

Attachment E

1 **Disposal Services**
2 **Agreement**
3 **BETWEEN**
4 **County of Santa Barbara**
5 **AND**
6 **MarBorg Industries, Inc.**

7 **Agreement Date: 11/29/2016**

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TABLE OF CONTENTS

1			
2	RECITALS	1
3	ARTICLE 1: DEFINITIONS	1
4	ARTICLE 2: TERM OF AGREEMENT	10
5	2.1	Effective Date	10
6	2.2	Agreement Term	10
7	2.3	Survival of Certain Provisions	10
8	ARTICLE 3: COUNTY’S OBLIGATIONS	.....	11
9	3.1	Materials Diversion Services.....	11
10	3.2	Facility Revenues.....	Error! Bookmark not defined.
11	3.3	Exercise of Contractual Rights.....	Error! Bookmark not defined.
12	3.4	Annual Facility Review Meeting	11
13	3.5	Services During Uncontrollable Events.....	11
14	ARTICLE 4: MARBORG’S OBLIGATIONS	.....	13
15	4.1	Acceptable Materials Delivery Requirement and Monthly Payments	13
16	4.2	MarBorg’s Annual Deliveries.....	Error! Bookmark not defined.
17	4.3	Compensation.....	13
18	ARTICLE 5: SUSPENSION AND TERMINATION	.....	15
19	5.1	Notice of Default	15
20	5.2.	Resolution When Facility Financing Certificate(s) Outstanding	15
21	5.3.	Resolution When Facility Financing Certificate (s) Not Outstanding	15
22	ARTICLE 6: RECORDS AND REPORTS	.....	16
23	6.1	Records	16
24	6.2	Reports	16
25	ARTICLE 7: ENFORCEMENT	.....	17
26	7.1	Enforcement	17
27	7.2	Uncontrollable Circumstances	17
28	7.3	Jurisdiction, Venue, Service of Process.....	17
29	7.4	Governing Law.....	18
30	7.5	Costs.....	18
31	ARTICLE 8: ASSIGNMENT	.....	19
32	8.1	Assignment	19
33	ARTICLE 9: MISCELLANEOUS PROVISIONS	.....	20
34	9.1	Entire Agreement.....	20
35	9.2	Amendments.....	20
36	9.3	Severability	20
37	9.4	Interpretation.....	20
38	9.5	Timely Performance.....	21

Materials Delivery Commitment & Processing Services Agreement

39 9.6 Notices, Etcetera..... 21
40 9.7 Writing..... 22
41 9.8 Exercise of Options..... 22
42 9.9 Parties' Agreement Representatives..... 22
43 9.10 Signing Multiple Copies 23
44 9.11 Authority to Sign..... 23

45 **EXHIBITS**

- 46 A. Addresses for Notices
- 47 B. Communications
- 48

49 **RECITALS**

50 This Disposal Services Agreement is made and dated as of the date on the cover page between the
51 County of Santa Barbara, a political subdivision of the State of California (the "County"), and MarBorg
52 Industries, Inc. a California Corporation ("MarBorg").

53 (A) WHEREAS, MarBorg collects and sorts construction and demolition materials at its Construction
54 & Demolition Recycling & Transfer Facility located at 119 North Quarantina Street in Santa
55 Barbara, California; and,

56 (C) WHEREAS, MarBorg also receives Mixed Waste from self-haul customers at its North Quarantina
57 Street Recycling & Transfer Facility; and,

58 (D) WHEREAS, MarBorg wishes to continue to transport and dispose sorted Residual Waste from
59 the Recycling and Transfer Facility identified above at the Tajiguas Sanitary Landfill located off
60 State Highway 101, approximately twenty-six (26) miles West of Santa Barbara ("Tajiguas
61 Landfill"); and,

62 (E) WHEREAS, the County has developed the Tajiguas Resource Recovery Project ("TRRP") in order
63 to achieve their goals of: Extending the operating life of Tajiguas Landfill; Complying with State
64 law and local policy that mandate diverting materials from Disposal, and reducing greenhouse
65 gas emissions; and,

66 (F) WHEREAS, MarBorg wishes to enter into a long-term disposal agreement with the County to
67 assist the County in meeting its 20-year financing obligations for the TRRP.

68 IT IS THEREFORE AGREED AS FOLLOWS:

69 **ARTICLE 1: DEFINITIONS**

70 "Acceptable Materials", means all of the materials delivered to the Tajiguas Landfill or Solid Waste
71 System by MarBorg, as permitted under Applicable Law and the County's Solid Waste System Permits.
72 Acceptable Materials may include some Unacceptable Materials that must be removed before Disposal.

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

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

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

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

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

81 "Applicable Law", means any law, rule, code, standard, regulation, requirement, consent decree,
82 consent order, consent agreement, Permit, guideline, action, determination or order of, or legal

83 entitlement issued or deemed to be issued by, any governmental body having jurisdiction, applicable
84 from time to time to any activities associated with landfilling municipal solid waste, and any other
85 obligations of the Parties under this Agreement. Governmental bodies include local, County, State and
86 federal agencies and all successors thereto.

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

- 88 (A) A transfer to a third party of at least twenty-five percent (25%) of either Party's assets dedicated
89 to service under this Agreement; and,
- 90 (B) A sale, exchange or other transfer to a third party, which may result in a change of control of
91 MarBorg or County; and,
- 92 (C) Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-
93 issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction
94 in which either Party are a party and which results in a change of control of either Party; and,
- 95 (D) Any assignment by operation of law, including insolvency or bankruptcy, assignment for the
96 benefit of creditors, writ of attachment for an execution being levied against this Agreement,
97 appointment of a receiver taking possession of either Party's property; and,
- 98 (E) Any combination of the foregoing (whether or not in related or contemporaneous transactions),
99 which has the effect of any such transfer or change of control of either Party.

100 "Bond Documents", means the Trust Agreement, 2017 Installment Purchase Agreement, Assignment
101 Agreement, and all other legal documents necessary to effectuate the issuance of Certificates related to
102 the Tajigaus Resource Recovery Project ("TRRP").

103 "Business Day", means any day that County Administrative Offices are open to the public to conduct
104 business.

