



# CITY OF SANTA BARBARA

## SUSTAINABILITY COMMITTEE AGENDA REPORT

**AGENDA DATE:** February 13, 2023

**TO:** Council Sustainability Committee

**FROM:** Environmental Services Division, Sustainability & Resilience Department

**SUBJECT:** Proposed Terms for a new MarBorg Solid Waste Franchise Agreement

**RECOMMENDATION:** That the Committee:

That the Committee forward a recommendation to Council supporting the proposed terms for a new MarBorg Solid Waste Franchise Agreement.

### **EXECUTIVE SUMMARY:**

The City is preparing for the expiration of its current solid waste franchise hauler agreement (Agreement) with MarBorg Industries (MarBorg) on June 7, 2023. As directed by Council on July 19, 2022, City staff and solid waste consultants from R3 Consulting Group Inc. (R3) negotiated the terms and conditions of a new Agreement with MarBorg. Negotiations began in August 2022 and were substantially concluded in January 2023.

The City conducted an online survey of solid waste customers from June to September 2022, which indicated that a majority of customers are satisfied or very satisfied with MarBorg's services. Respondents to the survey provided feedback regarding priorities for enhanced service offerings, which are being pursued during the negotiation process, in addition to new and enhanced programs and services recommended by City staff and R3. New and enhanced programs and services resulting from negotiations include:

- Enhancements to a variety of neighborhood collection services.
- Compliance with new State legislative mandates.
- Terms and conditions reflecting current industry standards in a variety of areas.
- Changes to compensation methodology and financial reporting.
- Transitioning small residential collection service to a curbside cart collection program.

- Keeping MarBorg's base compensation flat in Fiscal Year (FY) 2024.
- Keeping MarBorg's base compensation flat in FY 2025, except for a one-time adjustment for change in fuel costs in that year.
- Adjusting MarBorg's compensation annually by the Consumer Price Index, Garbage and Trash Collection in U.S. City Average (Series ID CUSR0000SEHG02) (CPI) starting in FY 2026, with a cap of five percent increase.
- Adding two percent to the CPI adjustment in FYs 2026 through FY 2029 to fund new collection vehicle and equipment capital costs.

Negotiations progressed smoothly and with favorable outcomes to the City and its solid waste ratepayers. The City and MarBorg have agreed on new programs and services for customers while also keeping the compensation paid by the City to MarBorg in FY 2024 flat. Base compensation to MarBorg will also remain flat in FY 2025, but there will also a one-time "fuel true-up" payment that will cover the annual change in fuel costs related to the global surge in natural gas costs in early 2023.

The Franchise Fee paid by MarBorg to the City will also be adjusted to align with best practices around the State and maintain revenue generation to the City; however, changes to the Franchise Fee will not result in a change in bills paid by ratepayers. Overall, approving the outcomes of negotiations, and subsequent approval of a final Agreement will not result in changes to amounts paid by customers on the City's utility bills in FY 2024 – though the City's overall solid waste rates are anticipated to increase in the coming year due to changes in the cost of post-collection processing and costs associated with landfill operations and other activities under the City's Waste Delivery Agreement with the County. Those costs will not be part of the new Agreement with MarBorg.

In FY 2025, MarBorg will implement the same small residential curbside cart collection program that has already been implemented in all other MarBorg service areas and is the standard model of collection throughout California. Via this program, all small residential customers (comprised of one to four residential units) will be expected to roll wheeled solid waste containers ("carts") to the curb for weekly emptying by MarBorg. Customers requiring accommodation because of disability or other physical limitation will be provided "on-premises" service at no additional cost, and customers voluntarily opting-in to "on-premises" service will pay an additional rate on their utility bills, corresponding to the higher cost of providing that service.

At this time, Council is being requested to approve the outcomes of negotiations and to direct staff to prepare an Agreement for Council approval, anticipated for April 2023.

