



Council Agenda Report

Item 6b

Department: Public Works
Cost Center: 5001
For Agenda of: 2/15/2022
Placement: Public Hearing
Estimated Time: 60 minutes

FROM: Matt Horn, Public Works Director
Prepared By: Paul Fields, Administrative Analyst

SUBJECT: RENEW A FRANCHISE AGREEMENT FOR EXISTING PIPELINES
WITHIN THE CITY RIGHTS-OF-WAY WITH PHILLIPS 66 PIPELINE LLC

RECOMMENDATION

Introduce an Ordinance entitled “An Ordinance of the City Council of the City of San Luis Obispo, California, granting to Phillips 66 Pipeline LLC a franchise to construct, operate and maintain pipelines for the transportation of oil, and other specified materials in the City of San Luis Obispo” to renew a franchise agreement with Phillips 66 Pipeline LLC for common carrier pipelines located in the City’s rights-of-way.

DISCUSSION

On June 24, 2021, Phillips 66 Pipeline LLC requested to renew its existing franchise agreement pertaining to common carrier pipelines located in the City’s rights-of-way (Attachment A). Common carrier pipelines transport the products of other companies as well as the products of the franchisee

Background

The City has several franchise agreements with utility companies to allow the use of public rights of ways for both the transmission and distribution of different products or services. For example, currently the City has franchise agreements with Pacific Gas and Electric, the Gas Company, and Charter Communications.

On January 11, 2022, the City Council adopted a resolution of intention to approve a franchise agreement with Phillips 66 Pipeline LLC for pipelines located within the City’s rights-of-way (Attachment B). The resolution also set a public hearing for public comment on the agreement for February 15, 2022. The procedures for adoption of a franchise agreement are prescribed by Article X of the City Charter (Attachment C). Specifically, Charter Section 1002 requires the City Clerk to publish the resolution of intention within fifteen (15) days of its adoption in a local newspaper and requires a public hearing prior to approval of the franchise within sixty (60) days of the passage of the resolution of intention.

Scope of Franchise Agreement

The proposed franchise agreement (Attachment D) would provide Phillips 66 Pipeline LLC the non-exclusive right to “construct, erect, maintain, operate, repair, renew and change the size of and remove pipelines ... for the transportation of oil, products, thereof, hydrocarbon gases and other gas necessary for the operation and maintenance of the pipelines...” The application requests approval of a three-year term as Phillips 66 Pipeline LLC is planning to divest operations within the San Luis Obispo region. Currently, Phillips 66 Pipeline LLC has no plans to install new pipelines. The franchise agreement would require Phillips 66 Pipeline LLC to provide the City with plans for decommissioning the pipelines and would give the City the authority to require their removal. All its existing pipelines are shown in an exhibit attached to the application requesting franchise approval (Attachment E).

Franchise Fee

Franchise fees for distribution pipelines are set by the Public Utilities Code Section 6231.5. The fee ranges from \$0.088 to \$0.66 per lineal foot based on pipeline diameter, with CPI adjustments added since 1989 when these rates were first established. The proposed franchise agreement limits pipeline diameter to 12 inches, which corresponds to a fee of \$.264 (plus CPI) per lineal foot. The majority of the pipeline length installed has an 8-inch internal diameter, resulting in a fee of \$.176 (plus CPI) per lineal foot. Based on the Phillips 66 Pipeline facilities that are installed within City Rights of Way, the resulting annual revenue is approximately \$6,700.

In addition to the annual franchise fee, the City is proposing a granting fee of \$10,000 to cover staff costs associated with preparing the agreement, advertising the request, holding the required public meetings (three total and described below), and managing the franchise agreement after adoption.

Previous Council or Advisory Body Action

The City Council renewed the franchise agreement for common carrier pipelines in July 2011 and approved the transfer of the franchise from ConocoPhillips Pipeline Company to Phillips 66 Pipeline LLC in February 2013. In January 2022 the City Council adopted Resolution No. 11297 declaring its intention to renew the franchise agreement with Phillips 66 Pipeline LLC. No other advisory body review is required for this action

Policy Context

The process for adoption of a new franchise agreement is prescribed by the Public Utilities Code (Section 6232-6234). The following schedule is proposed:

- January 11, 2022: Introduce and pass resolution of intent
- February 15, 2022: Hold public hearing and introduce ordinance
- March 15, 2022: Second reading and final adoption or ordinance
- April 14, 2022: Ordinance becomes effective

Article X of the City Charter empowers the City Council to grant by ordinance a franchise to furnish the City and its inhabitants with public utilities. In line with the Public Utilities Code, and the City Charter, the City Council adopted a resolution declaring its intention to grant the franchise and the set a public hearing for the February 15, 2022, City Council meeting. The adopted resolution was published more than fifteen days prior to the February 15, 2022, City Council meeting.

Public Engagement

Resolution 11297, adopted by the City Council on January 11, 2022, scheduled a public hearing for February 15, 2022, to allow for public comment on the agreement.

CONCURRENCE

The Finance Department concurs with this recommendation.

ENVIRONMENTAL REVIEW

The renewal of the franchise agreements is categorically exempt from the provisions for the California Environmental Quality Act in accordance with section 15061(b)(3). The proposed award of the franchise to Phillips 66 Pipeline LLC will continue the operation and maintenance of an existing pipeline. No new development or intensification of development would result from the franchise, therefore there is no potential for significant effects on the environment.

FISCAL IMPACT

Budgeted: Yes/No

Budget Year: 2021-22

Funding Identified: Yes

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$	\$	\$	\$
State				
Federal				
Fees				
Other:				
Total	\$	\$	\$	\$

There is a minor positive fiscal impact to the general fund in the amount of \$6,700 associated with granting of the proposed franchise agreement for pipeline services.

ALTERNATIVES

1. ***The City Council may reject the application by Phillips 66 Pipeline LLC for a new franchise agreement.*** This alternative is not recommended because it is in the City's best interest to have a qualified company operate and maintain the existing pipeline infrastructure within the City's right-of-way. Should the City Council express its intention to not award the franchise to Phillips 66 Pipeline LLC, the applicant would have three available options. The first would be to request City approval to physically remove the pipeline from the City's right-of-way. The second option would be to leave the pipeline in its current location but seal it where it enters and leaves the City, thereby rendering it unusable. The third option would be to initiate a condemnation action against the City under the Public Utilities Code in order to obtain through eminent domain a subsurface easement or other rights to utilize the pipeline within the City.
2. ***The City Council may reject the agreement in its current form and advise staff on terms that would need to be included in the agreement prior to approval.*** This would reset the process prescribed by the City Charter and California Public Utilities Code. The revised agreement would need to be approved by Phillips 66 Pipeline LLC. With no agreement in place Phillips 66 Pipeline LLC would be subject to standard utility encroachment permit requirements.

ATTACHMENTS

- A - Application Requesting Renewal of Franchise
- B - Resolution No. 11297 Declaring Intent to Renew Franchise
- C - Charter of the City of San Luis Obispo Article X
- D - Draft Ordinance approving the Franchise Agreement with Phillips 66 Pipeline LLC
- E - Map of Existing Pipelines in the City