

ORDINANCE NO. 23-2310

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON,
CALIFORNIA, GRANTING A PUBLIC UTILITY PIPELINE FRANCHISE
TO ZENITH ENERGY WEST COAST TERMINALS LLC**

WHEREAS, on July 16, 1973, the City of Carson ("City") granted a public utility pipeline franchise to Southern California Edison Company ("SCE") by adoption of Ordinance No. 73-264, which granted SCE a 50-year franchise set to expire August 14, 2023 ("1973 Franchise") where the franchise fee was established as 2% of gross annual receipts arising from the use, operation or possession of the granted franchise within the City; and

WHEREAS, the 1973 Franchise permitted SCE to construct, lay, operate, maintain, use, renew, repair, replace, remove, change the size and number of, and remove or abandon in place a system of pipelines, together with such valves, fittings, manholes, vaults, pumps, and other appliances, appurtenances, attachments or equipment as SCE or its successors and assigns, may deem necessary or convenient, for the purpose of conducting, transporting, conveying and carrying gas, oil, petroleum, water and other substances, on, along, in, under and across certain public streets, ways, alleys and places within the City of Carson; and

WHEREAS, on March 23, 1999, the City Council adopted Resolution No. 99-030, approving the location of pipelines to be constructed within certain City streets; and

WHEREAS, on January 4, 2000, the City Council adopted Ordinance No. 99-1185, restating certain rights granted to SCE under Ordinance No. 73-264, repealing any franchise rights previously granted to SCE by the County of Los Angeles through County Ordinance No. 9271 on January 24, 1967, and establishing franchise fees to be consistent with fees set out in Public Utilities Code Section 6231.5; and

WHEREAS, on March 21, 2006, the City Council adopted Resolution No. 06-023 consenting to assignment of the 1973 Franchise from SCE to Pacific Terminals LLC; and

WHEREAS, effective June 1, 2009, there was a name change from Pacific Terminals LLC to Plains West Coast Terminals LLC; and

WHEREAS, effective October 16, 2020, there was a name change from Plains West Coast Terminals LLC to Zenith Energy West Coast Terminals LLC, a Delaware limited liability company ("Zenith"); and

WHEREAS, on July 5, 2023, Zenith filed with the City an application requesting renewal of the 1973 Franchise; and

WHEREAS, during the month of July 2023, representatives for the City and Zenith

discussed and agreed upon the terms for the renewed 1973 Franchise proposed and set out in this Ordinance; and

WHEREAS, pursuant to Section 1000 of the City of Carson's City Charter, the City is authorized to grant a franchise by adoption of this Ordinance, and to prescribe the terms and conditions of the franchise; and

WHEREAS, pursuant to Charter Section 1001, the City Council passed Resolution No. 23 -122 declaring its intention to grant this franchise to Zenith and setting a public hearing on the granting of this franchise; and

WHEREAS, the City Clerk has published and posted the resolution as required by Charter Section 1001; and

WHEREAS, on November 21, 2023, the City Council held a public hearing on the granting of a public utility pipeline franchise to Zenith on the terms and conditions stated herein; and

WHEREAS, the City Council now desires to grant a franchise to Zenith to operate a public utility pipeline franchise, and Zenith agrees to the terms and conditions stated herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Authority. Pursuant to Section 1000 of the City of Carson's City Charter (the "Charter"), and Chapter 8 (Pipeline Franchises) of Article VI (Taxes and Licenses) of the Carson Municipal Code, the City Council hereby grants a public utility pipeline franchise to Zenith ("Franchisee") as reflected in this Ordinance.

Section 3. Grant of Franchise.

A. The City Council hereby grants a public utility pipeline franchise ("Franchise") to construct, lay, operate, maintain, use, renew, repair, replace, remove, change the size and number of, and remove or abandon in place a system of pipelines, together with such valves, fittings, manholes, vaults, pumps, and other appliances, appurtenances, attachments or equipment, to Franchisee and its successors and assigns, as Franchisee or its successors and assigns may deem necessary or convenient, for the purpose of conducting, transporting, conveying and carrying gas, oil, petroleum, water and other substances, on, along, in, under and across certain public streets, ways, alleys and places within the City of Carson, as approved from time to time by resolution of the City Council.

