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Title: Actions pertaining to non-exclusive franchise agreements for roll-off collection services:
 1. Adopt a finding that approval of Amendment No. 2 to Non-Exclusive Agreements for Roll-Off Collection Services is exempt from the California Environmental Quality Act (CEQA) pursuant to the common sense exemption that it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3);
 2. Authorize Amendment No. 2 to Non-Exclusive Agreements for Roll-Off Collection Services between the City of Fresno and franchisees to allow for two additional extensions of up to five year each and to award the first of those extensions, to extend terms through June 30, 2026.

Sponsors: Department of Public Utilities

Indexes:

Code sections:

Attachments: 1. Attachment 1 - Ordinance.pdf, 2. Attachment 2 - Non Exclusive Franchisees (22).pdf, 3. Attachment 3 - Sample Letter 2 with NERO Amendment No. 2.pdf

| Date | Ver. | Action By | Action | Result |
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REPORT TO THE CITY COUNCIL

December 10, 2020

FROM: MICHAEL CARBAJAL, Director
Department of Public Utilities

BY: JERRY L. SCHUBER SR., Assistant Director
Department of Public Utilities, Solid Waste Management Division

SUBJECT

Actions pertaining to non-exclusive franchise agreements for roll-off collection services:
 1. Adopt a finding that approval of Amendment No. 2 to Non-Exclusive Agreements for Roll-Off Collection Services is exempt from the California Environmental Quality Act (CEQA) pursuant to the common sense exemption that it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3);

2. Authorize Amendment No. 2 to Non-Exclusive Agreements for Roll-Off Collection Services between the City of Fresno and franchisees to allow for two additional extensions of up to five year each and to award the first of those extensions, to extend terms through June 30, 2026.

RECOMMENDATION

Staff recommends that Council:

1. Adopt a finding that approval of Amendment No. 2 to Non-Exclusive Agreements for Roll-Off Collection Services is exempt from the California Environmental Quality Act (CEQA) pursuant to the common sense exemption that it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3);
2. Authorize Amendment No. 2 to Non-Exclusive Agreements for Roll-Off Collection Services between the City of Fresno and franchisees to allow for two additional extensions of up to five year each and to award the first of those extensions, to extend terms through June 30, 2026.
3. Authorize the Director of Public Utilities or designee to execute the amendments and subsequent extensions on the City's behalf.

EXECUTIVE SUMMARY

The City Council approved an ordinance establishing a non-exclusive roll-off collection franchise system for private haulers under City Charter Article XIII, Section 1300 on July 21, 2011. Sixteen companies were approved as franchisee at that time. Since then, twelve additional companies have applied and been approved to become franchisees. These non-exclusive franchises are projected to generate \$875,000 in FY21. Consistent with the initial agreement, in 2016 the City extended the term of 22 of the agreements by five years with Council authorization and written notice to the haulers 180 days prior to the end of the agreement. These 22 agreements will expire on June 30, 2021. Therefore, staff recommends Council authorize an amendment to these 22 agreements to provide the option for two additional extensions of up to five years each, and grant the first five year extension, extending the term of the current agreements to June 30, 2026. Extending these agreements would generate more than \$4,375,000 million in General Fund revenues over the next five years.

BACKGROUND

On July 21, 2011, City Council approved an ordinance establishing a non-exclusive roll-off collection franchise system to regulate roll-off hauler collection activities.

The volume of roll-off materials collected is approximately 20-25% of the solid waste stream and highly recyclable, therefore the City has implemented the system to:

- Comply with current and anticipated State regulations related to the diversion of such materials from landfill diversion;
- Implement the goals of the City's AB 939 Plan including the Source Reduction and Recycling Element as adopted by the City Council;

- Support the goals of the City to achieve 75% diversion by 2012 and Zero Waste by 2025, which were adopted by City Council by establishing minimum diversion standards for roll-off materials (50% of C&D materials and 70% of recyclables); and
- Increase the fees received from these companies from the previous material diversion fee of \$17.70 per service location to a 10% franchise fee. In FY 2021, the City anticipates receiving approximately \$875,000 in total annual franchise fees from roll-off haulers.

Roll-Off Hauler Application Process

Haulers may apply to the City to obtain a non-exclusive roll-off franchise. The applicant must describe and/or provide:

- Information about the company
- Qualifications of the company, which must include:
 - Names and addresses (1) officers, directors, and associates; (2) persons and entities having five percent or more of ownership; and (3) Any parent or subsidiary or business entity owning or controlling in whole or in part applicant
 - Description of applicant's experience
 - Municipal references
 - Customer references
 - Proof of insurance
 - Litigation and regulatory history
 - Criminal history
- Operations Information
 - Diversion plan
 - Description of equipment (trucks and containers)
 - Collection schedule
 - Description of the types of materials to be collected
 - Processing facilities collector intends to use
 - Hazardous waste procedures
 - Customer service plans
 - Billing services
- Other information that may be requested by the Director of Department of Public Utilities.

The current list of approved haulers includes the twenty two entities listed on Attachment B. In total the City has awarded non-exclusive roll-off franchises to 28 entities. The remaining entities are not addresses in this staff report.

If approved, the Director of the Public Utilities Department, or designee, will send notice to each of the haulers notifying them of the City's offer to amend their agreement to provide the option for two additional extensions of up to five years each and to exercise the first of those options to extend its current agreement as a non-exclusive roll off hauler for an additional five years. Each hauler will then have thirty days to return written notice of their agreement to continue to participate in the program.

ENVIRONMENTAL FINDINGS

CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA if it is “covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

Staff has conducted a preliminary review of the project and has determined that it is exempt from CEQA pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) under the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

The proposed Amendment No. 2 amends the current Non-Exclusive Agreements for Roll-Off Collection Services to (1) provide the option for two additional extensions of up to five years each and to (2) grant the first of those extensions. The non-exclusive franchises authorize the franchisees to provide for the roll-off container collection of permitted materials within the corporate limits of the City. All of the franchisees are currently authorized to provide such collection services with the City and extending the term of their non-exclusive agreements does not change or expand the scope of collection services they are authorized to perform. The proposed amendment does not add any new franchisees to the agreement, nor does it contemplate an expansion of service. Rather it allows a continuation of service in the same capacity that is already being provided by the franchisee. Thus, it can be seen with certainty that this approval will not have a significant effect on the environment. Therefore, it is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15061 (b)(3) and no further assessment is required.

LOCAL PREFERENCE

Local preference was not implemented because extension of the non-exclusive roll-off franchise agreements is not an award of a services or construction contract.

FISCAL IMPACT

In FY 2021, the City anticipates receiving approximately \$875,000 in total annual franchise fees from roll-off haulers. Expected revenue for the remaining five years is based on tonnage and customer participation. Over the past 10 year term of the agreement the City of Fresno has received revenues of \$6,738,136 from non-exclusive roll-off.

Attachments:

Attachment 1 - Ordinance

Attachment 2 - Non-Exclusive Franchise Haulers

Attachment 3 - Sample Letter and Sample Amendment No. 2