City of Culver City, California

City Council Agenda Item Report

Meeting Date:04/07/08	Item Number: A-4
AGENDA ITEM: Adoption of a Resolution Granting a Five Year Extension of an Existing Oil Pipeline Franchise Agreement with ExxonMobil.	
Contact Person/Dept.: Martin R. Cole, Assistant City Manager	Phone Number: (310) 253-6000
Fiscal Impact: Yes [X] No []	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [X]	Attachments: [X]
Public Notification: Master Notification List (04/02/08); ExxonMobil (04/02/08)	
Department Approval: Martin R. Cole (04/01/08)	City Attorney Approval: Carol Schwab (by R. Miranda) (04/01/08)
Fiscal Impact Review: Jeff Muir (by M. Noller) (04/01/08)	City Manager Approval: Jerry B. Fulwood (04/02/08)

RECOMMENDATION:

Staff recommends the City Council adopt a resolution granting ExxonMobil's third five-year extension.

BACKGROUND:

On February 4, 2008, the City Council considered a report on this subject. At the time this report was presented (a copy of the Staff Report from February 4, 2008 is attached for the City Council's ease of reference), a member of the public provided additional comment. Prior to taking action on this item, the City Council directed staff to perform additional research on the topics raised during public comment.

After reviewing documents dating to 1992, staff presents the following information in response to the comments made on February 4, 2008 and provides additional supplementary information for the City Council's consideration.

DISCUSSION:

In general and in response to the comments presented to the City Council, staff reviewed the franchise and related documents researching two broad topics. Following are the results of the research:

Fiscal Related Issues

Three items of concern were voiced related to the fiscal components of the Franchise. They involve: (1) the reasons for and circumstances surrounding a penalty payment to the City, in 2003, in the amount of $949,091.25; (2) a potential of $1,000,000 in lost revenues to the City for the years 1993 to 2001; and (3) the change in penalty rate from $0.25 to $0.05. A review of the pertinent records reveal the following:

(1) **2002 payment of $949,091.25**: It had been mentioned in comments provided from the public that this payment was a result of an audit by the City Treasurer's Office. The records indicate this payment was provided voluntarily by ExxonMobil, in the normal course of business under the Franchise which requires ExxonMobil to provide throughput reports to the City. The records do not indicate that any audit was performed for calendar year 2002.

(2) **Potential for $1,000,000 in "lost" revenues for the periods 1993 to 2001 based upon the application of a statute of limitations by ExxonMobil**: The records indicate the throughput for these years did not exceed the 95,000 barrel threshold. Because the throughputs did not exceed the 95,000 barrel threshold in any of these years, no overage penalties were due to the City and, therefore, there were no lost revenues to the City. The records indicate, however, that ExxonMobil did pay the City the franchise fee due to the City under the Franchise.

(3) **Change in penalty from $0.25 to $0.05:** This change was one of the two amendments approved by the City Council on December 1, 2003. In brief, the City implemented this reduction after receiving an addendum to the original Environmental Impact Report showing that, due to advances in technology, the volume of oil which could be pumped through the pipeline without causing significant environmental impacts had increased. Additional detail is provided in the December 1, 2003 staff report. (A copy of said report is included as an Attachment for the City Council's ease of reference).

(4) **Performance of Fiscal Audits:** With respect to audits, the City Treasurer's Office commissioned an audit for calendar years 1999, 2000, and 2001. As reported by the City Manager, a recent audit for calendar years 2004, 2005, and 2006 was also completed. In both cases, the audits resulted in findings that ExxonMobil had paid the City all monies owed to the City pursuant to the Franchise. The Chief Financial Officer will also ensure audits for calendar years 2007 and forward are conducted as deemed fiscally and operationally desired.

Operational Issues

(5) **Monitoring of equipment, current condition of the pipeline**: Staff is in contact with the State Fire Marshal (who, under State Law "…shall exercise exclusive safety regulatory and enforcement authority over intrastate hazardous liquid

pipelines…" (California Pipeline Safety Act of 1981). On March 25, 2008, staff contacted the State Fire Marshal whose office reports the ExxonMobil pipeline "is in compliance and has no outstanding safety issues." Further, there is no indication in City records that the pipeline is now or ever has been allowed to deteriorate and, therefore, poses an unusual hazard.

