LEGAL COMMITTEE MEETING AGENDA
Thursday, January 25, 2024 2:00 PM
Roswell City Hall Conference Room
425 N. Richardson St., Roswell, NM 88201

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Chair: Ed Heldenbrand, Ward 3
Vice Chair: Matthew Chappell, Ward 3
Members: Juan Oropesa, Ward 1
Robert Corn, Ward 4
Staff Liaison: Hessel E. Yntema IV.

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CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES
Approval of the minutes from the Legal Committee meeting on Thursday, November 16, 2023. (pg. 4)

NON-ACTION ITEMS
1. Department Report
   a. City Clerk (pg. 7)
   b. Human Resources Department Report (pg. 13)
   c. Safety Department (pg. 15)

REGULAR ITEMS
2. RAC Lease Agreements
   a. Summit Food Services Lease Renewal – Consider recommending approval to authorize Summit Food Services to enter into a one (1) year renewal with a first amendment to original lease agreement. This is the second one (1) year renewal of seven (7). (Lanfor) (pg. 21)
   b. Aerodesign Services, LLC Lease – Consider recommending approval to authorize Aerodesign Services, LLC to enter a one (1) year lease agreement, beginning December 1, 2023 and ending November 30, 2024 for 850 square feet of office space in Building 1000 located at the Roswell Air Center. (Lanfor) (pg. 35)
   c. CAVU Aerospace ATS Lease – Consider recommending approval to authorize CAVU Aerospace ATS to enter into a five (5) year lease agreement renewal beginning February 1, 2024 and ending January 31, 2029 for 8 acres of land at the Roswell Air Center. (Lanfor) (pg. 55)
d. Ascent Aviation Services, LLC., Lease – Consider recommending approval to authorize Ascent Aviation Services, LLC., an Arizona Corporation, to enter into a lease agreement on a vacant land west of Building 1002 at the Roswell Air Center. (Lanfor) (pg. 57)

e. New Mexico Department of Transportation Lease – Consider recommending approval to authorize New Mexico Department of Transportation request to enter a five (5) years and six (6) months lease agreement, beginning January 1, 2024 and ending June 30, 2030 for 11,915 square feet of shop space in Building 42 along with adjacent parking area, 12,011 square feet of office and training space in Building 735 along with fenced parking area west of the building, 37,821 square feet of land adjacent to Building 735, and two unimproved parcels of land totaling sixty (60) acres MOL located at the Roswell Air Center. (Lanfor) (pg. 77)

3. RFP 24-008 Visitor Center Management Services – Consider recommending approval for RFP 24-008 Scope of Work for the Visitor Center Management Services. (Cole/Verciglio) (pg. 98)

4. RFP 24-009 Scope of Work for the Air Center Service Development and Consulting Services – Consider recommending approval for RFP 24-009 Scope of Work for the Air Service Development and Consulting Services for the Roswell Air Center. (Griego) (pg. 121)

5. Ordinance 23-15 Amending Chapter 16 Regulating Nuisance Noise of the Roswell City Code – Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 23-15 Amending Chapter 16 Regulating Nuisance Noise of the Roswell City Code. (Vickers) (pg. 130)

6. Ordinance 24-XX Amending Chapter 2 Administration of the Roswell City Code – Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 24-XX Amending Chapter 2 Administration of the Roswell City Code. (Corn/Heldenbrand/Arnold) (pg. 136)

7. Ordinance 24-XX Amending Chapter 21 Solid Waste of the Roswell City Code – Consider recommending approval to authorize to advertise for a public hearing Proposed Ordinance 24-XX Amending Chapter 21 Solid Waste of the Roswell City Code with rate increase. (Chaparro) (pg. 171)

8. Ordinance 24-XX Amending Chapter 26 Water & Wastewater Utilities of the Roswell City Code – Consider recommending approval to authorize to advertise for a public hearing Proposed Ordinance 24-XX Amending Chapter 26 Water & Wastewater Utilities of the Roswell City Code along with Appendix A. (Glenn) (pg. 316)

9. Resolution 24-XX New Mexico Open Meetings Act – Consider recommending approval for adoption of Resolution 24-XX pursuant to the New Mexico Open Meetings Act. (Martinez) (pg. 384)
CHAIR COMMENTS, REPORTS, ANNOUNCEMENTS

PUBLIC PARTICIPATION

ADJOURN

Notice of this meeting has been given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 23-40.

NOTICE OF POTENTIAL QUORUM – A quorum of the City Council may or may not attend, but there will not be debate by the City Council. The Council, acting as attendees to an informational presentation, will not be discussing public business and no action will be taken.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Human Resources at 575-624-6700 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats, please contact the City Clerk at 575-624-6700.

Printed and posted: Monday January 22, 2024 at 2:00 PM

TO ATTEND THE LEGAL COMMITTEE MEETING BY GO-TO-MEETING
Thursday, January 25, 2024, 2:00 PM – 4:00 PM (MDT).
Please join my meeting from your computer, tablet or smartphone.
https://global.gotomeeting.com/join/994272373

You can also dial in using your phone.
United States: +1 (872) 240-3412
Access Code: 994-272-373
Regular Meeting of the Legal Committee  
Held in the Roswell City Hall  
Thursday November 16, 2023,

Notice of this meeting was given to the public in compliance with NMSA 1978 §10-15-1 through 4 and Resolution 23-40.

ROLL CALL
The meeting convened at 2:30 p.m. with Chair Heldenbrand presiding, Councilor Arnold, Councilor Oropesa, and Councilor Corn being present.

Staff present: Tisha Tu’ua, Vicky Eaton, Todd Verciglio, Jenna Lanfor, Tara Painter, Mike Mathews, Hessel E. Yntema, Amanda Dickerson, Dorothy Ramirez, Amalia Martinez, Della Andazola, Christopher Josh Nairn-Mahan, Chad Cole, Juanita Jennings, and Chief Lance Bateman.

Guests present: Rita Kane-Doerhoefer, Bruce Andler, Peggy Seskey and Mike Espiritu.

Go To Meeting: Todd Wildermuth, Juanita Jennings, Daniel R3, and Amara H.

APPROVAL OF AGENDA
Councilor Arnold moved to approve the Legal Committee meeting agenda as presented. Councilor Oropesa was the second. A voice vote was 4-0 and the motion passed.

APPROVAL OF MINUTES
Councilor Arnold moved to approve the Legal Committee meeting minutes as presented from September 28, 2023. Councilor Oropesa was the second. A voice vote was 4-0 and the motion passed.

NON-ACTION ITEMS
1. Department Report - City Clerk – discussion only, no action taken, Human Resource – discussion only, no action taken. Councilors made a request for HR to bring back excel spreadsheet report of number of full-time employees and current vacancy, Safety Department - discussion only, no action taken.

2. Noise Ordinance – Hessel E. Yntema IV. Presented this ordinance. Members discussed changing wording as followed: page 10, section (b) Exceptions, number (4) line 19 change from 8 AM to 7 PM to Sunrise to Sunset. Number (5) line 23 change from 8 AM to 7 PM to Sunrise to Sunset. Discussion only, no action taken.

REGULAR ITEMS
3. RAC Lease Agreements:
   a. RAC Lease Agreements Carlton Walker – Jenna Lanfor presented this item. Carlton Walker requests to enter into a one (1) year lease for building
T Hangar 119 Space 1 consisting of 1,175 square feet, more or less, located at the Roswell Air Center, commencing on January 1, 2024, and ending December 31, 2024, for the purpose of storing and maintaining privately owned aircraft. Tenant agrees to pay to Landlord as rent the sum of ($3,025.68) annum, payable in 12 monthly installments of $252.14 (3% Increase). Councilor Corn moved to send to consent agenda recommending approval to authorize Carlton Walker to enter into a one (1) year lease agreement beginning January 1, 2024, and ending December 31, 2024, for T Hangar 119 Space 1 located at the Roswell Air Center. Councilor Arnold was the second. A voice vote was 4-0 and the motion passed.

b. RAC Lease Agreements Tom Wadsworth – Jenna Lanfor presented this item. Tom Wadsworth requests to enter a one (1) year lease for building T Hangar 119 Space 3 consisting of 1,002 square feet, more or less, and 120 Space 3 1,175, square feet, more or less, located at the Roswell Air Center, commencing on January 1, 2024, and ending December 31, 2024, for the purpose of storing and maintaining privately owned aircraft. Tenant agrees to pay to Landlord as rent the sum ($3,025.58) annum, payable in 12 monthly installments of $252.14 for 119 Space 3, and ($2,580.12) annum, payable in 12 monthly installments of $215.01 for 120 Space 3 (Increase 3%). Councilor Corn moved to send to consent agenda as amended with the following changes on page 35 Lease Agreement, #3 Rent should read as follow “Tenant agrees to pay Landlord as rent the sum of two thousand five hundred eighty dollars and twelve cents ($2,580.12), payable in 12 monthly installments of $215.01 for 119 space 3, and three thousand twenty-five dollars and sixty-eight cents ($3,025.68) annum, payable in 12 monthly installments of $252.14 for 120 space 3” recommending approval to authorize Tom Wadsworth to enter into a one (1) year lease agreement beginning January 1, 2024, ending December 31, 2024, for T Hangar 119 Space 3 and 120 Space 2 located at the Roswell Air Center. Councilor Arnold was the second. A voice vote was 4-0 and the motion passed.

c. RAC Lease Agreements Aerodesign Services, LLC – Jenna Lanfor presented this item. Aerodesign, LLC requests to enter a one (1) year lease for 850 square feet of office space in Building 1000, located at the Roswell Air Center, commencing on December 1, 2023, and ending November 30, 2024, for the purpose of administrative support services for aircraft repairs. Tenants agrees to pay to Landlord as rent the sum ($10,200.00) annum, payable in 12 monthly installments of $850.00. $12.00 psf includes maintenance and utilities. Councilor Corn moved to postponed till next Legal Committee meeting. Councilor Arnold was the second. A voice vote was 4-0 and the motion passed.
4. Ordinance 24-XX Amending Chapter 2 of the Roswell City Code – Hessel E. Yntema IV presented this item. NMSA 1978, §3-12-4 provides for the creation of certain municipal offices. Following Attorney General Opinion 2022-02, these amendments to the administrative code would bring the city into accord with the opinion and provide for the greater council oversight of top-level employee/appointee positions in city government. These amendments also will bring the administrative code and current governing body procedural practice, existing resolutions, and the Open Meetings Act into harmony. The proposed ordinance creates no financial obligations for the City currently. Councilor Arnold moved to postponed till January Legal Committee meeting. Councilor Oropesa was the second. A voice vote was 4-0 and the motion passed.

5. RFP 24-007 Scope of Work for Roswell/Chavez County All-Hazards Emergency Operations Plan – Mike Mathews presented this item. The City of Roswell is requesting revision services for the Roswell/Chaves County All-Hazards Emergency Operations Plan. This plan establishes the doctrine and principles for the City/County emergency management program and is required to be current every 10 years to be eligible for grants. Our current version was updated in 2015. The RFP-24-007 Scope of Work currently has no financial obligations for the City. Once a qualified selection has been made through the RFP process, the funding will be out of capital outlay funds approved in the FY24 budget for emergency management. Councilor Oropesa moved to consent agenda recommending approval for RFP-24-007 Scope of Work for Roswell/Chaves County All Hazards Emergency Operations Plan. Councilor Corn was the second. A voice vote was 4-0 and the motion passed.

For the record: Chair Heldenbrand left the meeting at 3:43 PM and returned to meeting at 3:44 PM.

6. RFP 24-008 Scope of Work for the Visitor Center Management Services – Hessel E. Yntema IV presented this item. Presently the City expends $373,846 for personnel and operations of the Visitor’s Center. The administration seeks to request outside proposals for Visitor Center management to compare to current operations. If awarded it will save the city $373,846 or more per annum. Councilor Corn moved to postponed till January Legal Committee meeting. Councilor Arnold was the second. A voice vote was 4-0 and the motion passed.

CHAIR COMMENTS, REPORTS, ANNOUNCEMENTS
NONE

PUBLIC PARTICIPATION
Rita Kane-Doerhoefer

ADJOURN
The meeting adjourned at 4:37 PM.
January 2024 Monthly Report – City Clerk’s Office

Newly Elected Officials
December 8, 2023 – Training at the Convention Center
January 1, 2024 – Swearing In

Agendas/Minutes
Review agenda and minutes for the months of November and December.

Resolutions & Ordinances
The number of resolutions processed for the months of November and December combined was six (6) and the number of Ordinances processed for both months was zero (0).

Process Inspection of Public Records Act requests

<table>
<thead>
<tr>
<th>IPRA REQUESTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requestor #1 (Tellez)</td>
</tr>
<tr>
<td>Requestor #4 (Partner Engineering)</td>
</tr>
<tr>
<td>Requestor #3 (LexisNexis)</td>
</tr>
<tr>
<td>Miscellaneous requestors</td>
</tr>
<tr>
<td>Total requests Nov and Dec</td>
</tr>
</tbody>
</table>

NextRequest – See report attached.
City of Roswell, NM Performance Report
January 1, 2024 - January 16, 2024  All departments

General Overview: Requests received, opened, and closed in this period.

<table>
<thead>
<tr>
<th>33 request(s) received</th>
<th>5 total request(s)</th>
<th>23 request(s) closed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of new requests received during this reporting period.</td>
<td>Total number of requests in the portal at the beginning of the reporting period.</td>
<td>Total number of requests closed during this reporting period.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15 request(s) open</th>
<th>0 request(s) overdue</th>
<th>0 request(s) paused</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of open requests by the end of this reporting period.</td>
<td>Total number of requests that became overdue in this reporting period.</td>
<td>Total number of requests that were paused by the end of this reporting period.</td>
</tr>
</tbody>
</table>

Response and Fulfillment: How fast your agency responds to and fulfills requests

<table>
<thead>
<tr>
<th>0 late response(s)</th>
<th>1 day(s) to respond</th>
<th>1 day(s) to respond</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of requests where an initial response was sent after the response window expired.</td>
<td>Median response time in days in this reporting period.</td>
<td>Average response time in days in this reporting period.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9 fulfilled outside 3 days</th>
<th>9 fulfilled within 3 days</th>
<th>6 day(s) to fulfillment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of requests closed beyond 3 days of request submission during this reporting period.</td>
<td>Total number of requests closed within 3 days of request submission during this reporting period.</td>
<td>Median number of days taken to fulfill all requests in this reporting period.</td>
</tr>
<tr>
<td>9 days to fulfillment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average number of days taken to fulfill all requests in this reporting period.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Staff Time: How much time staff has spent working on requests

<table>
<thead>
<tr>
<th>2.5 hours spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of hours staff spent on requests in this reporting period.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.25 median hours spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median number of hours staff spent on each request.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.25 average hours spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average number of hours staff spent on each request.</td>
</tr>
</tbody>
</table>

Staff Cost: How much money is spent fulfilling record requests

<table>
<thead>
<tr>
<th>$0.00 dollars spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total amount of money spent (from staff costs) fulfilling requests in this reporting period.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>$0 median dollars spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median amount of money spent (from staff costs) on each request.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>$0.0 average dollars spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average amount of money spent (from staff costs) on each request.</td>
</tr>
</tbody>
</table>

Cost Recovery: Payments received from requesters via NextRequest

<table>
<thead>
<tr>
<th>7 total invoices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of requests with invoices.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>$175.00 dollars received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total amount of money received from all requests with invoices in this reporting period.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>$25.00 median dollars earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median amount of money received from each request with invoices in this reporting period.</td>
</tr>
</tbody>
</table>
$25.00 average dollars earned

Average amount of money received from each request with invoices in this reporting period.

Requests by Department

This table breaks down how many requests were received and closed by each department, as well as median fulfillment speed for each department in this reporting period.

<table>
<thead>
<tr>
<th>Department</th>
<th>New</th>
<th>Closed</th>
<th>Median</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Clerk</td>
<td>9</td>
<td>4</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Pecos Valley Regional Communications Center</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Roswell Police Department</td>
<td>13</td>
<td>9</td>
<td>13</td>
<td>11</td>
</tr>
<tr>
<td>Not Assigned</td>
<td>9</td>
<td>8</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>

Message Templates Report

This table includes all message templates used within this reporting period.
<table>
<thead>
<tr>
<th>Message Template</th>
<th>Times Used</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarification Needed</td>
<td>1</td>
</tr>
<tr>
<td>IPRA Received</td>
<td>17</td>
</tr>
<tr>
<td>IPRA Received RPD</td>
<td>3</td>
</tr>
<tr>
<td>Medical Release Required</td>
<td>4</td>
</tr>
<tr>
<td>Message to Staff</td>
<td>13</td>
</tr>
<tr>
<td>Message to staff - charging for time</td>
<td>2</td>
</tr>
<tr>
<td>Records Available</td>
<td>14</td>
</tr>
<tr>
<td>Records Available - charges</td>
<td>10</td>
</tr>
<tr>
<td>(STAFF ONLY) No records</td>
<td>13</td>
</tr>
<tr>
<td>(STAFF ONLY) Records Uploaded</td>
<td>6</td>
</tr>
</tbody>
</table>

Closure Response Report

This table includes all closure responses and totals used in this reporting period.

<table>
<thead>
<tr>
<th>Closure Response</th>
<th>Times Us</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duplicate</td>
<td>1</td>
</tr>
<tr>
<td>Fire - under investigation</td>
<td>1</td>
</tr>
<tr>
<td>Fulfilled</td>
<td>11</td>
</tr>
<tr>
<td>No Records</td>
<td>2</td>
</tr>
<tr>
<td>Records Request Granted in its Entirety and Records Disclosed</td>
<td>8</td>
</tr>
<tr>
<td>RPD IPRA No Records Found</td>
<td>1</td>
</tr>
</tbody>
</table>

Tag Report

This table includes the tags applied to requests opened in this reporting period.
Key Assumptions

Requests Overdue
For requests that were closed prior to October 28, 2018 requests are counted as overdue only if they were overdue at the time the request was closed.

Late Responses
A late response indicates that there were no documents released; no message or invoice sent to the requestor; or that the request remained open past its due date.

Response and Fulfillment Speed
Response time is tracked using the first external message sent through the NextRequest portal. This metric assumes that the message sent includes either a "request for clarification" or a time estimate.

Fulfillment time is calculated based on the time from when the request was created to the first date the request was closed (if there are multiple closed dates, only the first one is used).

Median days to close and average days to close are calculated based on the number of requests that have a closed date within the reporting period.

Staff Time
Staff time only accounts for time logged in NextRequest. This metric assumes that staff members regularly log all staff time in the portal and that the hourly rates are accurate and up-to-date.

Staff Cost
Staff cost only accounts for costs logged in NextRequest. This metric assumes that staff members regularly log costs in the portal.

Message Templates Report
The message templates report tracks message template usage from February 25, 2018 onwards.
JANUARY 2024 HUMAN RESOURCES MONTHLY REPORT

For December, the city hired twenty-six new employees, fifteen promotions, and thirteen exits.

Our turnover rate for January 1st 2023 – December 31st 2023 is at a 25% With a YTD total amount of employees of 786 and total exits 199.

So Far for the month of January we have hired ten new employees, thirteen promotions/transfers, and twelve exits.
# Year to Date Turnover 2023

<table>
<thead>
<tr>
<th></th>
<th>Administration</th>
<th>Adult Center</th>
<th>Airport</th>
<th>Animal Control</th>
<th>Cemetary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average # Of Employees</td>
<td>3</td>
<td>2</td>
<td>10</td>
<td>12</td>
<td>9</td>
</tr>
<tr>
<td>Number Of Exits</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>17</td>
<td>3</td>
</tr>
<tr>
<td>Turnover Rate %</td>
<td>100.00%</td>
<td>50.00%</td>
<td>0.00%</td>
<td>141.00%</td>
<td>33.00%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Dispatch</th>
<th>Emergency Mgmt</th>
<th>Engineering</th>
<th>Facilities</th>
<th>Finance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average # Of Employees</td>
<td>18</td>
<td>1</td>
<td>10</td>
<td>13</td>
<td>12</td>
</tr>
<tr>
<td>Number Of Exits</td>
<td>7</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Turnover Rate %</td>
<td>38.00%</td>
<td>0.00%</td>
<td>10.00%</td>
<td>23.00%</td>
<td>50.00%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Legal</th>
<th>Library</th>
<th>Muni. Court</th>
<th>Museum</th>
<th>Parks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average # Of Employees</td>
<td>4</td>
<td>10</td>
<td>8</td>
<td>12</td>
<td>30</td>
</tr>
<tr>
<td>Number Of Exits</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Turnover Rate %</td>
<td>0.00%</td>
<td>20.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>23.00%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Sanitation</th>
<th>Sp. Electronics</th>
<th>Streets</th>
<th>Transit</th>
<th>Visitor Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average # Of Employees</td>
<td>35</td>
<td>2</td>
<td>23</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>Number Of Exits</td>
<td>17</td>
<td>1</td>
<td>3</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>Turnover Rate %</td>
<td>48.00%</td>
<td>50.00%</td>
<td>13.00%</td>
<td>66.00%</td>
<td>33.00%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Central Control</th>
<th>City Clerk</th>
<th>Code Enforcement</th>
<th>Comm. Enhancement</th>
<th>Convention</th>
<th>Total Exits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10</td>
<td>4</td>
<td>12</td>
<td>1</td>
<td>5</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
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## NOVEMBER 2023 Accident/Incident Report (page 2)

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NOVEMBER 2023 Accident/Incident Report (page 3)

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### Illness or Injury

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### Property Damage

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Consider recommending approval to authorize Summit Food Services to enter into a one (1) year renewal with a first amendment to original lease agreement. This is the second one (1) year renewal of seven (7).

