



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: February 5, 2013

TO: Mayor and Councilmembers

FROM: Environmental Services, Finance Department

SUBJECT: Public Hearing And Grant Of Citywide Franchise To MarBorg Industries, Inc.

RECOMMENDATION: That Council:

- A. Hold a public hearing, as required by the City Charter Section 1401, regarding the grant of an exclusive franchise for Citywide solid waste collection services to MarBorg Industries, Inc., a California Corporation; and
- B. Introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Granting an Exclusive Ten-year Franchise for Citywide Solid Waste Collection and Disposal Services to MarBorg Industries, Inc., a California Corporation and Approving and Authorizing the City Administrator to Execute a Memorandum of Understanding Between the City and MarBorg Industries, Inc. Providing for MarBorg's Waiver of Certain Compensation Under the Existing Zone One and Zone Two Franchise Agreements in Consideration of the Grant of the New Citywide Franchise to MarBorg.

DISCUSSION:

Public Hearing

Since December 13, 2011, the City has engaged in sole source negotiations with MarBorg Industries, Inc. (MarBorg) on a long-term franchise agreement for solid waste collection services within the City. On December 11, 2012, Council adopted a resolution declaring its intent to grant a ten-year exclusive franchise for Citywide solid waste collection and disposal services to MarBorg.

Section 1401 of the City Charter requires the City Council to hold a public hearing before granting a franchise. The purpose of the hearing is to allow any person to protest the potential award of a franchise or the proposed terms of that franchise. The hearing on the proposed MarBorg franchise was properly noticed in a newspaper of general circulation in accordance with Section 1401 of the City Charter.

Adoption of Ordinance

Following the public hearing, staff recommends that the City Council adopt an ordinance to formally award the exclusive franchise to MarBorg in accordance with Section 1401 of the City Charter. Adoption of the ordinance requires affirmative votes of five members of Council.

A full copy of the draft Franchise has been made available to the City Council for their review by delivering a copy to the Council reading file in the Council offices. A copy of the draft Franchise is available for review by members of the public at the City Clerk's office. An in-depth discussion of the main operational and financial terms of the draft Franchise and impacts to customers resulting from the proposed rates was provided to Council at the November 20, 2012 Council Meeting. The Council Agenda Report for this item (No. 16) is available for review in the City Clerk's Office or on the City's website <http://www.santabarbaraca.gov/CAP/>).

Memorandum of Understanding

Upon approval of the ordinance to award the exclusive franchise to MarBorg Industries, staff recommends that Council also approve a memorandum of understanding (MOU) between the City and MarBorg. The purpose of the MOU is to amend the following terms of the existing Zone One and Zone Two Franchise Agreements:

1. MarBorg agrees to permanently waive the Consumer Price Index (CPI) adjustment to customer rates for Fiscal Year 2013 as set forth in the existing Zone One and Zone Two Franchise Agreements.
2. MarBorg agrees to remit to the City the sum of \$300,387, which represents a continuation into Fiscal Year 2013 of the revenue concession agreed to in Fiscal Year 2012 by the Zone One and Zone Two contractors.

These terms were part of the negotiated agreement between the parties.

BUDGET/FINANCIAL INFORMATION:

Should Council grant a franchise to MarBorg based upon the draft tentative agreement, it will cost an estimated \$16,790,736 per year, subject to variations in customer subscription levels. This is initially approximately \$670,000 higher than the current cost for services. The increase to the hauler compensation is due to the following:

- New services and more expensive CNG vehicles; and,
- An adjustment for the expected loss in future revenue MarBorg will experience due to migration from trash containers to less expensive diversion containers as a direct result of new diversion requirements, which MarBorg would need to absorb under the agreement.

All franchise costs will be paid for by rates charged to solid waste customers. The rates listed in the November 20, 2012 Council Agenda report are based on current conditions, and will be increased prior to implementation on July 1, 2013 by the CPI and tipping fees increases that have been standard under the City's hauler contracts.

