Agenda Item No.____________

File Code No. 510.04

CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: December 13, 2011

TO: Mayor and Councilmembers

FROM: Environmental Services, Finance

SUBJECT: Zone One Solid Waste Franchise Recommendation

RECOMMENDATION:

That Council authorize the Finance Director to enter into exclusive negotiations with MarBorg Industries for a Citywide Solid Waste Franchise Agreement contingent on MarBorg's written agreement, in a form acceptable to the City attorney, to do the following:

A. Provide the City with an option to extend the term of the current franchise agreement for an additional year should agreement not be reached before June 30, 2012;

B. Provide a deposit to cover the City's costs for HF&H's consultant services related to the franchise renewal process; and

C. Provide City staff with access to all available financial information about the City's franchise zones, including, but not limited to, MarBorg's operations, revenues, costs, and profits.

EXECUTIVE SUMMARY:

In November of 2010, the City first initiated a competitive procurement process for the selection of a solid waste collection contractor for Zone One for which the existing contract expires on June 7, 2013. After initiating and completing work towards the issuance of an RFP, on July 12, 2011 Council invited MarBorg Industries ("MarBorg") to submit a preliminary proposal and directed staff to work with the consultant and the newly created Zone One Solid Waste Franchise Council Ad Hoc Subcommittee to evaluate the proposal. The objective of the evaluation was to determine whether or not the City should continue to move forward with an open competitive procurement process for Zone One.

MarBorg's proposal, received on September 12, 2011, was evaluated by staff and HF&H Consultants over the ensuing 2 ½ months. Based on that review, City staff and the consultant believe that the proposal represents a good starting point from which to begin negotiations, but one which can and should be improved upon. As such, staff and the Zone One Solid Waste Franchise Ad Hoc Subcommittee recommend suspending the public competitive procurement process and entering into exclusive negotiations with

MarBorg for a Citywide franchise agreement, subject to stipulated conditions, with the goal of achieving the best franchise terms possible for City residents and businesses.

DISCUSSION:

Since 2003, the City has had two “zones” for solid waste collection and disposal in the business, multi-family residential, and single family residential sectors, each zone representing approximately half of the City. These are the two largest contracts the City has with a private company. Collectively, these contracts are worth almost $16 million per year to the hauler(s). The cost of these services is funded entirely through the solid waste rates that the City charges to its residents and businesses.

On November 23, 2010, staff recommended beginning a competitive procurement process (via a Request for Proposals, or “RFP”) for collection services in Zone One because the City’s franchise contract with Allied Waste Services of North America, LLC (“Allied”) was set to expire on June 7, 2013. Only Zone One was to be included in this process because MarBorg, the hauler for solid waste Zone Two, has two 5-year options in its franchise which allow it to continue Zone Two services until June 2023.

Subsequently, Allied agreed to sell its Santa Barbara interests to MarBorg. On July 12, 2011, Council approved the assignment of the Zone One agreement to MarBorg, consolidating the City’s solid waste operations under one hauler. At that time, Council also invited MarBorg to submit a preliminary proposal for Zone One, within 60 days, for evaluation as an alternative to engaging in an open competitive process.

Council awarded a professional services contract to HF&H Consultants, LLC (HF&H) in the amount of $120,200 for assistance in the competitive procurement process in May 2011. With the receipt of MarBorg’s proposal in September 2011, City staff and HF&H shifted their primary efforts to evaluating the proposal. The results of the analysis are discussed below.

Proposal

MarBorg has proposed service and rate changes for both zones, consolidating them into a single franchise. Absent specifications that would normally be provided by the City in an RFP process, MarBorg was free to propose significant changes to rate structure and policy that were not suggested by City staff or Council. MarBorg also included an alternate proposal to assume customer billing responsibility, but since this would result in a loss of $820,000 to the General Fund, our analysis focused on the base proposal. A summary of the proposal is included as Attachment 1.

HF&H Findings

HF&H has presented the following summary findings to the City.

- ***Reasonableness of Service Changes Proposed:***

  - The proposal includes most of the major service components of a franchise agreement under current industry standards.

