

ORDINANCE NO. 18-1817

AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, CONSENTING TO THE ASSIGNMENT AND CONSOLIDATION OF THE EXXONMOBIL OIL CORPORATION PIPELINE FRANCHISES GRANTING A NONPUBLIC UTILITY PIPELINE FRANCHISE TO PBF HOLDING COMPANY LLC & REPEALING ORDINANCE NO. 00-1201 AND AMENDING ORDINANCE NO. 04-1309

WHEREAS, on July 18, 2000, the City Council adopted Ordinance No. 00-1201 granting to ExxonMobil Oil Corporation (“ExxonMobil”) a twenty-five (25) year nonpublic utility pipeline franchise within the City of Carson; and

WHEREAS, on April 7, 2004, the City Council adopted Ordinance No. 04-1309 granting to ExxonMobil a twenty-five (25) year nonpublic utility pipeline franchise within the City of Carson; and

WHEREAS, on September 29, 2015 ExxonMobil entered into a Purchase and Sale Agreement whereby ExxonMobil agreed to sell certain assets to PBF Holding Company, LLC (“PBF” or “Franchisee”), and on July 1, 2016, a Bill of Sale and Assignment was executed by and between ExxonMobil and PBF to consummate the transfer and assignment of such assets, including the nonpublic utility pipeline franchises identified as Ordinance No. 00-1201 and Ordinance No. 04-1309; and

WHEREAS, the nonpublic utility pipeline franchise granted by Ordinance No. 00-1201 only covers one (1) pipeline, and PBF desires to consolidate under Ordinance No. 04-1309 all the pipelines covered in Ordinance No. 00-1201 and Ordinance No. 04-1309, in order to provide for the efficient management and regulation of PBF’s nonpublic utility pipeline franchises; and

WHEREAS, PBF has submitted a copy of the duly executed instrument of transfer and assignment between ExxonMobil and PBF, and a written request for the consent of the City Council to such transfer and assignment of the nonpublic utility pipeline franchises identified as Ordinance No. 00-1201 and Ordinance No. 04-1309; and

WHEREAS, on April 25, 2018, the City and PBF met and agreed that the nonpublic utility pipeline franchises identified as Ordinance No. 00-1201 and Ordinance No. 04-1309 shall be consolidated under Ordinance No. 04-1309, that Ordinance No. 00-1201 shall be repealed, and that Ordinance No. 04-1309 shall be amended, thereby permitting the City Council’s consent to the transfer and assignment of the ExxonMobil pipeline franchises to PBF.

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. Consent. Pursuant to Carson Municipal Code § 6818, the City Council hereby consents to the transfer and assignment of the ExxonMobil nonpublic utility pipeline franchises, identified as Ordinance No. 00-1201 and Ordinance No. 04-1309, to Franchisee as reflected in this Ordinance.

Section 3. Consolidation. The facilities covered by the pipeline franchises identified as Ordinance No. 00-1201 and Ordinance No. 04-1309 are hereby consolidated under the pipeline franchise agreement identified as Ordinance No. 04-1309 upon the adoption and effective date of this Ordinance.

Section 4. Repeal. Ordinance No. 00-1201 is hereby repealed upon the adoption and effective date of this Ordinance.

Section 5. Section 1 of Ordinance No. 04-1309, entitled “Renewal of Franchise,” is hereby amended as follows (deleted text in ~~striketrough~~; added text in ***bold & italics***):

“Consent to Assignment Renewal of Franchise. ~~On or about June 8, 2001, without a change of ownership, Mobil Oil Corporation changed its corporate name to ExxonMobil Oil Corporation, a New York corporation. The City Council hereby~~ ***grant its consent to the transfer and assignment of*** ~~renews~~ the non-public utility pipeline franchise ~~granted pursuant to Ordinance No. 79-466 to ExxonMobil Oil Corporation (hereinafter referred to as “the Franchisee”), a nonpublic utility pipeline franchise~~ ***which continues previously granted franchises on behalf of Franchisee, for a period of fifteen (15) years from and after the date upon which this Ordinance No. 18-1817 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 oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances, water, wastewater, mud, steam and other liquid substances not more hazardous than the aforementioned substances, 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 6. Section 2 of Ordinance No. 04-1309, entitled “Base Granting Fee,” is hereby amended as follows (deleted text in ~~striketrough~~; added text in ***bold & italics***):

“Base Granting Fee.

For the grant of the franchise which continues previously granted franchises, a 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 shall be paid within thirty (30) days after the City Council adopts the ordinance ~~renewing~~ **granting** the franchise 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 following the renewal 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.***

Section 7. Section 2 of Ordinance No. 04-1309, 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~~ ***associated with the length of the pipelines*** at an annual rate of ~~one dollar and sixty-eight cents (\$1.68)~~ ***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 Section 6803(h), during the life of the franchise, including the year of ~~renewing~~ **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 pipeline area occupied by a pipeline or conduit~~ ***length of pipeline area occupied by a 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*** ~~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 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%). ***The provisions of this Ordinance shall supersede the terms of Carson Municipal Code § 6832(B), as may be amended.***

Section 8. Section 2 of Ordinance No. 04-1309, entitled "Adjustments," is hereby amended as follows (deleted text in ~~striketrough~~; added text in ***bold & italics***):

"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 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 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.”***
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 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, all Urban Consumers for the ~~Los Angeles-Anaheim-Riverside~~ ***Los Angeles-Long Beach-Anaheim*** area (~~1982-84~~ ***1967*** = 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.”

Section 9. Section 3 of Ordinance No. 04-1309, entitled “Term,” is hereby repealed in its entirety.

Section 10. Section 4 of Ordinance No. 04-1309, entitled “Compliance with Law,” is hereby repealed and replaced with the following:

"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 \$15,000,000, 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) 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 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. 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.

D. Professional Coverage (Errors and Omissions). Each professional liability insurance policy obtained by Franchisee must be appropriate for the Franchisee's profession and include a coverage limit of no less than \$15,000,000 per occurrence or claim, \$15,000,000 aggregate.

E. 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.

F. 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

(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.

G. 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.

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

I. 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 11. 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 12. CEQA. The pipelines which are the subject of this franchise were previously owned and operated by ExxonMobil under Ordinance No. 00-1201 and Ordinance No. 04-1309. The Franchisee will continue use of the pipelines as previously approved. Therefore, this grant of consent to the assignment 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. Ordinance 14-1309. Except as amended by and to the extent that it is not in conflict with this Ordinance, Ordinance No. 04-1309 shall otherwise remain in full force and effect.

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 _____, 2018.

MAYOR ALBERT ROBLES

ATTEST:

CITY CLERK DONESIA GAUSE

APPROVED AS TO FORM:

CITY ATTORNEY SUNNY K. SOLTANI