SUSTAINABILITY IMPACT:

Sustainability improvements under the new agreement will include increased diversion from the landfill due to two new diversion programs in the business and multi unit residential sectors and increases in free recycling and greenwaste in the single family residential sector. The agreement also calls for the replacement of all current diesel vehicles with compressed natural gas vehicles, reducing air quality impacts.

ATTACHMENT: DRAFT MOU providing for MarBorg's waiver of certain compensation under the existing Zone One and Zone Two Franchise Agreements

PREPARED BY: Matt Fore, Environmental Services Manager

SUBMITTED BY: Robert Samario, Finance Director

APPROVED BY: City Administrator's Office

THIS MEMORANDUM OF UNDERSTANDING is made as of this 12th day of February by and between the City of Santa Barbara (hereinafter the “City”) a charter city municipal corporation created and authorized by Article XI, Section 5 of the California Constitution, having its office at City Hall, 735 Anacapa Street, Santa Barbara, California and the MarBorg Industries, Inc., of Santa Barbara County, a California corporation, hereinafter referred to as “MarBorg ”, located at 728 Yanonali Street Santa Barbara, California.

City and MarBorg understand and acknowledge the following background information which forms the basis for this Memorandum of Understanding (“MOU”) agreement and the premises upon which this MOU is entered into:

A. The existing Solid Waste Franchise Agreements between the City and MarBorg for “Zone One” and “Zone Two” [both of which have a franchise term expiring in June 2013] are appropriate for minor modifications in order to provide an appropriate transition from MarBorg’s operation under its two City franchises to MarBorg’s operation of a new City-wide ten year franchise which new franchise is being considered and possibly approved by the City Council of the City concurrently with this MOU agreement; and,

B. As part of consideration for the award of the new ten-year Citywide Franchise Agreement by the City, MarBorg has offered amend its existing franchise agreements in order to provide for the following changes for MSW hauling in Zone One and Zone Two of the City prior to the effective date of the new City/MarBorg franchise:

1. MarBorg will waive it rights to the July 1, 2012 annual Consumer Price Index (CPI) rate adjustment as such adjustment is contained in the current Franchise Agreements for Zone One and Zone Two; and

2. MarBorg will continue the concession previously agreed to concerning its Zone One and Zone Two franchises, by forgoing \$300,387 in rate revenues otherwise payable to MarBorg for the period of July 1, 2012 through June 30, 2013 City Fiscal Year that would otherwise be payable to MarBorg under the business revenue rate guarantee negotiated with the City in November 2009 as such concession is described in more detail in Exhibits A and B attached hereto and incorporated herein by this reference.

C. Based the above-stated understanding, MarBorg and the City agrees that, upon the adoption of a Santa Barbara City ordinance approving a new ten-year Citywide solid waste franchise agreement between the City and MarBorg, the following changes will

become effective with respect to the existing MarBorg franchises which terminate in June of 2013:

1. The City will not be required to raise MSW collection rates by the CPI adjustment factor for July 2012, retroactive to July 1, 2012 as would otherwise be required by the existing franchise agreements; and,
2. MarBorg will pay the City the amount of \$300,387 by check payable to the City on or before March 31, 2013.

City of Santa Barbara
City Administrator

MarBorg Industries Inc.

By: _____

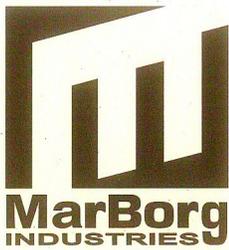
By: _____

ATTEST
CITY CLERK

By: _____
Deputy City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____



March 2, 2011

City of Santa Barbara
Bob Samario
Finance Director
P.O. Box 1990
Santa Barbara, CA 93102

Mr. Samario,

Following up on our meetings of February 16th and 24th regarding revenue declines in the commercial sector we would like to offer the following analysis.

