

RESOLUTION NO. 2016-123

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING AMENDMENT NO. 1 TO FRANCHISE AGREEMENT BETWEEN CITY OF MARINA
AND GREENWASTE RECOVERY, INC. FOR SOLID WASTE, RECYCLING, AND ORGANIC
COLLECTION SERVICE

WHEREAS, on August 19, 2014, City and GreenWaste Recovery, Inc. entered into Franchise Agreement between City of Marina and GreenWaste Recovery, Inc. for Solid Waste, Recycling, and Organic Collection Services (hereinafter on occasion "Franchise Agreement"); and

WHEREAS, the Franchise Agreement provides for a franchise fee of 10%/gross receipts and a vehicle impact fee of 5%/gross receipts, payable to City by GreenWaste; and

WHEREAS, a recent review of the transcription of City Council discussion of the Franchise Agreement at the Council meeting (August 19, 2014) where the Franchise Agreement was approved by the Council, reveals that the Council approval included a modification to the proposed text that the franchise fee be set at 15% and that there be no vehicle impact fee; and

WHEREAS, City and GreenWaste desire to amend the Franchise Agreement to conform to the above-referenced true action of the City taken by and through the City Council on August 19, 2014; and

WHEREAS, staff has prepared a proposed Amendment No. 1 to Franchise Agreement between City of Marina and GreenWaste Recovery, Inc. for Solid Waste, Recycling, and Organics Collection Service, a copy of the proposed amendment attached hereto, consisting of two pages, which terms will, if adopted, conform the Franchise Agreement to the true action of the City Council noted above.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina, as follows:

1. Amendment No. 1 to Franchise Agreement between City of Marina and GreenWaste Recovery, Inc. for Solid Waste, Recycling, and Organics Collection Service, in the form attached hereto, is hereby approved and the Mayor is authorized and directed to sign it for and on behalf of the City.
2. The City Manager and City Clerk are directed to annotate the approved minutes of the City Council meeting of August 19, 2014, accurately to reflect the action of the Council regarding the treatment of the franchise fee and vehicle impact fee described hereinabove and in Amendment No. 1 herein approved.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Marina, duly held on the 16th day of August, 2016, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

AMENDMENT NO. 1
to
Franchise Agreement
between
City of Marina
and
GreenWaste Recovery, Inc.
for Solid Waste, Recycling, and
Organics Collection Service

THIS AMENDMENT NO. 1 to Franchise Agreement between City of Marina and GreenWaste Recovery, Inc. for Solid Waste Recycling, and Organics Collection Services, is made and entered into as of June _____, 2016, between the City of Marina, California, a political subdivision of the State of California (hereinafter on occasion "Agency"), and GreenWaste Recovery, Inc. (hereinafter referred to as the "Contractor").

RECITALS

This Amendment No. 1 to Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, on August 19, 2014, Agency and Contractor entered into Franchise Agreement between City of Marina and GreenWaste Recovery, Inc. for Solid Waste, Recycling, and Organics Collection Services (hereinafter "Franchise Agreement"); and

WHEREAS, the Franchise Agreement, at Sections 7.1 and 7.5 respectively, provides for a franchise fee of 10%/gross receipts and a vehicle impact fee of 5%/gross receipts, payable to Agency by Contractor; and

WHEREAS, a recent review of the transcription of Marina City Council discussion of the Franchise Agreement at the Council meeting (August 19, 2014) where the Franchise Agreement was approved by the Council, reveals that Council approval included a modification to the proposed text that the franchise fee be set at 15% and that there be no vehicle impact fee; and

WHEREAS, the Agency and Contractor desire to amend the Franchise Agreement to conform to the above-referenced true action of the Agency taken by and through its governing body, the Marina City Council, on August 19, 2014.

NOW, THEREFORE, in consideration of the mutual promises contained herein and in the Franchise Agreement, Agency and Contractor agree that the Franchise Agreement be amended as set forth as follows, and that all other terms and conditions of the Franchise Agreement shall remain unchanged and continue in full force and effect.

- A. Section 7.1 of the Franchise Agreement hereby is amended to read as follows: "**7.1 FRANCHISE FEE** In consideration of the rights provided Contractor herein, Contractor shall pay Franchise Fee to Agency each quarter, equal to fifteen percent (15%) of Gross Receipts for all services performed under this Agreement. This fee may be adjusted by City Council resolution."

Amendment No 1

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B. Section 7.5 of the Franchise Agreement hereby is amended to read as follows: “**7.5 VEHICLE IMPACT FEE** Contractor shall pay no Vehicle Impact Fee.”

IN WITNESS WHEREOF, this Amendment No. 1 to Franchise Agreement is entered into by the parties hereto in Marina, California, on the day and year first above written.

CITY OF MARINA

GREENWASTE RECOVERY, INC.

by _____

by _____

its _____

its _____

APPROVED AS TO FORM:

by _____

City Attorney

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-,
APPROVING AMENDMENT NO. 1 TO FRANCHISE AGREEMENT
BETWEEN CITY OF MARINA AND GREENWASTE RECOVERY, INC.
FOR SOLID WASTE, RECYCLING, AND ORGANIC COLLECTION
SERVICE**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2016-, Amendment No. 1 to Franchise Agreement between City of Marina and GreenWaste Recovery, Inc. for Solid Waste, Recycling, and Organics Collection Service; and
2. Authorize the Mayor to execute it for and on behalf of the City.

BACKGROUND:

On August 19, 2014, City and GreenWaste Recovery, Inc. entered into Franchise Agreement between City of Marina and GreenWaste Recovery, Inc. for Solid Waste, Recycling, and Organic Collection Services (hereinafter on occasion "Franchise Agreement"); and

the Franchise Agreement provides for a franchise fee of 10%/gross receipts and a vehicle impact fee of 5%/gross receipts, payable to City by GreenWaste; and

ANALYSIS:

A recent review of the transcription of City Council discussion of the Franchise Agreement at the Council meeting (August 19, 2014) where the Franchise Agreement was approved by the Council, reveals that the Council approval included a modification to the proposed text that the franchise fee be set at 15% and that there be no vehicle impact fee; and

City and GreenWaste desire to amend the Franchise Agreement to conform to the above-referenced true action of the City taken by and through the City Council on August 19, 2014.

Staff has prepared a proposed Amendment No. 1 to Franchise Agreement between City of Marina and GreenWaste Recovery, Inc. for Solid Waste, Recycling, and Organics Collection Service, consisting of two pages, which terms will, if adopted, conform the Franchise Agreement to the true action of the City Council noted above. (**"EXHIBIT A"**)

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Layne Long
City Manager
City of Marina