BACKGROUND:

Initiated by: Jenna Lanfor, Deputy Air Center Director.

Summit Food Services requests to enter the second one (1) year renewal of seven (7) with a first amendment for Building 1 (terminal) consisting of 1,685 square feet, more or less, located at the Roswell Air Center, commencing on December 1, 2023 and ending November 30, 2024, for the purpose of operating a bar and grill.

FINANCIAL CONSIDERATION:

Tenant agrees to perform the services described in Exhibit B at the Premises and to pay to Landlord Commissions in the sum of four percent (4%) of Net Sales each month of the Lease for the first year. Year 2 six percent (6%), year 3 eight percent (8%), and years 4 to 7 ten percent (10%). Net Sales shall be defined as gross sales minus applicable sales tax. Summit shall provide a monthly operating statement, to the Landlord, which shall detail the revenue based on the operation. Commission payment shall be due within thirty days of issuance of the operating statement.

The parties agree to the following: Tenants agrees to continue commission payment of net sales each month at six percent (6%) commissions for year three, year four will increase to eight percent (8%) and year five through seven will increase to ten percent (10%).

LEGAL REVIEW:

The City Attorney has reviewed the lease.

BOARD AND COMMITTEE ACTION:

The Thursday January 25, 2024 meeting for Legal Committee is the first consideration of this matter.

STAFF RECOMMENDATION:

Consider recommending approval to authorize Summit Food Services to enter into a one (1) year renewal with a first amendment to original lease agreement. This is the second one (1) year renewal of seven (7).

Attachments

Attachment: 1 – Summit Food Executed Lease Building 1 Dated 12.09.21
Attachment: 2 – Summit Food Services Lease Renewal
LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this __ day of December 2021 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter designated “Landlord”, and SUMMIT FOOD SERVICE, LLC, a New Mexico limited liability company, hereinafter designated as “Tenant”.

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows

A portion of Building No. 1, consisting of 1,685 square feet, more or less, located at the Roswell Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit “A” (Premises).

1. GRANTING CLAUSE AND PREMISES. For the term, at the commissions specified below and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

2. TERM. The Lease term is for one (1) year, commencing on December 1, 2021 and ending November 30, 2022 unless sooner terminated by provision hereof. This Lease shall renew for seven (7) additional one-year periods unless either party provides sixty (60) days’ notice of non-renewal.

3. SCOPE OF WORK AND COMMISSIONS.
   a. Tenant agrees to perform the services described in Exhibit B at the Premises and to pay to Landlord Commissions in the sum of four percent (4%) of Net Sales each month of the Lease for the first year, Year 2 six percent (6%), year 3 eight percent (8%), and years 4 to 7 ten percent (10%). Net Sales shall be defined as gross sales minus applicable sales tax. Summit shall provide a monthly operating statement, to the Landlord, which shall detail the revenue based on the operation. Commission payment shall be due within thirty days of issuance of the operating statement.

4. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition as-is. Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant’s responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

5. MAINTENANCE.
   a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair.

   b. Tenant shall make necessary corrections and/or adjustments to maintenance practices as inspections reasonably determine. Landlord shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever maintenance Landlord deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Tenants in comparable facilities. If said maintenance is not undertaken by Tenant
within thirty (30) days after the date Landlord gives Tenant written notice of corrections needed, Landlord shall have the right to enter upon the Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor to be borne by Tenant.

6. TAXES, LICENSES AND UTILITIES. During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant’s business. Failure to have an appropriate current license or permit shall be a breach of this Lease.

7. PERSONAL PROPERTY AND FIXTURES OF TENANT. All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

8. EQUIPMENT AND IMPROVEMENTS.
   a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. Also Tenant shall, upon written demand by Landlord, at Tenant’s sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 8.

   b. Tenant shall not make, suffer or permit to be made, any major additions, alterations or improvements on the Premises (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner that no mechanic’s lien, materialman’s lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof, and Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. Tenant shall be responsible for obtaining, if necessary, any and all permits and inspections required by such improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof will not be offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein including snow clearance.

9. INSURANCE.
   a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease.

   b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon,
Landlord from any claim for death, injury, damage or loss which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord’s Agents.

12. CONDEMNATION OR GOVERNMENTAL TAKING. In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable or feasible to operate for the purposes for which the Premises was leased, Tenant’s obligation under this Lease shall continue in full force and effect, but the amount of rent payable by Tenant shall be reduced in the proportion which the portion of the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.

c. In the event of total or partial condemnation or taking of the leased Premises as aforesaid, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord and Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate and the value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled by reason of such total or partial condemnation or taking.

13. CONDITIONS OF DEFAULT. If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of commissions or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; or

b. Default in the observance of any of the Tenants covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of; or

c. Finally, and without further possibility of appeal or review (1.) be adjudicated bankrupt or insolvent, (2.) have a receiver or trustee appointed for all or substantially all of its business or assets, or (3.) suffer
in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance upon request.

10. DAMAGE OR DESTRUCTION OF PREMISES.

a. In the event the Premises are damaged by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the commission payments from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, there shall be no reduction of commissions. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.

b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to: (1.) to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the commission payments shall be proportionately reduced as provided above in 11a. during the period of such repair, reconstruction or restoration, or (2.) to give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Tenant such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified in such notice and Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the Premises, up to the date of such termination.

c. With regard to Landlord's duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord’s control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

11. LIABILITY. Landlord shall not be liable to Tenant or to Tenant's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant’s operations and use of the Premises. Tenant shall not be liable to Landlord or to Landlord’s employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Landlord’s operations and use of the Premises or surrounding areas. Tenant agrees to indemnify and save harmless
an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property; or

e. Leave the Premises vacant or deserted for a period of ten (10) consecutive days without prior Landlord written consent; or

f. Use the Premises for purposes other than those set forth in Paragraph 17 hereof, or fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

14. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease;

b. Landlord may sue to restrain by injunction any violation, conditions or provisions of this Lease;

c. Landlord may, without further notice to Tenant and without further demand for commissions or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant’s default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant’s property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant’s risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than
the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

15. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney’s fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

16. BANKRUPTCY. If Tenant should be adjudged bankrupt, either voluntarily or involuntarily, Landlord shall have the option to pursue with the Court having jurisdiction all remedies to which Landlord may be entitled in law or equity. In no event shall Tenant’s interests in this Lease be deemed to be an asset of Tenant.

17. USE OF THE PREMISES.
   a. Tenant shall use the Leased Premises solely for the purpose of Concessions, Beer/Wine & Micro-Market Operations and vending solutions as outlined in Exhibit B, scope of services, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. Tenant shall be bound by the Roswell City Code or as may be amended from time to time and all applicable policies and procedures of the Roswell Air Center (ROW)

   b. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant’s occupancy of the Premises is the sole and absolute responsibility of Landlord. Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials into Landlord provided receptacles. Tenant represents to Landlord that it will not release any hazardous materials at the leased premises or contaminated the leased premises. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant’s employees or representatives during the term of Tenant’s occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

   c. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of anything which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable.

   d. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the ROW’s airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master
18. PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23, and to comply with such requirements the Roswell Air Center (ROW) has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program, approved by the FAA, in accordance with 49 CFR Part 23. To comply with the ROW ACDBE Program, Tenant agrees as follows:

a. That it shall not discriminate against any business owner because of the owner’s race, color, national origin, or sex in the connection with the award or performance of any concession agreement, management contract or subcontract purchase or lease agreement or other agreement covered by 49 CFR Part 23;

b. That it shall obtain enough ACDBE participation to meet ROW’s overall ACDBE current % goal or document that it made sufficient good faith efforts to do so. This goal is subject to amendment to suit ROW’s circumstances; and

c. That it shall include the following statements in any subleases or contracts covered by 49 CFR Part 23, that it enters into and shall cause those businesses to similarly include the statements in further agreements:

“This agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner’s race, color national origin, or sex in the connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.”

19. DOMINANT PROVISIONS. The parties acknowledge that the Leased Premises are a part of ROW and are therefore subject to the provisions of the Indenture between the United States of America and the City of Roswell, dated 24 January 1968, and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County, New Mexico and any other agreements or understandings. The provisions of the above described indenture are hereby incorporated herein by reference and accepted as binding by the parties hereto.

20. ACCESS TO INSPECTION OF PREMISES. Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant’s regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

21. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.

22. HOLDOVER. In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the commissions provided for in this Lease and Tenant’s occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.
23. INTERPRETATION OF LEASE AGREEMENT. Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord’s authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

24. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

25. NOTICES.
   a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

      Air Center Manager
      1 Jerry Smith Circle
      Roswell, NM 88203

   b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

      Summit Food Service, LLC
      500 East 52nd Street
      Sioux Falls, SD 57104

26. EFFECT. The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

27. WAIVERS. One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

28. GOVERNING LAW; VENUE. This Lease and the rights and obligations of the parties hereunder shall be shall be governed by New Mexico law. Any suit brought by either party regarding this agreement or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

29. TERMINATION. This Lease may be terminated by either party by giving ninety (90) days written notice.

30. ENTIRE AGREEMENT AND AMENDMENT. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlords Governing Body.
IN WITNESS WHEREOF, this Lease Agreement is executed this 9th day of December, 2021.

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

[Signature]
Dennis Kintigh, Mayor

ATTEST:
Sharon Coll, City Clerk

TENANT:
Summit Food Services

[Signature]
Martin C. Sepulveda Jr., President
EXHIBIT "A"
Premises
EXHIBIT “B”
Scope of Work

Tenant Scope of Work

1. Tenant will provide Food Service, beer & wine sales and our Micro-Market concept on the unsecured side of the Roswell Air Center. Final menu and pricing of Food and Micro-Market sales to be determined and provided by Tenant. Beer and wines sales shall be subject to execution of separate lease of the City’s liquor license to Tenant and approval of the lease by the New Mexico Regulation and Licensing Department.

2. Additionally, Tenant will provide the following under the Scope of Work:
   a. Two full time Tenant employees to manage program
   b. Two POS units to capture sales + an order ticket machine
   c. Secure retail display and stands for Micro-Market sales
   d. Summit marketing & signage materials
   e. Pico vending cooler for secured side of airport
   f. Offer to reach out to Coke/Pepsi to provide a vending machine on the secure side of the airport.
   g. 4% commission on all food, alcohol and micro-market sales for first year and prospective increases as identified above.

3. Future Scope: The parties understand that the secured side of the airport will soon undergo expansion, Tenant is open to further discussion as to how we can enhance our offering in this location, once complete. The parties will mutual agree to any additional services in writing prior to Tenant commencing such services.

3-A. The Parties may coordinate promotional activities related to the services described in this scope of work, however, the City shall retain full naming, branding and advertising rights in all food and beverage service operations at the Air Center, which rights shall inure solely to the City, and the Tenant expressly disclaims any right, title or interest, in any intellectual property developed, associated, or owned by the City, in connection with the Roswell Air Center or food services thereon.
Lease Amendment/Renewal-Summit Building 1

Contract Renewal No: 2 of 7

Contract Term: December 1, 2021 – November 30, 2022
Renewal Term: December 1, 2023 – November 30, 2024
Contractor: Summit Food Service, LLC
Attn: Brittany Mayer-Schuler, President

Contract Renewal

This Contract Renewal is to be attached to the respective Contract and become a part thereof. The existing Contract initially commenced on December 1, 2021 and set to expire on November 30, 2022. The Term provides the Contract may be extended for up to Seven (7) additional one (1) year periods. In accordance with the Contract provisions and by mutual agreement of all parties, the Parties desire to renew this Contract for an additional term of one (1) year until November 30, 2024. All provisions of the Contract shall remain in full force and effect, including this amendment and previous amendments which shall remain unchanged by this Contract Renewal.

First Amendment

Original Lease Agreement language:

SCOPE OF WORK AND COMMISSIONS.

a. Tenant agrees to perform the services described in Exhibit B at the Premises and to pay to Landlord Commissions in the sum of four percent (4%) of Net Sales each month of the Lease for the first year. Year 2 six percent (6%), year 3 eight percent (8%), and years 4 to 7 ten percent (10%). Net Sales shall be defined as gross sales minus applicable sales tax. Summit shall provide a monthly operating statement, to the Landlord, which shall detail the revenue based on the operation. Commission payment shall be due within thirty days of issuance of operating statement.

The parties agree to the following:

Tenant agrees to continue commission payment of net sales each month at six percent (6%) commissions for year three, year four will increase to eight percent (8%) and year five through seven will increase to ten percent (10%).
IN WITNESS WHEREOF, the Parties have caused this Contract Renewal to be executed by their duly authorized officers on this __ day of ______________, 2023, the Effective Date hereof.

| Chad Cole, City Manager | Date | Brittany Mayer-Schuler, President | Date |

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CITY SEAL

Approved as to form:

Attest:

| Amalia Martinez, City Clerk | Date | Hessel Yntema, City Attorney | Date |
ACTION REQUESTED:
Consider recommending approval to authorize Aerodesign Services, LLC to enter a one (1) year lease agreement, beginning December 1, 2023 and ending November 30, 2024 for 850 square feet of office space in Building 1000 located at the Roswell Air Center.

BACKGROUND:
Initiated by: Jenna Lanfor, Deputy Air Center Director.

Aerodesign Services, LLC requests to enter a one (1) year lease for 850 square feet of office space in Building 1000, located at the Roswell Air Center, commencing on December 1, 2023 and ending November 30, 2024, for the purpose of administrative support services for aircraft repairs.

FINANCIAL CONSIDERATION:
Tenant agrees to pay to Landlord as rent the sum of ($10,200.00) annum, payable in 12 monthly installments of $850.00. $12.00 psf includes maintenance and utilities. If tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, tenant shall pay to landlord an additional 2% finance charge, as a penalty each month until the full amount of that month’s rent is paid.

LEGAL REVIEW:
The City Attorney was given this lease for review on 11/03/2023.

BOARD AND COMMITTEE ACTION:
The Thursday January 25, 2024 meeting for Legal Committee is the first consideration of this matter.

STAFF RECOMMENDATION:
Consider recommending approval to authorize Aerodesign Services, LLC to enter a one (1) year lease agreement, beginning December 1, 2023 and ending November 30, 2024 for 850 square feet of office space in Building 1000 located at the Roswell Air Center.

Attachments
Attachment: 1 – Aerodesign Services, LLC Lease Agreement DRAFT
LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this 14th day of December 2023 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter “Landlord”, Aerodesign Services, LLC, as individual, hereinafter “Tenant”.

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

| Building 1000 west side Space consisting of 850 square feet, more or less, located at the Roswell 1 Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit “A” (Premises). |

2. TERM. The Lease term is for one (1) year, commencing on December 1, 2023 and ending November 30, 2024 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of ten thousand two hundred dollars and no cents ($10,200.00) annum, payable in 12 monthly installments of $850.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month’s rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant’s failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set offset any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid $240.00 in advance as security for Tenant’s full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward

   a. Payment for rent or penalties due Landlord
   b. Reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises
   c. The cost of removal of any hazardous material not properly disposed of by Tenant.
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Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. GENERAL.
   a. Priority.
      i. Safety and security are the Airport’s first priorities. All personnel working and doing business on Airport property must comply with Airport Rules and Regulations at all times and model the significance of safety and security for co-workers, passengers, and members of the public.
   b. Definition of Restricted Area.
      i. For the purpose of this Lease, any area on Airport property, whether within a building, in the terminal or on the ramp or airfield area, including but not limited to all Secured Areas, Sterile Areas, Restricted Areas, and the Air Operations Area (AOA), shall be referred to collectively as the “Restricted Area.”
   c. Airport Security Program.
      i. This lease includes the non-Sensitive Security Information (SSI) requirements set forth in the Airport Security Program (ASP) issued by the Director under 49 C.F.R. 1542.
   d. Enforcement.
      i. Any person who violates or compromises Airport security, or creates or engages or participates in any unsafe, unsecure, or hazardous condition or activity at the Airport may have his/her access privileges immediately revoked on a temporary or permanent basis at the sole discretion of the Airport. Any person or entity responsible in whole or in part for any security violation shall also be responsible for any resulting cost, including but not limited to any fine imposed by a regulatory agency or remediation of property damage or personal injury.
   e. Federal, State, and/or Local Laws or Regulations –
      i. Every Person using the Airport shall comply with all Federal, State, and/or Local Laws, Airport Rules and Regulations, Tenant Directives, and/or decisions, including those of executive, legislative or judicial agencies or bodies, now or hereafter in effect, and applicable to the Person’s use of the Airport.
      i. Every Roswell Air Center tenant, and/or lessee, or any other Person doing business with the Airport, shall comply with all federal, state, and/or local laws, airport rules and regulations, tenant directives and/or decisions; including those of executive, legislative, or judicial agencies or bodies,
LEASE AGREEMENT

now or hereafter in effect, and applicable to that tenant's, lessees, or other Person's operations at the Airport.

f. Safety and Security Regulations – Adherence to Airport Security Directions.
   i. All Persons will obey lawful orders and directions of Airport Security Coordinator, Roswell Police Officers, or other Persons responsible for insured compliance with these Rules and Regulations. All orders or directions will be consistent with the Airport Security Program, Rules and Regulations, and applicable state, federal and local laws.

g. The Airport is operated under 49 CFR Part 1542 (Airport Security) and 14 CFR Part 139 (Airport Certification)
   i. The Tenant will comply with all applicable requirements of the Airport Security Program, Airport Certification Manual, and Airport Emergency Plan. Upon written notice from Airport, Tenant will, at its sole expense, promptly correct any violation or omission under the Airport Security Program or Airport Certification Manual within the time specified in the notice.
   ii. The Tenant will coordinate any Airport security matter with the Airport Security Coordinator or their designee.

The Tenant will coordinate any Airport security matter with the Airport Security Coordinator or their designee.

6. CONDITION OF PREMISES. Tenant accepts the Premises as is, in its present condition. Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant’s responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

7. MAINTENANCE.
   a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Janitorial maintenance is the sole cost and responsibility of the tenant. Tenant agrees to notify the Landlord within 72 hours of any non-emergent maintenance issues. Emergency issues need to be called in immediately.
   b. Further, Landlord shall maintain and replace when necessary the plumbing and electrical systems as well as all glass, heating, air conditioning, and other similar fixtures and equipment located on or in any portion of the Premises.

8. TAXES, LICENSES AND UTILITIES. During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant’s business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Landlord shall
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pay all utilities used on the Premises, including, electricity, gas, and water.

9. PERSONAL PROPERTY AND FIXTURES OF TENANT. All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

10. EQUIPMENT AND IMPROVEMENTS.
   a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. In addition, Tenant shall, upon written demand by Landlord, at Tenant’s sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.
   b. Tenant shall obtain written consent from Landlord prior to making or permitting any major additions, alterations or improvements on the Premises (including but not limited to, modification to any security boundary wall or fence, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in). Landlord may withhold consent in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner that no mechanic’s lien, materialman’s lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof. Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof does not offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein—including snow clearance.

11. INSURANCE.
   a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease. Tenant agrees to reimburse Landlord for insurance premium based upon the pro-rata per square foot cost attributable to the Premises as determined and billed by Landlord. Tenant understands that fire and extended
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coverage does not cover the property of Tenant or any property on the premises that does not belong to Landlord.

b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance (Exhibit B) in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

12. DAMAGE OR DESTRUCTION OF PREMISES.

a. In the event the Premises suffers damage by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent from the date of damage and during repairs. Proportionate rent reduction is based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, as determined by Landlord in its sole discretion, there shall be no reduction of rent. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.

b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to:

i. Repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above in 12(a) during the period of such repair, reconstruction or restoration.

ii. Give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving Tenant such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified. With such notice, Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business, carried on by Tenant in the Premises, up to the date of such termination.
c. With regard to Landlord’s duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord’s control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

13. LIABILITY. Landlord shall not be liable to Tenant or to Tenant’s employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant’s operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss, which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord’s Agents.

