

ORDINANCE NO. 19-1901

**AN ORDINANCE OF THE CITY OF CARSON, CALIFORNIA,
RENEWING THE GRANT OF A NONPUBLIC UTILITY
PIPELINE FRANCHISE TO SHORE TERMINALS LLC
AMENDING ORDINANCE NO. 99-1159**

WHEREAS, on October 1, 1991, the City Council adopted Ordinance No. 91-948 granting to Wickland Oil Company a twenty-five (25) year nonpublic utility pipeline franchise within the City of Carson;

WHEREAS, on April 6, 1999, the City Council passed Resolution No. 99-035 delineating certain locations for the installation and operating of pipelines or other facilities in connection with the nonpublic utility pipeline franchise assigned to Shore Terminals, LLC, a Delaware limited liability corporation ("Shore Terminals" or "Franchisee");

WHEREAS, on April 6, 1999 and April 20, 1999, the City Council introduced and then adopted Ordinance No. 99-1159, approving the assignment of the nonpublic utility pipeline franchise by Wickland Oil Company to Shore Terminals, subject to the twenty-five (25) year term established by Ordinance No. 91-948;

WHEREAS, the term of the nonpublic utility pipeline franchise granted to Shore Terminals by Ordinance No. 99-1159 expired on October 1, 2016;

WHEREAS, on September 1, 2016, Shore Terminals filed with the City an application requesting renewal of the nonpublic utility pipeline franchise to lay or construct from time to time and to operate and maintain pipelines for the transportation of oil and other substances within the City of Carson for a term of two (2) years;

WHEREAS, after filing its application for renewal, Shore Terminals consulted with City Staff regarding its interest in abandoning in place or removing the nonpublic utility pipeline since the pipeline was no longer in use for the collection, transportation, or distribution of substances;

WHEREAS, on October 27, 2016, the City sent a letter notifying Shore Terminals of the pipeline removal or abandonment process under Section 6852 of Chapter 8 of Article VI of the Carson Municipal Code ("CMC"), and of the October 31, 2016 deadline to submit an application to the City for authority to either abandon in place or remove the Shore Terminals pipeline;

WHEREAS, on October 28, 2016, Shore Terminals requested an extension to the deadline to submit the application due its discussions with the City concerning the procedures surrounding the expiration of the Shore Terminals pipeline franchise;

WHEREAS, on November 21, 2016, the City sent a letter to Shore Terminals agreeing to extend the due date for submission of the application to abandon in place or remove the Shore Terminals pipeline to December 19, 2016;

WHEREAS, on December 8, 2016, Shore Terminals sent a letter to the City stating that it would not be abandoning or removing the Shore Terminals pipeline and re-requesting renewal of the pipeline franchise to keep the nonpublic utility pipeline in service, while the pipeline is not in use;

WHEREAS, between 2016 and 2018, action on the Shore Terminals pipeline franchise was placed on hold while the City negotiated new franchise agreement fees and terms for the nonpublic utility pipeline franchise granted to Tesoro Refining & Marketing Company, LLC, which was adopted July 18, 2017;

WHEREAS, the City similarly negotiated new franchise agreement fees and terms for the nonpublic utility pipeline franchise granted to Torrance Pipeline Company, LLC, a subsidiary of PBF Holding Company, LLC, which was adopted October 2, 2018;

WHEREAS, between 2016 and 2018, Shore Terminals continued to pay the nonpublic utility pipeline franchise fees based on the terms of Ordinance No. 99-1159;

WHEREAS, on November 27, 2018, the City and Shore Terminals met and conferred on the agreement terms for renewing the nonpublic utility pipeline franchise granted to Shore Terminals by the adoption of Ordinance No. 99-1159, and agreed that the nonpublic utility pipeline franchise shall be renewed;

WHEREAS, Shore Terminals agreed to the new Base Franchise Fee adopted for Tesoro Refining & Marketing Company, LLC and Torrance Pipeline Company, LLC, as well as the retroactive application of the new Base Franchise Fee to the Shore Terminals pipeline franchise, starting from the date upon which the pipeline franchise granted by Ordinance No. 99-1159 expired;

WHEREAS, based on the out of use status of the nonpublic utility pipeline, Shore Terminals requested modified insurance terms from those adopted for Tesoro Refining & Marketing Company, LLC and Torrance Pipeline Company, LLC;

WHEREAS, the City agreed to the application of modified insurance terms for the Shore Terminals pipeline franchise for the time in which the nonpublic utility pipeline remains not in use;

WHEREAS, Shore Terminals has agreed that should it decide to place the nonpublic utility pipeline back into use, it shall first provide thirty (30) days prior written notice to the City, as well as comply with any additional insurance terms or other reasonable conditions deemed appropriate by the City for a nonpublic utility pipeline that is in use, (collectively, the "Conditions");

WHEREAS, Shore Terminals has agreed to a Ten Thousand Dollar (\$10,000.00) per day penalty, as well as to the possible revocation of the nonpublic utility pipeline franchise granted by the adoption of this Ordinance, in the event that Shore Terminals places the nonpublic utility pipeline into use without proper notice to the City or is in noncompliance with the Conditions imposed by the City, if any.

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 § 6801, the City Council hereby grants the nonpublic utility pipeline franchise to Franchisee as reflected in this Ordinance.

