

ORDINANCE NO. 19-1932

**AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA,
GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO
PRAXAIR, INC.**

WHEREAS, on October 3, 1989, the City Council adopted Ordinance No. 89-884 granting to Union Carbide Industrial Gases, Inc., a Delaware corporation, a twenty-five (25) year nonpublic utility pipeline franchise within the City of Carson;

WHEREAS, on August 7, 1990, the City Council adopted Ordinance No. 90-912, amending Ordinance No. 89-884, and granting to Union Carbide Industrial Gases, Inc. a renewed twenty-five (25) year nonpublic utility pipeline franchise within the City of Carson;

WHEREAS, effective June 30, 1992, Union Carbide Industrial Gases, Inc. changed its name to Praxair, Inc., a Delaware corporation (“Praxair” or “Franchisee”).

WHEREAS, on December 5, 1995, the City Council passed Resolution No. 95-115, approving the addition of 25,574 feet of existing pipeline purchased from GATX Terminals Corporation (“GATX”) to the nonpublic utility pipeline franchise granted to Praxair under Ordinance No. 89-884, as amended by Ordinance No. 90-912;

WHEREAS, on April 16, 1996, the City Council passed Resolution No. 96-024, approving the addition of 6,151 feet of existing pipeline purchased from GATX, as well as the installation of 1,067 feet of new pipeline, to the nonpublic utility pipeline franchise granted to Praxair under Ordinance No. 89-884, as amended by Ordinance No. 90-912;

WHEREAS, on July 10, 2001, the City Council passed Resolution No. 01-086, approving the relocation of a certain pipeline within the Praxair nonpublic utility pipeline franchise, which required the removal of 76 feet of existing pipeline and the installation of 120 feet of new pipeline, thereby adding 44 feet of pipeline to the nonpublic utility pipeline franchise granted to Praxair under Ordinance No. 89-884, as amended by Ordinance No. 90-912;

WHEREAS, the term of the nonpublic utility pipeline franchise granted to Praxair under Ordinance No. 89-884, as amended by Ordinance No. 90-912, expired on September 6, 2015;

WHEREAS, on March 13, 2017 Praxair filed with the City an application requesting renewal of the Praxair nonpublic utility pipeline franchise;

WHEREAS, from September 7, 2015 to the present, Praxair paid the nonpublic utility pipeline franchise fees based on the terms of Ordinance No. 90-912;

WHEREAS, on February 14, 2019, representatives for the City and Praxair discussed the terms for the nonpublic utility pipeline franchise previously granted under Ordinance Nos. 89-884 and 90-912, inclusive of Resolution Nos. 95-115, 96-024, and 01-086, thereby facilitating the City Council’s approval of this Ordinance granting Praxair a nonpublic utility pipeline franchise;

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;

WHEREAS, pursuant to Charter Section 1001, the City Council passed a resolution declaring its intention to grant this franchise to Praxair and setting a public hearing on the granting of this franchise;

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

WHEREAS, on , the City held a public hearing on the granting of a franchise to Praxair on the terms and conditions stated herein; and

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

NOW, THEREFORE, the CITY COUNCIL of the CITY OF CARSON, CALIFORNIA, does hereby 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 of Article VI of the Carson Municipal Code, the City Council hereby grants a nonpublic utility pipeline franchise to Franchisee as reflected in this Ordinance.

Section 3. Grant of Franchise.

A. The City Council hereby grants a nonpublic utility pipeline franchise to lay or construct from time to time, and to maintain, operate, renew, repair, change the size of, or remove, pipes and pipelines and communications cable for the collection, transportation or distribution of gas, together with all manholes, valves, appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines including conduits, cathodic protection devices, wires, cables and other appurtenances necessary or convenient for the exercise of the Franchisee’s business, in, under, along or across any and all streets within the City of Carson, as approved from time to time by Resolution of the City Council. Pursuant to Carson Municipal Code Section 6827, this franchise shall apply to the existing pipelines under this Ordinance, as well as any new pipelines and/or appurtenances added to this franchise by a future Ordinance or Resolution of the City Council.

B. The franchise shall be solely for a nonpublic utility pipeline system.

C. 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 authorized by this Franchise (and the resolution referenced in this Section 3.C) shall be subject to this Ordinance.

D. 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.

A. Franchise Fee Authority. Pursuant to California Public Utilities Code Section 6231.5(e), the Franchisee and City have authority to determine the annual franchise fee, and have agreed upon the franchise fees described in this Section 4. In the event of any conflicting language between this Section 4 and Section 6832 of the Carson Municipal Code, this Section 4 shall be interpreted in a manner consistent with Section 6832 of the Carson Municipal Code. If such interpretation is not reasonable, then this Section 4 shall govern.