105 "Change in Law", means any of the following acts, events, or circumstances, with which the Parties must
106 comply:

- 107 (A) The adoption, amendment, promulgation, issuance, modification, repeal or written change in
108 administrative or judicial interpretation of any Applicable Law on or after the Effective Date
109 (including a new or amended prevailing wage, minimum wage, living wage or similar laws or
110 regulations), unless such Applicable Law was on or prior to the Effective Date duly adopted,
111 promulgated, issued or otherwise officially modified or changed in interpretation, in each case
112 in final form to become effective without any further action by any governmental body;
- 113 (B) The order or judgment of any governmental body issued on or after the Effective Date (unless
114 such order or judgment is issued to enforce compliance with Applicable Law which was effective
115 as of the Effective Date) to the extent such order or judgment is not the result of willful or
116 negligent action, error or omission or lack of reasonable diligence of the County or MarBorg,
117 whichever is asserting the occurrence of a Change in Law; provided, however, that the
118 contesting in good faith or failure in good faith to contest any such order or judgment shall not
119 constitute or be construed as such a willful or negligent action, error or omission or lack of
120 reasonable diligence; or

121 (C) Except with respect to any governmental approval required for the Project as provided in item
122 (2) below pertaining to exclusions from "Change in Law", the denial of an application for, a delay
123 in the review, issuance or renewal of, or the suspension, termination, or interruption of any
124 governmental approval, or the imposition of a term, condition or requirement which is more
125 stringent or burdensome than the Agreement standards in connection with the issuance,
126 renewal or failure of issuance or renewal of any governmental approval, to the extent that such
127 occurrence is not the result of willful or negligent action, error or omission or a lack of
128 reasonable diligence of the County or MarBorg, whichever is asserting the occurrence of a
129 Change in Law; provided, however, that the contesting in good faith or the failure in good faith
130 to contest any such occurrence shall not be construed as such a willful or negligent action or
131 lack of reasonable diligence.

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

- 133 (1) A change in the nature or severity of the actions typically taken by a governmental body to
134 enforce compliance with Applicable Law which was effective as of the Effective Date;
- 135 (2) All matters relating to the Service Contractor's assuming the Permitting risk for the Project in
136 connection with obtaining and maintaining federal, State or local governmental approvals of the
137 design, construction and operation of the Project; and
- 138 (3) Any event that affects generally applicable working conditions or standards that is not specific to
139 the solid waste management industry.

140 "Collection Contractor", means anyone that collects Acceptable Materials for a Public Participant or
141 Agency by any or all of the following: 1) contract (including franchise contracts); 2) license; 3) permit;
142 and, 4) any other obligation.

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

147 "County", means the County of Santa Barbara, California, a political subdivision of the State of California.

148 "County Agreement Representative", means the individual named by County under Exhibit B.

149 "Current Revenues", means all gross income and revenue received or receivable by the County from the
150 ownership, operation or use of the Solid Waste System, determined in accordance with Generally
151 Accepted Accounting Principles, including all rates, fees, charges and revenue (including tipping fees,
152 recovered materials revenue, power revenues and salvage income) received by the County for the use
153 of Solid Waste System and all other income and revenue howsoever derived by the County from the
154 ownership, operation or use of the Solid Waste System, but excluding in all cases any proceeds of taxes
155 and any refundable deposits made to establish credit and advances or contributions in aid of
156 construction. For this Agreement, exclusions from Current Revenues include: permit fees, green waste
157 tipping fees, existing and future power and natural gas sales, state revenue, reimbursement for County
158 administrative services, payment from businesses using Community Household Hazardous Waste
159 Collection Center, fees collected from New Cuyama parcels, County interest (exclusive of interest of CPC
160 restricted cash for the Tajiguas Landfill, and other and miscellaneous revenues.

- 161 “Day”, means calendar day of twenty-four (24) hours measured from midnight to the next midnight.
- 162 “Delivery Covenant”, means the obligation of MarBorg to deliver Acceptable Materials to the Tajigaus
163 Landfill, pursuant to and as described in Section 4.1.
- 164 “Direct Costs”, means the sum of the following: 1) payroll costs (including compensation, vacation, sick
165 leave, holidays, retirement, workers compensation insurance, federal and State unemployment taxes
166 and medical and health insurance benefits), *plus*; 2) the costs of materials, services, direct rental costs
167 and supplies, *plus*; 3) travel and subsistence costs, *plus*; 4) the reasonable costs of consultants,
168 (sub)contractors, or counsel (necessary in connection with enforcement or the other Party’s
169 performance under this Agreement), *plus*; 5) any other cost or expense which is directly or normally
170 associated with that enforcement or exercise, which direct costs are substantiated to the satisfaction of
171 the other Party.
- 172 “Dispose”; “Disposal” means the delivery and final disposition of Accepted Materials collected from
173 MarBorg’s self-haul customers and its unscheduled hauling business in the Tajigaus Landfill or the Solid
174 Waste System as restricted by Permit conditions for Unacceptable Waste.
- 175 “Effective Date” means the date of this Agreement’s execution by the last of the Parties.
- 176 “Hazardous Waste”, means any waste which is defined or regulated as a hazardous waste, toxic waste,
177 hazardous chemical substance or mixture, or asbestos under Applicable Law, including:
- 178 (1) “Hazardous Waste” pursuant to Section 40141 of the California Public Resources Code; all
179 substances defined as acutely hazardous waste, extremely hazardous waste or hazardous waste
180 by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California
181 Hazardous Waste Control Act), and future amendments to or recodification of such statutes or
182 regulations promulgated thereunder;
- 183 (2) “Hazardous Substances” as defined under Chapter 6.8 of the California Health and Safety Code,
184 Division 20, Sections 25316 and 25317;
- 185 (3) Materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as
186 amended, and related Federal, State of California, and local laws and regulations, including the
187 California Toxic Substances Account Act, California Health and Safety Code Section 25300 et
188 seq.;
- 189 (4) Materials regulated under the Comprehensive Environmental Response, Compensation and
190 Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder;
- 191 (5) Materials regulated under The Resource Conservation and Recovery Act and the regulations
192 contained in 40 CFR Parts 260-281; and,
- 193 (6) Materials regulated under any future additional or substitute Federal, State or local laws and
194 regulations pertaining to the identification, transportation, treatment, storage or Disposal of
195 toxic substances or hazardous waste.
- 196 If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous
197 waste adopt conflicting definitions of “hazardous waste”, for purposes of collection, transportation,

198 Processing and/or Disposal, the broader, more restrictive definition shall be employed for purposes of
199 this Agreement.

