

**Attachment 1f - MarBorg Operations Direct Agreement**

Execution Copy

**DIRECT AGREEMENT**  
**(Marborg Agreement for Operation of the MRF)**

This DIRECT AGREEMENT (this "Agreement"), dated as of 2-14-17, is made by and among (i) MSB INVESTORS, LLC ("Developer and Assignor"), (ii) MARBORG RECOVERY, LP ("Consenting Party and Operator"), and (iii) THE COUNTY OF SANTA BARBARA (the "County").

A. The Developer/Assignor, MSB Investors, LLC, has entered into that certain Development & Operation Contract dated November 15, 2016 (as amended, restated, replaced, supplemented, modified and in effect from time to time, the "Development & Operation Contract"), with the County for the Development and Operation of the Tajigaus Resource Recovery Project (the "TRRP") at the Tajigaus Landfill located in Santa Barbara, California.

B. Section 11.4 of the Development & Operation Contract requires the Developer to secure agreements from each primary subcontractor consenting to the County as a pre-approved assignee to all such agreements. The Consenting Party is one of the primary subcontractors identified in the Development & Operation Contract.

C. The Developer/Assignor, MSB INVESTORS LLC and the Consenting Party, MARBORG RECOVERY, LP ("MarBorg") have entered into that certain Agreement for Operation of the TRRP MRF Facility dated November 18, 2016 (the "MSB-MarBorg MRF Operations Agreement") in which MSB Investors, LLC commissions MarBorg with the operation and maintenance of the TRRP's Material Recovery Facility ("MRF"). The MSB-MarBorg MRF Operations Agreement (as amended, restated, replaced, supplemented, modified and in effect from time to time, is hereinafter referred to as the "Assigned Agreement").

D. The County plans to issue Solid Waste System Revenue Certificates of Participation ("COPs") of approximately \$150,000,000 along with any additional bonds or other indebtedness hereafter issued in connection with the TRRP, (collectively referred to as the "Bonds") to finance the TRRP. A substantial portion of the proceeds of the COPs will be used to pay the Developer and its primary subcontractors to construct and equip the TRRP as provided by the Progress Payment Provisions set forth in Exhibit AA to the Development & Operation Contract.

E. This Agreement is required in order to secure the highest rating and lowest cost of borrowing for the TRRP.

IN CONSIDERATION OF THE FOREGOING and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Definitions. Each capitalized term used and not otherwise defined herein shall have the meaning assigned to such term (whether directly or by reference to another document or agreement) in the MSB-MarBorg MRF Operations Agreement. Representations, warranties and

covenants by the Consenting Party shall be construed to mean the Consenting Party and its successors and assigns.

2. Consent to Assignment.

(a) The Consenting Party hereby irrevocably consents to the assignment by the Developer, MSB Investors, LLC, of all its right, title and interest in, to and under the Assigned Agreement to the County, as security for the Developer's performance of its obligations under the Development and Operation Contract and, subject to the requirements of Section 4 herein, any subsequent assignments by the County upon and after the exercise by the County of its rights and enforcement of its remedies under the Development & Operation Contract, at law, in equity, or otherwise.

(b) MSB Investors, LLC agrees that it shall remain liable to the Consenting Party for all obligations of MSB Investors, LLC under the Assigned Agreement. The Consenting Party agrees that except as otherwise expressly provided herein (i) it shall look only to the MSB Investors, LLC for the performance of such obligations and (ii) it shall be and remain obligated to MSB Investors, LLC to perform all of the Consenting Party's obligations and agreements under the Assigned Agreement.

