

CITY OF CARSON
NOTICE OF INTENTION TO GRANT A FRANCHISE

RESOLUTION NO. 19 -143

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA,
DECLARING ITS INTENTION TO GRANT A NONPUBLIC UTILITY PIPELINE FRANCHISE
TO PRAXAIR, INC.**

WHEREAS, Praxair, Inc. ("Praxair" or "Franchisee"), a Delaware corporation, previously held a nonpublic utility pipeline franchise granted by the City of Carson (the "City") pursuant to Ordinance No. 89-884, as amended by Ordinance No. 90-912, for 33,136 feet of pipeline and other appurtenances necessary for the collection, transportation or distribution of atmospheric gases;

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's Director of Public Works an application for a nonpublic utility pipeline franchise consisting of the same franchise facilities operated and maintained by Praxair under Ordinance No. 89-884, as amended by Ordinance No. 90-912;

WHEREAS, between 2015 and 2019, Praxair continued to pay the nonpublic utility pipeline franchise fees based on the terms of Ordinance No. 90-912;

WHEREAS, the City Council has determined that the public good would be served by the renewal of the Praxair nonpublic utility pipeline franchise;

WHEREAS, pursuant to Charter Section 1001, the City Council must adopt a Resolution of Intention and conduct a public hearing prior to granting Praxair a nonpublic utility pipeline franchise;

WHEREAS, if granted, the resulting franchise shall comply with the City of Carson's City Charter and, except as otherwise stated herein, the Carson Municipal Code.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct, and are incorporated herein by this reference.

Section 2. Declaration of Intent. The City Council hereby declares its intention to grant Praxair, Inc. a nonpublic utility (gas) pipeline franchise. The character of the Praxair franchise, and the terms and conditions upon which it is proposed to be granted, are described below.

Section 3. Public Hearing. All persons having any interest in or any objection to the renewal of the Praxair franchise may appear before the City Council and be heard thereon in the Council Chambers located at Carson City Hall, 701 E. Carson Street, Carson, California, on **August 6, 2019 at 6:00 p.m.**, or as soon thereafter as the matter may be heard. At any time not later than the hour set for the hearing, any

person interested may make written protest stating any objections against the approval of the Praxair franchise. Any such protest shall be signed by the protesting individual and delivered to the City Clerk. At the time set for hearing objections, the City Council shall proceed to hear and pass upon all protests so made. For further details, reference is hereby made to Praxair's application which is on file in the office of the Director of Public Works.

Section 4. Proposed Franchise Terms and Conditions.

A. Praxair has filed an application with the City Council of the City of Carson requesting that the City Council grant Franchisee 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 atmospheric gases, 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.

B. The City Council of the City of Carson proposes to grant the franchise for a period of ten (10) years, with a maximum of two (2) opportunities to extend the franchise for an additional five (5) years each, or until it is voluntarily surrendered and the franchise facilities are removed by Franchisee, or until the State or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain all property actually used and useful in the exercise of such franchise and situated within the territorial limits of the State, municipal, or public corporation purchasing or condemning such property, or until such franchise is forfeited for noncompliance with its terms by the Franchisee.

C. The franchise shall apply to Franchisee's existing pipelines within the City, as well as any new pipelines and/or appurtenances added to the franchise by a future ordinance or resolution of the City Council. The franchise shall be solely for a nonpublic utility pipeline system.

D. If the franchise shall be granted, the Franchisee will pay the City of Carson the fees set forth below or the franchise will be forfeited:

1. Retroactive Application Fee.

Within thirty (30) days after the effective date of the franchise, Franchisee shall pay to the City, in addition to any other fees required, the new Base Franchise Fee 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).

2. Base Granting Fee.

For the renewal of the franchise, 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 adoption date of the ordinance granting the franchise and prior to signing the written acceptance of the franchise pursuant to Carson Municipal Code Section 6805. Franchisee shall submit a written request for the City's consent prior to adding any additional pipeline.

3. Base Franchise Fee.

(a) A base franchise fee shall be associated with the length of the pipelines at an annual rate of two dollars and fifty-six cents (\$2.56) per 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 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 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%).

(b) The City of Carson reserves the right to adjust the base fees established above at any time after the effective date of the ordinance granting the franchise, 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).

(c) Pursuant to California Public Utilities Code Section 6231.5(e) referenced above, in the event of any conflicting language between the provisions of the ordinance granting the franchise and Carson Municipal Code § 6832(B), as may be amended, the terms of the ordinance will govern.

4. Base Construction Charges.

Franchisee shall pay at the time of the commencement of installation, relocation, or replacement of any pipeline or other facility covered by the franchise, 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 the ordinance granting the franchise, but the base fees applicable to the franchise may only be changed five (5) times during the life of the franchise.

5. Adjustments.

(a) 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.

(b) In no event shall any base fee be charged which is less than the base fee amount established above.

(c) 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-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.

(d) Pursuant to California Public Utilities Code Section 6231.5(e) referenced above, the provisions of the ordinance granting the franchise shall supersede the terms of Carson Municipal Code § 6832(D), as may be amended.

E. Compliance with Local, State, and Federal Regulations.

1. Except as otherwise stated herein, Franchisee shall comply with all mandates of the City Charter and Carson Municipal Code, including Article VI, Chapter 8.

2. Franchisee shall also comply with State and Federal regulations.

F. If the franchise is granted, the Franchisee shall obtain and provide satisfactory evidence to the City Clerk of having, in full force and effect, insurance policies for liability coverage, automobile liability, workers' compensation, employer liability, pollution coverage, and, if applicable, professional 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, or the franchise will be suspended.

Section 5. Effective Date. This Resolution shall be effective immediately upon its adoption.

Section 6. Certification. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

Section 7. Publication of Notice. Pursuant to Section 1001 of the City Charter, the City Clerk shall publish this Resolution at least once in a newspaper of general circulation in the City, posted on the City's website, and at other location(s) the City Clerk may designate. Publication of this Resolution shall occur within fifteen (15) days after the passage of this Resolution and at least ten (10) days prior to the hearing date set forth in Section 3 above and shall serve as notice of the public hearing. The 10-day and 15-day requirements may be met with a single publication of this Resolution. The publication of this Resolution shall have the title, "NOTICE OF INTENTION TO GRANT A FRANCHISE."

PASSED, APPROVED and ADOPTED this 16th day of July, 2019.

[Signatures on Following Page]

APPROVED AS TO FORM:

/s/
Sunny K. Soltani, City Attorney

CITY OF CARSON:

/s/
Albert Robles, Mayor

ATTEST:

/s/
Donesia Gause-Aldana, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CARSON)

I, Donesia Gause-Aldana, City Clerk of the City of Carson, California, hereby attest to and certify that the foregoing resolution, being Resolution No. 19-143, adopted by the City of Carson City Council at its meeting held on July 16, 2019, by the following vote:

AYES:	COUNCIL MEMBERS:	Robles, Hicks, Davis-Holmes, Hilton, Dear
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

/s/
Donesia Gause-Aldana, MMC, City Clerk