

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA DECLARING ITS INTENTION TO GRANT A TEN-YEAR EXCLUSIVE FRANCHISE FOR CITYWIDE SOLID WASTE COLLECTION AND DISPOSAL SERVICES IN THE CITY TO MARBORG INDUSTRIES, INC., A CALIFORNIA CORPORATION.

WHEREAS, On December 13, 2011, the City Council of the City of Santa Barbara directed the Finance Director to enter into sole source negotiations with MarBorg Industries, Inc. ("MarBorg") for a Citywide Solid Waste Franchise Agreement;

WHEREAS, the City and MarBorg have subsequently reached agreement to terms for a new ten-year Citywide franchise;

WHEREAS, the terms of the new franchise include acceptable rates for customers and a reasonable profit for MarBorg, similar to what the City could likely expect to achieve through a competitive procurement process;

WHEREAS, the terms of the new franchise include desirable new services for ratepayers and the City and new diversion requirements that will help the City to meet anticipated future State mandates; and

WHEREAS, Section 1401 of the Charter of the City of Santa Barbara requires the City Council to publicly declare its intention to grant a franchise and to state the character of the franchise and the terms and conditions under which the franchise will operate, and to fix a specific date and time where persons having an interest in the franchise agreement may be heard by the City Council, and any objection to the franchise agreement may be expressed.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SANTA BARBARA AS FOLLOWS:

SECTION 1. Pursuant to Section 1401 of the City Charter, the City Council of the City of Santa Barbara declares its intention to hold a public hearing on Tuesday, January 29, 2013 at 2:00 pm in the City Council Chambers of the Santa Barbara City Hall located at 735 Anacapa St., Santa Barbara, CA 93101 to consider granting a ten-year franchise to MarBorg Industries, Inc. for solid waste collection and disposal services Citywide.

SECTION 2. Any and all persons having an interest in the proposed franchise or any objection to the proposed franchise agreement will be heard by the City Council on that date, and any objection to the franchise agreement may be expressed at such hearing prior to a City Council determination on the franchise and the possible introduction of an ordinance authorizing and approving award of the franchise to MarBorg.

SECTION 3. The terms and conditions of the proposed franchise agreement are generally described in the Exhibits attached hereto as Exhibit "A" and Exhibit "B", both dated October 17, 2012.

SECTION 4. In accordance with Section 1401 of the City Charter, the City Clerk is hereby directed to publish this Resolution at least once within fifteen (15) days of its adoption in the official newspaper.

Tentative Agreement
Deal Points 10-17-2012

Unless specifically proposed to be changed, below, terms under the contract will be the same as under the current MarBorg Zone 2 as modified by MarBorg's proposal to the City of September 2011, allowing for mutually agreeable modernization of language and other changes. The deal points below are for purposes of reaching conceptual agreement and are not meant to constitute contract language. Approval to these terms subject to subsequent agreement between negotiators to a comprehensive franchise agreement document, and final approval by MarBorg's Board of Directors and the City Council.

Issue	Proposal
Term	There will be two portions of the agreement, the Transition Plan and the new Franchise Agreement. The Transition Plan will become effective 30 days following adoption by ordinance of the award of the franchise to MarBorg. The new franchise terms for both zones will become effective upon expiration of the current franchise agreement for Zone 1 (midnight on June 7, 2013). As of that date, the new agreement will replace the existing agreement for Zone 2. The new agreement will expire at midnight on June 7, 2023.
Compensation to MarBorg	New rates will be effective July 1, 2013 as proposed and as adjusted for CPI and tipping fee for Fiscal Year 2014 pursuant to the contract. Until the new rates become effective, compensation to MarBorg will continue at existing rates, including the business sector revenue guarantee. MarBorg will continue its revenue concession totaling \$300,000 to the City, which was originally negotiated and enacted for Fiscal Year 2012, for Fiscal Year 2013. [Concession payment may be made by a lump sum payment, or through reductions to monthly payment to MarBorg from the City]
Agreement on Recycling Revenue Sharing	The City and MarBorg will enter into negotiations for a separate agreement regarding the sharing of any revenues derived from the sale by MarBorg of comingled recyclables or any other materials collected pursuant to the franchise agreement. Such negotiations may begin at any time, however the City agrees that the effective date of any revenue sharing arrangement will not be earlier than January 1, 2014.
July 2012 CPI	As proposed by MarBorg, there will be no CPI adjustment for

increase	July 2012. The first CPI increase would be July 1, 2013.
Adjustment for Significant Decline in Profit	If, no sooner than 60 months after the effective date of the agreement, MarBorg demonstrates to the satisfaction of the City's Finance Director that the franchise has become structurally unprofitable over the long term, MarBorg may request that the City consider a special rate increase. MarBorg will reimburse the City for the full cost of outside auditing services to evaluate such request. Approval of such rate increase will be at sole discretion of the City Council.
Single Family Service	<p>Service will be provided as current, with enhancements proposed by MarBorg in September 2011 proposal.</p> <p>[E.g., weekly service; Basic single family trash rates will include: 32 gallons trash; unlimited comingled recycling; 192 gallons of green waste; two bulky item clean ups per year; unlimited white goods collection; household battery and cellular phone collection; a sharps mail-in program; six extra greenwaste tags for use throughout the year; unlimited extra collection of trash, comingled recycling, and green waste on collection day during two weeks following Christmas.]</p> <p>Service will be backyard <u>can</u> service unless curbside <u>cart</u> service is selected by the account holder after being apprised of both alternatives. There will be no rate discount for curbside cart service. Backyard cart service will be available at a premium.</p> <p>Single family service includes the option of a greenwaste dumpster collected once per week at the single family rate.</p> <p>There will no longer be a green waste only rate. MarBorg will collect trash, greenwaste, and recycling on the same day.</p>
Definition of Multi-Unit Residential Customer	Any residence, or group of residences, with two (2) or more Dwelling Units, including any flat, apartment, duplex, triplex, condominium, town home or other premises, other than a hotel or motel, used for housing persons and serviced with one (1) or more common Containers.
Basic Multi-Unit Service	<p>Service will be provided as current, with the enhancements proposed by MarBorg in the September 2011 proposal.</p> <p>(e.g., 1x to 6x weekly service; the minimum service rate will include: 32 gallons trash; 96 gallons of comingled recycling; 96 gallons of green waste; two bulky item clean ups per year per account; unlimited white goods collection; household battery and cellular phone collection; a sharps mail-in program; six extra greenwaste tags for use throughout the year; unlimited extra</p>

