



# CITY OF SANTA BARBARA

## FINANCE COMMITTEE AGENDA REPORT

**AGENDA DATE:** June 10, 2014

**TO:** Finance Committee

**FROM:** Environmental Services Division, Finance Department

**SUBJECT:** Award Of Contract For Processing Of Recyclable Material To MarBorg Industries, Inc.

### RECOMMENDATION:

That the Finance Committee consider and recommend authorizing the Finance Director to execute a contract with MarBorg Industries, Inc., for processing of recyclable materials.

### DISCUSSION:

In February 2013, the City awarded an exclusive franchise to MarBorg Industries, Inc. for the collection of trash and recyclables throughout the City. Once collected, trash is transported to Tajiguas Landfill for burial. Recyclable material is transported to recycling facilities for further processing. Material collected in carts and cans is transported to Gold Coast Recycling in Ventura; material collected in larger dumpsters is transported to MarBorg's processing facility located near the Santa Barbara Airport. For several years, the City has received a portion of the revenue derived from the sale of recyclables collected in carts and cans. However, the City has never shared in the revenue generated from the sale of recyclable material collected from dumpsters.

Since October of 2013, the City has engaged in negotiations with MarBorg on a new contract for the processing of recyclable material that it collects in dumpsters. In March of 2014, staff from the City and MarBorg reached agreement on the following terms for the new contract:

- Work to be Performed: MarBorg will process, separate, divert from disposal and market all material collected from designated recycling dumpsters throughout the City and shall supply all necessary equipment and personnel.
- Contract Term: Five (5) years. Payments to the City will be based on recyclable material collected as of January 1, 2014 and will continue through December 31, 2018. However, the City would have the right to terminate the contract and direct the

recyclable material to an alternative processing facility constructed as part of a cooperative venture with neighboring jurisdictions, such as the Resource Recovery Project, currently under review by the Cities of Santa Barbara, Goleta, Solvang, Buellton and the County.

- Payments by MarBorg to the City: MarBorg will pay the City a base fee of \$30.44 for each ton of recyclable material collected. The base fee will be adjusted by CPI each year of the contract term beginning on July 1, 2015. MarBorg will retain all other revenue derived from the sale of recyclable material.

**BUDGET/FINANCIAL INFORMATION:**

The Solid Waste Fund will receive \$30.44 per ton of recyclable material collected in dumpsters. Based upon the 4,800 tons of recyclable material collected in Calendar Year 2013, staff anticipates that this contract will generate revenues of approximately \$73,000 and \$146,000 for the Solid Waste Fund in Fiscal Years 2014 and 2015, respectively.

**ATTACHMENT(S):** Proposed Contract with MarBorg Industries, Inc.

**PREPARED BY:** Matt Fore, Environmental Services Manager

**SUBMITTED BY:** Robert Samario, Finance Director

**APPROVED BY:** City Administrator's Office

SANTA BARBARA CITY AGREEMENT NO. \_\_\_\_\_

**AGREEMENT FOR RECYCLABLE MATERIAL PROCESSING  
AND RECYCLABLE REVENUE SHARING**

**THIS AGREEMENT**, made and entered into on \_\_\_\_\_ by and between the

**CITY OF SANTA BARBARA**,  
a municipal corporation, hereinafter  
referred to as "City";

and

**MARBORG INDUSTRIES, INC.**,  
hereinafter referred to as  
"MarBorg",

**WITNESSETH:**

**Whereas**, MarBorg collects recyclable materials from residential, business and public service solid waste customers within the City of Santa Barbara pursuant to a Municipal Solid Waste Collection and Disposal Franchise dated February 12, 2013, as may be amended from time to time (hereinafter referred to as the "Franchise");

**Whereas**, recyclable materials have a resale value on the open market;

**Whereas**, MarBorg has the labor and equipment necessary to collect, process, and market recyclable materials;

**Now, therefore**, consideration of having the ability to collect, process and market recyclable materials collected within the City of Santa Barbara, the City and MarBorg agree as follows:

**1. COLLECTION, PROCESSING AND MARKETING SERVICES**

A. MarBorg shall supply all labor and equipment necessary to collect, process, and market all recyclable material collected from dumpsters pursuant to the Municipal Solid Waste Collection and Disposal Franchise Contract between the City of Santa Barbara and MarBorg Industries, Inc. dated as of February 12, 2013 ("Franchise Contract").

