



CITY COUNCIL AGENDA REPORT

Meeting Date: 6/6/2019

From: Maria Saguisag-Sid, Principal Analyst

Subject: Amendment No. 2 to the Agreement with South San Francisco Scavenger Company, Inc. to Extend the Term of Zone 2

Community Goal/Result

Ecological Sustainability

Purpose

To ensure solid waste is disposed of in a proper and environmentally effective manner.

Recommendation

Approve Resolution 2019-21, authorizing the Mayor to sign Amendment No. 2 to the franchise agreement between the City of Brisbane and South San Francisco Scavengers to extend term of Zone 2 coverage to November 30, 2024.

Background

The City of Brisbane currently holds a franchise agreement with South San Francisco Scavenger Company, Inc. (SSF Scavenger) for Solid Waste Services in Zone 1 and 2. This agreement was approved in November 2014. Services under this agreement not only include weekly residential and commercial solid waste removal services, but also provides for other services such as residential curbside recycling including food waste, the annual citywide yard waste clean-up, management of annual diversion reports to CalRecycle, assistance in implementing new mandates such as the AB341 mandatory commercial recycling law, and other solid waste services. SSF Scavengers reported the diversion rate for Zone 1 and 2 was 79% in calendar year 2017.

Under Section 3.1 of the agreement, the term for Zone 1 is for a period of 20 years, from December 1, 2014 to November 30, 2034. Also under Section 3.1 of the agreement, the term for Zone 2 is for a period of five (5) years, from December 1, 2014 to November 30, 2019, with an option for the City to extend the agreement for an additional period of five (5) years, either in writing by April 30, 2019, or by mutual agreement of the parties.

Discussion

At the April 24, 2019 Infrastructure, Utilities and Franchise Subcommittee meeting, staff informed the subcommittee that SSF Scavenger reached out to City staff on April 12, 2019 and expressed their interest in extending the agreement for an additional five years in Zone 2. At the meeting, the subcommittee recommended invoking the clause in the agreement to extend Zone

2 coverage for the additional five years by mutual agreement and directed staff to prepare an amendment for the full Council's approval.

Attached is the notice of interest from SSF Scavenger, dated May 8, 2019, documenting their mutual interest in the term extension. Legal counsel for the City prepared Amendment No. 2 to extend the term of Zone 2 coverage for an additional 5 years, from December 1, 2019 to November 30, 2024. Staff concurs with the subcommittee's recommendation to approve Resolution 2019-21 authorizing the Mayor to sign the Amendment.

Fiscal Impact

Rates for Zone 2 are set annually, in line with Section 6.2 of the Agreement. Staff will continue to bring notices of intent for rate increases to Council for their review.

Measure of Success

Solid waste removal is able to continue efficiently for the community in a way that helps our city reach our diversion goals.

Attachments

1. Resolution 2019-21
2. Amendment No. 2 between the City of Brisbane and South San Francisco Scavenger Co. Inc.
3. Letter from South San Francisco Scavenger Co. Inc, dated May 8, 2019
4. Section 3.1, Term, of the Franchise Agreement Between the City of Brisbane and South San Francisco Scavenger Co., Inc., dated November 20, 2014



Maria Saguisag-Sid, Principal Analyst



Clay Holstine, City Manager

RESOLUTION 2019-21

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
AMENDING THE FRANCHISE AGREEMENT BETWEEN THE CITY OF BRISBANE
AND SOUTH SAN FRANCISCO SCAVENGER CO., INC.
EFFECTIVE DECEMBER 1, 2019**

WHEREAS, South San Francisco Scavenger Co., Inc. provides collection and disposal of recyclable materials, organic materials and solid waste services in franchise zones 1 and 2 on pursuant to the Franchise Agreement with the City of Brisbane dated November 20, 2014, as amended on May 18, 2017, and

WHEREAS, service coverage for Zone 2 expires on November 30, 2019, per Section 3.1 of the Franchise Agreement, and

WHEREAS, the City of Brisbane and South San Francisco Scavenger Co., Inc. are mutually agreeable to extend the term of Zone 2 as provided in Section 3.1 of the Franchise Agreement, and

WHEREAS, the City of Brisbane has proposed to amend the current agreement as outlined in attached Amendment No. 2 to extend the term of Zone 2 service coverage for an additional five (5) years, effective December 1, 2019 to November 30, 2024,

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Brisbane and authorizes the Mayor to sign Amendment No. 2 of the Franchise Agreement, which is attached hereto and incorporate as though set forth in full, to be effective December 1, 2019.

MADISON DAVIS
Mayor

I hereby certify that the foregoing Resolution No. 2019-21 was duly and regularly adopted at a regular meeting of the Brisbane City Council on June 6, 2019, by the following vote:

AYES:
NOES:
ABSENT:

INGRID PADILLA
City Clerk

AMENDMENT NO. 2 TO FRANCHISE AGREEMENT WITH SOUTH SAN FRANCISCO SCAVENGER CO., INC.