(c) The Consenting Party acknowledges and agrees, notwithstanding anything to the contrary contained in the Assigned Agreement, that none of the following shall constitute, in and of itself, a default by MSB Investors, LLC under the Assigned Agreement or shall result in a termination thereof: (i) the assignment the Assigned Agreement pursuant to the Development & Operation Contract; (ii) the development, management or operation and maintenance of the TRRP by the County or its designee or assignee following the occurrence and continuance of a default under the Development & Operation Contract; (iii) foreclosure or any other enforcement of a construction bond for the TRRP by the County; (iv) acquisition of the rights of MSB Investors, LLC under the Assigned Agreement in foreclosure or otherwise by the County or its designee or assignee (or acceptance of an absolute assignment of each of the Assigned Agreement in lieu of foreclosure); or (v) assignment of the Assigned Agreement in connection with or following a purchase in foreclosure or following an absolute assignment thereof in lieu of foreclosure.

3. Representations and Warranties. The Consenting Party hereby represents and warrants to the County that:

(a) The Consenting Party has been duly formed and is validly existing and in good standing (or its equivalent) under the laws of the jurisdiction of its organization, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to do all acts and things and execute and deliver all documents required to be done, observed or performed by it in connection with its engagement pursuant to the MSB-MarBorg MRF Operations Agreement. The Consenting Party is duly qualified to do business in the State of California will remain so qualified throughout the term of the Assigned Agreement and for so long thereafter as any obligations remain outstanding under the Assigned Agreement.

(b) The execution and delivery by the Consenting Party of the Assigned Agreement and this Agreement and the performance by the Consenting Party of the Assigned Agreement and this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action and do not and will not (i) require any consent or approval of any holder of interests in any member of the Consenting Party or any other Person which has not been obtained, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, or determination presently in effect having applicability to the Consenting Party or any member thereof, (iii) result in any violation of, breach of, default under or the creation of a lien under, any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to the Consenting Party or any member thereof, except for any such violations which, individually or in the aggregate, would not adversely affect the performance by the Consenting Party and each member thereof of its obligations under the Assigned Agreement and this Agreement.

(c) All authorizations, permits, approvals, consents, orders and waivers or any other action by, registration, declaration or filing with, any governmental authority or other official agency or any third party (collectively, the “Approvals”) necessary for the due execution, delivery and performance by the Consenting Party of this Agreement and the execution, delivery and (to the extent required by the Assigned Agreement to be obtained by the Consenting Party prior to the date hereof) performance by the Consenting Party of the Assigned Agreement have been validly obtained and are final, and in full force and effect. The Consenting Party reasonably expects that any Approvals not yet required by the Assigned Agreement to be obtained by the Consenting Party prior to the date hereof can be obtained in the normal course of business as and when required without significant delay or material impairment to the consummation and performance of their respective obligations under the Assigned Agreement or this Agreement.

(d) This Agreement and the Assigned Agreement is in full force and effect and is a legal, valid and binding obligation of the Consenting Party, enforceable against the Consenting Party and the respective members or affiliates thereof that are parties to such instruments in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors’ rights generally and by general principles of equity.

(e) There is no litigation, action, suit, proceeding or investigation pending or, to the best of the Consenting Party’s knowledge after due inquiry, threatened, against the Consenting Party or any member thereof before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (a) could modify or otherwise adversely affect the Approvals, (b) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby or (c) could have a material adverse effect on the ability of the Consenting Party to perform its respective obligations under the Assigned Agreement or this Agreement.

(f) Neither the Consenting Party nor, to the best of the Consenting Party's knowledge, MSB Investors, LLC is in default of any of its respective obligations under the Assigned Agreement. The Consenting Party has complied with, or will comply with, all conditions precedent to its obligations to perform under the Assigned Agreement. To the best knowledge of the Consenting Party, no event or condition exists which would, either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Consenting Party or MSB Investors, LLC to terminate or suspend any of its respective obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner.

(g) The Consenting Party has no notice of, nor has consented to, any previous assignment of all or any part of MSB Investors, LLC's right, title or interest in, to or under the Assigned Agreement to any other person or entity, other than the Consenting Party's consent to a future assignment thereof to the County. MSB Investors, LLC is not in default under any material covenant or obligation under the Assigned Agreement. The Consenting Party has no present claim or offsets against MSB Investors, LLC or lien upon the Project arising out of the Consenting Party's performance of any work or service under the Assigned Agreement or otherwise.