For purposes of this Agreement, "recyclable material" means those materials which are segregated by the City trash and recycling customers at the source of generation and set out for

collection in designated recycling dumpsters as defined in the Franchise. Recyclable material includes newsprint (including inserts, coupons and store advertisements); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, milk and juice cartons, office ledger paper, legal pad backing, shoeboxes and telephone books); glass containers (including brown, clear blue and green glass bottles and jars); aluminum (including beverage containers and foil products); scrap and cast aluminum; steel (including "tin" cans, aerosol cans (empty, non-toxic products) and scrap); bimetal containers; all other metals; all plastics (# 1-7), except expanded Polystyrene (EPS); aseptic packaging; textiles and shoes; and those materials as may be added to this Agreement by City.

The City and MarBorg agree that the definition of recyclable material shall be consistently applied across all designated recycling containers, including designated recycling carts, cans and dumpsters serviced pursuant to the Franchise Contract. This consistency ensures that a clear recycling message is communicated to City customers and facilitates uniform use of recycling services. Therefore, MarBorg agrees that City may amend the definition of recyclable material as viable markets develop for previously un-recyclable materials. A viable market is demonstrated if the City's processor of recyclable material from carts and cans is able to process, separate and divert from disposal a new material. Within 60 days of receiving notification from the City of a change to the definition of recyclable material, MarBorg shall process and separate all material types set forth in the amended definition. MarBorg shall then divert from disposal (to the extent practicable) all materials that have been newly added to the definition of recyclable material.

B. MarBorg shall possess and maintain throughout the term of this contract all federal, state, and local permits needed to operate the facility that will accept and process the recyclable material.

C. MarBorg shall collect, process, and market recyclable material without limitation as to amount, weight or periodic variances in quantity generated.

D. MarBorg shall properly dispose of all residual tonnage and pay all costs, including transportation and disposal costs.

E. MarBorg shall maintain a certified truck scale on-site to weigh all incoming loads of recyclable material. Each loaded vehicle shall be weighed upon entering the MarBorg's processing facility and weighed after tipping the recyclable material. MarBorg shall maintain a daily log of the time, sequential ticket number, vehicle number, gross vehicle weight, and tare vehicle weight and shall be provided to City upon request.

F. MarBorg shall divert all recyclable material in a manner that is acceptable for diversion credit under Assembly Bill 939. Under no circumstances may MarBorg landfill, burn, or convert for burning recyclable material diverted.

G. All recyclable material diverted shall meet or exceed secondary material market specifications for each class of recovered product.

H. If MarBorg, for any reason, is unable to process recyclable material collected pursuant to this Agreement, MarBorg shall ensure that such recyclable material is delivered to and processed by an alternate facility. MarBorg shall be responsible for costs to transport recyclable material and processing fees charged by the alternative facility. Regardless of the facility used to process recyclable material, MarBorg shall remit payment to City for all tons of recyclable material collected as set forth in Section 2 below.

I. In the event MarBorg inadvertently collects hazardous waste and during the course of transportation and disposition becomes aware that it has collected hazardous waste, MarBorg shall segregate such hazardous waste, and shall arrange for its transport to a properly permitted recycling, treatment or disposal facility of MarBorg's choosing. MarBorg shall be responsible for handling and arranging the proper transport and disposition of all hazardous waste that is collected or received by MarBorg, but may engage a licensed and permitted hazardous waste transport company to assist it. MarBorg may attempt to identify, locate and bill the responsible waste generator for additional costs incurred in disposing of such hazardous waste. For the purposes of this Scope of Work, "hazardous waste" means "Hazardous Waste" as defined in the Franchise Contract.

## 2. **PAYMENT TERMS**

A. **Base Per-Ton Compensation:** MarBorg shall remit to the City \$30.44 for each ton of recyclable material collected as recorded by MarBorg on Figure 1 (MarBorg Monthly Report) of Exhibit 10 of the Franchise.