## **DISCUSSION:**

### **Background**

The solid waste industry has changed significantly since the City first entered into the Agreement with MarBorg in 2013. In the last ten years, a series of legislative mandates have been signed into law requiring recycling and organic collections services in certain sectors and establishing targets to reduce statewide disposal of organic waste. Additionally, changes in recycling and labor markets and advancements in technology have shifted industry operating standards.

Implementing these mandates and new industry standards into a new Agreement will involve significant changes. Additionally, evaluating and incorporating lessons learned since current programs and services were put into place will be critical to developing a modern Agreement in alignment with industry best practices and the service needs of the Santa Barbara community. To support the City in that effort, on April 12, 2022, Council approved a professional service agreement with R3 for expert consulting services relating to developing and negotiating the new Agreement.

On June 13, 2022, the Council Sustainability Committee voted to recommend pursuing a direct negotiation with MarBorg, establishing an eight-month period to come to an agreement, while maintaining the right to conduct competitive procurement if an agreement is not reached during that time, as well as to extend the existing contract by one year. On July 19, 2022, the City Council voted to support the Sustainability Committee's recommendation.

On October 17, 2022 the Council Sustainability Committee voted to recommend that Council support the changes to the solid waste programs and services for the new MarBorg Agreement, and on November 15, 2022, the City Council voted to support the Sustainability Committee's recommendation. Council requested keeping near-term changes to solid waste rates as low as possible, and also requested additional details regarding the small residential curbside cart collection program both of which are addressed in this report.

### **Community Survey Results**

Staff and R3 prepared for negotiating programs and services for the City by conducting a community survey from June 8 through September 2022. There were over 1,200 respondents to the survey, which was conducted online, and while the results are not statistically significant, the majority of respondents indicated being satisfied or very satisfied with MarBorg's services. The majority of respondents also indicated that quality of overall service was of highest priority, with range of services provided and cost of

service being the next highest overall priorities. Respondents also expressed interest in broader access to household hazardous waste (HHW) collection services, access to compost for gardens and backyards, and additional bulky item pickups, in that order of priority.

### **Negotiation Outcomes**

Staff, MarBorg, and R3 have successfully concluded negotiations of terms, conditions, programs, and services for inclusion in the new Agreement, which is proposed to be a 15-year Agreement with the City's option for a 5-year extension.

### **Enhanced Neighborhood Collection Services**

The new Agreement will provide enhancements and additions to several existing MarBorg programs and services which, together, will contribute to greater cleanliness on City streets and public rights-of-way. The enhanced services are summarized below, with all services being provided to the City by MarBorg at minimum set levels as well as scalability for increased level of service if needed.

- **Bulky Items:** Expanding bulky item collection service to include large residential units, which will triple the amount of bulky item collections available to residents in the City, which will be provided within 5 business days of requests by residents. Palm fronds will also now be accepted in bulky item collection.
- **Abandoned Waste:** Enhancing abandoned waste clean-up efforts, which will be provided within 48 hours of City direction and providing for a greater number of abandoned waste collections based on City's needs.
- **Palm Fronds:** As requested by City staff, providing collection of palm fronds cleaned up by City crews on City property. Separately, collection of palm fronds generated on residential properties via the bulky item collection service provided to residents.
- **Clean Santa Barbara and City Services:** Providing additional solid waste collection services via roll-off containers for City services and collection containers for clean-up events.
- **Premium Sunday Service:** Providing a premium Sunday collection service to businesses that subscribe to service on all other collection days.
- **HHW Collection Events:** Providing periodic events for City residents to drop-off HHW at convenient and centralized locations, supplementing the existing Community HHW Collection program at UCSB.

## **Programs and Services for Legislative Compliance**

A primary reason to update the City's Agreement with MarBorg is to secure programs and services to facilitate compliance with State legislative requirements.