14. CONDEMNATION OR GOVERNMENTAL TAKING. In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:
   a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.
   b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant’s obligation under this Lease shall continue in full force and effect. However, the amount of rent payable by Tenant shall be reduced in the proportion of which the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.
   c. In the event of total or partial condemnation or taking of the leased Premises as previously mentioned, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord. Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any,
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sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate. The value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled because of such total or partial condemnation or taking.

15. CONDITIONS OF DEFAULT. If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default.

b. Default in the observance of any of the Tenant’s covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of.

c. Without further possibility of appeal or review:
   i. Be adjudicated bankrupt or insolvent.
   ii. Have a receiver or trustee appointed for all or substantially all of its business or assets.
   iii. Suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof.

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property.

e. Leave the Premises vacant or deserted for a period of ten (10) consecutive days without prior Landlord written consent.

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, of fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has
LEASE AGREEMENT

given Tenant written notice specifying the default.

16. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:
   a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent.
   b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease.
   c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant’s default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant’s property shall be considered additional damages recoverable by Landlord.
   d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant’s risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.
   e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

17. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party
LEASE AGREEMENT

defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss
damage and expense by reason thereof, including reasonable attorney’s fees and all
reasonable costs incurred by Landlord in such action. If any action shall be brought to
recover any rental under this Lease, or for or on account of any other default/breach of or
to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the
recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant
all reasonable attorney fees and costs.

18. USE OF THE PREMISES. Security Responsibilities of Tenant, Tennant Employees and
Other Persons.
   a. No person may:
      i. Tamper, interfere with, compromise, modify, attempt to circumvent, or
         cause a person to tamper, interfere with, compromise, modify, or attempt
to circumvent any security system, measure, or procedure.
      ii. Enter, or be present within, a Secured Area, AOA, SIDA, or sterile area
          without complying with the systems, measures, or procedures being
          applied to control access to, or presence or movement in, such areas.
      iii. Use, allow to be used, or cause to be used, any airport-issued or airport-
           approved access medium or identification medium that authorizes the
           access, presence, or movement of persons or Vehicles in Secured Areas,
           AOAs, or SIDAs in any other manner than that for which it was issued by
           the Airport Authority.
   b. Security Badges
      i. Airport ID Badge
         1. Persons who work or do business on Airport property on a
            permanent or long-term (longer than 30 days) basis must have an
            Airport-issued identification in the form of an Airport ID badge.
            An individual holding an Airport ID badge may also be referred to
            as “badged personnel.”
      ii. Airport ID Badge Holder and Tenant Security Responsibilities / Access
          Control Procedures
         1. All badged personnel have an affirmative duty to maintain a secure
            Airport. Airport tenants are responsible for ensuring that their
            employees, suppliers, contractors, subcontractors, and all other
            businesses and entities providing services on Airport property
            comply with Airport Security these Rules and Regulations.
   c. All badged personnel have an affirmative duty to maintain a secure Airport.
      Airport tenants are responsible for ensuring that their employees, suppliers,
      contractors, subcontractors, and all other businesses and entities providing
      services on Airport property comply with Airport Security these Rules and
      Regulations.
   d. All badged personnel have an affirmative duty to maintain a secure Airport.
      Airport tenants are responsible for ensuring that their employees, suppliers,
LEASE AGREEMENT

contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security Rules and Regulations.

e. Tenants and tenant employees are responsible for controlling access to doors, gates and other passageways between the AOA and the landside of the airport through their lease areas.

f. A breach in security caused by a tenant or tenant employee that results in a TSA, Airport Security Coordinator, or Airport Director finding of negligence will be cause to review, suspend, or withdraw access privileges, impose additional training requirements and/or impose other penalties as provided by these Rules and Regulations and the Airport Security Program.

g. Tenant shall use the Leased Premises solely for the purpose of administrative support services for aircraft repairs, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. The Roswell City Code shall bind tenant or as may be amended from time to time and all applicable policies and procedures of the Roswell Air Center (ROW).

h. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant’s occupancy of the Premises is the sole and absolute responsibility of Tenant. Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of Tenant’s occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it will not release any hazardous materials at the leased premises or contaminated the leased premises. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant’s employees or representatives during the term of Tenant’s occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including:

i. Environmental claims.

ii. Environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials.

iii. Liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

i. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of any thing which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable
LEASE AGREEMENT

condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or otherwise noxious or objectionable condition, and Tenant agrees to abide by Landlord’s decision and act in accordance with its directions with respect thereto.

j. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the ROW’s airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master plan.

19. NONDISCRIMINATION PROVISIONS. Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply with these requirements in its leasing activities.

20. DOMINANT PROVISIONS. The parties acknowledge that the Leased Premises are a part of the Roswell Air Center and are therefore subject to the provisions of the Indenture between the United States of America and the City of Roswell, dated 24 January 1968, and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County, New Mexico and any other agreements or understandings. The provisions of the above-described indenture are hereby incorporated herein by reference and accepted as binding by the parties hereto.

21. ACCESS TO INSPECTION OF PREMISES. Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant’s regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

22. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.

23. HOLDOVER. In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant’s occupancy shall be governed in all other provisions hereof, except as to the duration of
the term, by the provisions of this Lease.

24. INTERPRETATION OF LEASE AGREEMENT. Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord’s authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

25. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

26. NOTICES.
   a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

   
   Air Center Manager
   1 Jerry Smith Circle
   Roswell, NM 88203

   b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

   Aerodesign Services, LLC
   29555 Costello Drive
   Hudson, MI 48165

27. EFFECT. The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

28. WAIVERS. One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

29. GOVERNING LAW; VENUE. This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement, default, or breach thereof shall be filed in the courts of Chaves County New Mexico.
30. TERMINATION. This lease may be terminated by the City upon a majority vote of the City Council, which will become effective one hundred eighty (180) days following an affirmative vote.

31. ENTIRE AGREEMENT AND AMENDMENT. The parties intend this writing as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord’s Governing Body.

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LEASE AGREEMENT

IN WITNESS WHEREOF, this Lease Agreement is executed this _____day of December 2023.

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

CITY SEAL

____________________
Timothy Z Jennings, Mayor

ATTEST:

____________________
Amalia Martinez, City Clerk

TENANT:
Aerodesign Services, LLC

____________________
Don Zaharia, President
LEASE AGREEMENT

EXHIBIT A Premises

City of Roswell
LEASE AGREEMENT

EXHIBIT B Insurance

1. MINIMUM SCOPE OF INSURANCE

   a. Aerodesign Services, LLC shall procure and maintain for the duration of the contracts the following minimum insurance against claims for injuries to persons or damages to property which may arise from or in connections with the performance of the Work herein and the results of the Work by Aerodesign Services, LLC agents, representatives, employees or subcontractors (check all that apply):

       ☒ I. Commercial General Liability (“CGL”): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence.

       ☒ II. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Aerodesign Services, LLC has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000.00 per accident for bodily injury and property damage.

       ☒ III. Worker’s Compensation: as required by the State of New Mexico, with Statutory Limits and Employer’s Liability Insurance with limit of no less than $1,000,000.00 per accident for bodily injury or disease.

       ☐ IV. Professional Liability (Errors and Omissions): Insurance appropriate to Aerodesign Services, LLC’s profession, with limit no less than $1,000,000.00 per occurrence or claim, $2,000,000.00 aggregate.

       ☐ V. Property Insurance: against all risks of loss to any and all improvements, betterments and fixtures on or to real property made the subject of this Agreement, at full replacement cost with no coinsurance penalty provisions.
LEASE AGREEMENT

b. **Aerodesign Services, LLC** maintains broader coverage and/or higher limits than the minimum shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by **Aerodesign Services, LLC**.

2. **ADDITIONAL INSURED STATUS**

   The City, its council members, officials, officers, employees, agents, and volunteers are to be coverage as additional insured on the CGL policy with respect to liability arising out of the Work performed by or on behalf of **Aerodesign Services, LLC**, including materials, parts or equipment furnished in connection with the Work. General Liability coverage can be provided in the form of an endorsement to **Aerodesign Services, LLC**’s insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10,0CG 20 26, CG 20 33, CG 20 38, CG 20 37 form is later revisions used).

3. **PRIMARY COVERAGE**

   For any claims related to this Agreement, **Aerodesign Services, LLC**’s insurance shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its council members, officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its council members, officials, officers, employees, agents, and volunteers shall be excess of **Aerodesign Services, LLC**’s insurance and shall no contribute to it.

4. **NOTICE OF CANCELLATION**

   Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

5. **WAIVER OF SUBROGATION**

   **Aerodesign Services, LLC** hereby grants to the City a waiver of any rights to subrogation, which any of **Aerodesign Services, LLC**’s insurers may acquire against the City by virtue of the payment of any loss under such insurance. **Aerodesign Services, LLC** agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the city has received a waiver of subrogation endorsement for the insurer.
6. **SELF INSURED RETENTIONS**

Self-insured retentions must be declared to and approved by the city. The City may require **Aerodesign Services, LLC** to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses with the retention.

7. **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers authorized to conduct business in the State of New Mexico with Current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

8. **CLAIMS MADE POLICIES**

If any of the required policies provide claims-made coverage:

i. The Retroactive Date must be shown, and must be before the Effective Date of this Agreement or the beginning of the Work hereunder.

ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Work.

iii. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Effective Date, **Aerodesign Services, LLC**

iv. Must purchase “extended reporting” coverage for a minimum of five years after completion of the Work.

9. **VERIFICATION OF COVERAGE**

**Aerodesign Services, LLC** shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this Section. All certificates and endorsements are to be received and approved by the city before the Work commences. Failure to obtain the required documents prior to commencement of the Work, however, shall not waive **Aerodesign Services, LLC**’s obligations to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications at any time.
10. SPECIAL RISKS OR CIRCUMSTANCES

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
AGENDA ITEM ABSTRACT

Regular Committee Meeting  Item No. 2c
Meeting Date: Thursday January 25, 2024
COMMITTEE: Legal
CONTACT: Hessel E. Yntema IV
CHAIR: Edward Heldenbrand

ACTION REQUESTED:
Consider recommending approval to authorize CAVU Aerospace ATS to enter into a five (5) year lease agreement renewal beginning February 1, 2024 and ending January 31, 2029 for 8 acres of land at the Roswell Air Center.

BACKGROUND:
Initiated by: Jenna Lanfor, Deputy Air Center Director.
CAVU Aerospace requests to exercise a five (5) year renewal of 8 acres of land used as a tear down pad at the Roswell Air Center beginning February 1, 2024 and ending January 31, 2029. The contract provides the term may be extended for up to two (2) additional five (5) year periods. This lease commenced February 13, 2014, and was assigned to CAVU Aerospace September 14, 2017.

FINANCIAL CONSIDERATION
Tenant agrees to pay Landlord as rent the sum of ($48,967.77) per annum, payable in 12 monthly installments of $4,080.65 with annual increases of 3% or CPI-U.

LEGAL REVIEW:
The City Attorney was given this lease for review on 11/16/2023.

BOARD AND COMMITTEE ACTION:
The Thursday January 25, 2024 meeting for Legal Committee is the first consideration of this matter.

STAFF RECOMMENDATION:
Consider recommending approval to authorize CAVU Aerospace ATS to enter into a five (5) year lease agreement renewal beginning February 1, 2024 and ending January 31, 2029 for 8 acres of land at the Roswell Air Center.

Attachments
ATTACHMENT: 1 - CAVU Aerospace Contract Renewal Agreement
Lease Renewal- CAVU Aerospace ATS Assigned Leases

Contract Renewal No: 2 of 2 (AOA) Land 8 Acres AOA

Contract Term: Original Lease (ATS)
February 01, 2019 - January 31, 2024
Lease Assignment September 14, 2017

Renewal Term: February 01, 2024 – January 31, 2029

Contractor: CAVU Aerospace
Attn: Bryan Hancock
1801 Military Road
Stuttgart, AR 72160

Contract Renewal

This Contract Renewal is to be attached to the respective Contract and become a part thereof. The existing Contract initially commenced on February 13, 2014 and set to expire on January 31, 2024. The Term provides the Contract may be extended for up to Two (2) additional five (5) year periods. In accordance with the Contract provisions and by mutual agreement of all parties, the Parties desire to renew this Contract for an additional term of five (5) years until January 31, 2029. Lease renewal continues with an annual rent amount of $48,967.77 due in 12 monthly installments of $4,080.65 with the contractual 3% or CPI-U increase due annually. All provisions of the Contract shall remain in full force and effect, including previous amendments, which shall remain unchanged by this Contract Renewal.

IN WITNESS WHEREOF, the Parties have caused this Contract Renewal to be executed by their duly authorized officers on this 5th day of January 2024, the Effective Date hereof.

Chad Cole, City Manager 1/16/2023
Bryan Hancock, Managing Partner 1/16/2023

Amalia Martinez, City Clerk 1/16/2023
Hessel Yntema, City Attorney 1/16/2023

CITY SEAL

Approved as to form:

Attest:

City of Roswell
ACTION REQUESTED:
Consider recommending approval to authorize Ascent Aviation Services, LLC., an Arizona Corporation, to enter into a lease agreement on a vacant land west of Building 1002 at the Roswell Air Center.

BACKGROUND:

Initiated by: Jenna Lanfor, Deputy Air Center Director.

Ascent Aviation Services, LLC requests to enter a one (1) year lease for 9,500 square feet of vacant land, MOL, located west of Building 1002 at the Roswell Air Center, commencing March 1, 2024, and ending February 28, 2025 for the purpose of storing ground servicing equipment.

FINANCIAL CONSIDERATION:
Ascent Aviation Services, LLC new rent amount is $203.86 monthly; $2,446.29 annually based on $0.2575 per square foot. Rent adjustment is 3%. Term: March 1, 2024 through February 28, 2025.

LEGAL REVIEW:
The City Attorney has reviewed the lease.

BOARD AND COMMITTEE ACTION:
The Thursday January 25, 2024 meeting for Legal Committee is the first consideration of this matter.

STAFF RECOMMENDATION:
Consider recommending approval to authorize Ascent Aviation Services, LLC., an Arizona Corporation, to enter into a lease agreement on a vacant land west of Building 1002 at the Roswell Air Center.

Attachments
ATTACHMENT 1- 2024 One Year Lease Signed Ascent Building 1002
LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this 1st day of March, 2024 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter “Landlord”, ASCENT AVIATION SERVICES, LLC, an Arizona corporation, hereinafter “Tenant”.

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

Vacant land west of Building No. 1002 consisting of 9,500 square feet of vacant land, more or less, located at the Roswell Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).

2. TERM. The lease term is for one (1) year commencing on March 1st, 2024 and ending February 28, 2025 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Two Thousand Four Hundred Forty-Six dollars and Twenty-Nine cents ($2,446.29) annum, payable in 12 monthly installments of $203.86. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month’s rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant’s failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set offset any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid $197.92 in advance as security for Tenant’s full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward
   a. Payment for rent or penalties due Landlord
   b. Reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises
   c. The cost of removal of any hazardous material not properly disposed of by Tenant.
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Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. GENERAL.
   a. Priority.
      i. Safety and security are the Airport’s first priorities. All personnel working and doing business on Airport property must comply with Airport Rules and Regulations at all times and model the significance of safety and security for co-workers, passengers, and members of the public.
   b. Definition of Restricted Area.
      i. For the purpose of this Lease, any area on Airport property, whether within a building, in the terminal or on the ramp or airfield area, including but not limited to all Secured Areas, Sterile Areas, Restricted Areas, and the Air Operations Area (AOA), shall be referred to collectively as the “Restricted Area.”
   c. Airport Security Program.
      i. This lease includes the non-Sensitive Security Information (SSI) requirements set forth in the Airport Security Program (ASP) issued by the Director under 49 C.F.R. 1542.
   d. Enforcement.
      i. Any person who violates or compromises Airport security, or creates or engages or participates in any unsafe, unsecure, or hazardous condition or activity at the Airport may have his/her access privileges immediately revoked on a temporary or permanent basis at the sole discretion of the Airport. Any person or entity responsible in whole or in part for any security violation shall also be responsible for any resulting cost, including but not limited to any fine imposed by a regulatory agency or remediation of property damage or personal injury.
   e. Federal, State, and/or Local Laws or Regulations –
      Every Person using the Airport shall comply with all Federal, State, and/or Local Laws, Airport Rules and Regulations, Tenant Directives, and/or decisions, including those of executive, legislative or judicial agencies or bodies, now or hereafter in effect, and applicable to the Person’s use of the Airport.
      i. Every Roswell Air Center tenant, and/or lessee, or any other Person doing business with the Airport, shall comply with all federal, state, and/or local laws, airport rules and regulations, tenant directives and/or decisions; including those of executive, legislative, or judicial agencies or bodies,
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now or hereafter in effect, and applicable to that tenant's, lessee's, or other Person's operations at the Airport.

f. Safety and Security Regulations – Adherence to Airport Security Directions.
   i. All Persons will obey lawful orders and directions of Airport Security Coordinator, Roswell Police Officers, or other Persons responsible for insuring compliance with these Rules and Regulations. All orders or directions will be consistent with the Airport Security Program, Rules and Regulations, and applicable state, federal and local laws.

g. The Airport is operated under 49 CFR Part 1542 (Airport Security) and 14 CFR Part 139 (Airport Certification)
   i. The Tenant will comply with all applicable requirements of the Airport Security Program, Airport Certification Manual, and Airport Emergency Plan. Upon written notice from Airport, Tenant will, at its sole expense, promptly correct any violation or omission under the Airport Security Program or Airport Certification Manual within the time specified in the notice.
   ii. The Tenant will coordinate any Airport security matter with the Airport Security Coordinator or their designee.

The Tenant will coordinate any Airport security matter with the Airport Security Coordinator or their designee.

6. CONDITION OF PREMISES. Tenant accepts the Premises as is, in its present condition. Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant’s responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

7. MAINTENANCE.
   a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant further agrees, at its sole cost and expense, to maintain the Premises, including improvements, in a clean and policed condition at all times and to keep trees, shrubbery, and grass irrigated, trimmed and attractively maintained.
   b. Further, Tenant shall maintain and replace when necessary the plumbing and electrical systems as well as all glass, heating, air conditioning, and other similar fixtures and equipment located on or in any portion of the Premises.
   c. Tenant shall make necessary corrections and/or adjustments to maintenance practices as inspections reasonably determine. Landlord shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever maintenance Landlord deems reasonably necessary, provided, however, such maintenance shall
LEASE AGREEMENT

be consistent in quality with that required of other City Tenants in comparable facilities. If said maintenance is not undertaken by Tenant within ten (10) days after the date Landlord gives Tenant written notice of corrections needed, Landlord shall have the right to enter upon the Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor and borne by Tenant.

8. TAXES, LICENSES AND UTILITIES. During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant’s business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Tenant shall pay all utilities used on the Premises, including but not limited to telephone, electricity, gas, and water.

9. PERSONAL PROPERTY AND FIXTURES OF TENANT. All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

10. EQUIPMENT AND IMPROVEMENTS.
   a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. In addition, Tenant shall, upon written demand by Landlord, at Tenant’s sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.
   b. Tenant shall obtain written consent from Landlord prior to making or permitting any major additions, alterations or improvements on the Premises (including but not limited to, modification to any security boundary wall or fence, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in). Landlord may withhold consent in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner that no mechanic’s lien, materialman’s lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof. Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of
LEASE AGREEMENT

any such major alterations, additions or improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof does not offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein—including snow clearance.

11. INSURANCE.
   a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease. Tenant agrees to reimburse Landlord for insurance premium based upon the pro-rata per square foot cost attributable to the Premises as determined and billed by Landlord. Tenant understands that fire and extended coverage does not cover the property of Tenant or any property on the premises that does not belong to Landlord.
   b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance (Exhibit B) in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

12. DAMAGE OR DESTRUCTION OF PREMISES.
   a. In the event the Premises suffers damage by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent from the date of damage and during repairs. Proportionate rent reduction is based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, as determined by Landlord in its sole discretion, there shall be no reduction of rent. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.
   b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to:
      i. Repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full
LEASE AGREEMENT

force and effect, but the rent shall be proportionately reduced as provided above in 12(a) during the period of such repair, reconstruction or restoration.

ii. Give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving Tenant such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified. With such notice, Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business, carried on by Tenant in the Premises, up to the date of such termination.

c. With regard to Landlord’s duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord’s control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

13. LIABILITY. Landlord shall not be liable to Tenant or to Tenant’s employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant’s operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss, which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord’s Agents.