First, the revenue declines are unique to the City of Santa Barbara when compared to the bin customers that we service in surrounding jurisdictions. On average bin revenues have risen by 2.48% in the County and City of Goleta over the same period of time that the City of Santa Barbara's declined, from November 2009 to present, after the City changed its commercial rate structure. (Attachment A)

Second, over the same time period from November 2009 to present the amount of work we are doing in the business sector has increased. We have measured this in both the number of lifts we are performing to collect the material from the business sector and the container volume that we are servicing in the business sector. Both of these measurements have increased by approximately 2%. (Attachments B & C)

Third, the total tonnage of material that we are collecting from the business sector's bins and carts has increased by 14% over the same time period. (Attachment D)

As a result of this analysis we believe that the downturn in commercial revenue is more closely tied to the change in rate structure than any overall economic influence. We believe that if a purely economic downturn were responsible for the revenue decrease we would see all of the above mentioned indicators going in the same direction as the City's revenue but they are all going in the opposite direction.

Based on this information we believe that it is important to take a close look at the commercial rate structure to ensure that it provides a sustainable revenue source for the services required. It appears that the diversion services may be too sharply discounted (85% less than the cost of trash) to fund the cost of their collection and disposal.

P.O. Box 4127
136 N. Quarantina Street
Santa Barbara
California 93140
Phone 805-963-1852
Fax 805-962-0552

We understand that at this time the City is hesitant to make any large scale changes to the commercial revenue structure due to possible economic influences and other already planned rate changes. In order to facilitate a stabilization of the rates and departmental budgets dependent on those rates without making major changes to the commercial rate structure we would like to make the following offer:

MarBorg Industries will forgo \$240,000.00 in payments from the City of Santa Barbara for services provided to the commercial business sector during the City's 2011-2012 fiscal year. This will be withheld monthly in an amount equaling \$20,000. At the end of this period our commercial revenue payment will be restored to its current amount after being indexed for inflation. We anticipate that the City will then be in a position to review the commercial rate structure to ensure that it is providing a sustainable source of funding.

I would appreciate your feedback after you have had a chance to review this offer.