B. Pursuant to Carson Municipal Code Section 6827, the Franchisee shall not operate the franchise granted by this Ordinance or add any pipeline to the franchise granted by this Ordinance, without first obtaining the City Council's prior approval by resolution. Pursuant to Section 6819 of the Carson Municipal Code, all facilities previously authorized by the City Council shall be subject to this Ordinance. Franchisee has represented to City that there are currently approximately 25,442 feet of pipelines that exist within the City of Carson.

C. The Franchise term shall be for a period of ten (10) years commencing on the effective date of this Ordinance, with a maximum of two (2) opportunities to extend the Franchise for an additional five (5) years each. Pursuant to Section 1002 of the Charter, the City Council may grant a longer term on a case-by-case basis.

Section 4. Fees. Franchisee shall pay to the City franchise fees pursuant to California Public Utilities Code Section 6231.5(a) and (b), in the following amounts:

A. Base Annual Fee.

A base annual fee shall be paid within sixty (60) days after the end of each calendar year and during the life of the Franchise for each and every year, commencing with calendar year 2023, according to the "franchise payment period" as defined in Carson Municipal Code Section 6800 *et seq.*, by multiplying the pipe length expressed in feet by the applicable base rate, as follows:

Pipe Size (Internal) Diameter in Inches	Base Rate in \$ Per Lineal Foot
0-4	0.088
6	0.132
8	0.176
10	0.220
12	0.264
14	0.308
16	0.352
18	0.396
20	0.440
22	0.484
24	0.528
26	0.572
28	0.616
30	0.660

For pipelines with an internal diameter not listed above, the fees shall be in the same proportion to the fees of a twelve inch (12") diameter pipe as the diameter of the unlisted pipe is to twelve (12) inches. The formula used in arriving at the annual fee

shall apply to any existing, replacement, modification or extension of the pipeline.

B. Adjustments.

- (1) The amount of the fee specified above shall be adjusted at the time payment is due by multiplying the base fee by the Consumer Price Index, All Urban Consumers for the Los Angeles-Long Beach-Anaheim area as published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index for June 30, 1989, which is declared to be 100.0 (being the base CPI used for purposes of future adjustments in the fee).
- (2) In no event shall an annual fee be charged which is less than the base annual fee amount established above.
- (3) The indices specified in paragraph 1 above are calculated and published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau discontinues the calculation or publication of the Consumer Price Index for the area, and if no transposition table is available to convert to another index, then the amount of each annual adjustment in base fees shall be computed by using a comparable governmental index.

C. Publication Costs. Pursuant to Carson Municipal Code Section 6817, within thirty (30) days after receiving an invoice or statement from the City for all advertising and publishing costs incurred in connection with the granting of this franchise, the Franchisee shall pay the balance of such invoice in full.

Section 5. Insurance. Franchisee shall obtain, and provide satisfactory evidence of having obtained, the following policies of liability and workers' compensation insurance from companies that are authorized to transact business in the State of California by the Insurance Commissioner of California and have a minimum rating of or equivalent to A-: VIII in Best's Key Rating Guide, Comprehensive Liability Insurance. In the event of any conflicting language between this Section 5 and Section 6809 of the Carson Municipal Code, this Section 5 shall be interpreted in a manner consistent with Section 6809 of the Carson Municipal Code. If such interpretation is not reasonable in City's determination, then this Section 5 shall govern.

A. General Liability Insurance (Coverage Form ISO CGL CG 00 01 or equivalent). Each liability insurance policy obtained by Franchisee must:

- (1) Be issued to the Franchisee and name the City of Carson, its elected and appointed officials, employees, officers and agents as additional insureds;
- (2) Provide coverage for Franchisee's liabilities, including without limitation,

Franchisee's obligation to indemnify the City of Carson, its elected and appointed officials, employees, officers and agents, for all liability for personal and bodily injury, death and damage to property arising from activities conducted pursuant to the Franchise, and the acts or omissions of the Franchisee, and its agents, servants and employees, committed in the conduct of franchise operations. The coverage must provide liability insurance in the amount of \$15,000,000 per occurrence, subject to self-insured retention in an amount and form that is appropriate and prudent for operations substantially similar to those of Franchisee, and subject to approval by City of Carson in its sole discretion, and may not be cancelled unless at least thirty (30) days prior written notice is provided to the City by Franchisee or its insurance provider.