- ***Implications of Proposed Rate Restructuring*:**

  - The proposed rate restructuring increases commercial and multi-family residential rates to reduce single-family residential rates (significant policy issue);
  - The proposed rate restructuring reduces business financial incentives to recycle which could negatively affect the City's ability to meet its diversion mandates and goals (significant policy issue);

- ***Cost Competitiveness/Proposed Hauler Compensation:***

  - Proposed net compensation to MarBorg is slightly above the current level, and does not appear to reflect any potential savings from efficiencies created from serving both zones or from expected single family customers' migration to less expensive curbside service;
  - The proposal takes City fees from the October 2011 rate increase that are retained by the City for Solid Waste Fund operations (currently $347,000 per year) and incorporates those funds into the rates retained by the hauler;
  - By recouping the full 2009 rate guarantee equivalent from the business sector, the proposal effectively discontinues the $300,000 negotiated Fiscal Year 2012 concession from MarBorg to account for the effect of the economic decline on the business sector;
  - Overall hauler compensation appears to be towards the high end of the observed ranges based on recent competitive results;
  - If the City were to proceed with negotiations with MarBorg, the City should expect to negotiate a more favorable proposal, using this current MarBorg proposal as a starting point for negotiations.

- ***Diversion Commitments***

  - The proposal does not propose increases to diversion levels, or make assurances for meeting the City's current and future diversion mandates and goals.

Exclusive Negotiations Versus Competitive RFP

It is difficult to predict whether the City could attract a better franchise contract through a competitive public RFP process than it could through further exclusive negotiations with MarBorg. In an analysis of 22 competitive RFPs managed by HF&H:

- Customer rates changes ranged from a 14% increase to a 41% decrease;
- Overall the hauler's revenues decreased in 20 of the 22 cities (90%);
- The median rate change in the 22 RFPs was a 17% rate decrease;
- If the median rate change were achieved just for Zone One, the resulting citywide rate reduction would be approximately 8.5% (17% x 50% of customers).

This analysis suggests that the City could potentially do much better if it were to conduct a full open competitive process.

However, the City has unique challenges that may limit the number and the quality of the competitive bids. The City is geographically isolated from major population centers and there are no other significant local franchises up for renewal in near future. Only Zone One, half of the City, could be included in an RFP at this time because MarBorg has the right to service Zone Two until 2023. It would be expensive for an outside hauler to come in and set up a base of operations to service just half of the City, which might make it difficult for a hauler to be competitive. The recent competitive process at the County showed that a major North County hauler without an existing South Coast base of operations (Waste Management) proposed higher rates in the South Coast than both MarBorg and Allied. With Allied now out of the South Coast, a key MarBorg South Coast competitor has been eliminated from consideration.

If the City were to proceed with a competitive RFP, it is possible that the City may attract a better overall proposal, either from another hauler or from MarBorg; although there is no assurance another proposal would be received.

Key Issues For Negotiation

Staff has some key concerns about the current proposal.

- Competitive procurements generally lead to a "sharpening of the pencil" that leads to better overall rates for customers, yet this proposal actually slightly increases hauler revenues, significantly increases customer rates in all but the single family sector, and does not reflect expected efficiencies achieved through the consolidation of the two zones.
- The solid waste fund stands to lose approximately $406,000 per year that is needed for operations. This includes the loss of approximately $347,000 from the October fee increase, $40,000 for Looking Good Santa Barbara, and $19,000 in public education funding.
- The proposal effectively discontinues MarBorg's current concession for the effect of the economic downturn on the business sector.

- Under best industry practices, we would expect to see increasing diversion commitments and diversion guarantees to help the City keep pace with increasing State Mandates, but these are not included in this proposal.
- The proposed rate restructuring would reduce many of the financial incentives for diversion in the business and multi-unit sectors, which we expect would negatively affect current diversion levels.
- The proposal provides overall single family residential rate reductions by increasing overall rates to businesses, and overall rates multi-family residential rate payers to a lesser extent.

However, these concerns and other issues could be addressed through negotiations should the City elect to engage in exclusive negotiations with MarBorg.