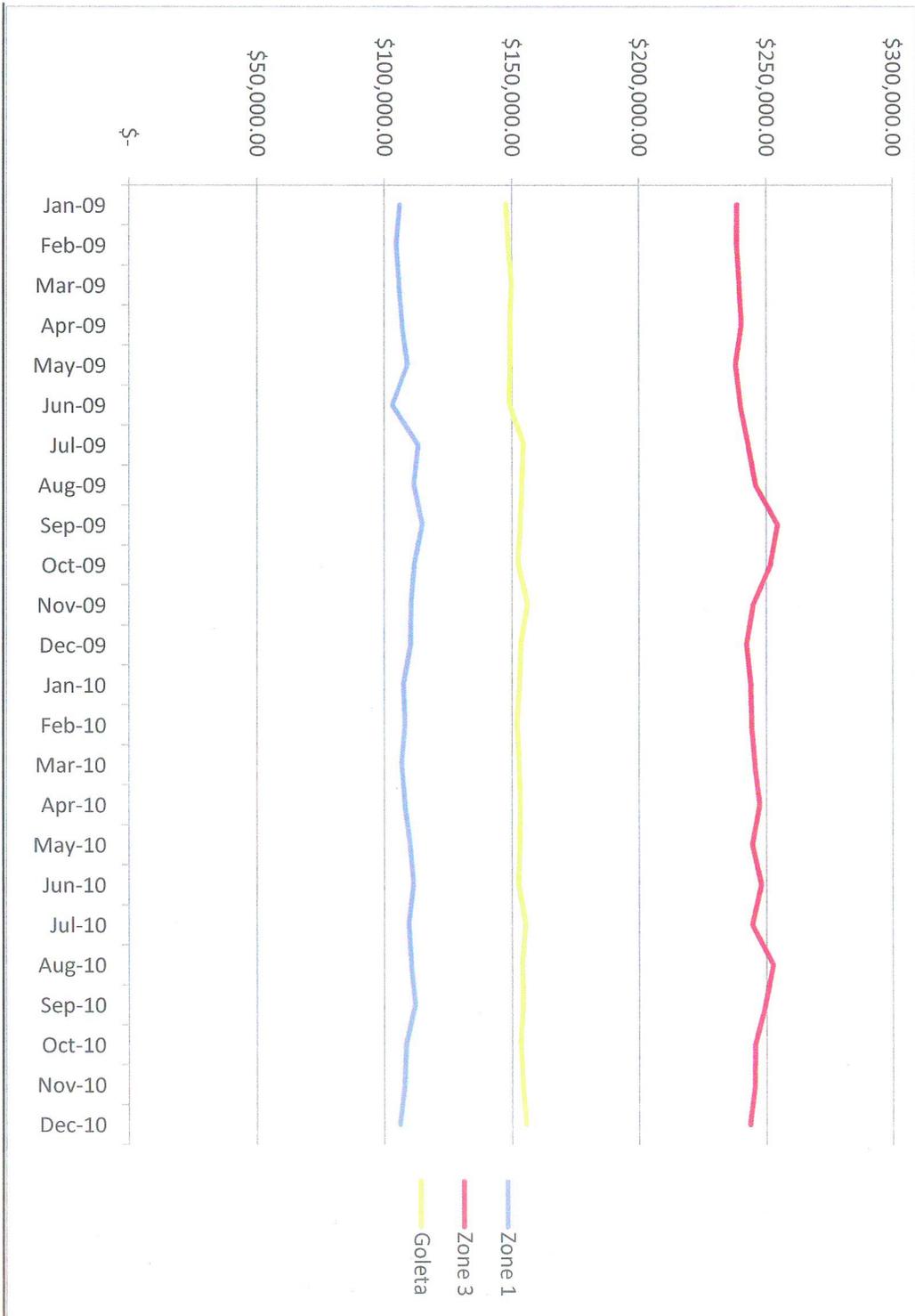
Thank you,



Derek Carlson
Business Manager
MarBorg Industries

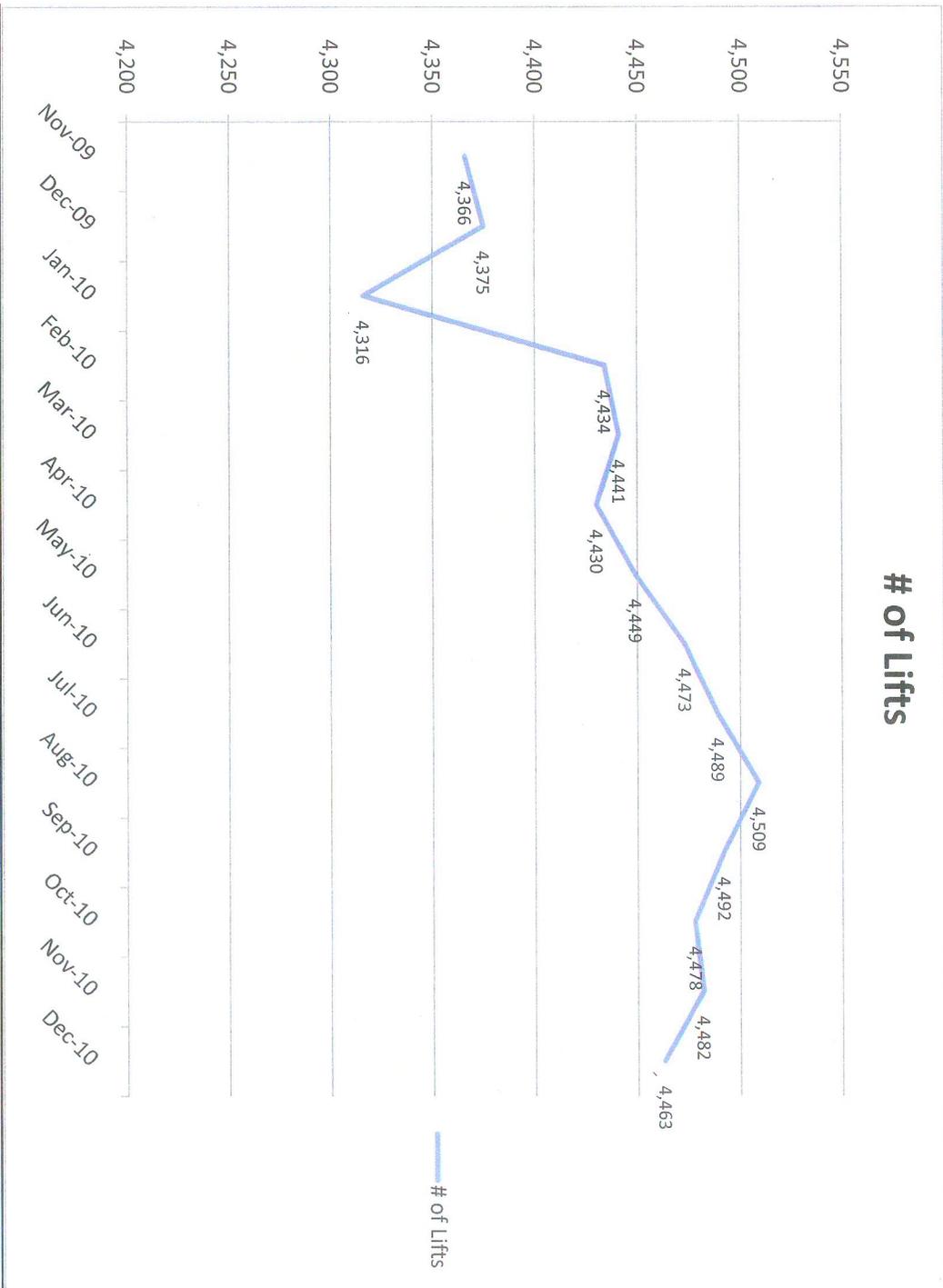