14. CONDEMNATION OR GOVERNMENTAL TAKING. In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.
LEASE AGREEMENT

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant’s obligation under this Lease shall continue in full force and effect. However, the amount of rent payable by Tenant shall be reduced in the proportion of which the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.

c. In the event of total or partial condemnation or taking of the leased Premises as previously mentioned, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord. Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate. The value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled because of such total or partial condemnation or taking.

15. CONDITIONS OF DEFAULT. If at any time during the term of this Lease, Tenant shall:

   a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default.

   b. Default in the observance of any of the Tenant’s covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of.

   c. Without further possibility of appeal or review:

      i. Be adjudicated bankrupt or insolvent.

      ii. Have a receiver or trustee appointed for all or substantially all of its business or assets.

      iii. Suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or
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any other applicable law or statute of the United States or any state thereof.

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property.

e. Leave the Premises vacant or deserted for a period of ten (10) consecutive days without prior Landlord written consent.

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, or fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

16. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent.

b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease.

c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant’s default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant’s property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant’s risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The
LEASE AGREEMENT

failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

17. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney’s fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

18. USE OF THE PREMISES. Security Responsibilities of Tenant, Tenant Employees and Other Persons.
   a. No person may:
      i. Tamper, interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper, interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure.
      ii. Enter, or be present within, a Secured Area, AOA, SIDA, or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.
      iii. Use, allow to be used, or cause to be used, any airport-issued or airport-approved access medium or identification medium that authorizes the access, presence, or movement of persons or Vehicles in Secured Areas, AOAs, or SIDAs in any other manner than that for which it was issued by the Airport Authority.
   b. Security Badges
      i. Airport ID Badge
         1. Persons who work or do business on Airport property on a permanent or long-term (longer than 30 days) basis must have an Airport-issued identification in the form of an Airport ID badge. An individual holding an Airport ID badge may also be referred to as “badged personnel.”
ii. Airport ID Badge Holder and Tenant Security Responsibilities / Access Control Procedures

1. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security these Rules and Regulations.

c. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security these Rules and Regulations.

d. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security these Rules and Regulations.

e. Tenants and tenant employees are responsible for controlling access to doors, gates and other passageways between the AOA and the landside of the airport through their lease areas.

f. A breach in security caused by a tenant or tenant employee that results in a TSA, Airport Security Coordinator, or Airport Director finding of negligence will be cause to review, suspend, or withdraw access privileges, impose additional training requirements and/or impose other penalties as provided by these Rules and Regulations and the Airport Security Program.

g. Tenant shall use the Leased Premises solely for the purpose of ground servicing equipment (GSE) storage, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. The Roswell City Code shall bind tenant or as may be amended from time to time and all applicable policies and procedures of the Roswell Air Center (ROW).

h. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant’s occupancy of the Premises is the sole and absolute responsibility of Tenant. Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of Tenant’s occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it will not release any hazardous materials at the leased premises or contaminated the leased premises. To the extent it is proven that hazardous materials have been released
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on the leased premises by Tenant, Tenant’s employees or representatives during
the term of Tenant’s occupancy of the leased premises, Tenant hereby
unconditionally agrees at its sole cost to defend, indemnify, protect and hold
Landlord harmless from and against any bodily injury, death or property damage,
including:
   i. Environmental claims.
   ii. Environmental expenses, including without limitation, the handling,
       investigation, treatment, storage decontamination, remediation, removal,
       transport or disposal of such hazardous materials.
   iii. Liabilities, losses, damages, fines, penalties, charges, orders, judgments, or
       liens caused by such release.

   i. Tenant shall operate its business in such a manner as to prevent the performance
      of any act or creation or maintenance of any thing which, in the opinion of
      Landlord, is or may become a nuisance or otherwise noxious or objectionable
      condition including, but not limited to, any act or thing resulting in noise,
      vibration, shock, smoke, dust, odor or other forms of air pollution, or other
      condition, substance or element in such amount as to affect areas surrounding or
      adjoining the Premises. Landlord shall be the sole and reasonable judge as to
      whether or not any act done or thing created or maintained by Tenant on the
      Premises is or may become a nuisance or otherwise noxious or objectionable
      condition, and Tenant agrees to abide by Landlord’s decision and act in
      accordance with its directions with respect thereto.

   j. Landlord reserves the right to take any action it considers necessary to protect the
      aerial approaches to the ROW’s airport against obstruction, and together with the
      right to prevent Tenant from erecting or permitting to be erected any building or
      other structure on the Premises which, in the opinion of Landlord, would limit the
      usefulness of the airport or constitute a hazard to aircraft or conflict with a current
      restriction or master plan.

19. NONDISCRIMINATION PROVISIONS. Tenant shall use the Premises in compliance
   with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted
   Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply
   with these requirements in its leasing activities.

20. DOMINANT PROVISIONS. The parties acknowledge that the Leased Premises are a
   part of the Roswell Air Center and are therefore subject to the provisions of the Indenture
   between the United States of America and the City of Roswell, dated 24 January 1968,
   and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County,
   New Mexico and any other agreements or understandings. The provisions of the above
   described indenture are hereby incorporated herein by reference and accepted as binding
   by the parties hereto.
LEASE AGREEMENT

21. ACCESS TO INSPECTION OF PREMISES. Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant’s regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

22. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.

23. HOLDOVER. In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant’s occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.

24. INTERPRETATION OF LEASE AGREEMENT. Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord’s authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

25. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

26. NOTICES.
   a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

   Air Center Manager
   1 Jerry Smith Circle
   Roswell, NM 88203

   b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

   Ascent Aviation Services, LLC
   6901 South Park Avenue
   Tucson, AZ 85756
LEASE AGREEMENT

27. EFFECT. The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

28. WAIVERS. One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

29. GOVERNING LAW; VENUE. This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement, default, or breach thereof shall be filed in the courts of Chaves County New Mexico.

30. TERMINATION. This lease may be terminated by the City upon a majority vote of the City Council, which will become effective one hundred eighty (180) days following an affirmative vote.

31. ENTIRE AGREEMENT AND AMENDMENT. The parties intend this writing as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord’s Governing Body.

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LEASE AGREEMENT

IN WITNESS WHEREOF, this Lease Agreement is executed this 1st day of March, 2024.

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

CITY SEAL

____________________
Timothy Z Jennings, Mayor

ATTEST:

____________________
Amalia Martinez, City Clerk

TENANT:
ASCENT AVIATION SERVICES, LLC

____________________
David T. Querio, President
LEASE AGREEMENT

EXHIBIT A Premises

9,500 Square Feet, more or less adjacent to building 1002
LEASE AGREEMENT

EXHIBIT B Insurance

1. MINIMUM SCOPE OF INSURANCE

   a. **Company Name** shall procure and maintain for the duration of the contracts the following minimum insurance against claims for injuries to persons or damages to property which may arise from or in connections with the performance of the Work herein and the results of the Work by **Ascent Aviation Services, LLC**’s agents, representatives, employees or subcontractors (check all that apply):

      □ I. **Commercial General Liability** (“CGL”): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence.

      □ II. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if **Ascent Aviation Services, LLC** has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000.00 per accident for bodily injury and property damage.

      □ III. **Worker’s Compensation**: as required by the State of New Mexico, with Statutory Limits and Employer’s Liability Insurance with limit of no less than $1,000,000.00 per accident for bodily injury or disease.

      □ IV. **Professional Liability (Errors and Omissions)**: Insurance appropriate to **Ascent Aviation Services, LLC**’s profession, with limit no less than $1,000,000.00 per occurrence or claim, $2,000,000.00 aggregate.

      □ V. **Property Insurance**: against all risks of loss to any and all improvements, betterments and fixtures on or to real property made the subject of this Agreement, at full replacement cost with no coinsurance penalty provisions.
b. Ascent Aviation, LLC maintains broader coverage and/or higher limits than the
minimum shown above, the City requires and shall be entitled to the broader coverage and/or
higher limits maintained by Ascent Aviation Services, LLC.

2. ADDITIONAL INSURED STATUS

The City, its council members, officials, officers, employees, agents, and volunteers are
to be coverage as additional insured on the CGL policy with respect to liability arising out of the
Work performed by or on behalf of Ascent Aviation Services, LLC, including materials, parts
or equipment furnished in connection with the Work. General Liability coverage can be
provided in the form of an endorsement to Ascent Aviation Services, LLC’s insurance (at least
as broad as ISO Form 20 10 11 85 or both CG 20 10,0CG 20 26, CG 20 33, CG 20 38, CG 20 37
form is later revisions used)

3. PRIMARY COVERAGE

For any claims related to this Agreement, Ascent Aviation Services, LLC’s insurance
shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City,
its council members, officials, officers, employees, agents, and volunteers. Any insurance or self-
insurance maintained by the City, its council members, officials, officers, employees, agents, and
volunteers shall be excess of Ascent Aviation Services, LLC’s insurance and shall no contribute
to it.

4. NOTICE OF CANCELLATION

Each insurance policy required above shall provide that coverage shall not be canceled,
except with notice to the City.

5. WAIVER OF SUBROGATION

Ascent Aviation Services, LLC hereby grants to the City a waiver of any rights to
subrogation, which any of Ascent Aviation Services, LLC’s insurers may acquire against the
City by virtue of the payment of any loss under such insurance. Ascent Aviation Services, LLC
agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but
this provision applies regardless of whether or not the city has received a waiver of subrogation
endorsement for the insurer.
6. **SELF INSURED RETENTIONS**

Self-insured retentions must be declared to and approved by the City. The City may require **Ascent Aviation Services, LLC** to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses with the retention.

7. **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers authorized to conduct business in the State of New Mexico with Current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

8. **CLAIMS MADE POLICIES**

If any of the required policies provide claims-made coverage:

i. The Retroactive Date must be shown, and must be before the Effective Date of this Agreement or the beginning of the Work hereunder.

ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Work.

iii. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Effective Date, **Ascent Aviation Services, LLC** Must purchase “extended reporting” coverage for a minimum of five years after completion of the Work.

9. **VERIFICATION OF COVERAGE**

**Ascent Aviation Services, LLC** shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this Section. All certificates and endorsements are to be received and approved by the City before the Work commences. Failure to obtain the required documents prior to commencement of the Work, however, shall not waive **Ascent Aviation Services, LLC** to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications at any time.
LEASE AGREEMENT

10. SPECIAL RISKS OR CIRCUMSTANCES

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
Regular Committee Meeting

Meeting Date: Thursday January 25, 2024

COMMITTEE: Legal

CONTACT: Hessel E. Yntema IV. CHAIR: Edward Heldenbrand

ACTION REQUESTED:
Consider recommending approval to authorize New Mexico Department of Transportation request to enter a five (5) years and six (6) months lease agreement, beginning January 1, 2024 and ending June 30, 2030 for 11,915 square feet of shop space in Building 42 along with adjacent parking area, 12,011 square feet of office and training space in Building 735 along with fenced parking area west of the building, 37,821 square feet of land adjacent to Building 735, and two unimproved parcels of land totaling sixty (60) acres MOL located at the Roswell Air Center.

BACKGROUND:
Initiated by: Jenna Lanfor, Deputy Air Center Director

New Mexico Department of Transportation, an existing tenant, requests to lease Building 42, 735, and land for a training academy, for heavy road equipment together with such other related uses for 5 years and 6 months beginning January 1, 2024 and ending June 30, 2030.

FINANCIAL CONSIDERATION:
Tenant agrees to pay to Landlord as rent the sum of (59,384.04) per annum, payable in 12 monthly installments of $4948.67.

LEGAL REVIEW:
The City Attorney has reviewed the lease

BOARD AND COMMITTEE ACTION:
The Thursday January 25, 2024 meeting for Legal Committee is the first consideration of this matter.

STAFF RECOMMENDATION:
Consider recommending approval to authorize New Mexico Department of Transportation request to enter a five (5) years and six (6) months lease agreement, beginning January 1, 2024 and ending June 30, 2030 for 11,915 square feet of shop space in Building 42 along with adjacent parking area, 12,011 square feet of office and training space in Building 735 along with fenced parking area west of the building, 37,821 square feet of land adjacent to Building 735, and two unimproved parcels of land totaling sixty (60) acres MOL located at the Roswell Air Center.

Attachments

ATTACHMENT 1 - New Mexico Department of Transportation Lease Agreement
LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this 14th day of December 2023 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter “Landlord”, NEW MEXICO DEPARTMENT OF TRANSPORTATION, a New Mexico State Agency, hereinafter “Tenant”.

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

| Premises | Building No. 42 consisting of 11,915 square feet, more or less, together with a parking area and an adjacent area of land, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit “A”, and Building No. 735 consisting of 12,011 square feet, more or less, together with the fenced parking lot immediately west of the building and an adjacent area of land, 37,821 ± square feet, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "B", and Two un-improved areas of land totaling sixty (60) acres, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibits "C" & “D” (Premises). |

2. TERM. The Lease term is for five (5) years and (6) months, commencing on January 1, 2024 and ending June 30, 2030 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of fifty-nine thousand three hundred eighty-four dollars and four cents ($59,384.04) annum, payable in 12 monthly installments of $4,948.67 for the first year of the lease. Each year thereafter, rent will be increased by 3.0% or the latest 12-month percentage change in CPI-U, (Consumer Price Index-U, and U.S. City Average) whichever is greater. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month’s rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant’s failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set offset any kind except as herein specifically provided.

4. SECURITY DEPOSIT. None
5. GENERAL.
   a. Priority.
      i. Safety and security are the Airport’s first priorities. All personnel working
         and doing business on Airport property must comply with Airport Rules
         and Regulations at all times and model the significance of safety and
         security for co-workers, passengers, and members of the public.
   b. Definition of Restricted Area.
      i. For the purpose of this Lease, any area on Airport property, whether
         within a building, in the terminal or on the ramp or airfield area, including
         but not limited to all Secured Areas, Sterile Areas, Restricted Areas, and
         the Air Operations Area (AOA), shall be referred to collectively as the
         “Restricted Area.”
   c. Airport Security Program.
      i. This lease includes the non-Sensitive Security Information (SSI)
         requirements set forth in the Airport Security Program (ASP) issued by the
         Director under 49 C.F.R. 1542.
   d. Enforcement.
      i. Any person who violates or compromises Airport security, or creates or
         engages or participates in any unsafe, unsecure, or hazardous condition or
         activity at the Airport may have his/her access privileges immediately
         revoked on a temporary or permanent basis at the sole discretion of the
         Airport. Any person or entity responsible in whole or in part for any
         security violation shall also be responsible for any resulting cost, including
         but not limited to any fine imposed by a regulatory agency or remediation
         of property damage or personal injury.
   e. Federal, State, and/or Local Laws or Regulations –
      Every Person using the Airport shall comply with all Federal, State, and/or Local
      Laws, Airport Rules and Regulations, Tenant Directives, and/or decisions,
      including those of executive, legislative or judicial agencies or bodies, now or
      hereafter in effect, and applicable to the Person's use of the Airport.
      i. Every Roswell Air Center tenant, and/or lessee, or any other Person doing
         business with the Airport, shall comply with all federal, state, and/or local
         laws, airport rules and regulations, tenant directives and/or decisions;
         including those of executive, legislative, or judicial agencies or bodies,
         now or hereafter in effect, and applicable to that tenant's, lessee's, or other
         Person's operations at the Airport.
   f. Safety and Security Regulations – Adherence to Airport Security Directions.
      i. All Persons will obey lawful orders and directions of Airport Security
         Coordinator, Roswell Police Officers, or other Persons responsible for
         insuring compliance with these Rules and Regulations. All orders or
         directions will be consistent with the Airport Security Program, Rules and
         Regulations, and applicable state, federal and local laws.
g. The Airport is operated under 49 CFR Part 1542 (Airport Security) and 14 CFR Part 139 (Airport Certification)
   i. The Tenant will comply with all applicable requirements of the Airport Security Program, Airport Certification Manual, and Airport Emergency Plan. Upon written notice from Airport, Tenant will, at its sole expense, promptly correct any violation or omission under the Airport Security Program or Airport Certification Manual within the time specified in the notice.
   ii. The Tenant will coordinate any Airport security matter with the Airport Security Coordinator or their designee.

The Tenant will coordinate any Airport security matter with the Airport Security Coordinator or their designee.

6. CONDITION OF PREMISES. Tenant accepts the Premises as is, in its present condition. Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant’s responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

7. MAINTENANCE.
   a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant further agrees, at its sole cost and expense, to maintain the Premises, including improvements, in a clean and policed condition at all times and to keep trees, shrubbery, and grass irrigated, trimmed and attractively maintained.
   b. Further, Tenant shall maintain and replace when necessary the plumbing and electrical systems as well as all glass, heating, air conditioning, and other similar fixtures and equipment located on or in any portion of the Premises.
   c. Tenant shall make necessary corrections and/or adjustments to maintenance practices as inspections reasonably determine. Landlord shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever maintenance Landlord deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Tenants in comparable facilities. If said maintenance is not undertaken by Tenant within ten (10) days after the date Landlord gives Tenant written notice of corrections needed, Landlord shall have the right to enter upon the Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor and borne by Tenant.
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8. TAXES, LICENSES AND UTILITIES. During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant’s business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Tenant shall pay all utilities used on the Premises, including but not limited to telephone, electricity, gas, and water.

9. PERSONAL PROPERTY AND FIXTURES OF TENANT. All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

10. EQUIPMENT AND IMPROVEMENTS.
   a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. In addition, Tenant shall, upon written demand by Landlord, at Tenant’s sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.
   b. Tenant shall obtain written consent from Landlord prior to making or permitting any major additions, alterations or improvements on the Premises (including but not limited to, modification to any security boundary wall or fence, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in). Landlord may withhold consent in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner that no mechanic’s lien, materialman’s lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof. Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof does not offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein—including snow clearance.
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11. INSURANCE.
   a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease. Tenant agrees to reimburse Landlord for insurance premium based upon the pro-rata per square foot cost attributable to the Premises as determined and billed by Landlord. Tenant understands that fire and extended coverage does not cover the property of Tenant or any property on the premises that does not belong to Landlord.
   b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance (Exhibit B) in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

12. DAMAGE OR DESTRUCTION OF PREMISES.
   a. In the event the Premises suffers damage by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent from the date of damage and during repairs. Proportionate rent reduction is based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, as determined by Landlord in its sole discretion, there shall be no reduction of rent. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.
   b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to:
      i. Repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above in 12(a) during the period of such repair, reconstruction or restoration.
      ii. Give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving Tenant such notice of termination, this Lease
LEASE AGREEMENT

shall terminate and all interests of Tenant in the Premises shall cease on the date so specified. With such notice, Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business, carried on by Tenant in the Premises, up to the date of such termination.

c. With regard to Landlord’s duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord’s control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

13. LIABILITY. Landlord shall not be liable to Tenant or to Tenant’s employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant’s operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss, which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord’s Agents.

14. CONDEMNATION OR GOVERNMENTAL TAKING. In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant’s obligation under this Lease shall continue in full force and effect. However, the amount of rent payable by Tenant shall be reduced in the proportion of which the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.
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c. In the event of total or partial condemnation or taking of the leased Premises as previously mentioned, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord. Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate. The value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled because of such total or partial condemnation or taking.

15. CONDITIONS OF DEFAULT. If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default.

b. Default in the observance of any of the Tenant’s covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of.

c. Without further possibility of appeal or review:

i. Be adjudicated bankrupt or insolvent.

ii. Have a receiver or trustee appointed for all or substantially all of its business or assets.

iii. Suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof.

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property.
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e. Leave the Premises vacant or deserted for a period of ten (10) consecutive days without prior Landlord written consent.