	collection of trash, comingled recycling, and green waste on collection day during two weeks following Christmas. Customers will continue to have free access to ABOP and buy back centers.
Business Service	Service will be provided as current, and as proposed by MarBorg in the September 2011 proposal.
BUS and MUR (Dumpster) Foodscraps Collection	<ul style="list-style-type: none"> • MarBorg will provide foodscraps containers and will collect the containers at the frequencies as listed on the Rate Schedule. • MarBorg will maintain foodscraps separate from other materials (trash, recycling and greenwaste). As directed by City, MarBorg may commingle greenwaste and foodscraps in the same container. • MarBorg will deliver foodscraps to the South Coast Transfer Station unless otherwise directed by City • MarBorg will pay the foodscraps tipping fee (currently \$54 per ton) directly to the City's foodscraps processor. • At the request of City or customers, MarBorg will steam clean foodscraps containers up to two times per year at no additional cost to the customer. Customers that request additional steam cleaning of containers will be charged the Steam Clean rate listed on the Rate Schedule. • MarBorg will begin providing MUR foodscraps service with 90 days written notice from the City to commence such service.
Definition of Foodscraps (or Food Material):	Foodscraps and trimmings from food preparation generated by food processing establishments, grocery stores, institutional cafeterias (such as prisons, schools and hospitals), restaurants, and/or residential food scrap collection. These materials include, but not limited to: meat, fish and dairy waste, agricultural products, fruit and vegetable waste, grain waste and acceptable food packaging such items as pizza boxes, paper towels, waxed cardboard, contaminated paper products and other items deemed "compostable" by the manufacturer such as tableware, utensils and other implements used to serve or store food products.
ABOP/Buy-Back Center Facilities	MarBorg will continue to operate its ABOP/Buy back Center facilities, and City single family and multi-unit residential will have free access to downtown ABOP and buy back centers. MarBorg will also report usage and origin data in a form and frequency acceptable to City.
Notification of Bulky-Item and White Goods Collection	Upon receiving notification of SFR and MUR customers to close an active account, MarBorg will notify the customer of Bulky Item and White Goods Collection service to which the customer is entitled.
Protocol for	<ul style="list-style-type: none"> • Upon request by customer for Bulky Item Collection or

Scheduling Annual Pick-Up/Bulky Item Collection	<p>service, MarBorg will enter a note into the CIS Utility Billing System.</p> <ul style="list-style-type: none"> • MarBorg will collect Bulky Items and/or White Goods at least two days per week or in sufficient frequency to prevent lengthy accumulation of goods at the curb.
Access to MarBorg Customer Service Information System	<ul style="list-style-type: none"> • MarBorg will provide to the City access to its customer service information system, currently IPAC, in order for City to have timely access to City customer information.
Collection Method	<p>The collection method in all sectors will be semi-automated, as defined. Any change to fully automated service in any neighborhood or other area must be approved by the City, following negotiations over rate relief to customers associated with the reduced costs of providing fully automated service. All materials collected through franchised service will remain the property of the City of Santa Barbara.</p>
Days of Collection	<p>MarBorg may adjust routes so that trash, green waste and recycling are collected on the same day.</p>
Hours of Collection	<p>MarBorg will confine collection of carts, cans and dumpsters to the following hours:</p> <p>Residential: 7:00 am – 6:00 pm Commercial: 5:00 am – 6:00 pm*</p> <p>*if nearby residents complain to City or MarBorg regarding noise, then collection will begin no earlier than 6:00 am in those areas.</p>
BUS and MUR Cart Set-Out Site	<ul style="list-style-type: none"> • MUR: the default service location for MUR carts will be at the curb. • BUS: the default service location for BUS carts will be at the curb. However, MarBorg will continue to service BUS carts from any BUS customer service location (regardless of owner/operator of the business) at the location where the carts are currently set out for collection. • Any new BUS customer requesting cart service will be serviced at the curb unless “service-in-place” service is requested by City. • There will be no backyard service charge on BUS carts.
Collection Frequencies	<p>MarBorg will provide collection at any frequency listed on the rate schedule. Default foodscraps collection will be Monday, Wednesday and Friday. However, at the customer’s request, MarBorg will provide more frequent foodscraps collection service at the rate listed on the Rate Schedule.</p>
Minimum Collection Frequency	<p>Minimum collection frequency for SFR, MUR and BUS customers will be one time per week.</p>
Maximum Collection Frequency	<p>Maximum collection frequency for SFR will be one time per week. SFR customers requesting collection service at</p>

	<p>frequencies greater than one time per week will be charged MUR service and will be identified as MUR customers in the CIS database.</p>
Repeated Overflow Charge	<p>Any customer whose solid waste container or containers have significant and repeated overflowing solid waste prior to being emptied on collection day, will be subject to an overflow charge. The rate for the overflow charge will be the same as the extra pick up rate for the applicable container.</p> <p>No overflow charges may be assessed unless (A) Written notice of an overflow has been provided to the account holder of the premises (e.g. notice affixed to container and photo proof of service), and a subsequent overflow occurs at the premises within ninety days: (i) after such notice has been given; or (ii) after the last overflow charge has been assessed at the premises; and (B) There is significant overflow from the container and the container cannot be closed, and (C) overflow is evidenced by a photograph; and (D) The overflow actually has been collected by MarBorg.</p> <p>No overflow charge will may be assessed for overflow that is caused by a late, missed, or improperly performed collection by MarBorg.</p> <p>Overflow charges assessed pursuant to this chapter may be waived by the Finance Director, or his/her designee, or by MarBorg if it is determined that the owner or manager of the premises has taken reasonable steps to avoid future overflows, including but not limited to increasing the container capacity and/or collection frequency on the premises, installing locks on the lids of containers and/or on access gates to curtail illegal dumping by third parties, or other property management measures designed to avoid overflows.</p>
Repeated Contamination Charge	<p>Any customer whose green waste, recycling, or foodscraps container shows significant and repeated contamination will be subject to a contamination charge. Contamination will only be counted where such contamination requires MarBorg to treat the entire contaminated container as trash, rather than subjecting it to alternative processing as green waste, foodscraps, and/or recycling. The rate for the contamination charge will be the same as the extra pick up rate for the applicable container.</p> <p>No contamination charges may be assessed unless (A) Written notice of an contamination (e.g. Notice of Non-Collection affixed to contaminated container and photo proof of service), has been</p>

