

ORDINANCE NO. 17-1626

AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, CONSENTING TO THE
TRANSFER OF THE ARCO PIPELINE COMPANY PIPELINE FRANCHISE
GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO
TESORO REFINING & MARKETING COMPANY LLC &
AMENDING ORDINANCE NO. 00-1204

The CITY COUNCIL of the CITY OF CARSON does hereby ordain as follows:

Section 1. Recitals.

A. On September 19, 2000, the City Council adopted Ordinance No. 00-1204 granting to ARCO Pipeline Company ("ARCO") a twenty-five (25) year nonpublic utility pipeline franchise to lay or construct from time to time, and to maintain, operate, renew, repair, change the size of, remove or abandon in place pipes and pipelines for the collection, transportation or distribution of fiber optic cable together with all manholes, valves, appurtenances and service connections necessary or convenient for the operation of such pipes or pipelines including conduits, cathodic protection devices, wires, cables and other appurtenances necessary or convenient for the exercise of the ARCO's business in, under, along or across any and all streets within the City of Carson.

B. On August 8, 2012, BP West Coast Products LLC ("BP") and certain of its affiliates including Atlantic Richfield Company ("ARCO"), ARCO Terminal Services Corporation, and ARCO Midcon LLC, entered into a Purchase and Sale Agreement whereby BP agreed to sell certain assets to TESORO REFINING & MARKETING COMPANY LLC, a Delaware limited liability company ("Tesoro" or "Franchisee") or Tesoro's affiliates, including the former BP refinery in Carson and certain pipeline franchise agreements. On February 14, 2013, BP submitted a written request for the assignment of three pipeline franchises by the City Council, identified as City of Carson Ordinances 92-962, 99-1177 and 00-1204 (the "Pipeline Franchises").

C. The City and Tesoro have met and conferred and have agreed that the Pipeline Franchises shall be amended, thereby permitting City's consent to transfer the ARCO Pipeline Company franchise to Tesoro.

Section 2. Consent to Transfer. Pursuant to Carson Municipal Code § 6818, the City hereby consents to the transfer and assignment of the ARCO Pipeline Company pipeline franchise, codified at Ordinance No. 00-1204, to Franchisee as reflected in this Ordinance No. 17-1626.

Section 3. Section 1 of Ordinance No. 00-1204, entitled "Renewal of Franchise," is hereby amended as follows (deleted text in ~~strike through~~; added text in ***bold & italics***):

"Renewal Grant of Franchise. The City Council hereby grants a nonpublic utility pipeline franchise on behalf of ~~ARCO Pipeline Company (hereinafter referred to as "the Franchisee"), a Delaware corporation,~~ ***Franchisee for a period of fifteen (15) years from and after the date upon which this Ordinance No. 17-1626 shall become effective,*** to lay or construct from time to time, and to

maintain, operate, renew, repair, change the size of, remove or abandon in place pipes and pipelines for the collection, transportation or distribution of fiber optic cable together with all manholes, valves, appurtenances and service connections necessary or convenient for the operation of such 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. The franchise shall be solely for a nonpublic utility pipeline system."

Section 4. Section 2 of Ordinance No. 00-1204, entitled "Base Franchise Fee," is hereby amended as follows (deleted text in ~~striketrough~~; added text in ***bold & italics***):

"Base Franchise Fee.

