

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING THE EXCLUSIVE TEN-YEAR FRANCHISE FOR CITYWIDE SOLID WASTE COLLECTION AND DISPOSAL SERVICES GRANTED BY THE CITY TO MARBORG INDUSTRIES, INC., A CALIFORNIA CORPORATION, ON FEBRUARY 12, 2013, BY CITY ORDINANCE NO. 5608.

WHEREAS, the City and MarBorg entered into a ten-year Municipal Solid Waste Franchise on terms acceptable to MarBorg and the City in February 12, 2013 and such franchise was duly approved by the City Council in accordance with the requirements of the City Charter (hereinafter referred to as the "Franchise");

WHEREAS, the terms of the February 12, 2013 franchise included new diversion requirements that will help the City and MarBorg to meet anticipated future State mandates relating to the diversion of solid waste and these requirements were, in part, contained within Exhibit 4 to the Franchise;

WHEREAS, the Solid Waste Division staff of the City and MarBorg recently realized the Exhibit 4 to the Franchise contained an error in stating the future diversion requirements and, as a result, both MarBorg and the City agree that the Franchise needs to be amended by the use of a new corrected Exhibit 4;

WHEREAS, on October 29, 2013, the Council of the City of Santa Barbara publicly declared its intention to amend the Franchise granted to MarBorg through the adoption of a resolution in accordance with Section 1401 of the City Charter;

WHEREAS, a public hearing regarding the proposed amendment to the February 12, 2013 Franchise granted to MarBorg was noticed in a local newspaper of general circulation as required by Section 1401 of the City Charter for a public hearing date of November 19, 2013; and

WHEREAS, on November 19, 2013, the Council of the City of Santa Barbara held a public hearing to hear any objections on the proposed ordinance to amend the February 12, 2013 Franchise with MarBorg as required by Section 1401 of the City Charter.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Pursuant to Section 1401 of the City Charter and in accordance with Section 1407 of the Charter, the City Council of the City of Santa Barbara agrees to amend the exclusive ten-year franchise granted to MarBorg on February 12, 2013 ("Franchise") for Citywide solid waste collection and disposal services, as such amendment is described in the amendment attached hereto as Exhibit A, dated as of November 26, 2013, and authorizes the City Administrator to execute the amendment agreement attached hereto (in a form of agreement acceptable to the City Attorney) with MarBorg Industries, Inc., for said Municipal Solid Waste services.

**Amendment to February 12, 2013 Municipal Solid
Waste Franchise between the City of Santa
Barbara and Marborg Industries**

This is an amendment to the Municipal Solid Waste Franchise which was entered into by and between the City of Santa Barbara, a municipal corporation (hereinafter referred to as the “City”) and MarBorg Industries, Inc., a California corporation (hereinafter referred to as “MarBorg”) on February 12, 2013 as approved by Santa Barbara City Ordinance No. 5608 adopted by the Santa Barbara City Council on February 12, 2013 and hereinafter referred to as the “February 12, 2013 Franchise.”

I. Franchise Amendment. MarBorg and the City agree to amend the Marborg Municipal Solid Waste Franchise by revising Exhibit 4 to the February 12, 2013 Franchise in order to better reflect the mutual understanding of the City and MarBorg with respect to the Diversion Requirements of the Franchise. Consequently, the revised Franchise Exhibit 4, dated as of November 26, 2013, (a copy of which is attached hereto) is substituted for the original Exhibit 4 attached to the February 12, 2013 Franchise.

II. Existing Unaffected Terms And Conditions. Except as otherwise specifically amended by this amendment, the terms, conditions, and covenants of the February 12, 2013 Franchise not inconsistent with this amendment shall remain in full force and effect.

III. Conflicts. In the event of any conflict or inconsistency between the terms, conditions, and requirements of this amendment and the February 12, 2013 Franchise, the terms, conditions, and requirements of this amendment shall be controlling.

IV. Integration. This amendment, together with the February 12, 2013 Franchise, incorporates and integrate all prior negotiations, understandings, and discussions between City and MarBorg regarding the Marborg Municipal Solid Waste Franchise. There are no oral agreements or terms between City and MarBorg with respect to the Franchise or this Franchise amendment. This amendment together with the February 12, 2013 Franchise supersedes and cancels all previous negotiations, arrangements and understandings between the City and MarBorg and there are no representations between City and MarBorg other than those contained herein and the February 12, 2013 Franchise. All changes or amendments to the February 12, 2013 Franchise, as amended, shall be in writing and duly approved by the City Council and executed by the City in accordance with the City Charter.

IN WITNESS WHEREOF, the parties hereto have executed this amendment to the City's Solid Waste Collection and Disposal Franchise of February 12, 2013 as of November 26, 2013.

CITY OF SANTA BARBARA

By: _____
City Administrator

City Clerk : ATTEST:

By: _____

Approved as to Content:

By: _____
Robert Samario, Contract Administrator

Approved as to Form:

By: _____
Stephen P. Wiley,
City Attorney

Approved as to insurance:

By: _____
Mark Howard, Risk Management

MARBORG INDUSTRIES, INC.

By: _____
Mario A. Borgatello
President

By: _____
David J. Borgatello
Secretary

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:

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

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 Foodscrap 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 Foodscrap when servicing Containers. As directed by City, MarBorg may commingle Greenwaste and Foodscrap 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 Foodscrap) 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%