(h) The Consenting Party has not previously furnished to or for the benefit of MSB Investors, LLC or any other Person any labor, services, equipment or material, whether pursuant to the Assigned Agreement or any other contract or agreement with MSB Investors, LLC or any other Person, relating to the TRRP or any component thereof, and the Consenting Party is not aware of the furnishing of any labor, services, equipment or material comprising part of the work under the Assigned Agreement by any other Person, whether to MSB Investors, LLC, the County or any other Person except for work that has been paid for in full or that will be paid for pursuant to the Assigned Agreement.

(i) The representations and warranties of the Consenting Party made in the Assigned Agreement are true and correct as of the date hereof except to the extent any such representation and warranty was made specifically as of an earlier date, in which case such representation and warranty was true and correct as of such earlier date.

(j) The Consenting Party has duly performed and complied with all covenants, agreements and conditions contained in the Assigned Agreement and this Agreement required to be performed or complied with by it on or before the date hereof, and the Assigned Agreement, as of the date hereof, is in full force and effect and has not been amended, and none of MSB Investors, LLC's rights under the Assigned Agreement have been waived.

4. Rights of the County. The Consenting Party hereby agrees as follows:

(a) Notices of Default. The Consenting Party shall deliver to the County at the address set forth on the signature pages hereof, or at such other address as the County may designate in writing from time to time to the Consenting Party, concurrently with the delivery thereof to MSB Investors, LLC, a copy of each notice of default under the Assigned Agreement or any other notice that would, with or without the expiration of any grace period, enable the Consenting Party to cancel or terminate the Assigned Agreement or suspend, in whole or in part,

its performance thereunder (a “Contract Default”), and each notice or demand relating to the exercise of remedies thereafter given by the Consenting Party pursuant to the Assigned Agreement.

(b) Exercise of Rights. The County and any designee or assignee thereof shall be entitled, to the extent permitted by the Development & Operations Contract, to exercise any and all rights of MSB Investors, LLC under the Assigned Agreement. Without limiting the generality of the foregoing, the County and any designee or assignee thereof, shall have the full right and power, to the extent permitted by the Development & Operations Contract, and subject to all of the rights and remedies of the Consenting Party under the Assigned Agreement, to enforce directly against the Consenting Party all obligations of the Consenting Party under the Assigned Agreement and otherwise to exercise all remedies thereunder and to make all demands and give all notices and make all requests and take all action required or permitted to be made by MSB Investors, LLC under the Assigned Agreement; provided, that nothing herein shall require the County or such designee or assignee to cure any default of MSB Investors, LLC under the Assigned Agreement or to perform any act, duty or obligation of MSB Investors, LLC under the Assigned Agreement, but shall only give them an opportunity to do so if the County or its designee or assignee elects to assume the Assigned Agreement. Following receipt of notice from the County of the occurrence and during the continuation of an Event of Default (as defined in the Development & Operations Contract), the Consenting Party shall, upon the written election by the County, its assignee or designee (i) deal exclusively with the County (or its designee or assignee, as the case may be) in connection with performance of the Consenting Party’s obligations under the Assigned Agreement, (ii) treat any and all written instructions relating to the Consenting Party received from the County (or its designee or assignee, as the case may be) as if coming directly from MSB Investors, LLC under the Assigned Agreement, (iii) disregard any instructions received from MSB Investors, LLC and (iv) direct to the County (or its designee or assignee, as the case may be), with a copy to the MSB Investors, LLC, all future communications and correspondence arising out of or in connection with the Assigned Agreement. The County, its designee and assignee, and MSB Investors, LLC acknowledge and agree that the Consenting Party’s compliance with this paragraph 4(b) shall not constitute a breach of the Assigned Agreement.