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

201 "MarBorg", means MarBorg Industries, Inc. a California Corporation.

202 "MarBorg Agreement Representative", means the individual named by MarBorg under Exhibit B:
203 Communications.

204 "Mixed Waste", means Municipal Solid Waste and commercial and industrial waste that meets the
205 criteria defined herein, Construction and Demolition Debris, agricultural plastic, and tires. Mixed Waste
206 does not include materials that are collected or delivered in a source-separated form.

207 "Municipal Solid Waste"; "MSW", means generally the components of Mixed Waste, and specifically all
208 substances or materials that are discarded or rejected as being spent, useless, worthless or in excess of
209 the owner's needs at the time of discard or rejection including, without limitation, all putrescible and
210 non-putrescible solid and semi-solid waste including garbage, rubbish, maintenance waste, Yard
211 Trimmings, bulky wastes, industrial wastes, Construction and Demolition Debris, and grit and sweepings
212 from a water pollution control plant, which are generated by residential, commercial, industrial,
213 institutional, municipal, agricultural and other activities and which are not otherwise restricted in a Class
214 III landfill by State or federal regulations and which are delivered to the Tajiguas Landfill as Mixed
215 Waste. Municipal Solid Waste does not include: (i) Hazardous Waste; (ii) medical waste; (iii) ash; (iv)
216 Source-Separated Recyclable Materials; (v) Source-Separated Yard Trimmings; (vi) Source-Separated
217 Food Scraps; or (vii) other materials collected separately from Municipal Solid Waste for Processing at
218 the TRRP.

219 "Net Revenues", means for any Fiscal Agreement Year, the Revenues during such Agreement Year less
220 the Maintenance and Operation Costs during such Agreement Year.

221 "Notice"; "Notify", means notice given in accordance with Section 9.6 and Exhibit A.

222 "Party; Parties", means County and MarBorg, individually and together.

223 "Permit(s)" means all Federal, State, local and any other governmental unit permits, orders, licenses,
224 approvals, authorizations, consents and entitlements of whatever kind and however described which
225 are required under Applicable Law to be obtained or maintained by any Person with respect to the
226 Landfill or Solid Waste System or the performance of any obligation under this Agreement, as renewed
227 or amended from time to time.

228 "Person", means any individual, firm, association, organization, partnership, corporation, trust, joint
229 venture, the United States, the State, a county, a municipality or special purpose district, or other entity
230 whatsoever.

231 "Process"; "Processing" (or any other variation thereof), means the picking, pulling, sorting, separating,
232 classifying and recovery of Recovered Materials from Acceptable Materials. Processing also means the
233 baling, crushing, shredding, chipping, grinding or any other method of preparing Acceptable Materials
234 for further Processing or Marketing.

235 “Promptly”, means as soon as possible, and no longer than three (3) Business Days unless the parties
236 otherwise agree in writing.

237 “Public Participants”, means any jurisdiction which enters into an individual Material Delivery and
238 Service Agreement with the County, excluding Other Users.

239 “Reasonable Business Efforts”, means those efforts that a reasonably prudent business Person would
240 expend under the same or similar circumstances in the exercise of such Person’s business judgment, ,
241 intending in good faith to take steps calculated to satisfy the obligation which such Person has
242 undertaken to satisfy; provided that such Person and/or any enterprise by which such Person is
243 employed would not incur a financial loss (other than time expended or otherwise compensated for
244 such efforts herein) by reason of having expended or expending such efforts.

245 “Recyclable Materials”, means materials having economic value or a beneficial reuse which are
246 commonly recovered in materials recovery facilities in California.

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

250 “Solid Waste System”; “System”, means the Tajigaus Landfill and all solid waste collection, processing,
251 diversion, composting, recycling, disposal and power generation facilities (including related equipment)
252 and any other facilities related thereto now owned by the County, and all other facilities (including
253 related equipment) for solid waste collection, processing, diversion, composting, recycling, disposal and
254 power generation hereafter acquired and constructed by the County and such other facilities, which
255 may or may not be owned by the County, determined by the County to be a part of the Solid Waste
256 System. Solid Waste System shall not include any Special Facilities. “State”, means the State of
257 California.

258 “System Costs”, means all reasonable and necessary costs paid or incurred by the County for
259 maintaining and operating the Solid Waste System, determined in accordance with Generally Accepted
260 Accounting Principles, including all reasonable expenses of management and repair and other expenses
261 necessary to maintain and preserve the Solid Waste System in good repair and working order, state
262 mandated surcharges, and the annual costs of any permits or licenses, but excluding debt service costs,
263 and including all administrative costs of the County that are charged directly or apportioned to the
264 operation of the Solid Waste System, such as salaries, wages, and pension and other post-employment
265 benefits of employees, , overhead, taxes (if any) and insurance premiums, and including all other
266 reasonable and necessary costs of the County or charges required to be paid by the County to comply
267 with the terms hereof or of any resolution authorizing the issuance of any Certificates (as defined in the
268 Bond Documents) or of such Certificates, or of any resolution authorizing the execution of any Contract
269 or of such Contract (as defined in the Bond Documents), or of such contract, such as compensation,
270 reimbursement and indemnification of the trustee for any such Certificates or Contracts and fees and
271 expenses of Independent Certified Public Accountants and Independent Engineers, Insurance
272 Consultants, but excluding in all cases depreciation, replacement and obsolescence charges or reserves
273 therefor, amortization of intangibles and intergovernmental transfers by the County which are not
274 reimbursements or payments for overhead or other administrative expenses incurred by the County.

275 “Ton”; “Tonnage”, means a short Ton of 2,000 pounds.