ATTACHMENT-A

Bin Revenue for MarBorg Industries County Zones and City of Goleta



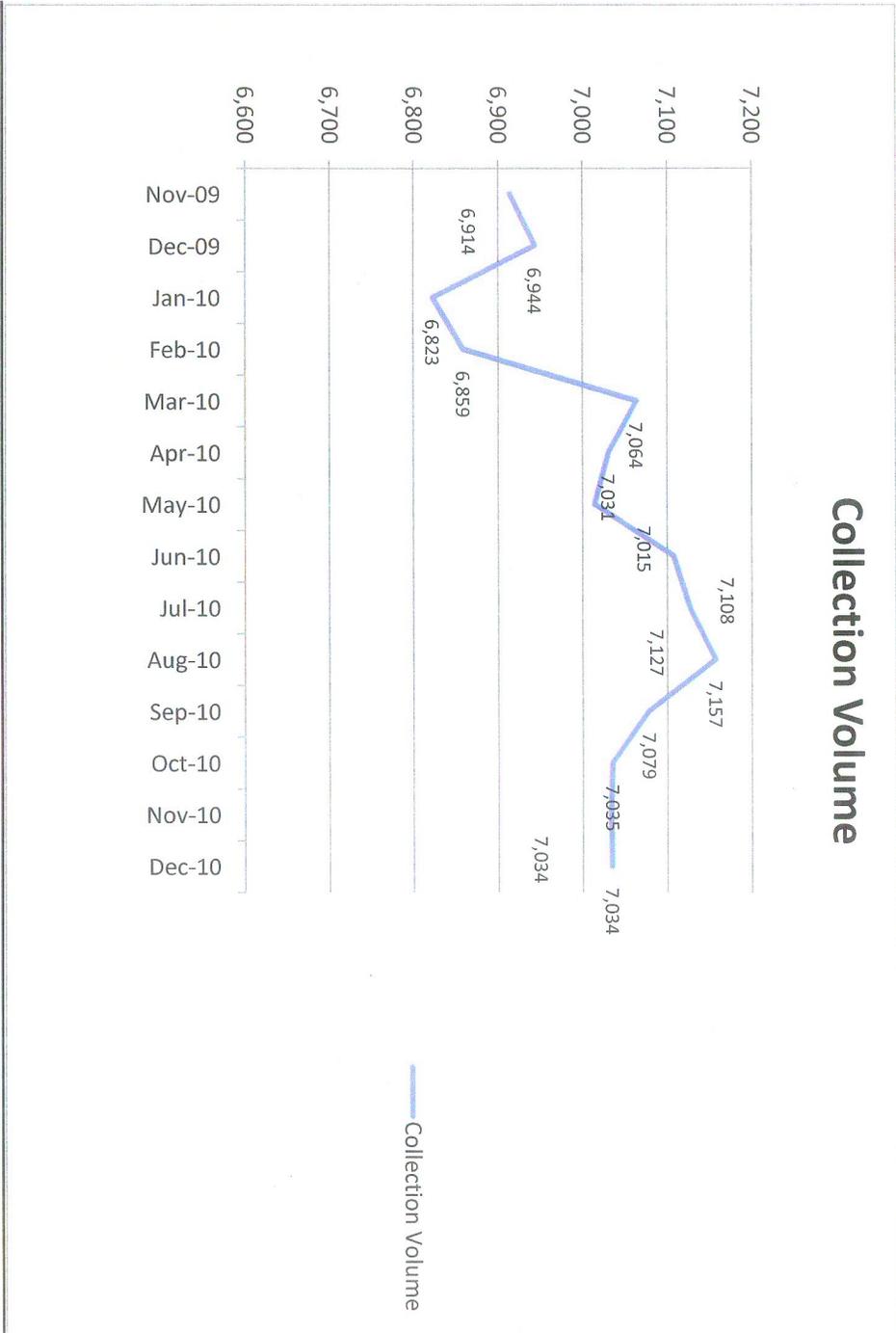
ATTACHMENT - B

Increase in the number of monthly pick-ups from City of Santa Barbara Commercial Customers