	<p>provided to the account holder of the premises, and a subsequent overflow occurs at the premises within ninety days: (i) after such notice has been given; or (ii) after the last overflow charge has been assessed at the premises; and (B) the contaminated container is evidenced by a photograph; and (D) The contaminated container actually has been collected by MarBorg.</p> <p>No contamination charge will may be assessed for contamination that is caused by a late, missed, or improperly performed collection by MarBorg.</p> <p>Contamination charges assessed pursuant to this chapter may be waived by the Finance Director, or his/her designee, or by MarBorg if it is determined that the owner or manager of the premises has taken reasonable steps to avoid future contamination, including but not limited to increasing or reallocating the container capacity and/or collection frequency on the premises, installing locks on the lids of containers and/or on access gates to curtail illegal dumping by third parties, or other property management measures designed to avoid contamination.</p>
Collection Vehicles	<p>Collection vehicles will be as provided currently, with enhancements proposed by MarBorg in its September 2001 proposal. MarBorg will use current diesel vehicles through the end of their depreciation period (10 years) after which vehicles will be replaced with new CNG vehicles. MarBorg will have 1 year from the franchise effective date to replace vehicles that are already fully depreciated with CNG vehicles.</p>
Containers	<p>Service will be provided as current, with enhancements proposed by MarBorg in its September 2011 proposal. The following specific terms will apply:</p> <ul style="list-style-type: none"> • Single Family residential customers will continue to provide their own trash cans. MarBorg will provide trash cans to multi-unit residential and business customers. MarBorg will provide trash carts and dumpsters to all customers. • MarBorg will provide all recycling and green waste carts, cans, and dumpsters to all customers. • MarBorg will provide all foodscraps carts, cans, and dumpsters to Business customers and foodscraps dumpsters to Multi-Unit Residential customers. • There will no longer be a multi-unit residential fee assessed for dumpster rental. Dumpster rental will be included in the proposed rates. • There will no longer be a credit for business owned

	<p>dumpsters. Dumpster rental will continue to be included in the proposed rates.</p> <p>MarBorg will maintain, repair and replace all containers that it provides.</p>
Container Marking	<p>MarBorg will provide carts, cans and dumpsters that include the following information:</p> <ul style="list-style-type: none"> • Material Type: “Trash,” “Recycling,” “Greenwaste” or “Foodscraps” • Container Size: e.g. 32 gallons, 2 yard, etc. • Contractor’s Name (MarBorg) and customer service phone number • Common items associated with each material type • Prohibited Items: items that are prohibited from being placed into the container for collection (e.g. household hazardous waste, commingling of trash or greenwaste in recyclables container, etc.)
Free Services Provided by MarBorg	<p>MarBorg will continue to be able to provide free service to customers and employees, at its option, with written notice to the City. MarBorg will be the billable party for such service and will remit full payment to the City Utility Billing Office (including City fees and taxes). MarBorg will recoup its own service fees on free services, less City fees and taxes, through normal monthly payments from the City.</p>
Additional Containers for SB Schools	<p>MarBorg will continue to provide carts not set out for collection (not serviced) for classrooms and campuses as requested by SB School District personnel.</p>
Annex Yard Service	<p>There will be an annual cap on annex yard collection service of 3000 tons or 750 trips, as proposed by MarBorg</p>
MarBorg C&D Facility	<p>The amount of spoils and City-collected illegally dumped material that the City may disposed of for free at the MarBorg C&D Facility will be increased to 2000 tons, as proposed by MarBorg in its September 2011 proposal. MarBorg will offer an additional 1000 tons of disposal at cost (10% discount).</p>
Public Places and Municipal Buildings	<p>MarBorg will service all MTD bus stops, public containers, parks, municipal buildings, either existing or placed into service during the contract term, free of charge.</p>
Looking Good Santa Barbara	<p>MarBorg will provide status quo funding of \$80,000 per year for Looking Good Santa Barbara program. The City will agree that such funding will be used for salaries and supplies only. The amount will be automatically adjusted, beginning in July 2013, by the CPI.</p>
Public Communication Fund	<p>The City will agree to a fixed hauler’s liability for support to Public Education at \$141,600 per year. This amount will be automatically adjusted, beginning in July 2013, by the CPI. City will agree to provide MarBorg with an opportunity to review and</p>

	comment prior to release of materials.
Zero Waste Events	As proposed in MarBorg's September 2011 proposal. In addition, MarBorg will provide the number of carts requested by City for each event. MarBorg will steam clean containers before delivering them to the City facility.
Abandoned Waste Collection	MarBorg will provide Abandoned Waste Collection as described in its September 2011 proposal. In addition, MarBorg will collect any abandoned waste within 72 hours following notification to MarBorg by City Environmental Services Division or Streets Division.
City Fees Assessed on Customers	MarBorg will remit City fees as reflected on the rate proposal sheets. Such fees currently include City fees assessed on customers of 8.08% (4% recycling, 3.24% regional, 0.84% closed landfill fees) on hauler revenues from all sectors, plus 5.54% on hauler revenues from the business sector only. [Hauler revenues are calculated as gross revenues less these City fees assessed on customers]. The City may change the structure or amount of such fees after appropriate notice and consultation with MarBorg.
Roll-off and Compactor Billing	Scheduled Roll-offs and compactors will be billed by MarBorg until such time as the City is able to bill them. MarBorg will list each charge as a separate line item including container rental and each pickup service charge. Each pickup will list the date of collection, the material type, the weight, and the total charge. MarBorg will remit City Taxes and Fees to City for services that it bills.
Billing Fee	MarBorg will remit a billing fee of 5% on hauler revenues, as reflected on the rate proposal. [Hauler revenues are calculated as gross revenues less the City fees assessed on customers- currently 8.08% in residential sectors and 13.62% in the business sector]. MarBorg will not remit a billing fee on scheduled roll-off and compactor services that are billed by MarBorg directly to customers.
Franchise Fee	The franchise fee will continue to be 2% of gross revenues.
Existing Diversion Programs	MarBorg will continue to participate in existing diversion programs, as those programs are reflected in current practice and including enhancements reflected in its September 2011 proposal.
New Diversion Requirements	MarBorg will implement the new diversion program contained in Attachment 1, including indemnification of the City under AB939.
Environmental Considerations	MarBorg will provide service consistent with the environmental considerations. CNG vehicle replacements will be as reflected in "collection vehicles" above.
MUR "Backyard Cart Service" Charge	MarBorg will charge MUR customers the "Backyard Cart Charge" as listed on the Rate Schedule. However, the property currently named "Los Amigos Mobile Home Estates" will receive Backyard