(c) Right to Cure. Consenting Party shall not cancel or terminate the Assigned Agreement, or suspend its performance of any of its obligations thereunder in connection with a Contract Default or for any other reason until it first affords to the County, its designee or assignee sixty (60) days to cure a monetary Contract Default and one hundred and twenty (120) days to cure a non-monetary Contract Default following receipt of such notice; provided that if any non-monetary Contract Default cannot be cured during such one hundred and twenty (120) day period using commercially reasonable efforts then the Consenting Party shall allow such longer time period as is required so long as such party commenced pursuing such cure within such one hundred and twenty (120) day period and thereafter is diligently pursuing a cure to such default. If the County is prohibited or unable to cure any Contract Default by operation of law or by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving MSB Investors, LLC, then the time periods specified herein for curing such Contract Default shall be extended for the period of time equal to such prohibition.

Following receipt of notice from the County of the occurrence and during the continuation of an Event of Default (as defined in the Development & Operations Contract) or the County's receipt of notice from the Consenting Party of the occurrence and during the continuation of monetary Contract Default by MSB, Investors, LLC under the MSB-MarBorg MRF Operations Agreement, the Consenting Party is authorized to submit the invoices and progress reports required under Article 8 of the Assigned Agreement directly to the County.

(d) Substitute Party. In the event that the County its designee or assignee succeeds to MSB Investors, LLC's interest under the Assigned Agreement, whether by foreclosure or otherwise, and the County or its designee or assignee assumes liability in writing for all of the MSB Investors, LLC's obligations thereafter arising under the Assigned Agreement and has cured or commences curing any outstanding material defaults under the Assigned Agreement (except for any default relating to bankruptcy or insolvency proceedings or negligence, willful misconduct, malfeasance or misrepresentation by MSB Investors, LLC) such party shall be substituted for MSB Investors, LLC under the Assigned Agreement and the Consenting Party shall recognize the substitute party and will continue to perform its obligations under the Assigned Agreement. Notwithstanding any such assumption by the County or its designee or assignee, the Consenting Party retains all rights under the Assigned Agreement against the MSB Investors, LLC with respect to defaults arising prior to such assumption to the extent not cured by the County or its designee or assignee. Nothing herein shall, however, obligate the County or its designee or assignee to assume the Assigned Agreement or otherwise succeed to MSB Investors, LLC's interests thereunder.

(e) New Assigned Agreement. In the event that (i) the Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving MSB Investors, LLC or (ii) the Assigned Agreement is otherwise terminated as a result of any bankruptcy or insolvency proceeding involving MSB Investors, LLC or a termination of the Development & Operation Contract, and if within 120 days after such rejection or termination, the County or its designee or assignee shall so request and shall certify in writing to the Consenting Party that it intends to cure outstanding defaults (excepting defaults relating to bankruptcy or insolvency proceedings or negligence, willful misconduct, malfeasance or misrepresentation by MSB Investors, LLC) and perform the obligations of MSB Investors, LLC thereafter arising as and to the extent required under the Assigned Agreement and this Agreement, the Consenting Parties shall execute and deliver to the County or such designee or assignee a new agreement ("new Assigned Agreement"), pursuant to which new Assigned Agreement the Consenting Parties shall, without altering their rights under the original Assigned Agreement, agree to perform the obligations contemplated to be performed by each Consenting Party under the original Assigned Agreement, including the obligations and services remaining to be performed under the original Assigned Agreement, and shall include the benefit of all Consenting Parties' warranties, indemnities, guarantees and professional responsibility, including such obligations with respect to work already performed under the Assigned Agreement. Where reasonably possible, the new Assigned Agreement shall be delivered before giving effect to any such rejection or termination of the original Assigned Agreement by a trustee or debtor-in-possession. If the approval of any such trustee or debtor-in-possession or any regulatory approvals are necessary in order for the Consenting Party to enter into or perform under any such new Assigned Agreement, the Consenting Part shall cooperate with the County or such designee or assignee in obtaining such approvals as rapidly as reasonably possible.