Over the last ten years, the solid waste industry has undergone a series of significant changes in response to post-consumer material markets and state legislation, driving the need to create a more adaptive system. Some of the major legislation includes Mandatory Commercial & Multi-Family Recycling (AB 341 (2012)) and Mandatory Commercial Organics Recycling (AB 1826 (2014)), which require commercial and multi-family residents to subscribe to recycling and organic collection services and Short-Lived Climate Pollutants (SB 1383 (2016)), which is intended to reduce greenhouse gas emissions, such as methane, and address food insecurity in California.

SB 1383 imposes significant new administrative requirements on jurisdictions including program implementation, reporting to CalRecycle, and enforcement. The following are not included in the current Agreement and will be incorporated into the new Agreement to address these important changes:

- **New Containers/Lids and Labeling:** The City must adopt a collection system that complies with prescribed labeling and container or lid color for all account holders. This includes providing new containers or lids for those that do not comply. The City's brown trash containers do not comply as SB 1383 requires them to be gray or black. Brown trash containers will be replaced with gray containers over the first 5 years of the new Agreement to comply with this requirement.
- **Contamination Monitoring:** SB 1383 includes annual inspection requirements to verify self-hauler compliance, including inspections of Tier One and Tier Two commercial edible food generators to verify compliance with food recovery requirements and annual residential and commercial route reviews to visually assess container contamination.
- **Reporting and Data Tracking:** There are a number of reporting requirements that the City intends to have MarBorg fulfill, including: type of organic waste collection service(s) provided to generators; results of waste evaluations performed to minimize contamination and the number of resulting targeted route reviews; and the total number of generators that receive each type of organic waste collection service provided.

**Dedicated Staffing, New Collection Vehicles, Zero Emission Vehicle Opportunities, and Other Industry Standards**

The new Agreement will also include terms and conditions meeting industry standards in a variety of areas. Among those are:

- **Dedicated Staffing:** MarBorg will provide a full-time dedicated point-of-contact serving as the primary liaison to the City and being responsible for resolution of City inquiries (such as service needs, complaint resolution, reporting requests, etc.).
- **New Collection Vehicles:** MarBorg's collection vehicles are due for replacement and vehicles over 10-years-old will be replaced with new compressed natural gas (CNG vehicles) during the Agreement. Additionally, the City and MarBorg will periodically meet-and-confer to review the economic and technological viability of implementing zero emission vehicles, with the intention of piloting such vehicles as soon as it is feasible. New collection vehicles will be acquired in the first 6-years of the Agreement, with depreciation being amortized over a 15-year period in order to spread out the costs of new capital over a longer-term, thereby facilitating the near-term outcomes of keeping MarBorg's compensation flat in FY 2024 and FY 2025 (not including the one-time fuel true-up).

Other industry standard terms and conditions include, but are not limited to:

- **Reporting:** To meet legislative requirements and facilitate best practices in management and administration of the Agreement.
- **Performance Standards:** Providing the City with assurances of MarBorg's performance including administrative penalties for uncured failures to perform.
- **Performance Reviews:** Providing the City with the ability to audit MarBorg's operations and finances periodically to ensure adherence to the terms and conditions of the Agreement.
- **Risk Management:** Meeting current City standards for insurance coverages and performance bond assurances.

**Small Residential Curbside Cart Collection Program**

The City's Small Residential (1 – 4 dwelling units) collection program is provided in a manner that is outdated compared to current industry standard in Santa Barbara County and the rest of California. Currently, collection services for Small Residential customers in the City are provided via collection vehicles that require two employees to exit the

vehicle to gather containers and manually move those containers to the rear of the collection vehicle for emptying. Containers are often located away from the public right-of-way, meaning that employees spend valuable time walking to and from the collection vehicle to gather and return containers.