Section 3. Section 1 of Ordinance No. 99-1159, entitled “Approval of Franchise Assignment,” is hereby amended as follows (deleted text in ~~strikethrough~~; added text in ***bold & italics***):

Approval of Franchise Assignment Renewal. The City Council hereby approves the assignment by Wickland Oil Company (hereinafter referred to as Assignor"), a California corporation, to Shore Terminals, LLC (hereinafter referred to as "Assignee"), a Delaware limited liability corporation, of the nonpublic utility pipeline franchise granted to the Assignor by Ordinance No. 91-948, subject to the twenty five (25) year term established by Ordinance No. 91-948, ***renewal of the nonpublic utility pipeline franchise granted to Franchisee by Ordinance No. 99-1159, for a term of 15 years,*** 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, waste water, mud, steam and other liquid substances not more hazardous than the aforesaid 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 Assignee's ***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. The Base Granting Fee portion of Section 2 of Ordinance No. 99-1159, entitled “Compensation,” is hereby amended as follows (deleted text in ~~strikethrough~~; added text in ***bold & italics***):

“Base Granting Fee.

For the grant of the franchise which renews the previously granted franchise, 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 effective 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 following the effective date of this Ordinance~~ ***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 5. The first paragraph of the Base Franchise Fee portion of Section 2 of Ordinance No. 99-1159, entitled "Compensation," is hereby amended as follows (deleted text in ~~striketthrough~~; added text in ***bold & italics***):

"Base Franchise Fee.

1. A base franchise fee shall be ~~paid by the Assignee 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 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 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 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 6. The Adjustments portion of Section 2 of Ordinance No. 99-1159, entitled "Compensation," is hereby amended as follows (deleted text in ~~striketthrough~~; 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 7. Section 3 of Ordinance No. 99-1159, entitled "Compliance with Law," is hereby repealed and replaced with the following:

"Insurance. Franchisee shall comply with the following insurance requirements while the nonpublic utility pipeline remains out of use. Should Franchisee decide to place the nonpublic utility pipeline back into use, the City reserves the right to amend the insurance requirements as it may deem necessary for a nonpublic utility pipeline that is in use, and Franchisee shall demonstrate compliance with such amended requirements, if any, prior to placing the nonpublic utility pipeline into use.

Franchisee shall obtain, and provide satisfactory evidence of having obtained, policies of liability and workers' compensation insurance and pollution liability and auto 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-VII 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 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 liability insurance in the amount of \$15,000,000, if limit is subject to self-insured retention it must be 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 thirty (30) 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. Automobile Liability. Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$5,000,000 per accident for bodily injury and property damage.

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, or surveyors hired on the project, and that such coverage include a coverage limit of no less than \$5,000,000 per occurrence or claim, \$50,000,000 aggregate.

F. 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.

G. 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, certifying that the policy is in force, with any necessary endorsements, including without limitation, additional insured, waiver of subrogation and cancellation notification endorsements. Franchisee shall provide the Carson City Manager, or designee, with renewal certificates throughout the term of the franchise and for five (5) years after the termination or expiration of a 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 for this specific exposure;

(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, 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 8. 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 the franchise granted by the adoption of this Ordinance, pursuant to Carson Municipal Code Section 6805.

Section 9. Retroactive Application. Within thirty (30) days after the effective date of this Ordinance and prior to signing the written acceptance of the franchise, Shore Terminals shall pay to the City the new Base Franchise Fee provided for in this Ordinance retroactively assessed, with credit for fees paid, for the period in which the nonpublic utility pipeline franchise was expired, starting October 2, 2016, amounting to Forty-Six Thousand Five Hundred Twenty Dollars and Eighty-Five Cents (\$46,520.85).

Section 10. Use of Pipeline. Shore Terminals shall not place the nonpublic utility pipeline in use for the collection, transportation, or distribution of substances, except in accordance with Section 11. However, Shore Terminals shall perform the maintenance and inspection activities required by this Ordinance, the Carson Municipal Code, federal Pipeline and Hazardous Materials Safety Administration regulations, and any and all other applicable state and federal laws.

Section 11. Change of Use of Pipeline and Penalty. Should Shore Terminals decide to place the nonpublic utility pipeline back into use, it shall provide thirty (30) days prior written notice to the City. Upon receiving notice of Shore Terminals' intent to place the nonpublic utility pipeline into use, the City shall have full discretion to impose any reasonable conditions it deems appropriate for a nonpublic utility pipeline that is in use by providing Shore Terminals with prompt written

notice thereof. Franchisee shall demonstrate compliance with such Conditions, if any, prior to placing the nonpublic utility pipeline into use.

In the event that Shore Terminals fails to properly notify the City of its placing the nonpublic utility pipeline into use, Shore Terminals shall be subject to a penalty in the amount of Ten Thousand Dollars (\$10,000.00) per day for each day that the nonpublic utility pipeline is in use without proper notice to the City or should Shore Terminals fail to comply with the Conditions, as well as to possible revocation of the nonpublic utility pipeline franchise granted by the adoption of this Ordinance.

Section 12. City's Right to Audit. City reserves the right to audit Shore Terminals' maintenance and/or operation of the nonpublic utility pipeline at Shore Terminals' 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 Shore Terminals has pipelines existing in the City. Shore Terminals 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 13. CEQA. The pipelines which are the subject of this franchise will continue to be operated by Franchisee. The Franchisee will continue use and/or maintenance of the pipelines as previously approved. Therefore, the City has determined this grant of franchise renewal 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 14. Ordinance 99-1159. Except as amended by and to the extent that it is not in conflict with this Ordinance, Ordinance No. 99-1159 shall otherwise remain in full force and effect.

Section 15. 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 16. 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 17. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

Section 18. 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