(f) Right to Assignment. The County or its assignee or designee may assign any rights and interests it may have as substitute party pursuant to Section 4(d) hereof or as a party to new Assigned Agreement pursuant to Section 4(e) hereof to any purchaser or transferee of the Project, if such purchaser or transferee shall assume all of the obligations of MSB Investors, LLC under the Assigned Agreement in writing, and the County or its assignee or designee shall be relieved of all its obligations arising under the Assigned Agreement upon such assignment and assumption and the Consenting Party hereby agrees to be bound by any such assignment and assumption.

(g) No Obligations. Nothing herein shall require the County or its assignee or designee to perform any of MSB Investors, LLC's obligations or cure any default under any of the Assigned Agreement except during any period in which the County or its assignee or designee is, pursuant to its election, a substitute party pursuant to Section 4(d) hereof or has entered into replacement agreements pursuant to Section 4(e) hereof.

(h) No Consent Required. A foreclosure or other exercise of remedies by the County or its assignee or designee, whether by judicial proceedings or under any power of sale contained therein, or any conveyance from MSB Investors, LLC to the County or such assignee or designee, in lieu thereof, shall not in any event require the consent of the Consenting Party.

(i) Limitation on Amendments. The Consenting Party shall not, without the prior written consent of the County, enter into any amendment, supplement or other modification of the Assigned Agreement except as expressly permitted by the Assigned Agreement or the Development & Operation Contract.

(j) Consenting Party Assignment. Except as provided for in the Assigned Agreement with respect to the County, the Consenting Party shall not assign or otherwise transfer any of its rights or obligations under this Agreement or the Assigned Agreement without the prior written consent of the County.

(k) Right to Terminate. In the event that the County, its designee or assignee, has succeeded to MSB Investors, LLC's interests in the MSB-MarBorg MRF Operations Agreement but has notified Consenting Party that it elects not to become a substitute party to the Assigned Agreement or enter into new Assigned Agreement (or has failed to notify the Consenting Party that it has made either such election within 30 days, or such other time period as provided for herein, after written inquiry by the Consenting Party) then, notwithstanding any contrary provision of the Assigned Agreement, the Assigned Agreement shall terminate. In the event of such termination the County, its designee or assignee the Consenting Party shall promptly submit to the County an accounting of its actual costs for the work performed prior to the date of termination.

5. Payments Under the Assigned Agreement. Unless and until the Consenting Party receives written notice to the contrary from the County, the Consenting Party shall pay all amounts (including any damages), if any, payable by it to MSB Investors, LLC under the Assigned Agreement directly to the person designated on Exhibit A, Addresses for Payments and Notices, attached hereto, or to such other person or account as may be specified from time to time by the County to the Consenting Party in writing. Notwithstanding anything to the contrary



in the Assigned Agreement, by its acceptance and agreement to this Agreement, MSB Investors, LLC, for itself and its successors and permitted assigns, consents to the making by the Consenting Party of payments as provided in the previous sentence.

6. Miscellaneous.

(a) Notices. All notices to be given under this Agreement shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, and shall be delivered personally, sent by certified or registered first-class mail, postage prepaid, or dispatched by facsimile or courier to the intended recipient at its address as set forth on Exhibit A, Addresses for Payments and Notices. Subject to Section 5, all payments to be made under this Agreement shall be made by check representing immediately collectible funds to the address of the intended recipient as set forth on Exhibit A hereto, unless the recipient has given notice of another address for receipt of notices or payments.

(b) Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the principles thereof relating to conflicts of law. The Consenting Party, MSB Investors, LLC and the County, on its own behalf and on the behalf of any assignee or designee and their respective permitted successors and assigns hereunder, hereby irrevocably waive all right of trial by jury in any action, proceeding or counterclaim arising out of or in connection with this Agreement or any matter arising hereunder.

