

EXHIBIT 4
DIVERSION REQUIREMENTS
Dated as of November 26, 2013

Section 1 AB 939 Indemnification

MarBorg shall be responsible for ensuring that City meets the 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 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.

Section 2 Citywide Diversion Requirement

A. Minimum Diversion Requirement Citywide.

MarBorg will increase the annual percentage of Source-Separated Recyclable Material, Greenwaste and Foodscraps collected in Carts, Cans, Dumpsters, scheduled Roll-Off Boxes and compactors for all Customer classes by at least ~~one percentage point~~ **0.3%** per Contract Year **during the first five Contract Years** ~~throughout the Term of the Agreement.~~

B. Measurement of Minimum Diversion Requirement

The annual Diversion rate citywide will be measured by calculating the annual percentage by weight that Source-Separated Recyclable Material, 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.

The annual Diversion rate citywide will be calculated as follows:

$$\frac{\text{(Recyclable Material+ Greenwaste +Foodscraps Collected during the Contract Year)}}{\text{(Total Waste collected during the Contract Year)}}$$

Recyclable Material includes:

- Gross weight of franchise material collected in blue-colored Recyclable Material Cans, Carts, and Dumpsters and charged a Recyclable Material rate.
- Gross weight of franchise material collected in scheduled Roll-Off Containers or compactors that is listed on the Customer bill as Recyclable Material, Metal, or Cardboard and charged the tipping fee for that specific commodity.

Greenwaste includes:

- Gross weight of franchise material collected in green-colored Greenwaste Cans, Carts, and Dumpsters and charged a Greenwaste rate.
- Gross weight of franchise material collected in scheduled Roll-Off Boxes 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-colored Foodscraps Carts, compactors and Dumpsters and charged a foodscraps rate.

Total Waste Includes:

- All material collected in franchise Cans, Carts, Dumpsters, scheduled Roll-Off Boxes and compactors excluding Roll-Off Boxes that contain 100% inert materials generated from construction and demolition and sorted Roll-off Boxes and compactors with a recovery rate of less than 90 percent.

Data used in calculating the annual Diversion rate citywide will be taken from the monthly reports submitted by MarBorg. As shown in Figure One: MarBorg Monthly Report, 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.

C. Compliance with the Minimum Diversion Requirement Citywide.

MarBorg will be deemed to be in compliance with the Minimum Diversion Requirement Citywide provided that the following equation yields a value of greater than or equal to 0.34% for any given Contract Year **throughout the first five Contract Years** ~~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 Years since July 1, 2013)

Initial compliance with the Minimum Diversion Requirement Citywide will be calculated 24 months after the Effective Date and every twelve months thereafter for the five-year compliance period.

Greater than required Diversion in any year will not increase the total minimum percent diversion for any subsequent year

D. Baseline Diversion Rate Citywide.

The baseline Diversion rate citywide will be established in July of 2013 pursuant to the following formula:

(Recyclable Material+ Greenwaste +Foodscraps collected between July 1, 2012 and June 30, 2013) / (Total Waste Generated between July 1, 2012 and June 30, 2013)

E. Corroboration of Diversion.

Marborg will provide City with any documentation that 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 City. In particular, MarBorg will retain information such as weigh tickets, invoices, bills of lading, or receipts which City may request. MarBorg will provide City with copies of documentation within seven (7) days of City request.

F. Weighing and Record Requirements.

MarBorg will cause a weigh master who is certified under law to weigh all Recyclable Material, Greenwaste, and Foodscraps upon delivery to the City-designated facility and record all of the following information:

- weight and material type,
- delivery date and time,
- route and truck number, and
- driver name and any identification number

MarBorg shall retain this information throughout the Term of the Agreement.

Section 2 No Commingling

MarBorg will not mix Municipal Solid Waste, Recyclable Material, Greenwaste and Foodscraps when servicing Containers. As directed by City, MarBorg may commingle Greenwaste and Foodscraps in the same Collection vehicle. Parties acknowledge that Customers might not cooperate with Collection programs and might discard Municipal Solid Waste, Recyclable Material or Greenwaste together in the same Container.

Section 3 Sorting of Business Loads at the MarBorg Material Recovery Facility

City, at any point during the Term of the Agreement may direct the flow of any franchised material to other processing facilities and may explicitly prohibit sorting of Municipal Solid Waste loads at the MarBorg Material Recovery Facility.

Section 4 AB 341 Diversion

A. Subscription Requirements.

Within five (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 (Recyclable Material, Greenwaste and Foodscraps) for 90% of all AB 341 Customers. The subscription based Diversion requirements will be achieved by MarBorg without the adoption of a mandatory Recycling ordinance.

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. The incremental percentage to be brought into compliance with the 30% subscription Diversion requirement during each Contract Year shall be

derived from the list of AB 341 Customers generated by MarBorg as described in Section D1.

Greater than required Diversion in any year will not increase the total incremental subscription Diversion threshold set forth below in subsequent years.

| <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% |

B. Sorted Municipal Solid Waste Loads

Municipal Solid Waste Containers designated in City’s utility billing system as “High Content,” “Medium Content” and/or “Low Content” will be viewed as Municipal Solid Waste Containers when evaluating compliance with the 30% subscription requirement.

C. Diversion Services Provided Free of Charge

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 City’s utility billing system.

D. Corroboration of Subscription Requirement

1. Within two months following the execution of the Agreement, and at the beginning of each Contract Year thereafter, MarBorg will provide to City a list of AB 341 Customers along the following information for each Customer:
 - Account Number in City’s utility billing system;
 - Sharing Agreements and the names and account numbers of the sharing parties;
 - Current service levels; and,
 - Current Diversion rate.
2. At the beginning of each Contract Year, MarBorg will provide City with a tentative list of AB 341 Customers with whom MarBorg will work to bring them into compliance with the 30% diversion requirement during the Contract Year.
3. MarBorg will provide to City information regarding its progress toward achieving this requirement 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 City's utility billing system.

Figure 1: MarBorg Monthly Report

| 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% |