1. A base franchise fee shall be paid by the Franchisee to the City of Carson for the pipeline area occupied by the pipelines ***associated with the length of the pipelines*** at an annual rate of one dollar and sixty-eight (~~\$1.68~~) cents ***two dollars and fifty-six cents (\$2.56)*** per cubic ***lineal*** foot. The franchise fee shall be due and payable semi-annually, at the end of each franchise payment period, as defined in Carson Municipal Code § 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. For purposes of this paragraph, the ***length of area*** occupied by a pipelines or conduit including protective covering, pipe connections, cathodic protection facilities, pipe casings and other minor appurtenances, ***as well as manholes and vaults*** shall be taken as equivalent to ***lineal feet*** the volume occupied by a cylinder of equal length having a diameter of one (1) inch (for metal pipe) or two (2) inches (for plastic pipe) greater than the nominal internal diameter of the pipe or conduit but in no case with an equivalent cylinder diameter less than four (4) inches, and the payment rate therefor shall be computed to the nearest tenth of a cent per lineal foot of pipe. Pipeline area occupied by any appurtenances such as manholes or vaults shall be computed from the outside dimensions of the structure. 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 (10) percent 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 (50) percent. ***The provisions of this Ordinance shall supersede the terms of Carson Municipal Code § 6832(B), as may be amended.***"

Section 5. Section 2 of Ordinance No. 00-1204, entitled Adjustments, is hereby amended as follows (deleted text in ~~striketrough~~; added text in ***bold & italics***):

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"Adjustments.

1. ~~The amount of each base fee specified above shall be adjusted at the time payment is due by the percentage change in the Consumer Price Index, all Urban Consumers for the Los Angeles-Anaheim-Riverside area (1982-84 = 100), for the period July 1, 1991 to the date which is sixty (60) days prior to the due date of the fee.~~ *"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 increase as measured by the All Urban Consumers in the Los Angeles-Riverside-Orange County Metropolitan Area (commonly known as the "CPI-U") as provided by the United States Bureau of Labor Statistics (based on 1967 = 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. The provisions of this Ordinance shall supersede the terms of Carson Municipal Code § 6832(D), as may be amended."*

Section 6. Section 3 of Ordinance No. 00-1204, entitled "Term," is hereby repealed in its entirety.

Section 7. Section 4 of Ordinance No. 00-1204, entitled "Compliance With Law," is hereby repealed and replaced with the following:

"Section 4. Insurance. Franchisee shall obtain, and provide satisfactory evidence of having obtained, policies of liability and workers' compensation insurance and pollution liability 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. The provisions of this Ordinance shall supersede the terms of Carson Municipal Code § 6809, as may be amended.

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 \$10,000,000, 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. **Workers' Compensation.** Each workers' compensation insurance policy obtained by the Franchisee must:

- (1) 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 forty-five (45) days prior written notice to the City.
- (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.

C. **Pollution Coverage.** Each pollution liability insurance policy obtained by the Franchisee 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.

D. **Evidence of Coverage.** Upon acceptance of the franchise, and for five (5) years after the termination or expiration of a franchise, Franchisee shall file with the Carson City Manager, or designee, copies of the required liability, workers' compensation, and pollution liability policies, or 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:

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- (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 all endorsements that form a part of the policy and are applicable to the Franchisee's operations under this ordinance.

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

F. 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 8. CEQA. The pipelines which are the subject of this Franchise were previously owned and operated by ARCO Pipeline Company under Ordinance No. 00-1204, and are depicted on Exhibit A hereto. The Franchisee will continue use of the pipelines as previously approved. Therefore, this Franchise is exempt from the requirements of California Environmental Quality Act ("CEQA") as a Class 1 Categorical Exemption, Existing Facilities, pursuant to Section 15301 of the CEQA Guidelines.

Section 9. Acceptance. The 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 this Ordinance.

Section 10. Ordinance No. 00-1204 to Otherwise Remain in Effect. Except as amended by this Ordinance No. 17-1626, Ordinance No. 00-1204 shall otherwise remain in full force and effect.

Section 11. 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 12. 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 13. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

Section 14. 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 5th day of July, 2017.

MAYOR ALBERT ROBLES

ATTEST:

CITY CLERK DONESIA GAUSE

APPROVED AS TO FORM:

CITY ATTORNEY SUNNY K. SOLTANI
2830340.2

Ordinance	Prior Ordinance	Lineal Footage
17-1626	00-1204	20,612

Ordinance Number 17-1626

 LINE 001