	Cart Service at no additional charge throughout the contract term.
Extra Pickups	MUR and/or BUS customers requesting extra pick-up service will be serviced on the next service day. MarBorg will charge the "Extra Pickup" rate listed on the Rate Schedule.
Missed Pickups	In the event of a missed pick up, MarBorg will go back within 24 hours to service the missed containers.
Container Replacement	MarBorg will replace missing containers on the next regularly scheduled collection day.
Container Repair	MarBorg will exchange damaged containers with fully functional containers on the next regularly scheduled collection day.
Container Exchange	Upon request by a customer to exchange containers of one size or material type with containers of a different size or type, MarBorg will make the exchange within five Within five (5) business days.
Liquidated Damages	Updated amounts and categories included at Attachment 2.
Spill Cleanup	<p>MarBorg will not be responsible for cleaning up un-sanitary conditions caused by the carelessness of the Customer; however, MarBorg will clean up any material, fluids or residue that is spilled or scattered by its employees within four hours of spilling or dropping the material or receiving notice of such spill from a customer or the City.</p> <p>Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from MarBorg's operations or equipment repair will be covered immediately with an absorbent material and removed from the street surface. MarBorg will equip its collection vehicles with sufficient quantities of petroleum absorbent materials along with a broom and shovel.</p> <p>MarBorg will maintain a log of spills that indicates the material spilled, quantity and remedial actions taken and will immediately report any spills entering or endangering any waterway or storm drain or any spill of forty-two (42) gallons or more to the State Office of Emergency Service (OES) as required by law.</p>
Hazardous Waste	<p>MarBorg will not knowingly collect hazardous waste, or remove unsafe or poorly containerized hazardous waste from a collection container. MarBorg will refuse to collect hazardous waste and will instead contact the generator and request that the generator arrange for proper disposal. If the generator cannot be reached immediately, MarBorg will, before leaving the premises, leave a Non-Collection Notice indicating the reason for refusing to Collect the material.</p> <p>If MarBorg encounters hazardous waste in a collection container that poses an imminent danger to people or property, MarBorg will immediately call 9-1-1 and the Contract Administrator.</p> <p>If hazardous waste is identified at the time of delivery to the disposal or processing facility, and the Generator cannot be</p>

	identified, MarBorg will be responsible for handling and arranging lawful transport and disposition of the hazardous waste.
Customer Information	<p>MarBorg will collect and maintain the following information on customer accounts during each customer service contact event with the account holder:</p> <ul style="list-style-type: none"> • full first name, middle initial and last name of account holder • address of the property where containers are serviced • customer mailing address • customer electronic mail address • customer landline and mobile phone numbers • Information regarding customer complaints • Last four digits of account holder's Social Security Number or full Tax Identification Number if Business or Home Owner's Association <p>On a monthly basis, MarBorg will update all changes to customer information listed above in the City's Utility Billing System.</p>
CIS Information	<p>MarBorg will record and will ensure that the following information is maintained accurately in the CIS Billing System:</p> <ul style="list-style-type: none"> • MarBorg will identify "high content, "medium content" and "low content" trash containers that are sorted after collection • MarBorg will identify all City facilities and City public containers that receive service from MarBorg
New Customer Packets	<p>MarBorg will mail and/or email (if customer has provided email address) "New Customer Packets" to all new Single Family Residential, Multi-Unit Residential and Business customers within five (5) business days of starting service or from when requested by the customer. City will develop and provide hard copy versions of the New Customer Packet for each sector to MarBorg throughout the contract term.</p>
Credits	<p>MarBorg will provide credits to customers upon return of dumpster locks.</p>
Spanish-Speaking Capacity	<p>MarBorg will ensure that a sufficient number of customer service representatives are fluent in Spanish language.</p>
Transition Plan	<p>Prior to commencement of service under the proposed franchise agreement, MarBorg will complete the following transition tasks:</p> <ul style="list-style-type: none"> • Provide emergency backup plan to City • Provide collection route maps along with customer names, service addresses and days of collection • Provide equipment inventory • Provide emergency contact number to City Contract Administrator • Provide insurance coverages (including endorsements) and

	<p>performance bond</p> <ul style="list-style-type: none"> • Provide procurement schedule for new containers and CNG vehicles • Finalize collection methods for all services described in the franchise agreement (e.g. MUR battery and cell phone collection). • Customer outreach regarding franchise changes: meetings, notices, etc.
Refund Policy	Retroactive to one year from when over-charge is discovered
Defense of Exclusive Franchise	The City may, but will not be required, to take action to defend the grant of the exclusive franchise to MarBorg. MarBorg will defend the validity and enforceability of the exclusive franchise and will pay all costs related to such defense.
Stopping Service on Delinquent Accounts	<ul style="list-style-type: none"> • For all customer accounts that have trash and water service on the same account, the City Utility Billing Office will continue to take the lead on delinquent payments. However, for accounts that have trash service only: • SFR and BUS Accounts: MarBorg will be permitted to discontinue service and collect trash and recycling containers from customers whose accounts are more than 40 days delinquent. • MUR: MarBorg will be permitted to discontinue service and collect trash and recycling containers from customers whose accounts are more than 40 days delinquent. However, if a landlord pays for all units, then MarBorg will also provide notice of discontinued service to each individual customer no later than 48 hours prior to service disruption. • Before stopping service to any account, MarBorg will provide 10 days prior written notice to the City.
Updates to Amounts	Updates to other monetary amounts in the franchise agreement (performance bond and insurance requirements, liquidated damages, assignment fees, etc.) will be made in consultation with appropriate City and MarBorg staff.
Existing Covenants to Remain	The assurances and covenants from MarBorg provided in consideration of the grant of the two five-year options to extend the term of the agreement between the City and MarBorg for Zone Two of the City shall be included in the new franchise agreement, with appropriate updates of monetary amounts: 1. Section 3.17 Construction and Operation of the MarBorg Recycling Facility; 2. Section 12.12 "Rates not to Exceed Comparable Localities;" 3. Section 14.01 "Restrictions on Assignment;" and 4. Section 14.02 "Binding on Successors."
Billing Change	City will initially continue to do billing. If the City chooses to designate MarBorg to assume customer billing responsibility