B. Base Granting Fee. Franchisee shall pay a base granting fee of seven thousand five hundred dollars (\$7,500.00) for pipelines with a total length of one-quarter (1/4) mile or more, or one thousand six hundred dollars (\$1,600.00) for pipelines with a total length of less than one-quarter (1/4) mile. Franchisee shall pay this base granting fee within thirty (30) days after the adoption date of this Ordinance and prior to signing the written acceptance of the franchise pursuant to Carson Municipal Code Section 6805. If at any time during the first five (5) years of the franchise, additional pipeline is added that will result in a total length of pipeline of one-quarter (1/4) mile or more, the seven thousand five hundred dollars (\$7,500.00) granting fee shall be required at the same time such footage is added. Franchisee shall submit a written request for the City's consent prior to adding any additional pipeline.

C. Base Franchise Fee.

(1) Franchisee shall pay a base franchise fee at an annual rate of two dollars and fifty-six cents (\$2.56) per lineal foot of pipeline area occupied by Franchisee's pipelines. The franchise fee shall be due and payable semi-annually, at the end of each franchise report period, as defined in Carson Municipal Code Section 6803(h), during the life of the franchise, including the year of granting the franchise. Such franchise fee shall accrue at the end of each semi-annual period for the pipeline area occupied by the greatest number of feet of pipeline covered by the franchise during the franchise payment period. The semi-annual fee shall be paid no later than January 1st and July 1st of each calendar year. A penalty at the rate of ten percent (10%) per month or fraction thereof beyond thirty (30) days after the payment due date shall be charged, but in no event shall such penalty exceed fifty percent (50%). For purposes of this paragraph, the length of pipeline or conduit including protective covering, pipe connections, cathodic protection facilities, pipe casings and other minor appurtenances shall be taken as equivalent to lineal feet.

(2) The City of Carson reserves the right to adjust the base fees established above at any time after the effective date of this Ordinance, but the base fees applicable to the franchise may only be changed five (5) times during the life of the franchise, and may only be changed in accordance with the provisions of California Public Utilities Code Section 6231.5(e).

D. Base Construction Charges. At the time of the commencement of installation, relocation, or replacement of any pipeline or other facility covered by the franchise, Franchisee shall pay a base construction charge of three thousand three hundred eighty-four dollars (\$3,384.00) for each one-

half (1/2) mile of trench or fractional part thereof installed, replaced or relocated on major streets and two thousand two hundred thirty-two dollars (\$2,232.00) per one-half (1/2) mile of trench or fractional part thereof, on minor streets or actual cost of inspection, whichever is greater. The City reserves the right to change the base fees established hereunder at any time after the effective date of this Ordinance, but the base fees applicable to the franchise may only be changed five (5) times during the life of the franchise.

E. Adjustments.

- (1) The base franchise fee shall adjust annually on January 1st of each calendar year by an amount equal to one hundred percent (100%) of the increase in the consumer price index as measured by the All Urban Consumers in the Los Angeles-Long Beach-Anaheim Metropolitan Area (commonly known as the "CPI-U") as provided by the United States Bureau of Labor Statistics (based on 1982-84 = 100 base) as measured over the preceding twelve (12) months ending on November 30 of the preceding calendar year, or by two percent (2%), which ever amount is greater.
- (2) In no event shall any base fee be charged which is less than the base fee amount established above.
- (3) The indices specified in subsection E(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, all Urban Consumers for the Los Angeles-Long Beach-Anaheim area (1982-84 = 100), and 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.

F. 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, then this Section 5 shall govern.

A. Liability Coverage. Each liability insurance policy obtained by a 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 a combined single limit 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: Insurance Services Office Form CA 0001 covering Code (any auto), with limits no less than \$5,000,000 per accident for bodily injury and property damage.

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, a 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. 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.

H. 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, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

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

J. Self-Insurance Program. In lieu of any insurance required by this Section the City of Carson may, upon application by Franchisee, permit a 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 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, 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. 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 new Base Franchise Fee provided for in this Ordinance retroactively assessed, with credit for fees paid, for the period of September 7, 2015 to March 13, 2017, during which the franchise granted under Ordinance No. 89-884, as amended by Ordinance No. 90-912, had expired and Franchisee had yet to submit an application for the grant of a new franchise, amounting to Sixty-Eight Thousand Four Hundred and Fourteen Dollars and Sixty-Three Cents (**\$68,414.63**).

Section 9. City's Right to Audit. City reserves the right to audit Franchisee's operation and maintenance of the nonpublic 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 nonpublic 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. Repeal. Ordinance No. 89-884 and Ordinance No. 90-912 are hereby repealed upon the adoption and effective date of this Ordinance.

Section 14. 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 15. 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 16. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

Section 17. 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.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this ____ day of _____, 2019.

MAYOR ALBERT ROBLES

ATTEST:

CITY CLERK DONESIA GAUSE

APPROVED AS TO FORM:

CITY ATTORNEY SUNNY K. SOLTANI
[tc/ltf]