

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM
Meeting Date: September 25, 2007
Executive Summary
Request for Amendment to the Loan Agreement

Prepared by: *Doreen Carle*

Applicant: MarBorg Industries and/or its Affiliates	Action Requested: Loan Agreement Amendment
Project: Santa Barbara (Santa Barbara County)	Application No.: 765 (SB)
Location: Barbara County)	Final Resolution No.: 447

Background Information: In 2006, CPCFA approved the issuance of bonds in the amount of \$6,700,000 to MarBorg Industries and/or its Affiliates to finance improvements at three locations in Santa Barbara. The approved Project included construction, renovation and equipment purchases, including collection vehicles, containers, balers and loaders. To date, the company has spent approximately \$2,000,000 of the approved \$6,700,000.

Action Requested: At this time, the Company requests to alter the allocation of expenditure of bond proceeds from the 2006 financing. The Company proposes to eliminate the activity at one location, and to decrease the scope of construction which will result in a decrease of expenses. The Company proposes to reallocate the bond funds and increase the expenditure to acquire collection vehicles and containers from \$3,000,000 to \$4,400,000. Instead of using approximately 45% of the 2006 bond funds to finance collection vehicles and containers, the Company will use 66%. Attachment A outlines the proposed Project component and cost changes.

The Loan Agreement between the Authority and the Borrower requires that the Borrower obtain the approval of the Authority before proceeding with this reallocation of bond funds. Per section 3.1 of the Loan Agreement, “in the event that the Borrower desires to alter or change the Project, and such alteration or change substantially alters the purpose and description of the Project as described in Exhibit A hereto, the Borrower must first obtain the consent of the Authority (which consent shall not be unreasonable withheld) to such changes...”

Given the change in the allocation of 2006 bond funds, staff has requested the following documentation (as required per section 3.1 of the Loan Agreement) be submitted by the Company:

- (1) A Certificate of the Borrower describing in detail the proposed changes and stating that they will not have the effect of disqualifying the Project as facilities that may be financed pursuant to the Act;
- (2) A copy of the form of amended or supplemented Exhibit A hereto approved by the Authority;
- (3) An opinion of Bond Counsel (Orrick Herrington & Sutcliffe) that such proposed changes will not adversely affect the tax-exempt status of interest on the Bonds; and

Agenda Item – 4.C.1.

- (4) The written approval of the Letter of Credit Bank, Pacific Capital Bank dba Santa Barbara Bank and Trust.

Staff has received the documentation as required per the Loan Agreement.

Legal Questionnaire: An updated legal status questionnaire was submitted with this request. No information was disclosed that raises questions concerning the financial viability or legal integrity of this applicant.

Staff Recommendation: Given that the Borrower has met the requirements of the loan agreement, staff recommends that the Authority consent to the request of the Company to amend the loan agreement.

**AMENDMENT OF LOAN AGREEMENT RELATING TO
BONDS ISSUED TO FINANCE SOLID WASTE
DISPOSAL FACILITIES
FOR MARBORG INDUSTRIES
AND/OR AFFILIATES**

WHEREAS, the California Pollution Control Financing Authority (“Authority”), a public instrumentality, approved the application of MarBorg Industries (the “Borrower”) for financial assistance in the acquisition and construction of certain pollution control facilities (the “2006 Project”) and issued California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Revenue Bonds (Marborg Industries Project) Series 2006A (the “2006 Bonds”) to provide such financial assistance; and

WHEREAS, the proceeds received from the sale of the 2006 Bonds were loaned to the Borrower pursuant to the terms and provisions of that certain Loan Agreement, dated as of March 1, 2006 (the “2006 Loan Agreement”) to finance the 2006 Project as further described in Exhibit A to the 2006 Loan Agreement; and

WHEREAS, pursuant to the 2006 Loan Agreement the Borrower is required to obtain the prior consent of the Authority in order to alter or change the Project in such a way that substantially alters the purpose and description of the 2006 Project as described in Exhibit A to the 2006 Loan Agreement; and

WHEREAS, the Borrower has requested the Authority to amend the 2006 Loan Agreement to allow for the reallocation of certain costs estimates from certain locations set forth in Exhibit A to the 2006 Loan Agreement; and

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Agenda Item – 4.C.1.

Section 1. The Authority finds and determines that the foregoing recitals are true and correct.

Section 2. The First Amendment to Loan Agreement is hereby approved. The Bank of New York Trust Company, N.A., as trustee (the “Trustee”) under the Indenture, dated as of March 1, 2006, by and between the Authority and the Trustee, is hereby instructed to consent to the First Amendment to Loan Agreement.

Section 3. The Executive Director or Deputy Executive Director of the Authority is hereby authorized and directed to do any and all ministerial acts and to enter into any agreements, including (without limitation) to execute and deliver any and all certificates, including without limitation a tax certificate or any amendments thereto, which, with the advice of the Attorney General, or other counsel retained by the Authority as issuer's counsel, they may deem necessary or advisable in order to effectuate the purpose of this resolution.

Section 4. This Resolution shall take effect immediately upon its passage and remain in full force and effect thereafter. Except as specifically provided in the First Amendment to Loan Agreement, the 2006 Loan Agreement remains in full force and effect.

Attachment A

MarBorg Industries

(Comparison of project costs previously approved and currently requested)

	February 2006 FR Approval	July 2007 Changes	Amended FR Request
A. 620 Quinientos Street (MRF) Santa Barbara, CA 93103			
Building and scale house renovation	\$ 1,000,000	(950,000)	50,000
Construct Building	1,500,000		1,500,000
Additional sorting line and related equipment such as balers & loaders including collection vehicles and containers*	2,500,000	1,900,000	4,400,000
B. 725 Cacique Street (MRF) Santa Barbara, CA 93103			
Sorting line & scale	800,000	(800,000)	0
Construct scale house	200,000	(200,000)	0
C. 136 N. Quarantina Street (corp yard) Santa Barbara, CA 93103			
Sandblast booth	500,000	50,000	550,000
Total Project Costs	<u>\$6,500,000</u>		<u>\$6,500,000</u>

* A small component for collection vehicles and containers had been included in the equipment portion of this project as approved in February 2006. The proposed expenditure to acquire collection vehicles and containers has been increased from a nominal amount to \$3,000,000 of the total \$4,400,000 anticipated for equipment.