(c) Headings. The headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

(d) Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(e) Amendment, Waiver. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Consenting Party, MSB Investors, LLC and the County.

(f) Successors and Assigns. This Agreement shall be binding upon the Consenting Party and MSB Investors, LLC and their permitted successors and assigns and shall inure to the benefit of the County, its successors and assignees.

(g) Further Assurances. The Consenting Party and MSB Investors, LLC hereby agree to execute and deliver all such instruments and take all such action as may be reasonably necessary to effectuate fully the purposes of this Agreement, but the Consenting Party is under no obligation to agree to any instrument which expands its liability beyond what the Consenting Party has assumed under the Assigned Agreement except to a de minimis extent.

(h) Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and

delivered shall be an original, but all of which shall together constitute one and the same instrument.

(i) Third Party Beneficiaries. The agreements of the parties hereto are solely for the benefit of the Consenting Party, MSB Investors, LLC, and the County and shall be binding upon and inure to the benefit of the respective successors and permitted assigns and designees of each of the foregoing parties. No person or entity (other than the foregoing parties, including their respective successors and assigns) shall have any rights hereunder.

(j) County. The parties acknowledge that MSB-MarBorg MRF Operations Agreement and the Development & Operations Contract each contain provisions expressly providing certain rights to the County with respect to the Assigned Agreement. The Consenting Party shall comply with such provisions as they relate to the rights of the County, its designee or assignee, regarding the Assigned Agreement. Consenting Party hereby agrees that in the context of this Section 6(j) no provision of the MSB-MarBorg MRF Operations Agreement affording the County any such rights may be amended, supplemented, restated, waived or otherwise modified in any respect without the prior written consent of the County.

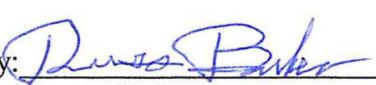
[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]  
[SIGNATURES FOLLOW.]

A. 27  
19  
6

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

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

**COUNTY OF SANTA BARBARA:**


By:   
Deputy Clerk

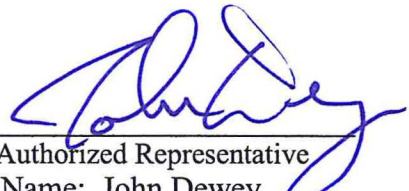
By:   
Chair, Board of Supervisors

Date: 2/14/17

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

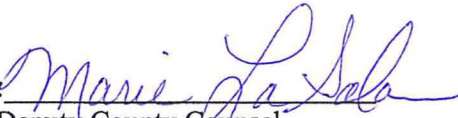
**ASSIGNOR-DEVELOPER**  
MSB INVESTORS, LLC

By:   
Scott D. McGolpin Department  
Head, Public Works Director

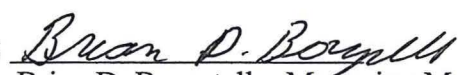
By:   
Authorized Representative  
Name: John Dewey  
Title: CEO & Managing Member

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

**CONSENTING PARTY-SUBCONTRACTOR**  
MARBORG RECOVERY, LP  
a California Limited Partnership

By:   
Deputy County Counsel


By: Marborg Management, LLC, General Partner

By:   
Brian D. Borgatello, Managing Member

**APPROVED AS TO FORM:**  
Risk Management

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

By:   
Risk Management

By:   
Deputy

## Exhibit A

Address for Payment and Notices:

MSB Investors, LLC  
17 Corporate Plaza, Suite 200  
Newport Beach, California 92660  
Attn: John Dewey

MarBorg Recovery, LP  
c/o  
Marborg Management, LLC, General Partner  
728 East Yanonali Street  
Santa Barbara, California 93103  
Attn: Brian Borgatello

County of Santa Barbara  
Resource Recovery & Waste Management Division  
130 E. Victoria Street, Suite 100  
Santa Barbara, CA 93101  
Attn: Mr. Mark Schleich, Deputy Director