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, of fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

16. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent.

b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease.

c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant’s default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant’s property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant’s risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided,
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but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

17. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney’s fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

18. USE OF THE PREMISES. Security Responsibilities of Tenant, Tenant Employees and Other Persons.
   a. No person may:
      i. Tamper, interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper, interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure.
      ii. Enter, or be present within, a Secured Area, AOA, SIDA, or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.
      iii. Use, allow to be used, or cause to be used, any airport-issued or airport-approved access medium or identification medium that authorizes the access, presence, or movement of persons or Vehicles in Secured Areas, AOAs, or SIDAs in any other manner than that for which it was issued by the Airport Authority.
   b. Security Badges
      i. Airport ID Badge
         1. Persons who work or do business on Airport property on a permanent or long-term (longer than 30 days) basis must have an Airport-issued identification in the form of an Airport ID badge. An individual holding an Airport ID badge may also be referred to as “badged personnel.”
      ii. Airport ID Badge Holder and Tenant Security Responsibilities / Access Control Procedures
         1. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security these Rules and Regulations.
   c. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers,
LEASE AGREEMENT

contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security these Rules and Regulations.

d. All badged personnel have an affirmative duty to maintain a secure Airport. Airport tenants are responsible for ensuring that their employees, suppliers, contractors, subcontractors, and all other businesses and entities providing services on Airport property comply with Airport Security these Rules and Regulations.

e. Tenants and tenant employees are responsible for controlling access to doors, gates and other passageways between the AOA and the landside of the airport through their lease areas.

f. A breach in security caused by a tenant or tenant employee that results in a TSA, Airport Security Coordinator, or Airport Director finding of negligence will be cause to review, suspend, or withdraw access privileges, impose additional training requirements and/or impose other penalties as provided by these Rules and Regulations and the Airport Security Program.

g. Tenant shall use the Leased Premises solely for the purpose of operating a training academy for heavy road equipment together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. The Roswell City Code shall bind tenant as may be amended from time to time and all applicable policies and procedures of the Roswell Air Center (ROW).

h. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant’s occupancy of the Premises is the sole and absolute responsibility of Tenant. Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of Tenant’s occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it will not release any hazardous materials at the leased premises or contaminated the leased premises. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant’s employees or representatives during the term of Tenant’s occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including:

i. Environmental claims.

ii. Environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials.
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   iii. Liabilities, losses, damages, fines, penalties, charges, orders, judgments, or
        liens caused by such release.

   i. Tenant shall operate its business in such a manner as to prevent the performance
       of any act or creation or maintenance of any thing which, in the opinion of
       Landlord, is or may become a nuisance or otherwise noxious or objectionable
       condition including, but not limited to, any act or thing resulting in noise,
       vibration, shock, smoke, dust, odor or other forms of air pollution, or other
       condition, substance or element in such amount as to affect areas surrounding or
       adjoining the Premises. Landlord shall be the sole and reasonable judge as to
       whether or not any act done or thing created or maintained by Tenant on the
       Premises is or may become a nuisance or otherwise noxious or objectionable
       condition, and Tenant agrees to abide by Landlord’s decision and act in
       accordance with its directions with respect thereto.

   j. Landlord reserves the right to take any action it considers necessary to protect the
       aerial approaches to the ROW’s airport against obstruction, and together with the
       right to prevent Tenant from erecting or permitting to be erected any building or
       other structure on the Premises which, in the opinion of Landlord, would limit the
       usefulness of the airport or constitute a hazard to aircraft or conflict with a current
       restriction or master plan.

19. NONDISCRIMINATION PROVISIONS. Tenant shall use the Premises in compliance
    with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted
    Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply
    with these requirements in its leasing activities.

20. DOMINANT PROVISIONS. The parties acknowledge that the Leased Premises are a
    part of the Roswell Air Center and are therefore subject to the provisions of the Indenture
    between the United States of America and the City of Roswell, dated 24 January 1968,
    and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County,
    New Mexico and any other agreements or understandings. The provisions of the above-
    described indenture are hereby incorporated herein by reference and accepted as binding
    by the parties hereto.

21. ACCESS TO INSPECTION OF PREMISES. Upon giving reasonable notice to Tenant,
    Landlord and the Federal Aviation Administration, their agents, or contractors may enter
    upon the Premises during Tenant’s regular business hours and have free access to all
    buildings and other improvements located thereon for the purpose of inspecting the
    condition thereof or exercising any right or power reserved to Landlord or the Federal
    Aviation Administration under the terms and provisions of this Lease.

22. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in
    part, nor sublet all or any part of the Premises.
23. HOLDOVER. In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant’s occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.

24. INTERPRETATION OF LEASE AGREEMENT. Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord’s authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

25. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

26. NOTICES.
   a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

   Air Center Manager  
   1 Jerry Smith Circle  
   Roswell, NM 88203

   b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

   NMDOT Training Academy  
   PO Box 5878  
   Roswell, NM 88202-5878

27. EFFECT. The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

28. WAIVERS. One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.
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29. GOVERNING LAW; VENUE. This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement, default, or breach thereof shall be filed in the courts of Chaves County New Mexico.

30. TERMINATION. This lease may be terminated with mutual agreement and upon a majority vote of the City Council, which will become effective one hundred eighty (180) days following an affirmative vote.

31. ENTIRE AGREEMENT AND AMENDMENT. The parties intend this writing as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord’s Governing Body.

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LEASE AGREEMENT

IN WITNESS WHEREOF, this Lease Agreement is executed this _____day of December 2023.

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

CITY SEAL

____________________
Timothy Z Jennings, Mayor

ATTEST:

____________________
Amalia Martinez, City Clerk

TENANT:
New Mexico Department of Transportation

____________________
Name, FMD Director or Designee

____________________
Name, Cabinet Secretary
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EXHIBIT A Premises

EXHIBIT B Premises
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EXHIBIT E Insurance

1. MINIMUM SCOPE OF INSURANCE

   a. New Mexico Department of Transportation shall procure and maintain for the
duration of the contracts the following minimum insurance against claims for injuries to persons
or damages to property which may arise from or in connections with the performance of the
Work herein and the results of the Work by New Mexico Department of Transportation agents,
representatives, employees or subcontractors (check all that apply):

      ☒ I. Commercial General Liability (“CGL”): Insurance Services Office Form CG 00
      01 covering CGL on an “occurrence” basis, including products and completed operations,
      property damage, bodily injury and personal & advertising injury with limits no less than
      $1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate
      limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the
      general aggregate limit shall be twice the required occurrence.

      ☒ II. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1),
or if New Mexico Department of Transportation has no owned autos, covering hired (Code 8)
and non-owned autos (Code 9), with limits no less than $1,000,000.00 per accident for bodily
injury and property damage.

      ☒ III. Worker’s Compensation: as required by the State of New Mexico, with Statutory
Limits and Employer’s Liability Insurance with limit of no less than $1,000,000.00 per accident
for bodily injury or disease.

      ☐ IV. Professional Liability (Errors and Omissions): Insurance appropriate to New
Mexico Department of Transportation profession, with limit no less than $1,000,000.00 per
occurrence or claim, $2,000,000.00 aggregate.

      ☒ V. Property Insurance: against all risks of loss to any and all improvements,
betterments and fixtures on or to real property made the subject of this Agreement, at full
replacement cost with no coinsurance penalty provisions.
LEASE AGREEMENT

b. New Mexico Department of Transportation maintains broader coverage and/or higher limits than the minimum shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by New Mexico Department of Transportation.

2. ADDITIONAL INSURED STATUS

The City, its council members, officials, officers, employees, agents, and volunteers are to be coverage as additional insured on the CGL policy with respect to liability arising out of the Work performed by or on behalf of New Mexico Department of Transportation, including materials, parts or equipment furnished in connection with the Work. General Liability coverage can be provided in the form of an endorsement to New Mexico Department of Transportation insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10,0CG 20 26, CG 20 33, CG 20 38, CG 20 37 form is later revisions used)

3. PRIMARY COVERAGE

For any claims related to this Agreement, New Mexico Department of Transportation insurance shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its council members, officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its council members, officials, officers, employees, agents, and volunteers shall be excess of New Mexico Department of Transportation insurance and shall no contribute to it.

4. NOTICE OF CANCELLATION

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

5. WAIVER OF SUBROGATION

New Mexico Department of Transportation hereby grants to the City a waiver of any rights to subrogation, which any of New Mexico Department of Transportation insurers may acquire against the City by virtue of the payment of any loss under such insurance. New Mexico Department of Transportation agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the city has received a waiver of subrogation endorsement for the insurer.
LEASE AGREEMENT

6. SELF INSURED RETENTIONS

Self-insured retentions must be declared to and approved by the city. The city may require New Mexico Department of Transportation to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses with the retention.

7. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers authorized to conduct business in the State of New Mexico with Current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

8. CLAIMS MADE POLICIES

If any of the required policies provide claims-made coverage:

i. The Retroactive Date must be shown, and must be before the Effective Date of this Agreement or the beginning of the Work hereunder.

ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Work.

iii. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Effective Date, .

iv. Must purchase “extended reporting” coverage for a minimum of five years after completion of the Work.

9. VERIFICATION OF COVERAGE

New Mexico Department of Transportation shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this Section. All certificates and endorsements are to be received and approved by the city before the Work commences. Failure to obtain the required documents prior to commencement of the Work, however, shall not New Mexico Department of Transportation obligations to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications at any time.
10. **SPECIAL RISKS OR CIRCUMSTANCES**

   The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
AGENDA ITEM ABSTRACT

Regular Committee Meeting  
Meeting Date: Thursday January 25, 2024  
COMMITTEE: Legal  
CONTACT: Hessel E. Yntema IV  
CHAIR: Edward Heldenbrand  

Item No. 3

ACTION REQUESTED:
RFP 24-008 Scope of Work for the Visitor Center Management Services: Consider recommending approval for RFP 24-008 Scope of Work for the Visitor Center Management Services.

BACKGROUND:
Initiated by: Chad Cole, City Manager & Todd Verciglio, Property Technician

Presently the City expends $373,846 for personnel and operations of the Visitor's Center. The administration seeks to request outside proposals for Visitor Center management to compare to current operations.

FINANCIAL CONSIDERATION
If awarded will save the city up to $373,846 or more per annum.

LEGAL REVIEW:
The City Attorney has reviewed and approved RFP 24-008 Scope of Work for the Visitor Center Management Services.

BOARD AND COMMITTEE ACTION:
The Thursday November 16, 2023 meeting for Legal Committee was the first meeting to consider this matter to postponed this item for January 25, 2024 Legal Committee meeting.

STAFF RECOMMENDATION:
RFP 24-008 Scope of Work for the Visitor Center Management Services: Consider recommending approval for RFP 24-008 Scope of Work for the Visitor Center Management Services.

Attachments
ATTACHMENTS – 1. RFP 24-008 Draft Scope of Work Visitor Center Management Services  
2. RFP 24-008 Draft Lease Visitor Center Management Services
CITY OF ROSWELL

REQUEST FOR PROPOSALS

RFP: 24-008

Visitor Center Management Services

RFP Issue Date: Click or tap to enter a date.

PROPOSAL DUE:
11/16/2023 2:00 PM

PURCHASING DEPARTMENT
415 N. RICHARDSON
ROSWELL, NM 88203

CONTACT: ARELY PEEK
CHIEF PROCUREMENT OFFICER
575-637-6299
PURPOSE OF THIS REQUEST FOR PROPOSALS

The City of Roswell is requesting proposals from the public to provide visitor center management services at 426 N Main St, Roswell, NM 88201 in exchange for the rent-free use of the premises.

SUMMARY SCOPE OF WORK

The initial scope of work shall consist of providing visitor center management services to the general public at 426 N Main St, Roswell, NM 88201 in exchange for the use of the premises.

The initial contract(s) shall begin on July 1, 2024 or as soon as possible thereafter for one (1) year. This contract may be renewed by mutual agreements in annual increments for a renewal period of one (1) year for up to three (3) renewals, provided that the funds for subject contract are available and approved annually by the City Council and that the Offeror has established a satisfactory record of performance.

Operator Duties and Responsibilities:

The future Visitor Center operator through a lease with the City of 426 N Main St shall:

1. Provide knowledgeable, engaging, customer focused employee staffing at the Visitor Center.

2. Maintain the interior of the building to a high standard of cleanliness, including two (2) bathrooms for tourist / reasonable public use and other requirements as provided in the Lease, Exhibit 1.

3. Provide hospitality to tourists, promote local tourist attractions and events, and provide information and resources to Roswell visitors for no less than 40 hours per week over five days a week.

4. Provide current information about Roswell and its many attractions, events, hotels, restaurants, arts organizations, schools, and companies for the travelers, via brochures and other marketing materials.

5. Ensure Roswell related materials (guides, maps, etc.) are in the racks and that they are
stocked at all times. Rack space and advertising for tourist attractions and information for groups other than the operator shall be for no less than 10% of the available square footage.

6. Coordinate with other organizations to maintain an all-inclusive online calendar of community and cultural events and tourism information and make efforts to proactively solicit content and ensure the calendar is current and accurate.

7. Track and provide an annual report on the number and nature of visitors to the Visitor Center.

8. Attend quarterly meetings scheduled meetings with city management to discuss tourism and operations.

Roswell’s Duties and Responsibilities:

Roswell shall maintain the building exterior, structural components of the building, and surrounding grounds.

Anticipated Schedule

<table>
<thead>
<tr>
<th>Action</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>1. Issue of RFP</td>
<td>TBD</td>
</tr>
<tr>
<td>2. Acknowledgement of Receipt Form</td>
<td>TBD</td>
</tr>
<tr>
<td>3. Deadline to Submit Additional Questions</td>
<td>TBD</td>
</tr>
<tr>
<td>4. Response to Written Questions/RFP Addendum</td>
<td>TBD</td>
</tr>
<tr>
<td>5. Submission of Proposal 2:00 PM</td>
<td>TBD</td>
</tr>
<tr>
<td>6. Proposal Evaluation</td>
<td>TBD</td>
</tr>
<tr>
<td>7. Recommendation to Committee</td>
<td>TBD</td>
</tr>
<tr>
<td>8. Recommendation to Award to City Council</td>
<td>TBD</td>
</tr>
<tr>
<td>9. Notice of Award</td>
<td>TBD</td>
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<tr>
<td>10. Protest Deadline</td>
<td>TBD</td>
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<tr>
<td>11. Contract Negotiations/Executed</td>
<td>TBD</td>
</tr>
</tbody>
</table>

The following is a summary of evaluation factors with point value assigned to each.

<table>
<thead>
<tr>
<th>FACTOR</th>
<th>POINTS AVAILABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Company Experience</td>
<td>35</td>
</tr>
<tr>
<td>2. Company Past Performance /References</td>
<td>05</td>
</tr>
<tr>
<td>3. Management Plan</td>
<td>50</td>
</tr>
</tbody>
</table>
1. Offeror’s Company Experience

Offerors shall submit a statement of relevant company experience, including experience of subcontractors, if applicable. The documentation shall thoroughly describe how the Offeror has supplied expertise for similar contracts and work related to Operations and management of the City of Roswell’s Visitor Center.

A. Offerors shall include an overview the company including a summary the company history including the company history of subcontractors, if applicable. The overview shall include type of organization and the state of origin, the date established, location of headquarters and other offices, number and location of employees and a description of types of services offered.

B. Offerors should include in their proposal’s documentation describing the extent of their knowledge, experience, and expertise as a provider of services for tourism related activities and visitor center management.

C. Offerors should thoroughly describe the applicability and availability of qualified resources that may be employed for the project.

D. Offerors should include their proposal copies of appropriate professional certifications and/or other documented credentials.

2. Offeror’s Company Past Performance/References

Offeror’s proposals shall include three external references from clients who are willing to validate the Offeror’s past performance on similar contracts. The minimum information that shall be provided for each client reference follows:

a. Name of the contact person;
b. Name of the company or governmental entity;
c. Address of the contact person;
d. Telephone number of contact person;
e. Email address of the contact person;
f. A description of the products and services provided and dates the products and services were provided.
3. Management Plan

Proposals must include an annual plan of operations for management of the Roswell Visitor Center to include, but not be limited to, proposed staffing, hours of operations, scheduling and management of the facility to maintain safety and appearance. The plan must report on a list of mutually-agreed-upon, outcome-based performance measures that monitor and evaluate the effectiveness and efficiency of Roswell Visitor Center Management Services.

4. Cost

The Visitor Center occupies prime real estate in Roswell’s historic downtown. While the Visitor Center Operator will provide services as described above, the Operator will be able to use the remainder of the space for any purpose not inconstant with the Visitor Center’s mission. (For example, sale of merchandise.) As such, Offerors shall propose any rent, if any, willing to pay for use of the building. A no-rent offer shall be awarded no points. For any rents offered, the highest offer shall be awarded full points and offers below that shall be awarded as a percentage of the highest offer.

Additional Optional Points

**Resident Business Preference** – 8% of the total points available in this RFP will be awarded if the proposal contains a copy the Taxation and Revenue Department’s resident business preference certificate unless a Resident Veterans Preference Certificate is also submitted in which case the higher number of points from the Resident Veterans Preference shall be awarded instead.

**Native American Resident Business Preference** - A Native American business that has a valid resident business certificate issued by the NM Taxation and Revenue Department pursuant to Section 13-1-22, NMSA 1978 shall receive an 8% preference of the total available points.

**Resident Veterans Preference** – 10% of the total points available in this RFP will be awarded if the proposal contains a copy of the Taxation and Revenue Department’s Resident Veterans Certificate as follows: Resident veterans businesses with annual revenues of $6M or less.

**Native American Resident Veterans Business Preference** - A business that has a valid resident veteran business certificate issued by the NM Taxation and Revenue Department pursuant to Section 13-1-22 NMSA 1978 shall receive a 10% preference of the total available points.
LEASE AGREEMENT

This LEASE AGREEMENT ("Agreement") is hereby entered into on this March 4, 2023 (the "Effective Date"), by and between the CITY OF ROSWELL, NEW MEXICO ("City"), a political subdivision of the State of New Mexico, located at 425 N. Richardson, Roswell, NM 88201, and __________________collectively referred to herein as the Parties.

RECITALS

WHEREAS, The City is the current owner of the building known as 426 N Main St, Roswell, NM 88201.

WHEREAS, The City has determined that private management of the Visitor’s center is in the interest of the general public.

NOW THEREFORE, in consideration for the mutual covenants contained herein, _______ and the City agree as follows:

1. GRANTING CLAUSE

For the Term, at the Rent and otherwise upon the terms, provisions and conditions contained herein, the City hereby lets and leases unto _________ 426 N Main St, Roswell, NM 88201, together with all improvements located thereon.

2. RENT

_______ shall pay to the City rent in the amount of __________ per year during the term hereof, and as further consideration throughout.

3. TERM

The term of this Agreement shall commence on the Effective Date and shall continue for a period of 1 year (the "Term"). This Agreement may thereafter be renewed for up to 3 additional period(s) of 1 year each (the "Renewal Terms"), upon mutual written agreement of the Parties. Each Renewal Period shall be governed by the same terms and conditions hereof, except as may be otherwise agreed in writing by the Parties.

4. USE OF PREMISES

a. _________ shall use 426 N Main St, Roswell, NM 88201 solely for the purposes Described in RFP 24-008, _________ shall not use 426 N Main St, Roswell, NM 88201 for any purpose prohibited by the laws of the United States, the State of New Mexico, or the ordinances of the City of Roswell.
b. __________ shall conduct and operate its business in such a manner so as to prevent the performance of any act, creation, or maintenance of anything which in the opinion of the City may be or become a nuisance of otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor, other forms of air pollution, or other condition, substance, or element in such amounts as to affect the surrounding area or adjoining premises. The City shall be the sole judge as to whether any act done or things created or maintained by __________ on the 426 N Main St, Roswell, NM 88201 is or may become a nuisance or otherwise noxious or objectionable condition and __________ agrees to abide by the City's decision and act in accordance with its directions with respect thereto.

c. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of __________'s use or occupancy of 426 N Main St, Roswell, NM 88201 is the sole and absolute responsibility of __________. __________ shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of __________'s use or occupancy of 426 N Main St, Roswell, NM 88201 shall be grounds for the immediate termination of this Agreement with or without process of law. __________ represents to the City that it will not release any hazardous materials at, in, on or about 426 N Main St, Roswell, NM 88201. To the extent it is proven that hazardous materials have been released by __________ during the Term, __________ hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold the City harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

5. CONDITION OF THE PREMISES

___________ has inspected 426 N Main St, Roswell, NM 88201 and accepts 426 N Main St, Roswell, NM 88201 in its present condition, as is. __________ acknowledges that any requirements for accessibility and/or public accommodation(s) are __________'s responsibility. The City makes no representations or warranties that 426 N Main St, Roswell, NM 88201 is
suitable for __________'s use or any other purpose.