- 276 "TRRP" means the Tajigaus Resource Recovery Project located at the Tajigaus Landfill.
- 277 "Unacceptable Waste" means wastes that the Tajigaus Landfill may not receive under its Permits,
278 including but not limited to:
- 279 (A) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely
280 to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances,
281 which may be a Hazardous Waste if it contains more than one percent (1%) asbestos;
- 282 (B) Ash residue from the incineration of Municipal Solid Wastes, including infectious waste
283 described in item (G) below, wood waste, sludge, and agricultural wastes.;
- 284 (C) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances
285 which remains after the shredding of automobiles;
- 286 (D) Large dead animals;
- 287 (E) Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials;
- 288 (F) Industrial solid or semi-solid wastes resulting from industrial processes and manufacturing
289 operations, including cement kiln dust, ore process residues and grit or screenings removed
290 from waste water treatment facility;
- 291 (G) Infectious wastes which have disease transmission potential and are classified as Hazardous
292 Wastes by the State Department of Health Services, including pathological and surgical wastes,
293 medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings,
294 bottles, drugs, patient care items such as linen or personal or food service items from
295 contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical
296 purposes or with known infectious diseases;
- 297 (H) Liquid wastes which are not spadeable, usually containing less than fifty percent (50%) solids,
298 including cannery and food processing wastes, landfill leachate and gas condensate, boiler
299 blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings,
300 rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous
301 Wastes;
- 302 (I) Radioactive wastes as defined in Section 114710 of the California Health and Safety Code and
303 any waste that contains a radioactive material, the storage or Disposal of which is subject to any
304 other State or federal regulation;
- 305 (J) Special wastes designated from time to time by the Department of Resources Recycling and
306 Recovery (CalRecycle), including contaminated soil;
- 307 (K) Bulky items that cannot fit within standard roll-off containers or Mixed Waste/Municipal Solid
308 Waste collection vehicles unless otherwise approved by Service Contractor.
- 309 Parties shall Promptly conform this definition of "Unacceptable Waste" to the extent necessary to
310 comply with Applicable Law, should a Change in Law or in Permits and Permit requirements necessitate.

311 “Uncontrollable Circumstances”, means any act, event or condition that is beyond the reasonable
312 control of the Party relying thereon as justification for not performing a County Obligation or a MarBorg
313 Obligation as defined in Article 3 and 4 respectively, or complying with any condition required of such
314 Party under this Agreement, and that materially interferes with or materially increases the cost of
315 performing its obligations hereunder (other than payment obligations), to the extent that such act,
316 event or condition is not the result of the willful or negligent act, error or omission, failure to exercise
317 reasonable diligence, or breach of the this Agreement on the part of such Party. The only effect of such
318 Uncontrollable Circumstance is that it allows for a temporary cessation of delivery of materials and/or
319 provision of service by the County. Such acts or events may include, but shall not be limited to, the
320 following:

- 321 (A) Naturally occurring events (except weather conditions normal for the Santa Barbara area) such
322 as landslides, underground movement, earthquakes, fires, tornadoes, tidal waves, floods,
323 epidemics, storms, and other acts of God, ionizing radiation, nuclear, radioactive, chemical or
324 biological contamination;
- 325 (B) Explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, civil
326 war, armed conflict, terrorism, blockade, embargo, or insurrection, riot or civil disturbance;
- 327 (C) Labor disputes,;
- 328 (D) The failure of any subcontractor or supplier (other than MarBorg or the County, or any affiliate
329 of either) to furnish services, materials, chemicals or equipment on the dates agreed to, but only
330 if such failure is the result of an event which would constitute an Uncontrollable Circumstance if
331 it affected MarBorg or the County directly, and MarBorg or the County are not able after
332 exercising all Reasonable Business Efforts to timely obtain substitutes;
- 333 (E) The failure of any private utility to provide and maintain utilities to the Landfill or Solid Waste
334 System which are required for the performance of this Agreement;
- 335 (F) Any failure of title to the Landfill or portion of the Solid Waste System or enforcement of any
336 encumbrance on the Landfill or portion of the Solid Waste System not consented to in writing
337 by, or arising out of any action or agreement entered into by, the Party adversely affected
338 thereby;
- 339 (G) The preemption of materials or services by a governmental body in connection with a public
340 emergency or any condemnation or other taking by eminent domain of any material portion of
341 the Landfill or Solid Waste System;
- 342 (H) The temporary suspension of operations due to supervening authority of law, such as the
343 designation of all or a portion of the Landfill as a crime scene or as the site of an investigation by
344 law enforcement;
- 345 (I) A Change in Law.

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

- 348 (1) Any act, event or circumstance with respect to which MarBorg or the County has assumed the
349 "as-is" risk under this Agreement;
- 350 (2) Any act, event or circumstance that would not have occurred if the affected Party had complied
351 with its obligations under this Agreement;
- 352 (3) Changes in interest rates, inflation rates (other than those provided for in this Agreement), labor
353 costs, insurance costs, commodity prices, currency values, exchange rates or other general
354 economic conditions, with the exception of changes resulting from a Change in Law;
- 355 (4) Changes in the financial condition of the County, or MarBorg affecting the ability to perform
356 their respective obligations;
- 357 (5) The consequences of error, neglect or omissions by MarBorg or the County in the performance
358 of the obligations of each party under this Agreement;
- 359 (6) Union or labor work rules, requirements or demands, which have the effect of increasing the
360 number of employees employed, or overtime hours required, at the Landfill of Solid Waste
361 System or otherwise increasing the cost to the County for meeting County obligations under
362 this Agreement, provided that such are not the result of a Change-in-Law;
- 363 (7) Mechanical failure of equipment not itself due to an Uncontrollable Circumstance;
- 364 (8) Power outages not caused by third party utilities;
- 365 (9) Reasonably anticipated weather conditions for the geographic region of Santa Barbara County;
- 366 (10) Any act, event, circumstance or Change-in-Law occurring outside the United States of America,
367 unless it has a clear, direct and measurable impact on the ability of a Party to perform its
368 contractual obligations;
- 369 (11)
- 370 (12) A Change-in-Law pertaining to taxes, which does not discriminate against MarBorg; or
- 371 (13) Any Change-in-Law (including the issuance of any governmental approval, the enactment of any
372 statute, or the promulgation of any regulation) the terms and conditions of which do not impose
373 more stringent or burdensome requirements on the County than are imposed by this
374 Agreement
- 375 "Year", means a calendar year of January 1 through December 31, *unless* an Agreement Year is explicitly
376 specified.

377 **ARTICLE 2: TERM OF AGREEMENT**

378 **2.1 Effective Date**

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

381 **2.2 Agreement Term**

382 This Agreement shall run a concurrent term with each exclusive franchise agreement held by MarBorg
383 Industries and listed herein along with any subsequent extensions to those agreements. MarBorg
384 Industries franchise agreements include: The County of Santa Barbara Zones 1,2 and 3. The City of
385 Santa Barbara Zones 1 and 2, the City of Goleta and the City of Buellton. If any of these agreements
386 should expire then MarBorg’s obligation to deliver non-franchise waste from the geographic area
387 described in that agreement shall be relieved, however MarBorg’s obligation will remain for all
388 remaining areas under franchise contract. Should all of the listed agreements continue to be in force
389 then this agreement shall terminate December 31, 2038 (approximately 22 Years from the Effective
390 Date).