	during the term of the agreement, MarBorg will cease paying the City the 5% billing fee, and there will be a resulting 5% reduction in the City's MSW rates
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Diversion Program

<p>AB 939 Indemnification</p>	<p>MarBorg will be responsible for ensuring the City meets its 50% diversion requirement under AB 939. MarBorg agrees to indemnify City in the event the diversion, source reduction and recycling goals of the Integrated Waste Management Act (Act) are not met by City. City and MarBorg agree to negotiate with respect to any additional Act-related services, which MarBorg and City agree to implement</p>
<p>Citywide Diversion Requirement</p>	<p>The current commercial diversion requirement 3.18 will be supplanted by a citywide franchised service diversion requirement.</p> <p><u>Minimum Diversion Requirement:</u> MarBorg will increase the annual percentage of source-separated recyclables, greenwaste and foodscraps collected in carts, cans, dumpsters, scheduled roll-off boxes and compactors for all customer classes by at least one percentage point per Contract Year throughout the term of the Agreement.</p> <p><u>Measurement of Minimum Diversion Requirement</u> The annual diversion rate citywide will be measured by calculating the annual percentage by weight that source-separated recyclables, greenwaste and foodscraps collected by MarBorg from scheduled carts, cans, dumpsters, roll-off boxes and compactors comprises of the total solid waste collected by MarBorg for each Contract Year. Contract Year is defined as “a period of twelve (12) months beginning July 1st and ending June 30th.”</p> <p>The annual diversion rate citywide will be calculated as follows: (Recyclables+ Greenwaste +Foodscraps collected during the Contract Year) / (Total Waste collected during the Contract Year)</p> <p>Recyclables include:</p> <ul style="list-style-type: none"> • Gross weight of franchise material collected in blue designated recycling cans, carts, and dumpsters and charged a recyclables rate. • Gross weight of franchise material collected in scheduled roll-off containers or compactors that is listed on the customer bill as Comingled Recycling, Metal, or Cardboard and charged the tipping fee for that specific commodity.

Greenwaste Includes:

- Gross weight of franchise material collected in green designated greenwaste cans, carts, and dumpsters and charged greenwaste rates.
- Gross weight of franchise material collected in scheduled roll-off containers or compactors that is listed on the customer bill as Greenwaste, Sawdust, or Wood Waste, and charged the tipping fee for that specific commodity.

Foodscraps Includes:

- Gross weight of franchise material collected in yellow designated foodscraps carts and dumpsters and charged foodscraps rates.

Total Waste Includes:

- All material collected in franchise cans, carts, dumpsters, scheduled roll-off containers and compactors excluding roll-off containers that contain 100% inert materials generated from construction and demolition.

Data used in calculating the annual diversion rate citywide will be taken from the Monthly Reports submitted by MarBorg. As shown in Attachment 3, diversion shall equal the sum of the tonnages in blue cells and total waste shall be considered as the sum of the tonnages in both the blue and yellow cells. Data in grey cells will not be used in calculating the annual diversion rate citywide. The annual diversion rate citywide will be calculated from data from both zones.

The scheduled collection of construction and demolition debris in roll-off containers is not included in the calculations.

Compliance with the Minimum Diversion Requirement Citywide:

MarBorg will be deemed to be in compliance with the Minimum Diversion Requirement provided that the following equation yields a value of greater than or equal to 1% for any given Contract Year throughout the term of the Agreement:

(Annual Diversion Rate Citywide at the end of the Current Contract Year minus the Baseline Diversion rate) / (Total Number of Contract

	<p>Years since July 1, 2013)</p> <p>Greater than required diversion in any year will not increase the total minimum percent diversion for any subsequent year.</p> <p><u>Baseline Diversion Rate Citywide:</u> The baseline diversion rate citywide will be established in July of 2013 pursuant to the following formula:</p> <p>(Recycling+ Greenwaste +Foodscraps collected between July 1, 2012 and June 30, 2013) / (Total Waste Generated between July 1, 2012 and June 30, 2013)</p>
Corroboration of Diversion	<p><u>Corroboration of Diversion</u> MarBorg will provide the City with any documentation that the City requests in order to verify compliance with the minimum diversion requirement, including but not limited to information currently contained in MarBorg’s monthly reports to the City. In particular, MarBorg will retain information such as weigh tickets, invoices, bills of lading, or receipts which the City may request. MarBorg will provide City with copies of documentation within 7 days of City request.</p> <p><u>Weighing and Record Requirements</u> MarBorg will cause a weigh master who is certified under law to weigh all recyclables, green waste and foodscraps upon delivery to the City-designated facility and record all of the following information:</p> <ol style="list-style-type: none"> a. weight and material type, b. delivery date and time, c. route and truck number, and d. driver name and any identification number
No Commingling	<p>MarBorg will not mix refuse, recyclables, green waste and foodwaste. Parties acknowledge that customers might not cooperate with collection programs and might discard refuse, recyclables or green waste together in the same container.</p>
Sorting of Commercial Loads at MarBorg C&D Facility	<p>City, at any point during the term of the Agreement may direct the flow of any franchised material to other diversion facilities and may explicitly prohibit sorting of trash loads at the MarBorg C&D Facility.</p>
AB 341 Diversion Subscription Requirements	<p>For the purposes of this Section, Business customers that generate a minimum of four (4) cubic yards of trash per week and Multi-Unit Residential customers comprised of five (5) or more dwelling units are referred to as “AB 341 Customers.”</p>