Recommendation

Although HF&H and staff believe that the proposal can and should be improved upon through further negotiations, the MarBorg proposal provides a good starting point to begin those negotiations. Staff recommends, with the concurrence of the Ad Hoc Committee, suspending the competitive RFP procurement process and entering into a period of exclusive negotiations with MarBorg, subject to certain conditions. If approved by Council, staff would begin negotiations with MarBorg, working closely with the Council Ad Hoc Committee.

Staff would first enter into a preliminary written agreement for a period of exclusive negotiations with MarBorg, in a form acceptable to the City Attorney, which would cover the preconditions of negotiation. These include the following:

1. MarBorg's agreement to a City option to extend the current franchise agreement for Zone One by one year, until June 2014, under current terms should negotiations not be successfully completed by June 30, 2012;
2. MarBorg's agreement to pay for the City's consultant costs for the procurement process; and
3. MarBorg's agreement to provide City staff access to all available information and documentation relating to franchise cost and profits from the existing two franchise zones currently serviced by MarBorg.

Assuming an agreement is reached, staff would return to Council with a resolution of intent to award the franchise to MarBorg which would include the full terms of the proposed agreement. No sooner than 20 days later, as required by Article XIV of the City Charter, Council would need to hold a public hearing on the proposed franchise award. This would allow the public to weigh in on any changes. It would also provide any other interested hauler the opportunity to comment and express interest in presenting a competing proposal. Following the public hearing, the Council could approve the proposed franchise agreement or decide to pursue the other alternatives.

ATTACHMENT: Summary of Proposal

PREPARED BY: Kristy Schmidt, Employee Relations Manager
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SUBMITTED BY: Robert Samario, Finance Director

APPROVED BY: City Administrator's Office

MARBORG 9/12/2011 PROPOSAL FOR SOLID WASTE SERVICES
SUMMARY OF PROPOSAL

Proposal Areas

This summary focuses on the following proposal elements:

- Service Levels
- Collection Methods
- Rate Restructuring
- Customer Rates and MarBorg's Revenue Levels
- City Fees and Funding
- Diversion

1) Service Levels

The proposed services are similar to current services, with modest modifications and enhancements that are consistent with modern industry practice.

a. Would provide single family residential customers unlimited recycling (currently 96 gallons per week) under the basic trash service rate;
b. Would provide single family residential customers 192 gallons of green waste per week plus 6 extra green waste pick-ups per year (currently 32 gallons per week) under the basic trash service rate;
c. Would provide single family customers with twice yearly on-call bulky item service (currently once per year) and unlimited white goods collection (dishwashers, refrigerators, stoves, etc.) free of charge;
d. Would provide trash, recycling, and greenwaste containers to residential cart and can customers (currently, can customers must provide their own trash container).
e. Would provide twice yearly on-call bulky item service and unlimited white goods collection to multi-family residential complexes as requested by the account holder (currently no bulky item service);
f. Dumpster foodscraps collection service would be made available to multi-family residential customers on a subscription basis;
g. Weekly single family and multi-family residential service would include household battery and cell phone collection;
h. Single family residential and multi-family residential would be eligible for a medical sharps (syringe) mail-in disposal program;
i. Single family and multi-family residents could set out extra material for the two weeks following Christmas at no additional charge.
j. City departments to receive food waste service at 70 events per year at no additional charge.

2) Collection Methods

The proposal assumes continued 100% semi-automated collection service. This is a significant difference from the City of Goleta and the County Zone Two, where fully automated collection led to significant overall rate decreases. According to MarBorg, the City is not a candidate for fully automated service.

3) Rate Restructuring

MarBorg has proposed significant rate restructuring. Because some of these proposed changes would implicate a significant change in Council's established policy direction, staff expects Council would want to consider them more fully before implementing them.

Single Family Residential

- Single family residential rates would be the same for all residences, no matter how steep the slope and no matter how far the roll-out from the enclosure to the curb. Customers with steep driveways or roll-outs of over 100 feet currently pay a premium.
- Those single family residences electing curbside cart service would now receive a 5% discount. There is currently no discount for bringing your cart to the curb.