Under the new Agreement, collection practices will move away from this very labor intensive means of providing Small Residential collection services. Instead, MarBorg will use the same collection approach that has been approved in MarBorg's other service areas and is the industry standard for communities in California. This approach entails use of automated collection vehicles (operated by one employee) which use a mechanical arm to collect specially designed wheeled carts which are placed at the curb by residents. MarBorg has implemented this Small Residential curbside cart collection program in all the other communities to which it provides services, including most recently Montecito, Hope Ranch and Mission Canyon. The program has been well-received in those communities, and, according to the City's consultant R3, this collection approach has been in widespread use throughout the State for decades and is a time-proven method of providing Small Residential collection service. Large Residential (5 or more dwelling units) customers will continue to receive on-premises collection according to service categories in the Agreement and rate classes set by the City for that service. It should be noted that there will be no reduction in MarBorg's labor force as a result of approving a new Agreement and this new service model due to reallocation of MarBorg's labor force within the company.

Curbside cart collection for the City's Small Residential customers will be flexible, providing for cost-effective rates for most of the customers while maintaining an option for those who would like to pay for the added convenience of "on-premises" non-curbside service. There are many benefits to a curbside cart collection program, including but not limited to:

- **Efficiency:** Shorter service time to collect carts from the curb.
- **Reduced Idling:** Fewer emissions from idling vehicles due to shorter service time.
- **Traffic Safety:** Safer traffic neighborhood traffic conditions resulting from less time with trucks collecting containers in the street.
- **Worker Safety:** Safer working conditions for MarBorg employees by virtue of less need to physically maneuver containers.
- **Customer Convenience:** Wheeled containers that are easier for customers to maneuver.

- **Litter Improvements:** Reduced roadside litter by providing containers with attached lids.
- **Uniformity:** Cleaner appearance of roadways with standardized containers.

MarBorg will provide every Small Residential customer in the City with wheeled carts (color coordinated to meet the requirements of SB 1383) for collection of trash, recycling and yard waste. All Small Residential customers will be directed to place those wheeled carts out to the curbside on their collection day and MarBorg will collect the containers from the curbside collection point. MarBorg will employ the new automated collection vehicles where the conditions of service make automated collection feasible (estimated at 60 percent of the City's Small Residential customers) and will continue to employ the current approach in areas of the City where automated collection is infeasible due to density and/or traffic conditions (estimated at 40 percent of the City's Small Residential customers).

With this change, all Small Residential customers will need to use wheeled carts (to which 70 percent of customers already subscribe) and place those carts curbside. Customers will not be allowed to use non-wheeled cans, and all customers with non-wheeled cans will be provided new wheeled carts (affecting 30 percent of customers). Currently, MarBorg provides collection service customers using non-wheeled cans on-premises as a default service. Under the curbside cart collection program, the default collection option will be at the curbside, with customers being able to opt-in to on-premises collection service at an additional cost (with exception for customers requiring a disability accommodation). This additional cost will reflect the added cost of serving those customers carts on premises. Customers qualifying for an accommodation will be able to request on-premise collection at no additional charge, as discussed below.

If approved by Council, the change to this new collection approach would be enacted July 1, 2024, providing over one year for the transition. This will allow the City and MarBorg plenty of time and opportunity to conduct outreach and education to customers regarding the details of the new program, including but not limited to directions on how to safely set out containers and not block the public right-of-way and details about how to secure accommodation for "on-premises" service.

Small Residential customers will be provided plenty of advance notice via outreach and education regarding the change and will have the ability to keep or change their subscription levels during the transition. MarBorg leadership will personally oversee the container exchange process and will use MarBorg employees to deliver the new carts, as opposed to a third-party service provider which is typically the case for such transitions.

In November 2022, the Council asked for more information regarding the process to secure accommodations for disabilities. The process is simple and straightforward:

customers seeking accommodation need only complete a short form with MarBorg with proof of temporary or permanent disability (via placard or doctor's note) and then MarBorg will provide on premise collection of carts and the City will only charge the curbside rate. Confirmation of accommodation will be re-confirmed every two years.