	<p>Within 5 years following execution of the Agreement, and throughout the remainder of the Agreement, MarBorg will ensure that at least 30% of subscription collection service (including free and paid containers) is comprised of diversion services (commingled recycling, greenwaste and foodscraps) for 90% of all AB 341 Customers.</p> <p>Implementation: For each of the first five consecutive contract years, MarBorg will ensure that an increasing increment of at least 18% of all AB 341 Customers are brought into compliance with the 30% diversion requirement.</p> <table border="0"> <thead> <tr> <th><u>End of contract year</u></th> <th><u>Percent with 30% diversion</u></th> </tr> </thead> <tbody> <tr> <td>Year 1</td> <td>18%</td> </tr> <tr> <td>Year 2</td> <td>36%</td> </tr> <tr> <td>Year 3</td> <td>54%</td> </tr> <tr> <td>Year 4</td> <td>72%</td> </tr> <tr> <td>Year 5 (& thereafter)</td> <td>90%</td> </tr> </tbody> </table> <p>Trash containers designated in CIS as “High Content,” “Medium Content” and/or “Low Content” will be viewed as trash containers when evaluating compliance with the 30% subscription requirement. Moreover, diversion collection service that MarBorg provides free of charge to customers or for which MarBorg pays customers for commodities (e.g. source-separated glass) will be counted toward the 30% diversion requirement provided that the non-billed diversion containers are identified in the CIS Billing System.</p> <p>The subscription based diversion requirements will be achieved by MarBorg without the adoption of a mandatory commercial recycling ordinance.</p>	<u>End of contract year</u>	<u>Percent with 30% diversion</u>	Year 1	18%	Year 2	36%	Year 3	54%	Year 4	72%	Year 5 (& thereafter)	90%
<u>End of contract year</u>	<u>Percent with 30% diversion</u>												
Year 1	18%												
Year 2	36%												
Year 3	54%												
Year 4	72%												
Year 5 (& thereafter)	90%												
Corroboration of Subscription requirements	<ul style="list-style-type: none"> • AB 341 Customer List: within two months following the execution of the Agreement, and at the beginning of each Contract Year thereafter, MarBorg will provide to City a tentative list of AB 341 Customers along the following information for each customer: <ul style="list-style-type: none"> • CIS Account Number; • Sharing Agreements and the names and account numbers of the sharing parties; • Current service level; and, • Current diversion rate. 												

	<ul style="list-style-type: none"> • At the beginning of each Contract Year, MarBorg will provide City with an updated AB 341 Customer List that identifies the AB 341 Customers with whom MarBorg will work to bring them into compliance with the 30% diversion requirement during the Contract Year. • MarBorg will provide to City information regarding its progress toward achieving this provision in its monthly reports to City. If a customer refuses to subscribe to minimum diversion services as described, the MarBorg will provide documentation of the customer's refusal with its monthly reports to City and record the information in the CIS Billing System.
Diversions Element to Transition Plan	As part of its Transition Plan, MarBorg will develop a Diversion Plan describing how and when it will accomplish the diversion performance standards outlined in the Agreement. MarBorg will revise its Diversion Plan in conjunction with any change in scope of franchise services (for example, addition of a new program in response to increased State diversion requirements).
Assistance to City staff	<p>The following cooperation will continue, consistent with current practice:</p> <ul style="list-style-type: none"> • City may choose to work with customers to improve their diversion performance. If requested by City, MarBorg will make its personnel available to meet with City and customers on service-related issues. • Upon request from City, MarBorg will review building permit applicants' plans and advise applicants regarding adequacy of container storage space and access, particularly to accommodate access to, and collection of recyclable materials. MarBorg will provide this service at no charge to City.
Enforcement of Anti-Scavenging Laws	MarBorg will cooperate with City, including City-instituted civil actions, in enforcing anti-scavenging laws against a person alleged to have violated Public Resources Code Section 41950.

<p>Communication with Customers</p>	<ul style="list-style-type: none">• MarBorg (and its employees) will be a full participant in representing and supporting the solid waste policies and diversion goals adopted by the City Council in its written and verbal communication with customers. • Web Site: MarBorg will maintain a web site with content acceptable to City. MarBorg will post all of the following information on its web-site:<ul style="list-style-type: none">a. information about franchise services, including options for cart sizes,b. a link to the City's current Rate Schedule,c. link(s) to City's websitesd. link(s) to programs or facilities where customer can legally discard special waste (including Universal Waste and e-waste) and hazardous waste,e. MarBorg contact information, andf. other information related to waste management upon City request
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Attachment 2

Liquidated Damages

Collection Reliability	Current	PROPOSED
(a) For each failure to commence service to a new customer account within seven (7) days after order, in excess of five (5) such failures annually:	\$150.00	\$210
(b) For each failure to collect MSW or Recyclable Materials which has been properly set out for collection, from an established Customer account, on the scheduled collection day, in excess of five (5) such failures annually:	\$150.00	\$210
(c) For each failure to collect MSW or Recyclable Materials, which has been properly set out for collection, from the same Customer on two (2) consecutive scheduled pick up days:	\$150.00	\$210
(d) For each failure to prepare for or properly conduct an on-call City- clean up, including failure to timely deliver in good condition and, if a bin or roll-off box, empty of MSW or Recyclable Materials or any other necessary equipment, materials or supplies; failure to provide adequate personnel to dispatch, collect, transport or respond to City's requests for services specific to the clean up event; failure to cooperate with City's traffic control plan(s); failure to clean up any litter generated by MarBorg's personnel at any site utilized by City for event:	\$250.00	\$350
Collection Quality	Current	PROPOSED
(a) (i) For each occurrence of damage to private property which exceeds five (5) such occurrences annually:	\$250.00	\$350
(ii) Failure to repair damage to Customer property caused by MarBorg or its personnel.	N/A	\$700
(b) For each failure to	\$150.00	\$210