6. **MAINTENANCE**
   
a. __________, at its own expense, shall maintain 426 N Main St, Roswell, NM 88201 and appurtenances to 426 N Main St, Roswell, NM 88201 in good repair and in at least as good condition as that in which they were delivered, allowing for ordinary wear and tear, and provided that 426 N Main St, Roswell, NM shall not be required to make any structural repairs or alterations, which shall be the responsibility of the City, except as provided below.
   
b. The City shall be the sole judge of the quality of repair and maintenance by __________ under this Section and, upon written notice by the City, __________ shall be required to perform whatever maintenance or repairs deemed necessary by the City. If said maintenance or repair is not undertaken within ten (10) days after receipt of written notice, the City shall have the right to enter upon 426 N Main St, Roswell, NM 88201 and perform the necessary maintenance, the cost of which shall be borne by __________.
   
c. __________ shall notify the City of any structural repairs as soon as __________ knows or should know of the need for such repairs. The City shall bear the cost and responsibility of such structural repairs, except to the extent caused by __________'s failure to timely notify the City of the need for such repairs, or made necessary as a result of the activities of __________ at 426 N Main St, Roswell, NM 88201. The cost of structural repairs made necessary as a result of __________'s activities or failure to timely notify the City shall be shall be deemed additional Rent and shall be payable to the City on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

7. **TAXES, LICENSES AND UTILITIES**
   
During the Term hereof, __________ shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by __________ upon 426 N Main St, Roswell, NM, of whatsoever kind or nature, incident to or arising out of the conduct of __________'s activities. Failure to have or maintain any appropriate current license or permit shall be a breach of this Agreement. __________ shall be responsible for all utilities to 426 N Main St, Roswell, NM 88201.

8. **PERSONAL PROPERTY AND FIXTURES**
   
All personal property and fixtures of __________ in and on 426 N Main St, Roswell,
NM 88201 shall be kept at the sole risk of __________, and the City shall not be liable for any damage thereto or to __________ for interruption of business or otherwise. __________ hereby waives all causes or rights of recovery against City, its agents, employees, invitees and for any loss to such personal property and fixtures on 426 N Main St, Roswell, NM 88201 or to consequential loss arising there from caused by fire or other casualty, whether negligently caused or not.

9. **EQUIPMENT AND IMPROVEMENTS**
   a. Except as otherwise provided herein, __________ shall have the right to install such equipment as may be necessary for the conduct of its business on 426 N Main St, Roswell, NM 88201; and at the expiration or termination of the Agreement __________ shall have the right to remove all of such equipment installed by __________ that is removable without damage to 426 N Main St, Roswell, NM 88201. Also, except as provided in this Agreement, __________ shall, upon written demand by the City, at __________'s sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by __________ pursuant to this Section.
   b. __________ shall not make, suffer or permit to be made, any major additions, alterations or improvements on 426 N Main St, Roswell, NM 88201 (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of the City, which consent will not be unreasonably withheld. At the termination or expiration of this Agreement, all such permitted improvements shall become the sole property of the City.

10. **MECHANICS' LIENS**
    In the event that __________ makes any major alterations, additions or improvements, as provided for above, __________ shall not cause, suffer or permit any mechanic's, materialmen's, or other liens to be filed against 426 N Main St, Roswell, NM 88201, or any part thereof, nor against __________'s leasehold interest, by reason of work, labor, services, or materials supplied or claimed to have been supplied to __________. In the event that such liens shall be recorded against the 426 N Main St, Roswell, NM 88201, __________ shall cause the same to be removed or, in the alternative, if it in good faith desires to contest the same, it shall be privileged to do so, but in such case __________
hereby agrees to indemnify and save the City harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure, cause the same to be discharged and removed prior to the execution of such judgment.

11. ACCESS AND INSPECTION

Upon giving reasonable notice to __________, the City may enter 426 N Main St, Roswell, NM 88201 during __________'s regular business hours and have free access to 426 N Main St, Roswell, NM 88201 and improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to City under the terms and provisions of this Agreement.

12. HOLDOVER

In the event __________ remains in possession of 426 N Main St, Roswell, NM 88201 after the expiration or termination of this Agreement, __________ shall be deemed a tenant at sufferance, and shall be required to pay to the City the fair market rental value of the 426 N Main St, Roswell, NM 88201 on a monthly basis, and __________'s occupancy shall be governed in all other respects by the provisions hereof, except as to the duration of the Term.

13. CONDEMNATION

a. In the event that the 426 N Main St, Roswell, NM 88201 or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the Term hereof, this Agreement shall terminate as of the effective date of such condemnation or taking, unless the Parties mutually agree that any remainder left after a partial condemnation or taking is still suitable for the purposes of this Agreement, in which case this Agreement may continue at the election of the Parties. In such event, __________ shall bear any necessary costs of relocating its equipment and placing the remaining 426 N Main St, Roswell, NM 88201 in proper and usable condition.

   b. In the event of total or partial condemnation or taking of the 426 N Main St, Roswell, NM 88201 as aforesaid, all compensation awarded or paid upon a total or partial taking of the 426 N Main St, Roswell, NM shall belong to City and __________ shall have no right or cause of action against City; provided, however that __________ shall be
entitled to participate in any award to the extent that such award includes the loss, if any, sustained by __________ as a result of the termination of this Agreement or diminution of its leasehold estate and the value of any fixtures condemned or taken if such fixtures were installed by __________ and are located upon 426 N Main St, Roswell, NM 88201 at the time of such condemnation or taking. __________ reserves the right to proceed independently of City with any claim for compensation for damages to which __________ may become entitled by reason of such total or partial condemnation or taking.

14. DAMAGE OR DESTRUCTION OF PREMISES

a. In the event 426 N Main St, Roswell, NM 88201 is damaged or destroyed by fire, the elements, or other perils or casualty not the fault of __________, the City may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage, or terminate this Agreement by 30 days' written notice to __________. If the City elects to repair or rebuild, this Agreement shall remain in full force and effect, except that __________'s obligation to pay Rent shall be waived or reduced based upon the extent to which the damage and making of such repairs shall reasonably interfere with the activities carried on by __________ in 426 N Main St, Roswell, NM 88201, as determined by the City. The City shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements, of any leasehold improvements, fixtures, or other personal property of __________. In no event shall the City be liable to or for any costs incurred by __________ as a result of disruption of its activities by casualty under this Section.

b. In the event that the City elects to repair or rebuild 426 N Main St, Roswell, NM 88201 under this Section, the City shall act promptly and with due diligence, but the City shall not be responsible for delays caused by factors beyond the City's control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, __________ agrees that the City shall not be responsible for damages, nor shall the City be deemed to be in default under this Agreement.

15. TERMINATION
Either Party may terminate this Agreement at any time during the Term or any Renewal Term hereof by giving 30 days' written notice in advance. Termination under this Section shall not terminate, prejudice or otherwise effect any right or obligation accruing hereunder prior to the termination.

16. **SURRENDER**

Upon expiration or termination of this Agreement, __________ shall quit and surrender 426 N Main St, Roswell, NM 88201 to the City within 30 days of the expiration or notice of termination, in as clean and good order and condition as it was at the commencement of the Term, normal wear and tear excepted. Except as otherwise provided for herein, __________ shall remove all of its personal property and fixtures from 426 N Main St, Roswell, NM 88201 prior to surrender and any such personal property or fixtures abandoned on or about the 426 N Main St, Roswell, NM 88201 after surrender shall become irrevocably the property of the City, but __________ shall be liable for any costs to the City of disposing of any of its property or fixtures left after surrender that the City, in its discretion, does not elect to keep. __________ shall be further liable for any costs of repairs, restoration or cleaning of 426 N Main St, Roswell, NM 88201 made necessary as a result of __________'s failure to maintain its obligations under this Section.

17. **INSURANCE**

a. __________ agrees to have and maintain the polices of insurance set forth in Exhibit A: Insurance, which Exhibit is attached hereto and incorporated by reference as if set forth fully herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

b. __________'s insurance obligations under this Agreement shall be:
   1. all insurance coverage and/or limits by or available to __________; or
   2. the minimum coverage requirements and/or limits set forth in Exhibit A, whichever is greater.

c. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits set forth in Exhibit A, which are applicable to a
given loss, shall be available to the City. No representation is made that the minimum insurance requirements set forth in Exhibit A are sufficient to cover the obligations of __________ pursuant to this Agreement. __________'s requirements under this Section shall be referred to herein as the "Insurance."

d. Maintenance of insurance coverage set forth in this Section during the entire Term, and any Renewal Term, is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of the existence or renewal of required insurance may be treated by the City as a material breach of this Agreement.

18. INDEMNIFICATION AND HOLD HARMLESS

a. The City shall not be liable to __________ or to __________'s employees, customers, visitors, or any other person for any injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the premises in connection with, or arising out of, __________'s operation and use of 426 N Main St, Roswell, NM 88201.

b. __________ agrees to accept responsibility for loss or damage to any person or property, and to release, defend at its own expense, indemnify, and hold harmless the City, its council members, officials, officers, employees, agents, and volunteers, against any and all liability, actions, claims, losses, damages, disabilities, and expenses, including costs of litigation and reasonable attorneys' fees, that are asserted by any person or entity, to the extent arising out of any and all acts or omissions of __________, or its officers, employees or agents, in the performance of this Agreement, excluding, however, such liability, claims, losses, damages, or expenses arising from the City's sole negligence or willful acts.

c. __________ agrees to be responsible for all loss or damage from any cause whatsoever to any of its property or equipment. __________ is responsible for providing its own liability and loss insurance coverage for any of its property or equipment and __________ expressly acknowledges that no part of said property or equipment shall be covered under the City's insurance policies.

d. These indemnifications are independent of and shall not in any way be limited by the insurance requirements of this Agreement. Approval by the City of the insurance requirement by this Agreement shall not in any way relieve __________ from liability
under this Section. The City's right to indemnification hereunder shall survive termination, whether for cause or not, or expiration of this Agreement.

19. **DEFAULT**

___________ shall be in default of this Agreement, if at any time during the Term hereof, it shall:

a. Default in the payment of any installment of Rent or any other sums specifically to be paid by ___________ hereunder and such default shall not have been cured within ten (10) days after the City shall have given to ___________ written notice specifying such default; or

b. Fail in the observance of any covenants, agreements or obligations hereunder, other than the covenants to pay Rent, when such failure shall not have been cured within thirty (30) days after City shall have given to ___________ written notice specifying such default; provided, however, that if the failure complained of shall be of such nature that the same cannot be completely remedied or cured within such thirty (30) day period, then such failure shall not be an enforceable default against ___________ for the purposes of this paragraph if ___________ shall have commenced curing the failure within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the failure complained of; or

c. Finally and without further possibility of appeal or review
   1. be adjudicated bankrupt or insolvent,
   2. have a receiver or trustee appointed for all or substantially all of its business or assets, or
   3. suffer an order to be entered approving a petition filed against ___________ seeking reorganization of ___________ under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the
appointment of a receiver or trustee of all or a substantial part of its business and property;
or

e. Leave 426 N Main St, Roswell, NM 88201 vacant or deserted for a period of thirty (30) consecutive days and such lack of use shall continue for thirty (30) days after City has given __________ written notice specifying the vacancy.

20. CITY’S REMEDIES ON DEFAULT

a. Upon default of this Agreement by __________, the City may declare this Agreement, and all rights and interest created by it, to be terminated without further notice to __________, whereupon __________ shall surrender 426 N Main St, Roswell, NM 88201 as otherwise provided for herein. In the event that __________ shall fail or refuse to surrender 426 N Main St, Roswell, NM 88201, the City shall be entitled to regain possession thereof in the manner provided by the laws of the State of New Mexico in force at the time of the default. Termination hereunder shall not relieve __________ from any claim for damages accruing to the City under this Agreement or as a result of the default and the City shall be entitled to enforce the payment of such claim for damages by any remedy provided by law, whether or not stated herein. The City may further sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease.

b. If __________ shall at any time be in default in fulfilling any of the covenants of this Agreement, the City may, but shall not be obligated to, take or cause to be taken such action or make such payment as may be required by such covenant, without notice to or demand upon __________ and at __________'s risk and expense. All expenses, costs and liabilities of the City incurred hereunder shall be deemed additional Rent and shall be payable to the City on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

21. FORCE MAJEURE

Neither Party shall be held liable for failure of or delay in performing its obligations under this Agreement if such failure or delay is the result of an act of God, such as earthquake, hurricane, tornado, flooding, or other natural disaster, or in the case of war, action of foreign enemies, terrorist activities, labor dispute or strike, government sanction, blockage, embargo, or failure of electrical service, nor for any failure or delay caused by the negligence or omission of the City. Either Party claiming force majeure hereunder must make every reasonable attempt to minimize delay of performance. In the event of a force majeure, the Party claiming force majeure shall notify the other Party thereof within 10 days of its occurrence. If such force majeure continues longer than
120 days, either Party may terminate the Agreement, as otherwise provided for herein.

22. **Nondiscrimination**

___________ shall not discriminate against any otherwise qualified employee, applicant for employment, subcontractor, or other person, in connection with the performance of this Agreement, unless based on a bona fide occupational qualification or other statutory prohibition, because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or spousal affiliation. In the event of ___________'s noncompliance with the provisions of this Section, this Agreement may be canceled, terminated or suspended, in whole or in part, and ___________ may be declared ineligible for further contracts with the City.

23. **Choice of Law and Forum Selection**

This Agreement shall be governed by the laws of the State of New Mexico, exclusive of choice of law provisions, and venue for any judicial proceeding resulting here from shall lie in the Fifth Judicial District, Chaves County, New Mexico.

24. **Notices**

Notices and other communications under this Agreement must be in writing and are effective upon the sooner to occur of (i) the business day actually received (or if such date is not a business day, on the next business day thereafter), (ii) on the next business day after placing such written notice or communication with a reputable overnight delivery service for overnight (next morning) delivery, or (iii) on the third (3rd) business day following the date on which such written notice or communication was deposited with the United States Postal Service with postage prepaid and marked as certified or registered mail, return receipt requested, so long as, in each case, such written notice or communication was addressed to the Party to whom it was intended at such Party's address set forth herein or to such other address as that Party may from time to time provide in a writing pursuant to this Subsection to the other Party:

CITY OF ROSWELL

Attn:

Attn: Chad Cole
City Manager
P.O. 1838, Roswell, NM 88202-1838

25. **Counterparts**
26. **ENTIRE AGREEMENT, MODIFICATION**

   This Agreement constitutes the entire agreement of the Parties and supersedes any prior agreements, understandings or negotiations, written or oral. This Agreement may only be modified or amended in writing, signed by the Parties hereto, and any such duly-executed written modification or amendment shall be automatically incorporated into this Agreement as if set forth fully herein.

27. **SEVERABILITY**

   If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

28. **NON-WAIVER.**

   The Parties agree that no failure to exercise and no delay in exercising any right, power or privilege under this Agreement on the part of either Party shall operate as a waiver of any right, power, or privilege under this Agreement.

29. **RIGHTS CUMULATIVE**

   All rights, options, and remedies of the City contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and the City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

30. **BINDING EFFECT**

   This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

31. **NO ASSIGNMENT OR SUBLET**

   __________ shall not assign, sublet, or subcontract any obligation, duty, right or
covenant hereunder without the express written consent of the City, which the City may withhold in its total discretion.

32. AUTHORITY
The individual signing below warrants and represents that he or she is duly authorized to execute this Agreement on behalf of _________.

33. HEADINGS.
The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Agreement.

34. NO ADDITIONAL REPRESENTATIONS
a. _________ expressly acknowledges that in entering into this Agreement, it does not rely on any statement, representation, or warranty other than those expressly set out in this Agreement.

b. _________ expressly acknowledges that it has been advised to seek its own separate legal counsel for advice with respect to this Agreement, and has had sufficient opportunity to do so. The Parties further agree that interpretation of this Agreement shall be made without regard to authorship or negotiation.

[SIGNATURES FOLLOW ON NEXT PAGE]
IN WITNESS WHEREOF, ___________ and the City of Roswell have caused this Agreement to be executed by their duly authorized officers on this July 1, 2024, the Effective Date hereof.
EXHIBIT A: INSURANCE

1. MINIMUM SCOPE OF INSURANCE
   a. __________ shall procure and maintain for the duration of the contract the following minimum insurance against claims for injuries to persons or damages to property which may arise from or in connection with the lease of 426 N Main St, Roswell, NM 88201 by __________, its agents, representatives, employees or subcontractors (check all that apply):

      IZI I. Commercial General Liability ("CGL"): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

      D II. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if __________ has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000.00 per accident for bodily injury and property damage.

      □ III. Worker's Compensation: as required by the State of New Mexico, with Statutory Limits and Employer's Liability Insurance with limit of no less than $1,000,000.00 per accident for bodily injury or disease.

      DIV. Professional Liability (Errors and Omissions): Insurance appropriate to __________'s profession, with limit no less than $1,000,000.00 per occurrence or claim, $2,000,000.00 aggregate.

      IZI V. Property Insurance: against all risks of loss to any and all improvements, betterments, and fixtures on or to real property made the subject of this Agreement, at full replacement cost with no coinsurance penalty provisions.

   b. If __________ maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by __________.

2. ADDITIONAL INSURED STATUS
The City, its council members, officials, officers, employees, agents, and volunteers are to be covered as additional insured on the CGL policy with respect to liability arising out of the lease of 426 N Main St, Roswell, NM 88201 by __________, including materials, parts or equipment furnished in connection with the lease. General Liability coverage can be provided in the form of an endorsement to __________'s insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, or CG 20 38; and CG 20 37 form is later revisions used).

3. **PRIMARY COVERAGE**

   For any claims related to this Agreement, __________'s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its council members, officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its council members, officials, officers, employees, agents, and volunteers shall be excess of __________'s insurance and shall not contribute to it.

4. **NOTICE OF CANCELLATION**

   Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

5. **WAIVER OF SUBROGATION**

   __________ hereby grants to the City a waiver of any right to subrogation which any of __________'s insurers may acquire against the City by virtue of the payment of any loss under such insurance. __________ agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

6. **SELF INSURED RETentions**

   Self-insured retentions must be declared to and approved by the City. The City may require __________ to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administrations, and defense expenses within the retention.

7. **ACCEPTABILITY OF INSURERS**

   Insurance is to be placed with insurers authorized to conduct business in the State of New Mexico with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
8. **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 Effective Date of this Agreement or the beginning of occupancy hereunder.

11. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the occupancy.

m. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Effective Date, __________ must purchase "extended reporting" coverage for a minimum of five years after completion of occupancy.

9. **VERIFICATION OF COVERAGE**

__________ shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this Section. All certificates and endorsements are to be received and approved by the City before the occupancy commences. Failure to obtain the required documents prior to occupancy, however, shall not waive __________'s obligations to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications at any time.

10. **SPECIAL RISKS OR CIRCUMSTANCES**

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
**ACTION REQUESTED:**
RFP 24-009 Scope of Work for the Air Service Development and Consulting Services: Consider recommending approval for RFP 24-009 Scope of Work for the Air Service Development and Consulting Services for the Roswell Air Center.

**BACKGROUND:**
Initiated by: Jennifer Griego, Roswell Air Center Director

The Air Service Development Consultant will be asked to provide the following: Market Definition and Analysis to define and analyze the Airport’s air service trade area, to obtain level of interests and travel information. The consultant will analyze Roswell’s catchment area through geographical and ticket sales, leakage, monitor airfares; traffic, seats, and average trends. The Consultant will also provide a monthly report to include the average fares in the Top 15 markets; analysis whether airfares are out an acceptable range and changes in capacity and schedules at competitive airport ABQ, HOB, SAF, LBB. The Consultant will also analyze route performance and recommend airlines and routes that would be financially viable.

**FINANCIAL CONSIDERATION:**
The RFP 24-007 Scope of Work of the Air Service Development and Consulting Services currently has no financial obligation at this time.

**LEGAL REVIEW:**
The City Attorney has reviewed RFP 24-009 Scope of Work of the Air Service Development and Consulting Services.

**BOARD AND COMMITTEE ACTION:**
The Thursday January 25, 2024 meeting of the Legal Committee will be the first consideration of this matter.

**STAFF RECOMMENDATION:**
RFP 24-009 Scope of Work for the Air Service Development and Consulting Services: Consider recommending approval to advertise for a public hearing RFP 24-009 Scope of Work for the Air Service Development and Consulting Services for the Roswell Air Center.

**ATTACHMENTS**
ATT #1: RFP 24-009 Scope of Work for the Air Service Development and Consulting Services
REQUEST FOR PROPOSALS

RFP: 24-009

AIR SERVICE DEVELOPMENT AND CONSULTING SERVICES

RFP Issue Date: 2/18/2024

PROPOSAL DUE:
3/19/2024 2:00 PM

PURCHASING DEPARTMENT
425 N. RICHARDSON
ROSWELL, NM 88203

CONTACT: ARELY PEEK
CHIEF PROCUREMENT OFFICER
575-637-6299
PURPOSE OF THIS REQUEST FOR PROPOSALS

The City of Roswell is seeking proposals from qualified Air Service Development Consultants to provide Air Service Development and Consulting Services for the Roswell Air Center (ROW).