B. Automobile Liability (Coverage Form ISO CA 00 01 including “any auto” and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than \$5,000,000 per accident for bodily injury and property damage, issued to Franchisee and name the City of Carson, its elected and appointed officials, employees, officers and agents as additional insureds.

C. Workers' Compensation. Each workers' compensation insurance policy obtained by the Franchisee must:

- (1) Provide coverage as required by the Statutory Limits of the State of California. Cover all of the Franchisee's employees who in the course and scope of their employment conduct or perform work pursuant to the franchise operations;
- (2) Provide for every benefit and payment presently or after conferred by Division 4 of the California Labor Code upon an injured employee, including vocational rehabilitation and death benefits;
- (3) Be noncancellable without thirty (30) days prior written notice to the City by Franchisee or its insurance provider.
- (4) In lieu of the policy of workers' compensation insurance required by this section, Franchisee may substitute and provide a certificate of consent to self-insure, issued by the Board of Industrial Relations of the State of California.

D. Employer's Liability Coverage. Each employer liability insurance policy obtained by Franchisee must include a coverage limit of no less than \$1,000,000 per accident for bodily injury or disease.

E. Professional Coverage (Errors and Omissions). If applicable, the Franchisee must ensure that appropriate professional liability insurance coverage is obtained for any and all third party architects, engineers, surveyors, or other professionals hired to conduct or perform work

pursuant to the franchise operations, and that such coverage include a coverage limit of no less than \$5,000,000 per occurrence or claim, \$5,000,000 aggregate.

F. Pollution Coverage. Each pollution liability insurance policy obtained by the Franchisee shall be for sudden and accidental coverage and must:

- (1) Provide limits of coverage of \$5,000,000 per occurrence and \$10,000,000 aggregate, or other equivalent insurance as determined acceptable by the City of Carson; and
- (2) Be issued to the Franchisee and name the City of Carson, its elected and appointed officials, employees, officers and agents, as additional insureds by endorsement form acceptable to the City of Carson.

G. Waiver of Subrogation. For general liability, automobile liability, worker's compensation and pollution coverage, each of Franchisee's insurers are deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers.

H. Evidence of Coverage. Upon acceptance of the Franchise, and for as long as Franchisee has pipelines existing in the City, Franchisee shall file with the Carson City Manager, or designee, a certificate of insurance for each of the required policies executed by the company issuing the policy, certifying that the policy is in force, with any necessary endorsements, including without limitation, cancellation notification endorsements. Franchisee shall provide the Carson City Manager, or designee, with renewal certificates throughout the term of the Franchise. Franchisee shall provide all of the following information with respect to the policy.

- (1) The policy number;
- (2) The date upon which the policy will become effective and the date upon which it will expire;
- (3) The names of the named insured and any additional insureds;
- (4) The additional insured endorsement form(s);
- (5) The self-insured retention endorsement (if applicable);
- (6) The subject of the insurance;
- (7) The type of coverage provided by the insurance;
- (8) The amount of limit of coverage provided by the insurance; and

- (9) Copies of Additional Insured (including Primary and Non-Contributory coverage), Waiver of Subrogation, and Cancellation Notification endorsements that form a part of the policy and are applicable to the Franchisee's operations under this Ordinance.

I. Claims Made Policies. If any of the required policies provide claims-made coverage:

- (1) The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
- (2) Insurance must be maintained and evidence of insurance must be provided for at least five
(5) years after completion of the contract of work.
- (3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Franchisee must purchase "extended reporting" coverage for a minimum of five
(5) years after completion of work.

J. Compliance. All Franchise operations must be suspended during any period that the Franchisee fails to maintain these policies in full force and effect.