properly return any empty container to avoid pedestrian or vehicular traffic impediments or to place any can in an upright position with lid securely fastened, in excess of five (5) such occurrences annually:		
(c) For each occurrence of discourteous behavior to a Customer:	\$250.00	\$350
(d) For each occurrence of excessive noise:	\$250.00	\$350
(e) For each failure to clean up MSW or Recyclable Materials spilled from containers, in excess of five (5) such failures annually:	\$150.00	\$210
(f) For each occurrence of collecting MSW or Recyclable Materials during unauthorized hours, in excess of five (5) such occurrences annually:	\$500.00	\$700
(g) For each occurrence of mixing or adding uncontaminated Greenwaste to MSW and avoiding diversion and/or subsequent separate collection of Greenwaste:	\$200.00	\$280
(h) For each failure to conform to the requirements of Sections 5.02.E.2, Cleaning; 5.02.E.3, Painting; 5.02.E.4, Maintenance; 5.02.F, Operation; 5.03.C, Cleaning, Painting and Maintenance of MarBorg-Furnished Containers; 5.03.D, Compactors; 5.04.B, Driver Qualifications; and 5.04.C, Uniforms, which exceed in any one or a combination of categories above five (5) such occurrences annually:	\$150.00	\$210
(i) For each incident of commingling trash with Source Separated Greenwaste or other Source Separated recyclable materials:	\$250.00	\$350
Responsiveness to Customer	Current	PROPOSED
(a) For each failure to initially respond to a Customer complaint within twenty four (24) hours:	\$100.00	\$150
(b) For each failure to carry out responsibilities for establishing service:	\$500.00	\$700

(c) For each failure to conform to the requirements of Article 6:	\$250.00	\$350
(d) For each failure to weekly comply with Section 6.04.D, that is, for each percentage or a portion thereof in excess of the ninety percent (90%) minimum standard for answering incoming calls before the fourth (4th) ring, or for each percentage or a portion thereof in excess of ten percent (10%) of callers required to wait on hold for more than thirty (30) seconds before being connected to a customer service representative, or for each percentage point or a portion thereof in excess of three percent (3%) that callers, on average as calculated weekly, receive a telephone busy signal:	\$250.00	\$350
(e) Failure to deliver or exchange Cans, Carts, Bins, or other Containers within the time required. (new)	N/A	\$150
(f) Failure to repair or replace damaged Cans, Carts, Bins, or other Containers within the time required. (new)	N/A	\$150
(g) Failure to timely install locks on Bins. (new)	N/A	\$150
(h) Failure to properly cover materials in Collection vehicles.	N/A	\$350
(i) Failure to provide a Spanish speaking Customer Service Representative.		\$150
Submissions to City	Current	PROPOSED
(a) Timeliness; Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:	\$250.00	\$350
(b) Failure to provide information requested by the City pursuant to the agreement, including but not limited to information necessary to ensure the smooth transfer of operations to a new hauler upon termination or transfer of the franchise agreement, within XX days. For each calendar day a report is late, the daily liquidated	N/A	\$350

damage amount shall be:		
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Other Failure to perform	Current	PROPOSED
(a) Failure to deliver any Collected materials to City-approved Disposal Facility, Recyclables Processing Facility, C&D Facility, Composting Facility, or Green Waste Processing Facility, as appropriate, not including direct transfer of materials at an intermediate transfer point pending transport to the City-approved facility, or as otherwise expressly provided in this Agreement.	N/A	\$5,000.00 first failure. \$25,000.00 each subsequent failure.
(b) Failure to meet the minimum diversion requirements (1% per year increase citywide) for any compliance year.	N/A	Shortfall in cumulative diversion requirement for the year: \$50,000 per 0.5% shortfall or part thereof.
(c) Failure to meet the incremental diversion subscription requirement for AB 341 Customers in any compliance year.	N/A	Shortfall in cumulative subscription requirement: \$20,000 per 5% shortfall or part thereof.
(d) Failure to obtain any written approval, consent or approval of City or to notify City when required under the Agreement.		\$210
(e) Failure to cure non-compliance with the provisions of this Agreement in the manner and time set forth in this Agreement.		\$210
(i) For each incident of commingling trash with Source Separated Greenwaste or other Source Separated recyclable materials:	\$250.00	\$350

Attachment 3

Collection Information Zone 1						
Franchise Services						
Cart/Can Tonnages:	Single Family Residential	Multi-Unit Residential	Business	Schools	City	Public
Trash	434	300	56	0		25
Recycling	263	107	31	1	0	2
Greenwaste	351	71	9	0	1	
Food			20	11		
Use gross tonnage only. Do not make deductions for sorted loads.						
Dumpster Tonnages	Diversion %	Multi-Unit Residential	Business	Schools	City	Public
Trash	0%	375	629	29	42	27
High Content Trash	50%		0			
Medium Content Trash	25%					
Low Content Trash	10%		0			
Recycling	90%	16	153	10	7	0
Greenwaste	95%	6	6	4	2	
Food	100%		89	9		
Franchise Rolloff and Compactor Tonnages						
Solid Waste	0%		211			
Low Content	10%					
Recycling	100%		14			
C&D (bulky items)	77%		70			
Greenwaste/Wood	100%		3			
C&D Inerts	100%					
Other Residential Services		Bulky Disposed	Bulky Recycled	Batteries (lbs)	Cell Phones (lbs)	# of Sharps Containers Distributed
Single Family		6	7			
Multi-Unit						
2013 Franchise Contract Diversion Both Zones						39%

Single Family Residential Rates

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October 17, 2012

GROSS RATES - FEES INCLUDED

	Service Category	Rate
RESIDENTIAL	32 gallon refuse	28.14
	64 gallon refuse	33.83
	96 gallon refuse	37.00
	128 gallon refuse	40.13
	Additional 32 gal refuse	7.46
	Additional 32 gal green	2.00
	Distance 100-150	3.99
	Distance 150+	24.18
	slope	3.10
	Backyard cart -per cont.	8.44
	1.5 Yd Green Dumpster	19.01
	2 Yd Green Dumpster	25.34
	3 Yd Green Dumpster	38.02
4Yd Green Dumpster	50.70	