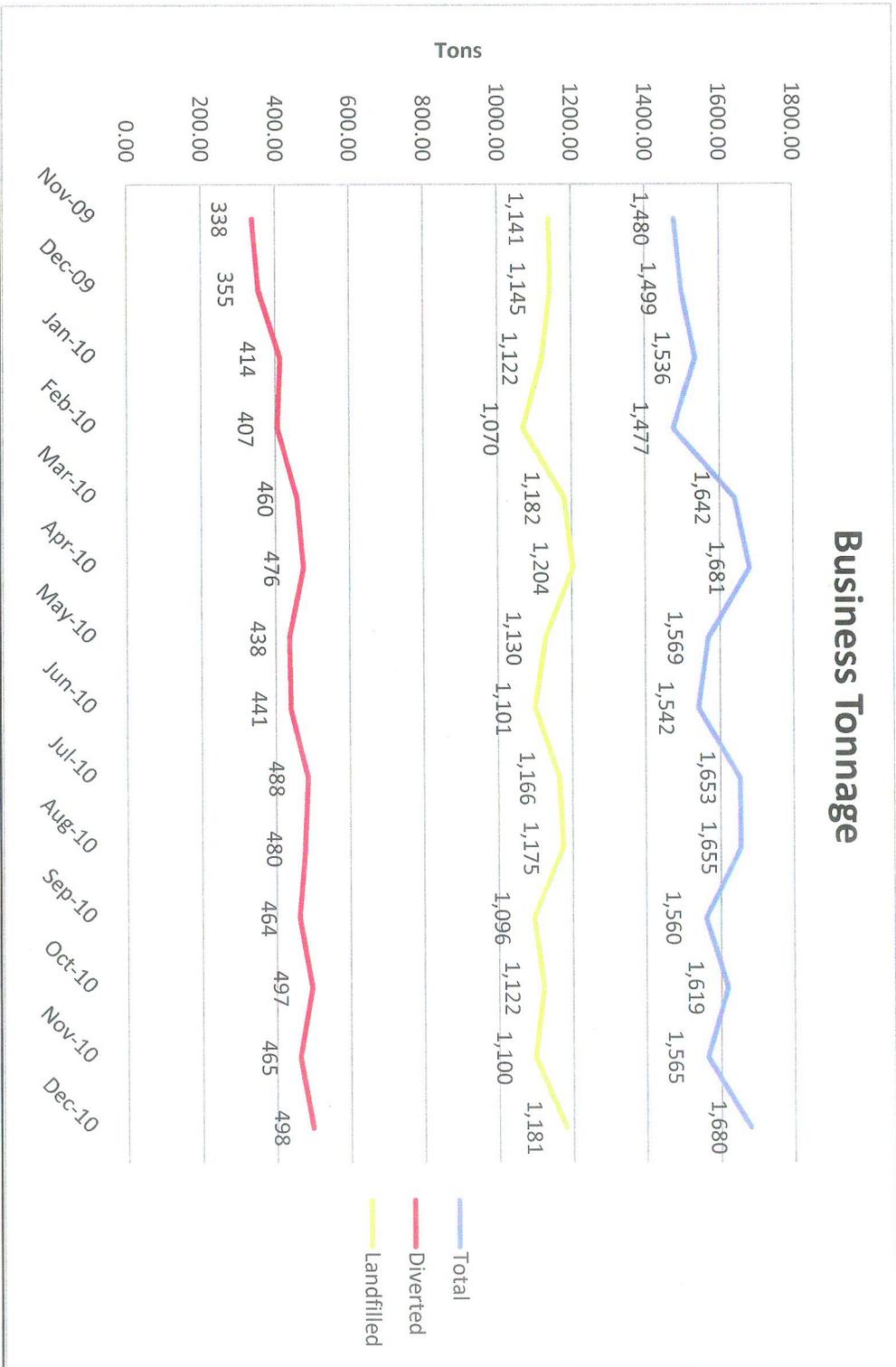
ATTACHMENT – C

Increase in the monthly service volume in yards from City of Santa Barbara commercial customers



ATTACHMENT - D

Increase in monthly tonnage from City of Santa Barbara commercial customers



March 15, 2011

Mr. Robert Samario
Finance Director
City of Santa Barbara
735 Anacapa Street
Santa Barbara, CA 93101

Dear Bob:

This letter serves to memorialize our conversation on Wednesday, March 9, 2011 regarding the City's request for Allied Waste to surrender \$60,387 in guaranteed revenues from our business sector collection activities for fiscal year 2012. You have requested this concession in light of the fact that the City has experienced a decline in revenues from hauling services in the business sector.

We understand that you are moving quickly to get a final Proposition 218 notice to our customers and that staff does not have enough time to determine the impacts of all of the various forces that may be negatively impacting revenues in the business sector. These forces include, but are not limited to, Environmental Services staff efforts (beginning in earnest in early 2009 to get businesses to maximize their recycling and right-size their service levels in advance of the new rates taking effect), the Council-approved November 2009 rate changes (making recycling, foodscraps and greenwaste 85% less expensive than trash service), and the current economic climate.

As we discussed, we believe it is important to note that when the City was split into two zones in 2003, with MarBorg assuming Zone 2 or the eastern half of the City, the differential in total monthly revenues was approximately \$5,000 in their favor. However, over the ensuing several years this difference grew by many tens of thousands of dollars per month in MarBorg's favor. For such a dramatic increase in Zone 2 revenues to have occurred, staff suspected that a good deal of trash and recycling capacity was being sold to Zone 2 customers that was not warranted or needed by the customer. Fast forward to the present and it appears that our intuitions were on the mark. As noted by ES staff earlier this month, the total business shortfall on MarBorg's side of the City is approximately \$460,000 per year, or nearly 4 times that of our shortfall. It is clear that customers in Zone 2 have right-sized their services and maximized recycling in response to ES outreach efforts, the new rates and the economy. I am pleased to say that Allied Waste did not oversell its customers during the past 8 years of our contract.

We are willing to assist the City with this shortfall because we are your partner. We are proud to have provided these critical services to the City of Santa Barbara and ratepayers for the past 39 years. Finally, we look forward to revisiting the data in the fall to better understand the relative impacts of the various factors at play to determine if further concessions, or a rate increase, will be warranted for FY 2013.