BACKGROUND INFORMATION

The Roswell Air Center (ROW) is owned and operated by the City of Roswell, NM. The airport is governed by a ten-person City Council. The catchment area has population base of approximately 145,000 in Chaves and the surrounding counties. Roswell is located on the northwest edge of the Permian Basin, making ROW the gateway to Southeast New Mexico oil business as well as the many tourism destination in the area. Additionally, the Airport is one of the largest airliner storage facilities in the world with four maintenance companies and a large aircraft painting business located on site.

The 29,000 square foot passenger terminal consists of a two-level main terminal building containing various passenger and baggage process facilities, including ticketing and baggage check-in, baggage claim, baggage make-up queuing area, security office, security checkpoint, lounge, café, car rentals and a museum on the first floor. Passengers board/dec- board from ground level. Airport administrative and security offices and conference rooms are located on the second floor.

Approximately 60,000 passengers enplaned at ROW in 2022, consisting mainly of originating and departing passengers traveling for business. Currently, American Airlines provides two (2) direct flights to/from Dallas/Ft. Worth daily on a year-around basis. The addition of another flight and/or carrier would most likely increase enplanements. Historically, air fare pricing relative to competing regional airports has been a community concern, and the lack of a low-cost carrier has hampered the growth of leisure travel. Leakage to other airports within the region has been a concern.

SCOPE OF WORK / SPECIFICATIONS

The initial scope of work shall consist of Air Service Development and Consulting Services for the Roswell Air Center.

The initial contract(s) shall begin on July 1, 2024 or as soon as possible thereafter for one (1) year. This contract may be renewed by mutual agreements in annual increments for a renewal
DRAFT SCOPE OF WORK

period of one (1) year for up to three (3) renewals, provided that the funds for subject contract are available and approved annually by the City Council and that the Offeror has established a satisfactory record of performance.

Statement of Work

The Proposer shall demonstrate excellence in market definition and analysis, demographic data gathering and presentation, route analysis, air service proposal analysis including Small Community Air Service Development Program Grants (SCASDP), messaging and airline relationship development. A successful Proposer will, with Airport staff, develop and implement a comprehensive air service development strategy to maintain, target and increase air service by existing carriers and attract new carriers to the Airport.

The Air Service Development and Consulting agreement may include but is not limited to the following services:

A. AIR SERVICE ANALYSIS AND PRESENTATION PREPARATION

1. Market Definition and Analysis: The Proposer shall be able to define and analyze the Airport’s air service trade area in multiple ways, including but not limited to, a thorough demographic review of the area, including the ability to obtain employment, level of interest, and travel information from the local business community. The results of this analysis will be summarized in the Air Service Presentation described below. The consultant will be asked to define and analyze ROW catchment area in multiple ways, including through demographic review of the area. The study will include, but is not limited to:
   a) Identification of ROW catchment area both from a geographical and ticket sale perspective
   b) Demographics of market users
   c) Leakage to competing airports and destination that leakage is flying to
   d) Travelers who drove to ROW after arriving at another airport
   e) Analysis of top 100 markets to include airport used, airline flown and average fare
   f) Traffic, seats, and average trends and analysis since the start of American Airlines service to DFW
   g) Domestic and international traffic demand trends
   h) Revenue per available seat mile (RASM) performance and analysis
   Consultant should be prepared to convert the Demand and Leakage study into airline specific presentations aligned to that airline’s strategy. Adding background about the local economy, airport and any incentives, if offered.
   i) Monitoring of airfares at ROW compared to competing airports
   j) Schedule analysis on an as needed basis, to determine if connections are optimal
   k) Monthly key performance indicator (KPI) reporting on traffic, capacity, air fares and operating performance. Traffic analysis should report on three years of
DRAFT SCOPE OF WORK

load factor. Competing airport performance should be included in the operating performance report.

l) Monthly reporting to include:
   i. average fares in the Top 15 markets relative to competitive airports
   ii. analysis as to whether the airfares are outside of an acceptable range
   iii. Notable changes in capacity and schedules at competitive airports, in particular ABQ, HOB, SAF and LLB.

2. Route Analysis: The Proposer shall be able to analyze route performance and recommend airlines and routes that would be financially viable, which analysis shall be based on, but not limited to, the following lists of considerations:
   i. Historic and forecast traffic volumes, service patterns, and seasons
   ii. Economic profile of historic an/or current commercial aviation services
   iii. Traffic and revenue forecasts for new operations including total passengers, projected load factors, yield analysis, passenger revenue potential, estimated operating costs and potential route profitability.
   iv. Historic and forecast comparative data and analysis showing why the Airport represents a strong opportunity for a targeted carrier to provide service on a specific route.

The results of this Route Analysis will be summarized and presented in the Air Service Development Presentations described below.

3. Air Service Presentation Preparation: The consultant shall develop customizable presentation and messaging materials in various formats for a variety of audiences, including airline planners, airline leadership, community business groups and others and may be required to attend and participate in meetings.

4. Presentation Support: The consultant should expect to prepare three to seven presentations for two annual air service development conferences (i.e., Jumpstart, Routes, etc). The consultant will most likely be asked to join Airport staff during annual conference presentations. The consultant may also be asked to accompany Airport staff to airline headquarter meeting on occasion to assist in making presentations. Travel will be reimbursed at cost for these engagements and is expected to be shared if the consultant is representing multiple airports at a conference or other meetings.

B. ON-CALL SERVICES

The consultant may be called upon to complete specific air service-related tasks. A scope and fee will be agreed to prior to the consultant initializing work on these tasks.

1. Incentive Program: The consultant may be asked to develop specific incentive proposals that are tailored to the airline and specific route being pursued. These incentives should include both suggested airport contributions and requests from local community groups.

2. Small Community Air Service Development Program Grant Analysis and Proposals: The consultant shall identify and analyze targeted routes for Small Community Air Service Development Program Grant (SCASDP Grants) applications.
Consultant shall prepare relevant proposals and applications for SCASDP Grants. Consultant shall support Airport personnel in relevant discussions with the airlines.

3. Ongoing Data and Analysis: The consultant may be called on to provide a scope of services for air service analysis from time-to-time including benchmarking the Airport against similar airports, identifying changes in flight schedules, analyzing changes in the airline industry, marketing ideas etc.

4. Community Relations: On occasion, the consultant may be asked to provide presentations directly to Roswell Community groups to garner support for incentives. Travel will be reimbursed at cost for these engagements.

The following Scope of Services will be completed as part of this agreement over the 12-month period:

1. Passenger Demand Analysis (one per 12-month periods)
The Passenger Demand Analysis (ie., Market Definition and Analysis) will quantify by destination the number of air travelers in the market, including those air travelers that drive to an airport other than ROW to originate the air travel portion of their trip. Passenger Demand Analysis data may be shared with airlines and community groups, and it is the foundation information for air service forecasts and pro formas.

2. True Visitation Estimate (one per 12-month period)
This location-based demand analysis uses the strength of the destination’s overall visitation as the foundation for identifying air service development opportunities. The output of the True Visitation Estimate will be PowerPoint summary slides, which will include heat maps that illustrate overall demand for the destination, seasonality trends by region and a listing of top domestic markets.

3. Airline Headquarters Meeting (Three per 12-month period)
The Consultant will prepare presentations for and attend three airline headquarters meetings. The Consultant will provide the analysis, preparation, presentation, and consulting services associated with the airline headquarters meeting. Anticipated meetings include American Airlines, and United Airlines.

4. Industry Conferences (Two per 12-month period)
In addition to assisting with conference meetings, the Consultant will prepare custom presentations for each of the meetings at industry conferences highlighting ROW and the community for use at the conference. The Consultant will complete the presentations the week prior to the date of the conference.

5. Community Meeting (One per 12-month period)
The Consultant will prepare a PowerPoint presentation and participate in a community meeting held in ROW to help educate the key stakeholders on industry changes as well as specifics regarding ROW’s air service development strategy. The meeting will also be useful for sharing results after the completion of key air service development tasks.

6. Performance Monitoring (Quarterly, four per 12-month period)
DRAFT SCOPE OF WORK

On a quarterly basis, the Consultant will complete quarterly performance monitoring and airfare monitoring. Quarterly performance monitoring will include the following: 1) seats, on board passengers and load factor trends; 2) current and historical passenger market share by airline; 3) year-over-year change in ROW’s six-month forward-looking schedules for flights and seats; 4) comparisons to markets of similar size (e.g. population, passengers, seats); 5) load factors for each nonstop market on a quarterly basis; and 6) revenue per available seat mile (RASM) comparisons for each nonstop market for the most recent year ended. The output of this effort will be a Quarterly Performance Monitor report provided in PDF electronically.

7. Airfare Monitor (Monthly)
To monitor airfares at ROW, the Consultant will compare local walk-up business and leisure airfares with airfares at competing airports. The Consultant will compare American Airlines’ walk-up, business, and leisure airfares with airfares that American offers at competing airports. This comparison provides the airfare information needed for follow-up communication with the airlines. The Consultant will provide the airfare comparisons electronically in PDF.

8) Additional Services (Up to 10 hours per 12-month period)
Additional services may be requested by ROW that are not described above. Additional services may include but are not limited to: lobbying support with state and federal officials; incentive program review and assistance; the preparation of ad hoc reports; communication with airlines; coordination with ROW; working with ROW staff on air service related tasks; and other elements as identified on an as needed basis.

Additional Authorizations of Service may be issued under the agreement during the term of agreement, as conditions warrant.

Anticipated Schedule

<table>
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<tr>
<th>Action</th>
<th>Date</th>
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<tbody>
<tr>
<td>1. Issue of RFP</td>
<td>2/18/2024</td>
</tr>
<tr>
<td>2. Acknowledgement of Receipt Form</td>
<td>2/28/2024</td>
</tr>
<tr>
<td>3. Deadline to Submit Additional Questions</td>
<td>2/28/2024</td>
</tr>
<tr>
<td>4. Response to Written Questions/RFP Addendum</td>
<td>3/01/2024</td>
</tr>
<tr>
<td>5. Submission of Proposal 2:00 PM</td>
<td>3/19/2024</td>
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<tr>
<td>7. Recommendation to Committee</td>
<td>3/28/2024</td>
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<tr>
<td>8. Recommendation to Award to City Council</td>
<td>4/11/2024</td>
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<tr>
<td>9. Notice of Award</td>
<td>4/12/2024</td>
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Evaluation Criteria

The following is a summary of evaluation factors with point value assigned to each.
FACTOR                       POINTS AVAILABLE
1. Company Experience        20
2. Company Past Performance /References  15
3. Proposed Key Personnel Experience  15
4. Project Plan               30
5. Cost proposal              20
6. Mandatory Forms            Pass/Fail

SUBTOTAL                       100

ADDITIONAL OPTIONAL POINTS
Points will be awarded based on Offerors ability to provide a copy of a current Resident Business Certificate OR Resident Veterans Certificate
Resident Business Preference 8% of subtotal
Resident Native American Preference 8% of subtotal
Resident Veterans Preference 10% of subtotal
Resident Native American Veterans Pref. 10% of subtotal

1. Offeror’s Company Experience and Qualifications.
Offerors shall submit a statement of relevant company experience, including experience of subcontractors, if applicable. The documentation shall thoroughly describe how the Offeror has supplied expertise for similar contracts and work related to Air Service Development and Consulting Services.

a. Offerors shall include an overview the company including a summary the company history including the company history of subcontractors, if applicable. The overview shall include type of organization and the state of origin, the date established, location of headquarters and other offices, number and location of employees and a description of types of services offered.

b. Offerors should include in their proposals documentation describing the extent of their knowledge, experience, and expertise as a provider of professional services for Air Service Development and Consulting Services.

c. Offerors should include their proposal copies of appropriate professional certifications and/or other documented credentials.

2. Offeror’s Company Past Performance/References

Offeror’s proposals shall include three external references from clients who are willing to validate the Offeror’s past performance on similar contracts. The minimum information that shall be provided for each client reference follows:

a. Name of the contact person;
b. Name of the company or governmental entity;
DRAFT SCOPE OF WORK

c. Address of the contact person;
d. Telephone number of contact person;
e. Email address of the contact person;
f. A description of the services provided and dates the services were provided.

At least ONE of the references for the proposed services must be from a site of comparable or larger size of the City.

3. Offeror’s Proposed Key Personnel Experience and Qualifications

Offerors shall submit resumes of all proposed Key Personnel who will be performing services under the contract. Experience narratives shall be attached that describe the specific relevant experience of the Key Personnel members in relation to the role that member will perform for this contract. The narrative(s) shall include the name of the individual(s) proposed and should include a thorough description of the education, knowledge, and relevant experience as well as certifications or other professional credential that clearly shows how they meet and/or exceed the City’s requirements.

4. Project Plan

Offerors shall submit a thorough project plan as part of the proposal. At a minimum, the project plan shall include a milestone chart including tasks to be performed, the time frame and proposed staff member designated for the completion of each task.

5. Cost

Offerors Cost Proposal MUST be in a separately sealed envelope clearly marked.

6. Mandatory Forms

Offerors shall provide all mandatory forms which include: Letter of Transmittal, Vendor Information Form, W9, Certificate of Insurance, Roswell Business License, Campaign Disclosure, Conflict of Interest and Non-Collusion Statement.
Regular Committee Meeting  Item No. 5
Meeting Date: Thursday January 25, 2024
COMMITTEE: Legal
CONTACT: Hessel E. Yntema IV
CHAIR: Edward Heldenbrand

ACTION REQUESTED:
Ordinance 23-15 Amending Chapter 16 Regulating Nuisances Noise of the Roswell City Code: Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 23-15 Amending Chapter 16 Regulating Nuisances Noise of the Roswell City Code.

BACKGROUND:

Initiated by: Jessica Vickers, Community Development

A substantial body of scientific research has shown that exposure to excessive sound and vibration is a serious hazard to the public health, welfare, safety and quality of life. It is the express intent of the Governing Body to control the level of excessive sound as noise in a manner that promotes the use, value and enjoyment of property, conduct of business, sleep, repose and an environment free from unnecessary and excessive sound. This ordinance establishes maximum sound emissions within the city limits, with limited exceptions, and a permitting program for special events.

This ordinance was referred back to Legal Committee by City Council on October 2023.

FINANCIAL CONSIDERATION
The proposed ordinance creates no financial obligations for the City at this time.

LEGAL REVIEW:
The ordinance was drafted by the City Attorney.

BOARD AND COMMITTEE ACTION:
The Legal Committee voted 3-1 to public hearing for City Council at its meeting on Thursday, October 12, 2023. However, during this meeting council referred this item back to Legal Committee.

STAFF RECOMMENDATION:
Ordinance 23-15 Amending Chapter 16 Regulating Nuisances Noise of the Roswell City Code: Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 23-15 Amending Chapter 16 Regulating Nuisances Noise of the Roswell City Code.

Attachments
ATTACHMENT: 1. Ordinance 23-15 CLEAN Amending Chapter 16 Regulating Nuisances Noise of the Roswell City Code
ORDINANCE 23-15

AN ORDINANCE AMENDING CHAPTER 16 OF THE ROSWELL CITY CODE
REGULATING NUISANCES

WHEREAS, Chapter 16 of the Roswell City Code regulates nuisances within the City limits; and

WHEREAS, a substantial body of scientific research has shown that exposure to excessive sound and vibration is a serious hazard to the public health, welfare, safety and quality of life. It is the express intent of the Governing Body to control the level of excessive sound as noise in a manner that promotes the use, value and enjoyment of property, conduct of business, sleep and repose and an environment free from unnecessary and excessive sound.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

SECTION 1. Chapter 16 – Chapter 16 of the Roswell City Code is amended to read as follows:

Chapter 16 - NUISANCES

ARTICLE I. - IN GENERAL

Sec. 16-10. - Noise generally.

(a) Prohibited Noise

(1) Except as otherwise provided in this article, no person shall make or continue, cause to be made or continued, or allow to be made or continued, any sound that persistently or continuously results in an exceedance of the following sound level limits using an approved sound-level meter measuring decibels on the A-Weighted scale.

<table>
<thead>
<tr>
<th>Source Premises</th>
<th>Residential</th>
<th>Commercial</th>
<th>Industrial/ Manufacturing and Public Premises</th>
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<tbody>
<tr>
<td>Daytime (7 AM - 10 PM)</td>
<td>Night (10 PM – 7 AM)</td>
<td>Daytime (7 AM - 10 PM)</td>
<td>Night (10 PM – 7 AM)</td>
</tr>
</tbody>
</table>

Numbers indicate decibel (dB) levels

Receptor Premises
<table>
<thead>
<tr>
<th></th>
<th>60</th>
<th>50</th>
<th>65</th>
<th>60</th>
<th>75</th>
<th>70</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial and Downtown Area</td>
<td>60 (indoor)</td>
<td>50 (indoor)</td>
<td>65 (outdoor)</td>
<td>60 (indoor)</td>
<td>65 (outdoor)</td>
<td>75</td>
</tr>
<tr>
<td>Industrial/Manufacturing and Public Premises</td>
<td>60 (indoor)</td>
<td>50 (indoor)</td>
<td>65 (outdoor)</td>
<td>60 (indoor)</td>
<td>65 (outdoor)</td>
<td>75</td>
</tr>
</tbody>
</table>

(b) Exceptions

(1) Aircraft and airports. The limits set forth in this article do not apply to sounds or vibrations generated by any aircraft or generated in connection with the operation of any airport or approved helipad used in support of law enforcement, public utility restoration, emergency medical transport or search and rescue.

(2) Earthshaking vibrations. The limits set forth in this article do not apply to vibrations caused by construction, demolition or repair work.

(3) Emergency or civic construction, demolition, maintenance, or repair work. The limits set forth in this article do not apply to sounds generated in construction, demolition, maintenance, or repair work of an emergency nature or in work on public improvements authorized by a governmental body or agency.

(4) Construction, demolition, or repair work. The limits set forth in this article do not apply to sounds generated in construction, demolition, or repair work from sunrise or 8 AM to sunset or 7PM, whichever is longer.

(5) Household power tools, lawn, or garden tools. The limits set forth in this article do not apply to sounds generated by home use of household power tools, lawn, or garden tools from sunrise or 8 AM to sunset or 7PM, whichever is longer.

(6) Entertainment events. The limits set forth in this article shall not apply to those reasonable sounds emanating from school bands, school athletic, and school entertainment events.
i. However, it shall be unlawful for sound in any place of public entertainment at a sound level greater than 90 dBA as read on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign is located outside such place, near each public entrance, stating, "Warning: Sound levels within may cause permanent hearing impairment."

In no event shall the sound level measured as indicated in this section exceed 110 dBA.

(7) Human voices. The limits set forth in this article do not apply to noise created by unamplified human voices.

(8) Fireworks. The limits set forth in this article do not apply to any public or private legally permitted fireworks from the hours of 8AM to 2AM for the second, third, fourth, fifth, and sixth of July, New Year’s Eve, and New Year’s Day.

(9) Mass transit. The limits set forth in this article do not apply to sounds or vibrations generated in the operation of any mass transit system.

(10) Parades and protests. The limits set forth in this article do not apply to legally permitted parades or to protests.

(11) Mosquito control. Equipment for the use of mosquito control and prevention by any governmental agency.

(12) Refuse collection. The limits set forth in this article do not apply to municipal refuse collection activities.

(c) Evidence of a violation

(1) Unless otherwise provided in this article, sound level measurements shall be taken with a sound level meter whose microphone is located at any point on the real property boundary or other point as provided in this article, no closer than five feet from any wall or vertical obstruction when possible, and where practicable not less than five feet above ground level, but in no event less than three feet above ground.

(2) In residential districts, it shall be prima facie evidence of a violation of this division if any loud or unusual noise is audible by any person at a distance of 30 or more feet from the source or causes a person to be aware of the vibration accompanying the sound at a distance of 30 or more feet from the source.

(d) Temporary Permits
(1) The Mayor or his designee may grant a temporary permit which allows noncompliance with the limitations prescribed in this article for the purpose of activities of short duration. The issuance of such permits will be only for a time period between 7:00 a.m. and 12:00 midnight and shall not exceed three consecutive days. Determinations of the Mayor are final.

(2) The Mayor shall consider the following criteria:

i. Distance of proposed activities from a residential zone.

ii. Number of amplification devices to be used in the proposed activities.

iii. Anticipated direction of amplification devices.

iv. Whether the activity will be held within or without a structure.

v. Approval or disapproval of adjacent property owners.

vi. Any other factors reasonably related to the comfort, repose, health, peace or safety of others.

(3) Upon a determination that the granting of a permit will not result in a condition injurious to health or safety, the permit shall be issued specifying place, duration, and any requirements appropriate to the proposed activity site, which may include maximum sound level limits.

(e) Violations; additional remedies; injunctions.