Multi-family Residential

- In the multi-family residential sector, there would be a new minimum cart/can service level at a reduced cost for very small volume producers.
- Multi-family residential dumpster service would be provided at the same rates as for businesses. Currently, multi-family residential dumpster rates are lower than business rates.
- Multi-family residential dumpster rental would be included in the service rates and not charged separately.
- Multi-family residential incentives for recycling and greenwaste would be greatly reduced for cart/can service and for dumpster service with more than once weekly collection frequency.
- Foodscraps would be available at a 10% discount off the price of trash for multi-family residential dumpster customers.

Business

- Rate incentives for business diversion would be significantly reduced. For recyclables, greenwaste, and foodscraps, customers currently receive a significant discount of between 83%(carts) and 69%(dumpsters) off the cost of trash. MarBorg proposes that this incentive be reduced to 50% off the cost of trash for recyclables. For greenwaste and foodscraps, the incentive would be reduced to only 10% off the price of trash. It is important to note that customers would pay two to four times more than their current rates for these recycling services. Trash producers, on the other hand, would benefit from proposed trash rate reductions.
- Businesses would no longer receive a discount for providing their own dumpsters.

Another significant implication of the proposal is that the rates proposed generally give single family rate reductions that are funded by the business sector, and the multi-family sector to a lesser degree. Total revenues under October 2011 rates are currently roughly split at 33.7% Single Family/22.7% Multi-family/43.6% Business. Under the proposed rates assuming the same service levels, this would be 28.7% Single Family/ 24.4% Multi-family/ 46.9% Business.

4) Customer Rates and MarBorg's Revenue Levels

On an overall basis, compared to October 2011 rates, customer billings under the proposed rates would increase by approximately 1%.

- Single family residential customers would see a 14% decrease. Decreases would be highest for those with long roll-outs or steep driveways, those who elect to take their carts to the curb, and those with significant recycling and greenwaste.
- There would be an 8% overall increase to multi-family residential customers. Smaller cart/can accounts would see minor decreases, particularly those with low diversion. The larger multi-family complexes that have dumpster (dumpster) service would see the greatest increases, particularly if they have collection more than once per week and/or significant recycling and greenwaste diversion.
- Business customers would see an 8% overall increase. Customers who divert a lot would see the biggest increases, with some paying two to four times as much for recycling, greenwaste, and foodscraps service. Trash rates would be reduced.

On an overall basis, compared to October 2011, MarBorg's proposed rate revenue after deducting City fees would increase by approximately 2%, however after accounting for changes in services and City fees**,** MarBorg's proposed revenue would increase by approximately 1%.

Because MarBorg has proposed rates that would not include a July 2012 collection cost CPI increase that it would be entitled to under the current agreements, by July 2012 MarBorg likely would be earning closer to the same net revenue as under the current agreement.

5) City Fees and Funding

MarBorg's proposal assumes that the City would no longer need the fee increase from October 2011, because the business rate guarantee to MarBorg would be eliminated. What MarBorg did not know at the time of the proposal was that the fee increase in October also covered the loss of funds from other sources, such as the franchise fee and recycling revenues. Under MarBorg's proposal, in addition to the $229,000 in excess of business revenues currently being paid to MarBorg under the rate guarantee, approximately $347,000 in business sector revenue from the October 2011 rate increase that is currently retained by the City to fund City operations would now go to MarBorg.

Also notable is that the fees proposed by MarBorg would generate enough business sector revenue to fully restore the November 2009 rate guarantee level of revenue. In the current fiscal year, MarBorg agreed to accept a concession of approximately $300,000 out of that rate guarantee in recognition of the effect of the economic downturn on business sector revenues versus the rate changes implemented by the City.

(Note: estimates are based on annualized values, actual values may differ slightly due to monthly service variation)

MarBorg has proposed decreased funding to support the Looking Good Santa Barbara program (reduced by $40,000 per year) and the City's public education efforts (reduced by approximately $19,000 per year).

MarBorg has also proposed reduced service to the City's Annex yard, requiring that more materials be delivered to the MarBorg C&D facility by the City for processing instead.

<u>Diversion</u>

Though not included in the proposal, MarBorg clarified to HF&H that it estimated a diversion rate of 41% under the new franchise agreement. This would be virtually no net increase in franchise diversion from current levels, as 40% diversion was reported in CY 2010.