Granting of Third Five-Year Option

As excerpted in pertinent part from the Franchise:

> "[Section 1A] Grantee (Exxon/Mobil) shall further have the option to extend this franchise for three additional five year terms…for a fee as agreed to by the parties or determined to be reasonable in light of franchise fees then being charged by jurisdictions for rights-of-way of similar size and type. Grantee may exercise its rights to extend this franchise by notifying the City of its election to extend this franchise in writing no later than ninety (90) days prior to the expiration of the then current term."

ExxonMobil provided written notification to the City of its election to extend the franchise on March 27, 2007, which is no later than ninety days prior to the expiration of the then current term.

Staff has researched "franchise fees…being charged by jurisdictions for rights-of-way of similar size and type" and has been able to negotiate a franchise fee which is (1) acceptable to Culver City; (2) agreeable to ExxonMobil; and (3) reasonable in light of other jurisdictions' fees being charged for similar rights-of-ways. Therefore, (1) because ExxonMobil has met the requirements of the franchise for exercise of its option rights thereunder and (2) staff can find no other justification to withhold such approval, staff recommends the City Council grant the third and final five year option.

Granting of a New Franchise Agreement

ExxonMobil has also requested that its franchise be extended beyond its current ending date of November, 2012. Therefore, the City Council is also requested to adopt a resolution declaring the time and place for a public hearing to consider granting a new franchise to ExxonMobil. While additional detail will be provided for the City Council's consideration at the time of the Public Hearing, it is important to note staff will consider, when making its recommendation to the City Council, that the proposed new franchise under consideration:

(1) provides the City Council with the sole discretion to approve any future extension options; and

(2) provides an increase in the administrative fee based upon the Produce Price Index (similar to the existing language for the base franchise fee).

The consideration of this new franchise will be scheduled for a future City Council meeting.

FISCAL ANALYSIS:

Under the current franchise agreement, ExxonMobil pays the City a flat fee annually as compensation for use of the City's right-of-way. The flat fee was set at $64,139.85 when the franchise agreement was first executed in 1992 and is subject to an annual increase based on the Producer Price Index for All Commodities.

Additionally, ExxonMobil pays a throughput penalty, based on the average daily flow of crude oil through the Culver City pipeline. If in any calendar year, the throughput of crude oil averages more than 95,000 barrels per day, then ExxonMobil must pay the City a throughput penalty in the amount of five cents ($0.05) per barrel in excess of 95,000 times the number of days in that year. The following table summarizes the City's flat fee and throughput penalty receipts since 2004-05:

	2004-05	2005-06	2006-07
Flat Fee	$80,420	$88,151	$90,057
Throughput Penalty	3,504	26,950	0
Total Receipts	**$83,924**	**$115,101**	**$90,057**

Assuming a 3.5% annual increase in the Producer Price Index for All Commodities, the receipts for the next five years of the current franchise agreement are as follows:

	2007-08	2008-09	2009-10	2010-11	2011-12
Flat Fee	$93,210	$96,470	$99,850	$103,345	$106,960
Throughput Penalty	TBD	TBD	TBD	TBD	TBD
Total Receipts	**$93,210**	**$96,470**	**$99,850**	**$103,345**	**$106,960**

Administrative Fee

Based on the estimated staff cost to review, research and process ExxonMobil's third option, an administrative fee of $10,000 has been tentatively agreed upon. Staffing cost estimates include direct salary and benefits costs for each staff member involved in the process as well as indirect overhead costs (such as payroll, IT services, workers' comp and liability insurance costs, management oversight, etc.).

ATTACHMENTS:

City of Culver City, California

City Council Agenda Item Report

1. Resolution Extending the Franchise of ExxonMobil Oil Corporation to Operate and Maintain a Certain Pipeline and Appurtenances for the Transportation of Hydrocarbon Substances in the City of Culver City of Culver City; and

2. Staff report from February 4, 2008

3. Franchise Agreement (as amended by the City Council in December 2003); and,

4. Background documents

MOTION:

That the City Council:

1. Adopt a resolution granting a five-year extension of the existing oil pipeline franchise with ExxonMobil (to November 25, 2012).