This Amendment No. 2 (the "Second Amendment") is made June 6, 2019 between the City of Brisbane ("City") and the South San Francisco Scavenger Co., Inc. ("Scavenger").

RECITALS

- A. City and Scavenger entered into a Franchise Agreement for the Collection and Disposal of Recyclable Materials, Organic Materials and Solid Waste in the City, dated November 20, 2014 (the "Franchise Agreement").
- B. The City and Scavenger first amended the Franchise Agreement on May 18, 2017 concerning, among other things, manual pick up of litter long Sierra Point Parkway.
- C. Under the Franchise Agreement, the term of the franchise for Zone 2 ends on November 30, 2019 unless such term is extended by the mutual agreement of the parties.
- D. Representatives of Scavenger have requested that the term of the franchise for Zone 2 be extended.
- E. The City Council Infrastructure, Utilities and Franchise subcommittee has considered such request and recommends that the term be extended for five years, i.e., to November 30, 2024.
- F. It is in the best interest for the maintenance of public health, safety and welfare to extend the term of the franchise for Zone 2.

NOW, THEREFORE, in consideration of the mutual promises in the Franchise Agreement and this Second Amendment, City and Scavenger agree as follows:

- 1. As provided in Section 3.1 of the Franchise Agreement, the term of the franchise for Zone 2 shall be extended until November 30, 2024.
- 2. Except as set forth in the First Amendment and this Second Amendment, as well as any other resolutions adopted by the City Council of the City concerning Service Rates, the terms of the Franchise Agreement remain in full force and effect.

CITY OF BRISBANE

SOUTH SAN FRANCISCO SCAVENGER CO., INC.

Madison Davis, Mayor

Doug Button, President

Approved as to form:

Thomas McMorrow, City Attorney

SOUTH SAN FRANCISCO
SCAVENGER
COMPANY, INC.

May 8, 2019

Ms. Maria Saguisag-Sid
Senior Human Resources Analyst/Special Projects
City of Brisbane
50 Park Lane
Brisbane, CA 94005

Dear Ms. Saguisag-Sid,

As you know, Section 3.1 of our Franchise Agreement For The Collection And Disposal Of Recyclable Materials, Organic Materials, And Solid Waste In The City Of Brisbane dated November 20, 2014 (the "Agreement") provides with respect to the term of the Agreement for Zone 2 that "the City shall have the option, exercisable in writing to Scavenger Company not later than April 30, 2019, to extend this Agreement and the franchise granted hereunder on the terms and conditions herein for a period of five (5) years commencing on December 1, 2019 and ending November 30, 2024."

We understand that the City desires to so extend the Agreement. We also desire to extend the Agreement, notwithstanding the April 30, 2019 deadline.

Please indicate your approval of this extension of the term of the Agreement with respect to Zone 2 through November 30, 2024 on the terms and conditions therein by signing and returning a copy of this letter to the undersigned.

Sincerely,



Paul Formosa, CFO
South San Francisco Scavenger Co., Inc.

Accepted and agreed for
the City of Brisbane:

By: _____
Title: _____
Date: _____

3. Term

3.1 The term of the franchise for Zone 1 shall be for a period of twenty (20) years, commencing on the effective date of December 1, 2014 and ending November 30, 2034, provided that City shall have the option, exercisable in writing to Scavenger Company not later than November 30, 2032, to extend this Agreement and the franchise granted hereunder on the terms and conditions herein for a period of (10) years commencing December 1, 2034 and ending November 30, 2044. The term may also be extended by the mutual agreement of the parties.

The term of the franchise for Zone 2 shall be for a period of five (5) years, commencing on the effective date of December 1, 2014 and ending November 30, 2019, provided that the City shall have the option, exercisable in writing to Scavenger Company not later than April 30, 2019, to extend this Agreement and the franchise granted hereunder on the terms and conditions herein for a period of five (5) years commencing on December 1, 2019 and ending November 30, 2024. The term may also be extended by the mutual agreement of the parties.

For the avoidance of doubt, and notwithstanding any other provision in this Agreement, all of Scavenger Company's rights and obligations hereunder with respect to either of Solid Waste Collection Zones 1 or 2 shall remain in effect only during the respective term of the franchise with respect to such Zone (other than any obligations with respect to such Zone that are specifically described as continuing after the expiration or termination of such term, such as the indemnification requirement for such Zone contained in Section 5.18(a) below).

4. Franchise Fee

4.1 Scavenger Company is obligated to pay City, on or before April 30th of each year during the term of this Agreement, a franchise fee in an amount equal to fourteen percent (14%) of Scavenger Company's annual gross revenues from the collection and disposal of all solid waste within Solid Waste Collection Zones 1 and 2 during the preceding calendar year in consideration of the provisions of such Agreement and the exclusive contract, right and privilege therein granted to Scavenger Company (the "Franchise Fee"). The full amount of the Franchise Fee will be included in the rates charged to the customers of Scavenger Company. In the event of any future increase in the Franchise Fee, or the direct or indirect imposition on Scavenger Company of any new government fees, the maximum rates hereunder shall be increased to cover the cost to Scavenger Company of all such increases or additional fees.