
1157 mailed delivery;
- 1158 2. Personal delivery to County Agreement Representative or MarBorg Agreement Representative;
- 1159 3. Deposit in the United States mail first class postage prepaid (certified mail, return receipt  
1160 requested); or,
- 1161 4. Commercial delivery service providing delivery verification.

1162 **C. "Notice"**

1163 Parties may give "notice" (not capitalized) by either Party of a routine administrative issue (such as  
1164 results of the Annual Settlement Process or date of a County Board meeting) orally (for example, by  
1165 telephone or computerized communication); and electronically (for example, by email).

1166 **D. Change of Address**

1167 Parties may change their address for Notice upon giving a Notice to that effect to the other Party.

1168 **9.7 Writing**

1169 Parties must make all of the following in writing unless oral communication is explicitly allowed:

- 1170 • requests, demands, orders, directions,
- 1171 • acceptances, consents, approvals, agreements,
- 1172 • waivers,
- 1173 • exercise of options or rights, selections,
- 1174 • proposals,
- 1175 • reports, and
- 1176 • acknowledgments, certifications, representations and warranties.

1177 Explicit reference to "written" or "writing" with respect to any one communication does not imply that  
1178 other communications without explicit reference to writing may be oral. "Writing" includes any means  
1179 of printed language, including hard copy and emails.

1180 **9.8 Exercise of Options**

1181 Parties exercise of any approval, disapproval, option, discretion, satisfaction, determination, election,  
1182 consent or choice under this Agreement is deemed reasonable, unless this Agreement specifically  
1183 provides otherwise, such as in a Party's "independent", "sole", "exclusive" or "absolute" "control",  
1184 "judgment", or "discretion".

1185 **9.9 Parties' Agreement Representatives**

1186 **A. County Agreement Representative**

1187 **1. Named**

1188 On the Effective Date, the County Agreement Representative is the Deputy Director of the County Public

1189 Works Department (Resource Recovery and Waste Management Division). The Deputy Director's  
1190 address is listed in Exhibit B.

1191 **2. Authority**

1192 County authorizes the County Agreement Representative to act on behalf of County in the  
1193 administration of this Agreement, unless it specifically names another individual. By signing this  
1194 Agreement, County delegates to County Agreement Representative the authority to exercise County  
1195 rights, remedies and options under this Agreement and administer this Agreement, except with respect  
1196 to:

- 1197 a. Extending the term;
- 1198 b. Suspending or terminating this Agreement;
- 1199 c. Approving or disapproving Assignment or transfer of this Agreement; and,
- 1200 d. Exercising any delegation of authority contrary to law.

1201 **B. MarBorg Agreement Representative**

1202 **1. Named**

1203 MarBorg will name MarBorg's Agreement Representative by Notice to the County.

1204 **2. Authority**

1205 MarBorg authorizes MarBorg Agreement Representative to act on behalf of MarBorg under this  
1206 Agreement. County may assume that MarBorg has delegated MarBorg's Agreement Representative to  
1207 exercise rights, remedies and options under this Agreement and administer this Agreement.

1208 **9.10 Signing Multiple Copies**

1209 The Parties may sign any number of copies of this Agreement. All signed copies are deemed to be one  
1210 Agreement.

1211 **9.11 Authority to Sign**

1212 **A. County**

1213 The County warrants that it duly authorized the officers listed below to sign this Agreement on behalf of  
1214 County.

1215 **B. City**

1216 The City warrants that it duly authorized the individuals listed below to sign this Agreement on behalf of  
1217 City.

1218

1219 **IN WITNESS WHEREOF**, the Parties have executed this Contract to be effective on the date  
1220 executed by COUNTY.

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1222

**ATTEST:**  
Mona Miyasato  
County Executive Officer  
Clerk of the Board

**COUNTY OF SANTA BARBARA:**

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1227

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chair, Board of Supervisors

1228

1229

1230

Date: \_\_\_\_\_

1231

**RECOMMENDED FOR APPROVAL:**  
Santa Barbara County Public Works  
Department

1232

1233

1234

By:   
Scott D. McGolpin  
Public Works Director

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**APPROVED AS TO FORM:**  
Michael C. Ghizzoni  
County Counsel

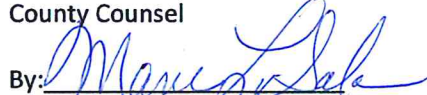
**APPROVED AS TO ACCOUNTING FORM:**  
Theodore A. Fallati, CPA  
Auditor-Controller

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By:   
Deputy County Counsel

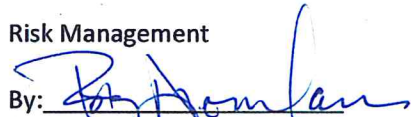
By:   
Deputy

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**APPROVED AS TO FORM:**  
Risk Management

By:   
Risk Management

CONTRACTOR  
MARBORG INDUSTRIES, INC.

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By: Mario P. Borcattello  
Title: PRE.

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## EXHIBIT A: ADDRESSES FOR NOTICES

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1301 [to come]

1302 Parties may change their representative following Notice to the other Party.

1303 **Acknowledgment:** MarBorg has submitted, and County has received, the attached address for  
1304 giving Notice under this Agreement on the later of the following dates:

- 1305       • the Effective Date, as evidenced by each of their signatures on this Agreement, or  
1306       • with respect to subsequent changes, the following date, as evidenced by their following  
1307       signatures :

1308       Date:           12-1-16          

1309       County:           [Signature]

## EXHIBIT B: COMMUNICATIONS

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1310

### A. County Agreement Representative

Name	Mark Schleich Deputy Director of Public Works (Resource Recovery and Waste Management Division)
telephone number	805 882-3600
e-mail address	<a href="mailto:Schleich@cosbpw.net">Schleich@cosbpw.net</a>
mailing address	County of Santa Barbara Resource Recovery and Waste Management Division 130 East Victoria St., Suite 100 Santa Barbara, CA 93101
County office address	Same as mailing address

1311 County may change its representative following Notice to MarBorg.

1312 **Acknowledgment:** County has submitted, and City has received, the attached identification of  
1313 County Agreement Representative on the later of the following dates:

- 1314       • the Effective Date, as evidenced by each of their signatures on the Agreement, or  
1315       • with respect to subsequent changes, the following date, as evidenced by their following  
1316       signatures :

1317       Date: 11/29/2016

1318       County: 

1319       MarBorg: 

## EXHIBIT B: COMMUNICATIONS

---

1320 **B. MarBorg Agreement Representative**

Name	Brian Borgatello
Telephone number	805-963-1852
e-mail address	<a href="mailto:bborgatello@marborg.com">bborgatello@marborg.com</a>
Mailing address	PO Box 4127, SB, CA, 93140
County office address	130 E. Victoria St. SB, CA 93101

1321 MarBorg may change any of this information following Notice to County.

1322 **Acknowledgment:** MarBorg named above has submitted, and the County has received, the attached  
1323 documentation on the later of the following dates:

- 1324     • the Effective Date, as evidenced each of their signatures on the Agreement, or  
1325     • with respect to subsequent changes, the following date, as evidenced by their following  
1326       signatures :

1327 Date: 11/24/2016  
1328 MarBorg: *Brian A. Borgatello*  
1329 County: *[Signature]*