CITY OF SANTA BARBARA

Single Family Residential Extra Pick Up Rates

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October 17, 2012

GROSS RATES - FEES INCLUDED

RESIDENTIAL	Service Category	Rate
	Trash, extra pickup (each bag) on regular service day	\$2.00
	Trash, extra pickup (up to 4 bags) not on regular service day	\$11.21
	Recycling, extra pickup on regular service day	\$0.00
	Recycling, extra pickup (unlimited) of bags not on regular service day	\$11.21
	Greenwaste, extra pickup (each bag) on regular service day	\$2.00
	Greenwaste, extra pickup (up to 4 bags) not on regular service day	\$11.21
	Greenwaste Dumpster extra pick up (up to 4 bags) any day	\$11.21

CITY OF SANTA BARBARA

Business Rates

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October 17, 2012

GROSS RATES - FEES INCLUDED

	Container Type	Number of Collections per Week							Extra Pickup (per
		1	2	3	4	5	6	7	
COMMERCIAL	Trash								
	Trash Minimum Rate	27.35							
	32 gallon Can	14.03	29.47	44.90	60.33	75.76	91.20	106.63	3.86
	32 gallon Cart	14.03	29.47	44.90	60.33	75.76	91.20	106.63	3.86
	64 gallon Cart	27.35	57.43	87.51	117.61	147.69	177.77	207.85	7.52
	96 gallon Cart	40.68	85.43	130.18	174.93	219.67	264.42	309.17	11.19
	1.5 cu. yard Dumpster	115.34	242.21	369.09	495.96	622.82	749.71	876.57	31.72
	2 cubic yard Dumpster	153.58	322.51	491.46	660.39	829.34	998.27	1,167.21	42.23
	3 cubic yard Dumpster	230.05	483.11	736.17	989.23	1,242.28	1,495.34	1,748.39	63.26
	4 cubic yard Dumpster	306.51	643.68	980.84	1,318.00	1,655.16	1,992.33	2,329.48	84.29
	1.5 cu. yard Compactor	344.75	723.99	1,103.21	1,482.44	1,861.66	2,240.89	2,620.13	94.81
	2 cubic yard Compactor	459.45	964.86	1,470.25	1,975.65	2,481.06	2,986.46	3,491.85	126.35
	3 cubic yard Compactor	688.87	1,446.62	2,204.38	2,962.14	3,719.89	4,477.65	5,235.40	189.44
	Recycling								
	32 gallon Can	7.01	14.72	22.42	30.14	37.85	45.56	53.26	1.93
	32 gallon Cart	7.01	14.72	22.42	30.14	37.85	45.56	53.26	1.93
	64 gallon Cart	14.03	29.47	44.90	60.33	75.76	91.20	106.63	3.86
	96 gallon Cart	21.04	44.18	67.32	90.46	113.61	136.76	159.89	5.79
	1.5 cu. yard Dumpster	57.68	121.12	184.56	248.00	311.45	374.90	438.33	15.86
	2 cubic yard Dumpster	76.79	161.26	245.72	330.20	414.67	499.14	583.60	21.12
	3 cubic yard Dumpster	115.02	241.55	368.06	494.58	621.11	747.63	874.15	31.63
	4 cubic yard Dumpster	153.26	321.85	490.44	659.02	827.61	996.20	1,164.79	42.15
	Greenwaste								
	32 gallon Can	7.01	14.72	22.42	30.14	37.85	45.56	53.26	1.93
	32 gallon Cart	7.01	14.72	22.42	30.14	37.85	45.56	53.26	1.93
	64 gallon Cart	14.03	29.47	44.90	60.33	75.76	91.20	106.63	3.86
	96 gallon Cart	21.04	44.18	67.32	90.46	113.61	136.76	159.89	5.79
	1.5 cu. yard Dumpster	57.68	121.12	184.56	248.00	311.45	374.90	438.33	15.86
	2 cubic yard Dumpster	76.79	161.26	245.72	330.20	414.67	499.14	583.60	21.12
	3 cubic yard Dumpster	115.02	241.55	368.06	494.58	621.11	747.63	874.15	31.63
	4 cubic yard Dumpster	153.26	321.85	490.44	659.02	827.61	996.20	1,164.79	42.15
	Foodscraps								
	32 gallon Cart	7.01	14.72	22.42	30.14	37.85	45.56	53.26	1.93
	64 gallon Cart	14.03	29.47	44.90	60.33	75.76	91.20	106.63	3.86
	1.5 cu. yard Dumpster	57.68	121.12	184.56	248.00	311.45	374.90	438.33	15.86
	2 cubic yard Dumpster	76.79	161.26	245.72	330.20	414.67	499.14	583.60	21.12
	3 cubic yard Dumpster	115.02	241.55	368.06	494.58	621.11	747.63	874.15	31.63
	4 cubic yard Dumpster	153.26	321.85	490.44	659.02	827.61	996.20	1,164.79	42.15
	Dumpster Push Out, more than 25'	6.35	12.70	19.05	25.40	31.75	38.10	44.45	-

CITY OF SANTA BARBARA

Scheduled Roll-Off Compactor Rates

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October 17, 2012

GROSS RATES -FEES INCLUDED

	Charge	Type	Container	Monthly Flat Rate	Per Pickup
Roll-Off	Hauling	Local	Compactor		160.83
	Hauling	Tajiguas	Rolloff		227.85
	Hauling	Tajiguas	Compactor		267.13
	Hauling	Local	Rolloff		201.03
	Hauling	Non-Service Fee	Rolloff/Compactor		55.13
	Tipping Fee			actual fee + 15.49%	
	Rental	all sizes	Rolloff	110.94	
	Rental	30 yard	Compactor	493.11	
	Rental		Cart Dumper	104.64	

CITY OF SANTA BARBARA

Special Services Rates

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October 17, 2012

GROSS RATES - FEES INCLUDED

Service	Charge per Incident
Exchange Cart-more than once per 3 months	7.39
Restart Service	14.30
Steam Clean Cart	7.39
Steam Clean Dumpster	43.77
Exchange Dumpster	43.77
Provide Padlock	14.30
Non-Barlock Locking Dumpster	38.62
Install Padlock on cart	28.62
Install Barlock on dumpster	84.40
Replace Key	5.72
Steam Clean Compactor	93.39
Steam Clean Rolloff	81.71
Go Back Charge/Special Pickup (up to 4 cans)	11.21
Overloaded Trash Dumpster	16.69
Overloaded Recycling Dumpster	7.91
Delinquency Fee per account, per month, for any billing period in which a delinquent unpaid balance exists	5.00