391 **2.3 Survival of Certain Provisions**

392 The following provisions survive this Agreement’s term:

- 393 (A) Parties’ representations, certifications, warranties and acknowledgements;
- 394 (B) Amounts that MarBorg owes County, and County owes MarBorg;
- 395 (C) Any other rights and obligations of the Parties accrued prior to expiration or termination of this
396 Agreement; and,
- 397 (D) Any other rights and obligations of the Parties expressly stated to survive this Agreement’s term.

398

399 ARTICLE 3: COUNTY'S OBLIGATIONS**400 3.1 Materials Disposal Services**

401 Commencing on January 2019, the County shall provide or cause the provision of the service of receiving
402 and disposing of Acceptable Materials from MarBorg at the Landfill or other designated facilities within
403 the Solid Waste System as the County may determine to use in the event the Landfill or other existing
404 components of the System are unavailable for any reason, as described in Section 3.5). The County, to
405 the maximum extent permitted under Applicable Law, shall use its Reasonable Best Efforts to keep the
406 Landfill open for the receipt of waste for transfer or disposal of Acceptable Materials pursuant to this
407 Agreement. The County shall do and perform all acts and things which may be necessary or desirable in
408 connection with its covenants in this subsection, including without limitation all planning, development,
409 administration, implementation, construction, operation, maintenance, management, financing and
410 contract work related thereto or undertaken in connection therewith. The County shall exercise all
411 reasonable efforts to minimize the costs incurred in complying with its obligations and responsibilities
412 under this Agreement, Applicable Law, the Bond Documents, and prudent solid waste management
413 practice and environmental considerations. The County shall enforce the provisions of all agreements
414 with third parties relating to the Solid Waste System.

415 B. MarBorg's Individual Rights

416 County authorizes MarBorg to exercise the following rights of the County under this Disposal
417 Agreement, at MarBorg's option:

- 418 1. Entering the Landfill or other designated facilities within the Solid Waste System during normal
419 hours of operation, and/or,
- 420 2. Accessing County's books and records during normal business hours as well as access to
421 electronic records available on-line from the County.

422 3.4 Annual Review Meeting

423 County shall hold an annual meeting with MarBorg to review the overall performance under this
424 Agreement. The purpose of such meeting is to provide for a discussion and review of technological,
425 economic, and regulatory changes in collection and Disposal to achieve a continuing, advanced Solid
426 Waste System; and to ensure services are being provided by County with adequate quality, effectiveness
427 and economy, and in full compliance with the terms of this Agreement.

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

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

433 3.5 Services During Uncontrollable Events

434 In the event of an Uncontrollable Circumstance, County shall make Reasonable Business Efforts to
435 receive materials delivered by MarBorg and to promptly and cost effectively provide Disposal services
436 within the Solid Waste System.

437 **A. Disposal Services Not Available at Landfill**

438 In the event an Uncontrollable Circumstance occurs which prevents Disposal in the Landfill, the County,
439 to the extent permitted by law, will use Reasonable Business Efforts and take whatever actions are
440 within the scope of its powers at all times to provide Disposal services. The County shall not abandon
441 the Solid Waste System and shall continue to provide Disposal sufficient to enable it to comply with the
442 terms hereof; provided, that the County may provide such services by making available transfer and/or
443 disposal facilities owned and operated by the County or by making contractual or other arrangements
444 for the use of transfer and/or disposal facilities (either inside or outside the geographic boundaries of
445 the County) owned or operated by persons other than the County. In the event of loss or damage to any
446 material portion of the Solid Waste System or the occurrence of any other event which prevents the
447 County from accepting solid waste at the Landfill or components of the Solid Waste System owned by
448 the County, the County will use Reasonable Business Efforts to take whatever actions are within its
449 powers to provide other facilities or services necessary to provide the solid waste management services
450 necessary to maintain Net Revenues as required under the TRRP Bond Documents.

451

452 **ARTICLE 4: MARBORG’S OBLIGATIONS**

453 **4.1 Acceptable Materials Delivery Requirement and Monthly Payments**

454 Commencing on January 2019, MarBorg will deliver all Construction and Demolition debris and Mixed
455 Waste, excluding Recyclable Materials, collected from its self-haul customers and its unscheduled
456 hauling business generated from within those jurisdictions in which MarBorg holds an exclusive hauling
457 franchise agreement. (collectively referred to as Acceptable Material) to the Landfill or other designated
458 facilities within the Solid Waste System.

459 **A. MarBorg’s Delivery Covenant**

460 MarBorg’s obligation to deliver the Acceptable Waste identified above in Section 4.1 shall be referred to
461 as the “Delivery Covenant.” MarBorg’s Delivery Covenant does not include any Municipal Mixed Waste
462 collected by MarBorg as a Collection Contractor for a Public Participant or Agency.

463 **B. MarBorg’s Payment Obligations for Disposal Services**

464 County will provide MarBorg with Monthly Invoices for the disposal of all Acceptable Material delivered
465 to the Landfill or other designated facilities pursuant to Section 4.1.

466 County will calculate MarBorg’s Monthly Invoices by multiplying the tons of Acceptable Material
467 delivered by MarBorg by the current Acceptable Materials Charge shown in Section 4.3.A. The initial
468 per-ton Disposal Rate is \$95/ton.

469 Payment of such charges will be due and payable within ten days following the receipt of a monthly
470 statement and MarBorg agrees to pay finance charges of 1.5% per month on any unpaid balance beyond
471 the due date. It is also agreed, that in the event of default and the balance due is referred to an attorney
472 or collection agency for collection, MarBorg is responsible for reasonable attorney’s fees and costs of
473 collection.

474
475 **C. Consent to Changes**

476 MarBorg may not suspend or significantly alter its sorting or recycling activities in any way that alters its
477 contractual provisions without County consent as there is the potential for changes to affect the
478 composition and suitability of the Acceptable Materials for Disposal. Examples of “change” are stopping
479 roll-off services to construction contractors or failing to sort construction and demolition debris before
480 transporting same to the Landfill for Disposal.