The Council also asked questions regarding the broader use of carts for collection (instead of customer owned cans) specifically with respect to keeping sidewalks clear and avoiding problems with set-out of carts on hills. In considering these issues, staff and MarBorg noted that 70% of Small Residential customers already use carts, and the vast majority of those already bring their carts to the curb for collection. MarBorg provides direction to customers regarding safe-set out of containers and City code enforcement staff currently enforces the City's codes with respect to blocking the public right-of-way. Likewise, MarBorg has not observed issues with carts being used in hilly areas, either in the City or its other service areas. Regardless, staff and MarBorg will make sure that outreach and education to customers in the yearlong period prior to formal roll-out of the curbside cart collection program will address how to set out containers safely without blocking sidewalks or allowing containers to roll down hills.

Finally, the Council also asked about the ability to reserve its right to change programs in the future, such as to implement separate collection of food scraps (instead of including them in trash for recovery at the Resource Center) or to implement a two-stream "wet / dry" program. While neither of these programs are currently necessary or cost-advantageous to the City or its customers, the City will retain the right and ability to direct future program changes with MarBorg should it see a need to adjust collection programs in the future.

### **Revised Compensation Methodology**

The means of compensating MarBorg in the current Agreement are complicated, outdated, and not in-keeping with industry standards. Currently, MarBorg is compensated based on a complex set of calculations wherein the amount due to MarBorg is derived based on what the City collects from solid waste customers. Additionally, MarBorg's current compensation includes compensation for the post-collection costs of processing, recycling, composting and disposal, which the City intends to pay directly to the County pursuant to its Material Delivery Agreement going forward.

Under the new Agreement, MarBorg will be compensated for collection services it provides to customers in accordance with a set of cost-of-service per unit rates. Those cost-of-service compensation rates will originally be set based on financial analysis conducted by the City, R3 and other City consultants. Once set, the compensation per unit will adjusted annually in accordance with a CPI posted by the Bureau of Labor Statistics.

Post-collection costs will be paid to the County by the City directly and will no longer be included as a pass-through cost in MarBorg's compensation. MarBorg will also provide the City with financial statements necessary for the City to periodically quantify the cost-of-service provided to the City and the reasonableness of compensation to MarBorg.

**BUDGET/FINANCIAL INFORMATION:**

If approved by Council, there will be no changes in MarBorg's compensation in FY 2024. MarBorg's base compensation will also not change in FY 2025, though there will be a one-time fuel true-up payment equal to the change in fuel cost from November 1, 2022 through October 31, 2023 compared to the prior year.

Starting in FY 2025, small residential customers that choose to opt-in to on-premises collection, and that are not able to demonstrate the need for a disability accommodation, will see increases in their collection rate as a result of higher cost-of-service compensation to MarBorg for on-premises collection service.

Starting in FY 2026, MarBorg's compensation will increase annually by the Garbage/Trash CPI, capped at five percent. Additionally, two percent will be added to the CPI in FY 2026 through FY 2029, which is to fund replacement of capital equipment including collection vehicles, carts and containers; adjustments to MarBorg's compensation will be phased in as new capital equipment is acquired, thus preventing the need for nearer term increases in MarBorg's compensation and customer rates. Thus, the maximum increases in MarBorg's compensation from FYs 2026 through 2029 will be seven percent annually, and with maximum increases thereafter will be five percent annually.

In its current agreement, the City collects a franchise fee on compensation to MarBorg of about two percent of gross revenues (approximately \$680,000 annually). Two percent is well below industry standards. However, the City also collects a six percent Utility Users Tax (UUT) on solid waste collections (generating approximately \$2.1 million annually) but it is not in line with standard industry practices to assess such a tax. Therefore, in order to better align with statewide practice, staff is recommending to eliminate the solid waste UUT and increase the franchise fee. The customer will see no increase to their bill related to these changes. The proposed new annual MarBorg franchise fee will initially be set at \$2.96 million, which includes a CPI increase of 4.625 percent, and is subject to future change based on resolution of the City Council.

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