Sincerely,

Stephen MacIntosh
General Manager

cc: Jim Armstrong, City Administrator
Kristy Schmidt, Employee Relations Manager
Matt Fore, Environmental Services Manager



Public Hearing and Grant of Citywide Franchise to MarBorg Industries, Inc.

February 5, 2013



PRESENTATION OUTLINE

- ◆ Brief History of Procurement
- ◆ Terms of Agreement
- ◆ Public Hearing
- ◆ Adoption of Ordinance
- ◆ Timeline for Implementation
- ◆ Transition Tasks

BRIEF HISTORY OF PROCUREMENT

- ◆ September 2011: MarBorg submitted proposal to combine Zones 1 & 2
- ◆ December 2011: Council approved staff & Ad Hoc Committee recommendation to enter into exclusive negotiations with MarBorg
- ◆ October 2012: Tentative Agreement reached on terms for new franchise agreement



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TERMS OF THE AGREEMENT

FINANCIAL TERMS

- ◆ Sets estimated profit at 8%
- ◆ Approximately \$500K in new services
- ◆ Generates same support for City operations
- ◆ Compensates hauler for expected revenue impacts of new diversion programs
- ◆ Compensates hauler for increased cost of CNG vehicles



TERMS OF THE AGREEMENT

NEW SERVICES

Single Family & Multi-Unit Residential

- Two annual bulky item collection
- Battery and cell phone collection
- Sharps mail in program
- Extra green waste collection (6 bags)
- Extra holiday collection
- Unlimited white goods collection

Municipal (City) Services

- Increased Abandoned waste collection (2,000 events)
- Additional 1,000 tons of C&D spoils
- 70 Zero Waste events at City facilities

TERMS OF THE AGREEMENT

DIVERSION REQUIREMENTS

- ◆ Minimum diversion capacity requirements in large MUR and business
- ◆ Will position the City to meet current and future diversion mandates
- ◆ Annual increase in overall franchise diversion of 1% per year
 - From approx. 39% to approx. 49%



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- ◆ Transition Tasks



PUBLIC HEARING

- ◆ On December 11, 2012, the City Council:
 - adopted a Resolution of Intent to grant an exclusive Citywide franchise ; and,
 - set date for public hearing
- ◆ Resolution and hearing date were published in newspaper in accordance with City Charter



PRESENTATION OUTLINE

- ◆ Brief History of Procurement
- ◆ Terms of Agreement
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- ◆ Transition Tasks



ADOPTION OF ORDINANCE

- ◆ City Charter requires the City Council to adopt an ordinance to grant an exclusive franchise
- ◆ Adoption requires affirmative votes of five Council members

ADOPTION OF ORDINANCE

Memorandum of Understanding

- ◆ Ordinance also authorizes the City Administrator to execute a MOU with MarBorg on other terms:
 - MarBorg to forego Fiscal Year 2012 CPI Increase (approximately \$260,000); and,
 - MarBorg to remit to City a total of \$300,387, representing a continuation of the revenue concession agreed to in FY 2012.



PRESENTATION OUTLINE

- ◆ Brief History of Procurement
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- ◆ **Timeline for Implementation**
- ◆ Transition Tasks

TIMELINE FOR IMPLEMENTATION

Task	Estimated Date
Council Hearing & Introduction of Ordinance	2/5/2013
Adoption of Ordinance	2/12/2013
Effective Date of Ordinance	3/15/2013
Implement Transition Plan	3/15 -6/7/2013
Send out Prop 218 rate notices	3/15/2013
Prop 218 Hearing	6/15/2013
New Rates & Services Effective	7/1/2013



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TRANSITION TASKS

- ◆ Purchase new CNG Vehicles
- ◆ Distribute new carts/cans and dumpsters to all customers
- ◆ Request new container choices from customers and notify customers of new pickup day schedules
- ◆ Outreach to all customer classes on new services and rates