481 MarBorg will notify the County of any such proposed changes to its operations at least one hundred and
482 eighty (180) Days before the proposed change become effective.

483 **4.3 Annual Adjustments to Acceptable Materials Rates**

484 **A. Annual Adjustments to Initial Per-Ton Disposal Charge**

485 The initial \$95 per-ton Disposal Charge for Acceptable Waste delivered by MarBorg for Disposal
486 represents approximately 79% of the initial \$120 per-ton Processing and Disposal Charge applicable to
487 Acceptable Materials delivered to the TRRP by Public Participants and/or their Collection Contractors.
488 MarBorg’s reduced per-ton rate for Disposal only is intended to, at a minimum, equal all amounts

489 required to be paid or incurred by the County to provide the disposal services set forth in Section 3.1
490 and to meet the requirements of the Bond Documents related to the TRRP financing.

491 MarBorg acknowledges that it has been informed that the initial Disposal Charge applicable to
492 Acceptable Materials delivered to the TRRP by Public Participants will most likely increase during the
493 Term of this Agreement as needed to generate Revenues in an amount at least equal to all amounts
494 required to be paid or incurred by the County to provide Disposal services, to meet the requirements of
495 the TRRP Bond Documents, and to replenish any required reserve accounts.

496 **D. Annual Adjustments**

497 Each June, the County will meet and confer with MarBorg to address: 1) The County's need to meet its
498 debt obligations, 2) actual costs incurred for Disposal services provided to MarBorg, 3) the nature and
499 amount of Acceptable Materials expected to be delivered to the Landfill by MarBorg during the next
500 Agreement Year, 4) available rates and related costs associated with disposal services offered by other
501 landfill operators as described in MarBorg's Residual Commitment (Exhibit C), and 5) the increased per-
502 ton Disposal Charge required by the County for the next Agreement Year.

503 1. If MarBorg does not agree to any annual increase in the per-ton Acceptable Material Charge
504 while any Certificates issued for the financing of the TRRP Facility are outstanding, MarBorg will
505 submit the dispute to binding arbitration using an independent arbitrator. If either Party wishes
506 to select an arbitrator, each Party shall prepare a separate list of five (5) independent arbitrators
507 having experience, as applicable in the operation of similar solid waste-related facilities, in
508 numerical order with the first preference at the top, and exchange and compare lists. The
509 independent arbitrator ranking highest on the two (2) lists by having the lowest total rank order
510 position on the two (2) lists shall be the Independent Arbitrator. In case of a tie in scores, the
511 Independent Arbitrator having the smallest difference between the rankings of the two (2)
512 Parties shall be selected; other ties shall be determined by a coin toss. If no independent
513 arbitrator appears on both lists, this procedure shall be repeated. If selection is not completed
514 after the exchange of three (3) lists or sixty (60) Days, whichever comes first, then each Party
515 shall select one independent arbitrator having experience described above and the two (2)
516 arbitrators so selected shall together select an Independent Arbitrator. The Independent
517 Arbitrator shall make its determination based on the submissions of the Parties, the five (5)
518 factors identified in Article 4.3 D above, and other factual determinations it may make regarding
519 the disputed rate increase, but in any case, such determination must not adversely impact the
520 County's ability to comply with the terms of the TRRP Bond Documents. The determination of
521 the Independent Arbitrator shall be binding. The Parties shall share the costs of the
522 Independent Arbitrator equally for the first two (2) dispute resolutions, and thereafter shall be
523 borne by the loser, as determined by the Independent Arbitrator.

524 2. If the Parties cannot agree to an annual increase in the per-ton Acceptable Material Charge after
525 the Certificates issued for the financing of the TRRP have been retired or extinguished, the
526 parties may terminate this Agreement upon 120 days' written notice.

527 ARTICLE 5: SUSPENSION AND TERMINATION**528 5.1 Notice of Default**

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

536 5.2. Resolution When TRRP Financing Certificate(s) Outstanding

537 While the Certificates for the TRRP financing are outstanding, the only remedy for default shall be
538 specific performance and there shall be no suspension or termination of the Agreement. If the Parties
539 cannot agree on such remedies and the claimed default or breach occurs while any Certificates issued
540 for the financing of the TRRP are outstanding, the matter shall be submitted to binding arbitration using
541 an independent arbitrator. If either Party wishes to select an arbitrator, each Party shall prepare a
542 separate list of five (5) independent arbitrators having experience, as applicable in the Development of,
543 or operation of similar solid waste-related facilities, in numerical order with the first preference at the
544 top, and exchange and compare lists. The independent arbitrator ranking highest on the two (2) lists by
545 having the lowest total rank order position on the two (2) lists shall be the Independent Arbitrator. In
546 case of a tie in scores, the Independent Arbitrator having the smallest difference between the rankings
547 of the two (2) Parties shall be selected; other ties shall be determined by a coin toss. If no independent
548 arbitrator appears on both lists, this procedure shall be repeated. If selection is not completed after the
549 exchange of three (3) lists or sixty (60) Days, whichever comes first, then each Party shall select one
550 independent arbitrator having experience described above and the two (2) arbitrators so selected shall
551 together select an Independent Arbitrator. The Independent Arbitrator shall make its determination
552 based on the submissions of the Parties, the provisions hereof, and other factual determinations it may
553 make regarding the matter in dispute, but in any case, such determination must not adversely impact
554 the County's ability to comply with the terms of the Bond Documents. The determination of the
555 Independent Arbitrator shall be binding. The Parties shall share the costs of the Independent Arbitrator
556 equally for the first two (2) dispute resolutions and thereafter shall be borne by the loser, as determined
557 by the Independent Arbitrator.

558 5.3. Resolution When TRRP Financing Certificate(s) Not Outstanding

559 If the Parties cannot agree on such remedies and the claimed default or breach does not occur during
560 the period when any Certificates issued for the financing of the TRRP are outstanding, the parties may
561 exercise any legal rights they have under the Agreement and under applicable law, including to secure
562 specific performance.
563

564 **ARTICLE 6: RECORDS AND REPORTS**

565 **6.1 Records**

566 **A. Contents**

567 County will keep records of its administration and enforcement of this Agreement. An example is
568 Tonnage of Acceptable Material that MarBorg delivers to the Landfill or Solid Waste System from its
569 self-haul and unscheduled hauling business and related tipping fees paid by MarBorg.