B. **Consumer Price Index (CPI) Adjustment:** The Base Per-Ton Compensation rate shall be adjusted in each fiscal year by a Consumer Price Index adjustment, beginning July 1<sup>st</sup> of the City's fiscal year 2015-2016 (i.e., July 1, 2015.) The Consumer Price Index adjustment will be a fraction, the numerator of which is the Consumer Price Index as of December in the year in which compensation is to be paid minus the Consumer Price Index as of the December twelve (12) months earlier, and the denominator of which is the Consumer Price Index as of the December twelve (12) months earlier, and rounded to two decimal places. The Consumer Price Index to be used is the Los Angeles-Riverside Orange County Metropolitan Area Consumer Price Index (Urban Wage Earners and Clerical Workers, 1982-84= 1 00) compiled and published by the United States Department of Labor, Bureau of Labor Statistics, or a successor index thereto approved by the Bureau of Labor Statistics.

C. **Timing of Payments:** MarBorg shall remit biannual payments to the City. One payment shall be made by August 1 of each year for recyclable material processed from January 1 through June 30. The second payment shall be made by February 1 of each year for recyclable material processed from July 1 through December 31. The first payment shall be made to the City by July 30, 2014 for recyclable material processed between January 1, 2014 and June 30, 2014.

## 3. **REPORTING REQUIREMENTS**

A. **Reporting to the City.** By the 30<sup>th</sup> day following the last day of the preceding fiscal year (July to June) quarter, MarBorg will submit an electronic report to the City that

contains the following information:

1. Incoming Tonnage: Recyclable material collected from designated dumpsters from the City during the previous quarter.
2. Sorted Recyclable material: Tonnage, after sorting, broken down by material type, such as but not limited to:
  - OCC (Card Board)
  - ONP (Newspaper)
  - Mixed Paper
  - Cartons (aseptic and gable top)
  - Clear glass
  - Brown glass
  - Green glass
  - Mixed glass
  - Aluminum
  - Tin cans / bi-metal
  - Scrap metal
  - PET (Plastic #1)
  - Natural HDPE (Plastic #2)
  - Colored HDPE (Plastic #2)
  - Mixed Plastic (Plastics #3 through #7)
  - Mix #1 (unsorted recyclable material)
  - Residue
  - All other categories of recyclables to which MarBorg sorts material
3. Recyclables Revenue: Gross revenue received for the sale of recyclable material by material type, including for each material: a) Price per ton b) Number of tons sold at each price c) Total Revenue (if the same material type was sold at different prices, include this information for each price point at which material was sold, or report the average price weighted by the number of tons)
4. Department of Conservation Funds (CRV): Amount received from Department of Conservation, as: a) California Redemption Value (CRV) reimbursement; b) CRV processing payment c); CRV supplemental processing payment; and, d) any other amounts.

**B. Reporting to the Department of Conservation.** MarBorg shall complete and submit appropriate reports to the Department of Conservation (DOC) on behalf of the City, indicating the total tons of material attributed to the Curbside Identification Number assigned for this activity.

## 2. **TERM**

The term of this Agreement shall commence on January 1, 2014 and shall terminate as of midnight on December 31, 2018, unless otherwise terminated earlier pursuant to the terms of this Agreement.

## 3. **TERMINATION**

Should the City enter into a multi—jurisdictional resource recovery project that requires the diversion of recyclable material to an alternative processing facility, City may terminate this Agreement upon ninety (90) days written notice to MarBorg. Upon such termination, City may direct MarBorg to transport collected and processed recyclable material to an alternative processing facility of City's election as provided in the Franchise.

## 4. **INSURANCE AND INDEMNIFICATION**

As part of the consideration of this Agreement, MarBorg agrees to purchase and maintain at its sole cost and expense during the life of this agreement, and for five (5) years thereafter, insurance coverage against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by MarBorg, its agents, representatives, or employees.

**A. REQUIRED COVERAGE.** Coverage shall be at least as broad as:

**1. Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations with limits of no less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

**2. Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits of no less than Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.

**3. Workers' Compensation:** In accordance with the provisions of the California Labor Code, MarBorg is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all MarBorg's staff while performing any work incidental to the performance or this agreement.