K. Self-Insurance Program. In lieu of any insurance required by this Section the City of Carson may, upon application by Franchisee, permit Franchisee to substitute a self-administered claims program (self-insurance) covering the risks assumed under this Franchise. In the event that Franchisee is permitted to substitute a program of self-insurance, Franchisee shall provide City with a letter evidencing and describing the self-administered claims program, duly executed by an authorized officer of Franchisee, and shall notify the Carson City Manager, or designee, in writing thirty (30) days prior to the termination of the self-administered claims program.

Section 6. Faithful Performance Bond. Pursuant to Carson Municipal Code Section 6810, on or before the effective date of this Ordinance, Franchisee shall file and thereafter at all times during the life of the Franchise keep on file with the Supervisor a corporate surety bond approved by the City Attorney running to the City in the penal sum of \$100,000, with a surety to be approved by the Supervisor, conditioned that Franchisee shall well and truly observe, fulfill and perform each condition of the Franchise and that in case of any breach of condition of the bond the whole amount of the penal sum shall be deemed to be liquidated damages and shall be recoverable from the principal and sureties of the bond. If said bond is not filed prior to the effective date of this Ordinance, then the award of the Franchise may be set aside, this Ordinance granting the Franchise repealed at any time prior to the filing of said bond, and any

money paid in consideration for said award of franchise shall be deemed forfeited. In the event that said bond, after it has been so filed, shall at any time during the life of the franchise become insufficient, Franchisee agrees to renew said bond, subject to the approval of the City Attorney, within ten (10) days after written notice to do so from the Supervisor.

Section 7. Acceptance. Franchisee shall, within thirty (30) days after passage of this Ordinance, file with the City Clerk of the City of Carson and with the Supervisor, a written acceptance of the terms and conditions of the Franchise granted by the adoption of this Ordinance, pursuant to Carson Municipal Code Section 6805.

Section 8. Retroactive Application of Fees. Within thirty (30) days after the passage of this Ordinance and prior to signing the written acceptance of the Franchise, Franchisee shall pay to the City, in addition to any other fees required, the base annual fee set out in Section 4(B) of this Ordinance, retroactively assessed on a pro-rated basis, for the period of August 15, 2023, to the effective date of this Ordinance granting the Franchise.

Section 9. City's Right to Audit. City reserves the right to audit Franchisee's operation and maintenance of the public utility pipeline at Franchisee's reasonable expense. The option to audit may be exercised during the term of the Franchise, upon termination or expiration of the Franchise, or at any time thereafter as long as Franchisee has pipelines existing in the City. Franchisee shall provide City with reasonable access to the public utility pipeline for auditing purposes upon seven (7) days written notice of an audit by the City.

Section 10. Compliance with Local, State, and Federal Regulations. Except as otherwise stated herein, Franchisee shall comply with all mandates of the City of Carson's City Charter and Carson Municipal Code, including Article VI, Chapter 8. Franchisee shall also comply with State and Federal regulations.

Section 11. Hold Harmless. Pursuant to Section 6821 of the Carson Municipal Code, the Franchisee shall be responsible to the City and save the City and its officers and employees free and harmless from all damages or liability arising from the use, operation or possession of the franchise, and from the use, operation or maintenance of the facilities erected, constructed, laid, operated or maintained thereunder.

Section 12. CEQA. The pipelines which are the subject of this Franchise will continue to be operated by Franchisee. The Franchisee will continue use and/or maintain the pipelines as previously approved. Therefore, the City has determined this grant of Franchise is exempt from the requirements of California Environmental Quality Act as a Class 1 Categorical Exemption, Existing Facilities, pursuant to Section 15301 of the CEQA Guidelines.

Section 13. Name Change. In the event that Franchisee changes its legal name, Franchisee shall advise the City by written notice to the Carson Public Works Director before the expiration of sixty (60) days after the effective date of such name change.

Section 14. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

Section 15. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

Section 16. Certification. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted in the manner required by law.

[remainder left intentionally blank]

PASSED, APPROVED and **ADOPTED** at a regular meeting of the City Council on this day of _____, 2023.

Lula Davis-Holmes, Mayor

ATTEST:

Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:

Sunny K. Soltani, City Attorney