570 **B. Access**

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

574 **6.2 Reports**

575 County will report to MarBorg on administration and enforcement of this Agreement. An example is a
576 report on results of the Annual Settlement Process.

ARTICLE 7: ENFORCEMENT**7.1 Enforcement**

If either County or MarBorg does not meet its obligations under this Agreement, the other Party may exercise any and all available remedies under law and equity, including specific performance. Specific performance is an appropriate remedy to enforce MarBorg's obligation to deliver Acceptable Materials to the Landfill.

7.2 Uncontrollable Circumstances**A. General**

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

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

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

B. Notice

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

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

7.3 Jurisdiction, Venue, Service of Process**A. Exclusive State Court Jurisdiction**

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

B. Venue

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

C. Location

County and MarBorg will conduct any other hearing or action (such as mediation or arbitration), of

609 whatever nature or kind regarding this Agreement, in the City of Santa Barbara.

610 **D. Service of Process**

611 County and MarBorg will accept service of process at the address where they receive Notices.

612 **7.4 Governing Law**

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

615 **7.5 Costs**

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

620 **ARTICLE 8: ASSIGNMENT**

621 **8.1 Assignment**

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

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

This Agreement contains the entire agreement between the Parties with respect to their rights and obligations under this Agreement, including the enforcement and administration of this Agreement. This Agreement supersedes all prior understandings and agreements between the Parties with respect to their rights and obligations, including those contained in drafts, memorandums, correspondence, telephone calls and meetings.

9.2 Amendments

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

9.3 Severability**A. Court Rulings Generally**

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

B. Court Rulings: Delivering Materials to the Tajiguas Landfill

However, in the ruling of invalidity, illegality, non-binding nature or unenforceability of any Agreement Provision, under Section 9.3.A, with respect to the obligations of County or MarBorg; the County Board of Supervisors may, in its sole discretion, do any of the following:

1. Accept the ruling without deleting or enforcing that Agreement Provision;
2. Delete that Agreement Provision and construe and enforce this Agreement under this Section; or,
3. Terminate this Agreement.

9.4 Interpretation

MarBorg acknowledges the following:

1. It commented on the form of this Agreement with advice of its attorneys.
2. It entered into this Agreement upon its own choice and initiative, in order to meet its goals described in the Recitals above.
3. It agrees that no one can construe any provision in this Agreement against County solely because County prepared this Agreement in its executed form.
4. It understands that this Agreement is an essential aspect of the Certificate financing process, and agrees to cooperate in providing information required for the financing process, including information for the official statement and rating process.

661 County represents and warrants as follows:

- 662 a. It has reviewed and commented upon this Agreement with advice of its attorneys.
663 b. It entered into this Agreement upon its own choice and initiative, in order to meet its goals
664 described in the Recitals above.

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

667 **9.5 Timely Performance**

668 **A. Specified Days on Weekdays**

669 **1. Performance**

670 If a Party must perform an obligation under this Agreement within a specified number of Days, and the
671 last Day falls on a weekend or holiday, the obligated Party may perform that obligation on the next
672 weekday following the weekend or holiday. For example, if MarBorg must provide documentation to
673 County within thirty (30) Days of County request and the 30th Day falls on a Sunday, MarBorg must give
674 County the documentation by the next Day, Monday.

675 **2. Counting**

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

679 **B. Specified Hours on Any Day**

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

- 683 1. The specified time is measured in hours;
684 2. The County specifies the time (for example, on a Saturday even though performance would
685 otherwise occur on Monday); or,
686 3. County determines that there is a threat to public health or safety.

687 **9.6 Notices, Etcetera**

688 **A. Location**

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

690 **B. Notice**

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

- 692 1. Email or facsimile followed as soon as possible (but no more than two (2) Days) by personal or
693 mailed delivery;

- 694 2. Personal delivery to County Agreement Representative or MarBorg Agreement Representative;
- 695 3. Deposit in the United States mail first class postage prepaid (certified mail, return receipt
- 696 requested); or,
- 697 4. Commercial delivery service providing delivery verification.

698 **C. "Notice"**

699 Parties may give "notice" (not capitalized) by either Party of a routine administrative issue (such as

700 results of the Annual Settlement Process or date of a County Board meeting) orally (for example, by

701 telephone or computerized communication); and electronically (for example, by email).

702 **D. Change of Address**

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

704 **9.7 Writing**

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

- 706 • requests, demands, orders, directions,
- 707 • acceptances, consents, approvals, agreements,
- 708 • waivers,
- 709 • exercise of options or rights, selections,
- 710 • proposals,
- 711 • reports, and
- 712 • acknowledgments, certifications, representations and warranties.

713 Explicit reference to "written" or "writing" with respect to any one communication does not imply that

714 other communications without explicit reference to writing may be oral. "Writing" includes any means

715 of printed language, including hard copy and emails.

716 **9.8 Exercise of Options**

717 Parties exercise of any approval, disapproval, option, discretion, satisfaction, determination, election,

718 consent or choice under this Agreement is deemed reasonable, unless this Agreement specifically

719 provides otherwise, such as in a Party's "independent", "sole", "exclusive" or "absolute" "control",

720 "judgment", or "discretion".

721 **9.9 Parties' Agreement Representatives**

722 **A. County Agreement Representative**

723 **1. Named**

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

725 Works Department (Resource Recovery and Waste Management Division). The Deputy Director's

726 address is listed in Exhibit B.

727 **2. Authority**

728 County authorizes the County Agreement Representative to act on behalf of County in the
729 administration of this Agreement, unless it specifically names another individual. By signing this
730 Agreement, County delegates to County Agreement Representative the authority to exercise County
731 rights, remedies and options under this Agreement and administer this Agreement, except with respect
732 to:

- 733 a. Extending the term;
- 734 b. Suspending or terminating this Agreement;
- 735 c. Approving or disapproving Assignment or transfer of this Agreement; and,
- 736 d. Exercising any delegation of authority contrary to law.

737 **B. MarBorg Agreement Representative**

738 **1. Named**

739 MarBorg will name its MarBorg Agreement Representative by Notice to the County.

740 **2. Authority**

741 MarBorg authorizes MarBorg Agreement Representative to act on behalf of the MarBorg under this
742 Agreement. County may assume that MarBorg has delegated its MarBorg Agreement Representative to
743 exercise rights, remedies and options under this Agreement and administer this Agreement.