MarBorg is required to be insured for coverage for benefits under the United States Longshoremen's and Harbor Workers' Compensation Act for any work on, over, or near any navigable waters.

If MarBorg maintains higher coverage limits than the amounts shown above, then the City requires and shall be entitled to coverage for the higher coverage limits maintained by MarBorg.

Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

## **B. OTHER INSURANCE PROVISIONS**

Each insurance policy shall contain, or be endorsed to contain, the following five (5) provisions:

### ***1) Additional Insured Status***

The City of Santa Barbara, its officers, employees, and agents, shall be covered as additional insureds on the Commercial General Liability and the Automobile Liability policy with respect to liability arising out of work or operations performed by or on behalf of MarBorg including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of MarBorg. Additional Insured coverage shall be provided in the form of an endorsement to MarBorg's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85). A copy of the endorsement evidencing that the City of Santa Barbara has been added as an additional insured on the policy, must be attached to the certificate of insurance.

### ***2) Subcontractors***

MarBorg shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and MarBorg shall ensure that the City is an additional insured on insurance required from subcontractors. For Commercial General Liability coverage subcontractors shall provide coverage with a format at least as broad as Insurance Services Office form CG 20 38 04 13.

### ***3) Notice of Cancellation***

A provision that coverage will not be cancelled or subject to reduction without written notice given to the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990.

### ***4) Primary Coverage***

For any claims related to this contract, MarBorg's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be excess of MarBorg's insurance and shall not contribute with it.

### ***5) Waiver of Subrogation***

MarBorg hereby agrees to waive rights of subrogation which any insurer of MarBorg may acquire from MarBorg by virtue of the payment of any loss. MarBorg agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. MarBorg agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by MarBorg, its employees, agents and subcontractors.

### **C. ACCEPTABILITY OF INSURERS**

All insurance coverage shall be placed with insurers that have a current rating from AM Best of no less than A: VII; and are admitted insurance companies in the State of California. All other insurers require prior approval of the City.

### **D. COVERAGE LIMITS SPECIFICATIONS**

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which MarBorg may be held responsible for payment of damages resulting from MarBorg's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

If, for any reason, MarBorg fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from MarBorg resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to MarBorg, City may deduct from sums due to MarBorg any premium costs advanced by City for such insurance.

### **E. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: MarBorg shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or MarBorg shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

### **F. EVIDENCE OF COVERAGE**

MarBorg must provide evidence that it has secured the required insurance coverage before execution of this agreement. A Certificate of Insurance supplied by the City or the appropriate ACORD and Insurance Services Office forms evidencing the above shall be completed by MarBorg's insurer or its agent and submitted to the City prior to execution of this Agreement by the City.

MarBorg shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive MarBorg's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**5. NO WAIVER OF PROVISIONS**

No waiver of a breach of any provision of this Agreement shall be construed to be a continuing waiver of that provision, nor a waiver of any breach of another provision of this Agreement.

**6. APPLICABLE LAWS, PARTIAL INVALIDITY**

This agreement shall be subject to the laws, rules, regulations, Charter and ordinances in effect within the City of Santa Barbara, County of Santa Barbara, California, and any interpretation of the law that may be necessary shall be pursuant to the laws applicable within that jurisdiction. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable for any reason, that provision shall be deleted from this Agreement and such deletion shall in no way affect, impair, or invalidate any other provision of this Agreement, unless it was material to the consideration for the performance required. If a provision is deleted which is not material to such consideration, the remaining provisions shall be given the force and effect originally intended.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date and year first written above.

CITY OF SANTA BARBARA  
A Municipal Corporation

MARBORG INDUSTRIES, Inc.

\_\_\_\_\_  
James L. Armstrong  
City Administrator

\_\_\_\_\_  
Mario A. Borgatello  
President

ATTEST:

\_\_\_\_\_  
David J. Borgatello  
Secretary

\_\_\_\_\_  
Gwen Pierce, CMC  
City Clerk Services Manager

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Robert Samario  
Finance Director

APPROVED AS TO FORM:

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Ariel Calonne  
City Attorney

Business Tax Compliance:  
Certificate No. \_\_\_\_\_

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Brenda Craig

APPROVED AS TO INSURANCE:

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Mark Howard  
Risk Manager