744 **9.10 Signing Multiple Copies**

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

747 **9.11 Authority to Sign**

748 **A. County**

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

751 **B. MarBorg**

752 The MarBorg warrants that it duly authorized the individuals listed below to sign this Agreement on
753 behalf of MarBorg.

754

755

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

758

759 **ATTEST:**
760 Mona Miyasato
761 County Executive Officer
762 Clerk of the Board

COUNTY OF SANTA BARBARA:

763

764 By: _____
765 Deputy Clerk

By: _____
Chair, Board of Supervisors

766

767

Date: _____

768

769 **RECOMMENDED FOR APPROVAL:**
770 Santa Barbara County Public Works
771 Department

CONTRACTOR:
MARBORG INDUSTRIES, INC.

772

773

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

By: 
Authorized Representative

777

Name: Mario A. Borgatello
Title: President

778

779

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

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

783

784 By: 
785 Deputy County Counsel

By: 
Deputy

786

787 **APPROVED AS TO FORM:**
788 Risk Management

789

790 By: 
791 Risk Management

792

793

794
795
796
797

EXHIBIT A ADDRESSES FOR NOTICES

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

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

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

804 Date: 12-1-16
805 County: [Signature]

**EXHIBIT B:
COMMUNICATIONS**

806



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	Schleich@cosbpw.net
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

807 County may change its representative following Notice to MarBorg.

808 **Acknowledgment:** County has submitted, and MarBorg has received, the attached identification of
809 County Agreement Representative on the later of the following dates:

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

813 Date: 12-1-16
814 County: 
815 MarBorg: 

816 **B. MarBorg Agreement Representative**

Name	Brian Borgatello
Telephone number	805-963-1852
e-mail address	bborgatello@marborg.com
Mailing address	P.O. Box 4127, SB, CA 93140
County office address	130 E. Victoria St. SB, CA 93101

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

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

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

823 Date: 11/29/2016

824 MarBorg: Brian A. Borgatello

825 County: San Bernardino

826



Exhibit C

September 14, 2016

Leslie Wells
County of Santa Barbara Public Works
130 East Victoria Street, Suite 100
Santa Barbara, CA 93101

Mrs. Wells,

On September 1st the County asked MarBorg Industries to consider two items related to the future disposal of non-franchise residual waste generated from at our C&D Recycling Facility. The first, was a commitment to bring all of the non-franchise residual waste generate at our C&D Recycling facility to the Tajiguas Landfill. Second, we were asked to determine the highest residual tipping fee that our operation could tolerate while continuing to attract similar volumes of material. We understand that the residual tonnage generated from our C&D facility represents a significant amount of waste, which translates to revenue, that the County would like to count on in the future as part of the overall financing structure of the TRRP.

MarBorg Industries is committed to doing its part in making the TRRP a reality for our community. We believe that the additional diversion, renewable energy and reduction in air emissions that this facility will provide for the South Coast is invaluable.

The biggest challenge of your request is determining the highest price point that the non-franchise market can bear for processing C&D material while maintaining the current flow of non-franchise C&D to our Recycling Facility. The highest price point that the market will support at our facility dictates the highest disposal fee that we are able to pay at the landfill which will offset the cost of the TRRP for franchise customers. In analyzing our current customer base and the competitive market alternatives that they have, we have determined that we can probably charge up to \$10 per ton above competing locations (including transportation costs) and still, likely maintain, our customer base by providing a convenient option with outstanding customer service.

MarBorg's two closest competitors for C&D and other self-haul material are the County Transfer Station and Gold Coast Recycling in Ventura. Here is the current pricing analysis of those facilities for customers in Santa Barbara.

CURRENT MARKET PRICING	MarBorg	Transfer Station	Gold Coast-In County	Gold Coast-Out of County
Disposal	\$ 82.00	\$ 72.00	\$ 54.00	\$ 64.27
Transportation @\$110/hr. @10 tons/load	\$ -	\$ -	\$ 16.50	\$ 16.50
Total Cost	\$ 82.00	\$ 72.00	\$ 70.50	\$ 80.77
Price Difference	\$ -	\$ (10.00)	\$ (11.50)	\$ (1.23)



Exhibit C

At current market prices both the Transfer Station and Gold Coast (for Ventura County material) are cheaper options at around \$10 per ton less than the MarBorg C&D Recycling Facility. The lowest pricing at Gold Coast is only for material that is generated in Ventura County so we believe that only a small amount of material may be currently leaking south to their facility being misidentified as Ventura County material. Materials that are correctly identified as originating from Santa Barbara County would only receive a discount of \$1.23 per ton.

Based on this current experience we have modeled escalating landfill costs along with the necessary gate fee at MarBorg Industries and find that the maximum tipping fee we can afford at the landfill and still maintain our ability to compete in the marketplace is \$95 per ton. Paying a \$95 per ton tipping fee for residual waste at the landfill and paying \$95 per ton for 10,000 tons of ADC, currently charged at \$17 per ton, would require us to charge \$93 per ton at our gate for mixed C&D. Here is what that pricing looks like when compared to the market.

	MarBorg	Transfer Stations	EJ Harrison In County	EJ Harrison Out of County
Disposal	\$ 93.00	\$ 93.00	\$ 54.00	\$ 64.27
Transportation @\$110/hr & 10 tons	\$ -	\$ -	\$ 16.50	\$ 16.50
Total Cost	\$ 93.00	\$ 93.00	\$ 70.50	\$ 80.77
Price Difference	\$ -	\$ -	\$ (22.50)	\$ (12.23)

With a \$93 per ton gate fee at the MarBorg C&D recycling facility we would create an incentive of \$12.23 per ton for our current customers to recycle their materials at Gold Coast Recycling. This is a greater incentive that they currently have but a calculated risk that we are willing to take for the benefit of the whole system.

MarBorg is willing to make this commitment based on the following assumptions:

1. MarBorg will commit 100% of the residual from our C&D operations, which will fluctuate with market and other outside conditions.
2. MarBorg will dispose of 15,000 tons of ADC per year at \$17 per ton.
3. MarBorg will commit our non-franchise flow from every jurisdiction that we provide franchise services for the life of that franchise.

We look forward to any questions you may have on this assessment and appreciate the opportunity to work with you on this project.

Sincerely,

Derek Carlson
Business Manager