(1) It shall be a misdemeanor to violate any provision of this Article. The violation of any provision may also be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

SECTION 3. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

SECTION 4. If any section, paragraph, clause or provisions of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

SECTION 5. This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED and APPROVED ___

CITY SEAL
Timothy Z. Jennings, Mayor

ATTEST

Amalia Martinez, City Clerk
AGENDA ITEM ABSTRACT

Regular Committee Meeting
Item No. 6
Meeting Date: Thursday January 25, 2024
COMMITTEE: Legal Committee
CONTACT: Hessel E. Yntema IV
CHAIR: Edward Heldenbrand

ACTION REQUESTED:
Ordinance 24-XX Amending Chapter 2 of the Roswell Administrative City Code: Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 24-XX Amending Chapter 2 of the City Code.

BACKGROUND:
Initiated by: Robert Corn, Edward Heldenbrand, and Christina Arnold

NMSA 1978, §3-12-4 provides for the creation of certain municipal offices. Following Attorney General Opinion 2022-02, these amendments to the administrative code would bring the city into accord with the opinion and provide for greater council oversite of top-level employee / appointee positions in city government.

These amendments also will bring the administrative code and current governing body procedural practice, existing resolutions, and the Open Meetings Act into harmony.

FINANCIAL CONSIDERATION:
The proposed ordinance creates no financial obligations for the City currently.

LEGAL REVIEW:
The Ordinance was drafted by the City Attorney.

BOARD AND COMMITTEE ACTION:
The Thursday November 16, 2023 meeting for Legal Committee was the first meeting to consider this matter to postponed this item for January 25, 2024 Legal Committee meeting.

STAFF RECOMMENDATION:
Ordinance 24-XX Amending Chapter 2 of the Roswell Administrative City Code: Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 24-XX Amending Chapter 2 of the City Code.

Attachments

ATTACHMENTS –
1. Proposed ordinance 24-XX REDLINE
2. Proposed Ordinance 24-XX CLEAN
3. Proposed Ethics Additions.
ORDINANCE 24-XX

AN ORDINANCE AMENDING CHAPTER 2 THE ROSWELL CITY CODE

WHEREAS, the City of Roswell (the "City") has the authority and obligation under NMSA1978, §3-12-4 to provide for certain appointed officers; and

WHEREAS, the Attorney General in Opinion 22-02 has provided additional guidance on the interpretation of §3-12-4; and

WHEREAS, clarifications and additions regarding appointed officers and City Council procedures to the City's Administrative Code would be beneficial to efficient and ethical running of City business and will improve accountability and administrative functions of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

SECTION 1. Chapter 2 of the Roswell City Code is hereby amended as follows:

ARTICLE II. GOVERNING BODY

DIVISION 1.- GENERALLY

Sec. 2-20. Time of meetings.

The regular meetings of the governing body shall be held at 9:00 AM on the second Thursday in each month, or as otherwise indicated on the meeting notice. Any regular meeting or meeting recessed from a regular meeting may be recessed from time to time by the mayor or mayor pro tem or a majority vote of those members present at the city council meeting.

(Ord. No. 1145, § 4, 8-1985; Ord. No. 1216, § 1, 7-1991; Ord. No. 1251, § 1, 6-1994; Ord. No. 14-05, 9-11-2014; Ord. No. 21-01, § 1, 4-8-2021)

Sec. 2-21.-35. Duties of chief of police.

The chief of police or his designee shall attend all meetings of the governing body unless excused by the mayor. He shall execute all summons and requests of the governing body.

(Ord. No. 1145, § 5, 8-1985; Ord. No. 1320, 4-1991)

Sec. 2-22.-230. Reserved.

DIVISION 2.- RULES OF ORDER AND PROCEDURE
Sec. 2-31. Rules of order.

On any question not mentioned in this division, the regular parliamentary rules shall prevail. The latest edition of Robert’s Rules of Order is hereby adopted as the official parliamentary rules and regulations of the governing body. Errors in the strict application of or the failure to follow said rules of order shall not invalidate any action taken by the governing body.


Editor’s note(s)—Section 1 of Ord. No. 15-03, adopted April 9, 2015, changed the title of § 2-31 from “Robert’s Rules” to read as herein set out.

Sec. 2-32. Quorum.

A quorum shall be a majority of the members of the governing body. Should there be no quorum present, only a motion to summon members, compel attendance or adjourn can be entertained.

(Code 1962 § 2-25)

State law reference(s)—Quorum defined, NMSA 1978, § 3-12-2(B).

Sec. 2-33. Manner of addressing presiding officer.

When the governing body is in session, the mayor shall be addressed as “mayor” and the mayor pro tem as “mayor pro tem.”


Sec. 2-34. Appeals from decision of presiding officer.

A member of council has the right of appeal from the decision of the presiding officer, which shall be decided by a majority vote.

(Code 1962 § 2-20)

Sec. 2-35. Conduct at meetings.

No disorderly conduct or obscene language shall be allowed while the governing body is in session. The presiding officer may have any person removed from the room for violating this section.

(Code 1962 § 2-30)

Sec. 2-36. Committees generally.

(Supp. No. 14)
(a) The standing committees of the governing body shall be as follows:

(1) Finance;

(2) General services Infrastructure;

(3) Infrastructure;

(3) Public safety;

(4) Legal.

(b) The standing committees shall consist of four to six members of the governing body. All members of all committees shall be appointed by the mayor who shall designate the chair and vice chair thereof. Three members of each committee shall comprise a quorum to do business. No standing committee shall form any subcommittee.

(c) No member of council who is appointed as a chair of any standing committee shall be appointed as chair or vice chair of any other standing committee.

(d) The mayor may also establish such temporary committees for specific purposes as needed, and appoint the members thereof. Unless otherwise authorized by the governing body, temporary committees shall be advisory only and may make recommendations which are not binding on the governing body.

(City of Roswell Municipal Code 1962 § 2-14; Ord. No. 1320, 4-1999; Ord. No. 15-03, § 4, 4-9-2015)

Sec. 2-38. Committee referrals to the City Council

Reports of standing committees

Generally, in order for a proposed action to go before the full governing body the action must be passed by the most applicable committee and referred to and passed by either the Legal or Finance Committee, as most applicable. All ordinances, resolutions of matters referred to standing committees shall be reported on at the next regular meeting of the governing body unless sooner called for at a special meeting. However, if not sent to the governing body by two committees, through written notice to the City Clerk, five (5) councilors or the mayor may place an item before the governing body.

(City of Roswell Municipal Code 1962 § 2-32)

Sec. 2-39. Roll call votes.

Any member of the governing body has the right to demand a vote by roll call on any question.

(City of Roswell Municipal Code 1962 § 2-33)

Sec. 2-40. Committee assignments and responsibilities.

The scope of assignments and responsibilities for the various standing committees in the following sections are descriptive and not intended to be exhaustive or mandatory.
Sec. 2-41. Finance committee.

The finance committee shall review and consider city finances, the city manager's proposed budget, amendments to adopted budgets, the financial aspects of the infrastructure capital improvements plan (ICIP), and financial policies, including those relating to investment, financial contingency management, and purchasing. The finance committee shall also review audits, certified annual financial reports (CAFR), and periodic financial reporting.

(Ord. No. 15-03, § 5, 4-9-2015)

Sec. 2-42. General services infrastructure committee.

The general services infrastructure committee shall review and consider policies that affect operations of the various departments of the city, other than those departments which fall under the public safety committee, including recommending policy changes regarding the provision of city services, fee structures, and operational hours. The general services infrastructure committee shall also review and consider the award of bids and proposals solicited by the city as required by city policies, resolutions, ordinances and applicable state and federal law and consider proposed actions that concern the physical assets of the city, including vehicles, equipment, buildings, land, water and sewer systems and streets. The infrastructure committee shall propose capital improvement plans.

(Ord. No. 15-03, § 6, 4-9-2015)

Sec. 2-43. Infrastructure committee.

The infrastructure committee shall review and consider proposed actions that concern the physical assets of the city, including vehicles, equipment, buildings, land, water and sewer systems and streets. The infrastructure committee shall propose capital improvement plans.

(Ord. No. 15-03, § 7, 4-9-2015)

Sec. 2-44. Public safety committee.

The public safety committee shall review and consider policies that affect the operations of the police department, fire department, code enforcement department, 911 dispatch, ambulance services, emergency management and preparedness, animal control, and other public safety programs such as alarm ordinance and neighborhood watch, and fees associated with the provision of the foregoing public safety services. The public safety committee shall also review and consider policies concerning behavioral health issues that were formerly considered by the city's commission on behavioral health.

(Ord. No. 15-03, § 9, 4-9-2015; Ord. No. 16-15, § 9, 7-14-2016)
Sec. 2-456. Legal committee.

The legal committee shall review and consider all proposed ordinances, codes, and policies which are adopted by the governing body, as well as issues such as eminent domain and annexation. The legal committee shall also review and consider proposed actions that pertain to development codes or plans which are general and legislative in nature, as opposed to actions which are adjudicatory in nature.

(Ord. No. 15-03, § 10, 4-9-2015)

Sec. 2-456. Validity of actions taken by governing body; referral to committee not a prerequisite.

A proposed action by the governing body is not required to be referred to a standing or temporary committee for a recommendation before being considered and acted upon by the governing body, and the failure to refer a proposed item to committee prior to action by the governing body shall not affect the validity of any action taken by the governing body.

Secs. 2-47—2-50. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES
DIVISION I. GENERALLY
Sec. 2-51. Oath.

Every elected officer and appointed officer shall, before entering upon the duties of his office, take and subscribe the oath specified in Article XX, Section 1, of the state constitution by law.

(Code 1962 § 2-36)

Sec. 2-52. Bonds.

Bonds executed or given by city officers or employees shall be filed with the clerk-treasurer, who shall keep it in a secure place subject, however, at all times to the inspection of the governing body and any taxpayer of the city. The clerk-treasurer shall record all bonds in a book to be kept for that purpose.

(Code 1962 § 2-39)

State law reference(s)—Authority of governing body to require bond, NMSA 1978, § 3-10-2.

Secs. 2-53—2-65. Reserved.

(Supp. No. 14)
DIVISION 2. CLERK-TREASURER

Sec. 2-66.53 Creation of Offices/combined Appointed Officers

(a) There shall be independent offices apart from City departments. These offices are the office of the Clerk, Office of the Treasurer / Finance Officer, Office of the Chief of Police, and Office of the City Attorney.

(b) The appointive officers of the city shall be a city manager, city clerk, city treasurer / finance officer, chief of police, city auditor, and city attorney.

(c) All appointed officers must coordinate with the other appointed officers.

(d) The governing body, at its discretion, may in lieu of having an in-house office of the city attorney, contract with an outside individual or law firm for legal services.

Sec. 2-66.54 Appointment and Term

(a) With the exception of the Manager, at an organizational meeting of the city council the mayor shall submit for confirmation by the city council, the names of persons who shall fill the various appointive offices of the city or shall serve as members of the various boards or commissions of the city.

(b) If the city council fails to confirm any appointment, the mayor at the next regular meeting of the city council shall submit the name of another person to fill such office.

(c) All officers shall be at-will and every appointive officer shall execute a bond.

(Code 1962 § 2-41; Ord. No. 1199 § 1, 5-1989)

State law reference(s)—Municipal officers generally, NMSA 1978, § 3-10-1 et seq.; authority to combine offices of clerk and treasurer, NMSA 1978, § 3-12-4; clerk and treasurer required, NMSA 1978, § 3-12-4. 

2-67. Bond required

(city of Roswell, New Mexico, Code of Ordinances)
The clerk—treasurer shall hold a term provided for under state law.

**Sec. 2-55 Compensation**

The salaries, wages, fringe benefits, and compensation of city officers shall be as provided by the governing body through contract or through a compensation plan determined by the governing body.

**SEC 2-56—2-65. Reserved.**

**DIVISION 2. CLERK**

**Sec. 2-66. Duties**

(a) The city clerk shall have those duties as prescribed by state law, and in addition thereto and shall have such duties as may be prescribed by the city council.

(b) The city clerk shall be responsible for the performance, functions, and all personnel of his office.

**Sec. 2-67. Licenses**

It shall be the duty of the city clerk to issue all licenses upon receipt of proof of payment of any license fee and compliance with other ordinances. All licenses shall be signed by the city clerk or by an authorized person on behalf of the city clerk. All licenses shall have affixed thereto the city seal. Upon the face of the license shall be designated the purpose for which such license is granted and the length of time the license shall run. The city clerk shall keep and maintain in his office a record, to be known as the license record, which shall be a list of all licenses issued, the purpose of the license, the expiration date thereof, and the amount of money paid therefor.

**Sec. 2-68. Seal.**

The city seal shall be kept in the office of the city clerk and shall be affixed to all instruments and papers which by law or ordinance are required to be attested by the city seal. The city clerk shall have custody of and shall safely keep all public records, documents, ordinances, resolutions and orders of the city council and such other papers and documents as may be delivered into the custody of the city clerk.

**Sec. 2-69. Deputy Clerks.**

There shall be a Deputy City Clerk who may exercise the powers and duties granted the city clerk in the absence or disability of the city clerk and as assigned by the city clerk. The deputy city clerk shall be recommended by the city clerk through the mayor’s nomination for approval by the governing body.

**Secs. 2-70—2-80. Reserved.**
DIVISION 3. CITY MANAGER

Sec. 2-81 City Manager; Creation of office; appointment; powers and duties generally; qualifications.

(a) The office of city manager is created pursuant to NMSA 1978, § 3-13-3.

(b) The city manager shall be the Chief Administrative Officer of the City and have all of the powers and duties as set out in NMSA 1978, § 3-13-3.

(c) The manager shall work in conjunction with the governing body and other appointed officers to create the City’s budget and effectuate the policies and goals of the governing body.

   (1) When administering contracts, the Manager may negotiate appropriate decreases or increases that are already within budget. This authority is not to exceed $20,000.00 for services or goods and $60,000.00 for professional services.

(d) The manager shall consult with the other appointed officers when taking any employment action, such as hiring, promoting, demoting, disciplining, or discharging, against employees that are part of the administrative service in the respective offices.

(e) The manager may create or reorganize the City’s departments as necessary with the consent of the governing body. Directors will be employed through the manager.

Sec. 2-82 Deputy City Manager

There shall be a Deputy City Manager who may exercise the powers and duties granted the manager in the absence or disability of the manager and as assigned by the manager. The deputy city manager shall be recommended by the manager through the mayor’s nomination for approval by the governing body.

Sec. 2-82 Bond

The city manager, within ten days after his appointment, shall furnish a surety bond approved by the city council, with such bond to be conditioned for the care and disposition of city funds in his hands and upon the faithful discharge of the duties of his office, according to law. The premium of the bond shall be paid by the city.

(Code 1962 § 2-4283 Reserved)

State law reference(s) – Bond required from treasurer, NMSA 1978, § 3-10-2.

DIVISION 4. CITY ATTORNEY

Sec. 2-84 Qualifications
The City Attorney shall be admitted to the practice of law by the supreme court of the state, and he shall be in good standing in the State Bar of New Mexico. He shall have at a minimum 6 years of previous full time legal practice.

Sec. 2-68.85 Duties as treasurer.
(a) The city attorney shall:

(a) be the chief legal officer of the City and legal adviser to the governing body. He shall attend all regular meetings of the council and such other meetings of the council as he shall be requested to attend by the mayor. He shall have the right to be heard at any meeting of the council at which matters involving questions of law are being discussed. He shall render to the council his opinion upon any question of law involving the interests of the city at all times when requested by the council to do so. He shall draft and prepare all contracts to be entered into by the city and shall submit the contracts to the council for its approval, whenever requested by the council to do so. He shall draft and prepare all city ordinances and shall submit the ordinances to the council for its approval, whenever requested by the council to do so.

(b) draft and prepare all process and papers for the use of police officers in the carrying out by them of the duties of their office, whenever requested by the police chief to do so. He may prosecute all actions brought in the municipal court on behalf of the city, whenever requested by the municipal judge to do so or whenever in his judgment it is for the general welfare of the city that any such action should be so prosecuted.

(c) supervise and pass upon the legality as to the manner and form of all bonds to be given by any city officer or by any person entering into such a contractual relationship with the city as requires the giving of a bond to the city.

(d) perform any other duties that are required by the governing and customary to the practice of law.

(e) The City Attorney shall be responsible for the performance, functions, and all personnel of his office.

(f) The City Attorney shall have pocket settlement authority of no more than $20,000.00 per occurrence. Such settlements shall not be made without the consent of the City Manager. The City Attorney shall make monthly reports of all settlement to the Legal Committee.

Sec. 2-86 Deputy City Attorney

There shall be a Deputy City Attorney who may exercise the powers and duties granted the city attorney in the absence or disability of the city attorney and as assigned by the city attorney. The deputy city attorney shall be recommended by the city attorney through the mayor’s nomination for approval by the governing body.
DIVISION 5. TREASURER / FINANCIAL OFFICER

Sec. 2-87 Qualifications

The Treasurer/Financial Officer shall have at minimum a bachelor’s degree in accounting, or hold an advanced degree in an accounting or finance related field. The Treasurer/Financial Officer shall have 6 years’ experience in government accounting or finance or shall have 10 years of previous work in accounting, finance, or a related field.

Sec. 2-88 Duties.

(a) The Treasurer/Financial Officer shall be chief financial officer for the City.

(b) The treasurer shall receive all money belonging to the city, and shall keep his books and accounts in such a manner as may be prescribed by ordinance. Such books and accounts shall always be subject to inspection of any member of the governing body. He shall keep a separate account of each fund or appropriation and the debts or credits belonging thereto. He shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and upon what account paid, and he shall file statements of such receipts with the chairman of the finance committee at the date of each monthly report. He shall, at the end of each month, and more often, if required, render an account to the city council or such officer as may be designated by ordinance, showing the state of the treasury. He shall also accompany such accounts with a statement of all money received into the treasury, and upon what account, during the preceding month, together with all warrants redeemed and paid by him, which warrants, with any and all vouchers held by him, shall be delivered to the governing body at the next regular meeting. He shall keep a register of all warrants redeemed and paid, which shall describe such warrants and show the date, amount, number, the fund from which paid, the name of the person to whom paid and when paid. He may be required to keep all money in his hands belonging to the city in such place of deposit as may be designated by ordinance; provided, that no such ordinance shall be passed by which the custody of such money shall be taken from him. He shall keep all money belonging to the city in his hands, separate and distinct from his own money, and he is hereby expressly prohibited from using, either directly or indirectly, the city money or warrants in his hands for his own use or benefit, or that of any other person whomsoever.

(c) The clerk—treasurer shall report to the finance committee, as often as required, a full and detailed account of all receipts and expenditures of the city, as shown by his books up to the time of his report, and he shall annually, in the month of July, make out and file a full and detailed account of all such receipts and expenditures and all his transactions as such treasurer during the preceding fiscal year.

State law reference(s) — Functions as treasurer generally, NMSA 1978, § 3-37.1 et seq.

(d) The Treasurer/Financial Officer shall be responsible for the performance, functions, and all personnel of his office.
Sec. 2-89 Bond

The Treasurer shall execute and deliver within ten days after appointment a surety bond of no more than $50,000.00 to be approved by the city council, with such bond to be conditioned upon the faithful performance of the office’s duties. The premium of the bond shall be paid by the city.

Sec. 2-90 Deputy Treasurer

There shall be a Deputy Treasurer who may exercise the powers and duties granted the Treasurer in the absence or disability of the Treasurer and as assigned by the Treasurer. The deputy Treasurer shall be recommended by the Treasurer through the mayor’s nomination for approval by the governing body.

Sec. 2-91 Auditor

The office of Treasurer shall have an Auditor. The Auditor shall be nominated by the Mayor for approval by the governing body. If approved, the Auditor will be employed through the Treasurer’s office. The auditor will report directly to the governing body and the treasurer.

2-69. Duties as clerk.

It shall be the duty of the clerk-treasurer to record all proceedings of the governing body in a book provided for that purpose and to record all ordinances in the ordinance book and all resolutions in the book to be known as the resolution book. He shall make out all licenses to be issued under ordinances of the city, and counter-sign the same under the city seal; before issuing any license, he shall present the same to the mayor for his signature and approval. He shall keep a full and complete record of warrants and licenses, with the names of the parties to whom issued, including dates, amounts and numbers, and the purpose for which issued, and shall, on the first day of each month, or as soon thereafter as the same can be completed, and at such other times as the governing body may require, prepare a full and complete report of all warrants and licenses issued and of all money collected belonging to the city, and of all other transactions of his office during the month preceding such report, and shall submit the same to the governing body at its first regular meeting in each month. He shall be the keeper of the city seal, and shall affix the seal to all instruments which are required to be attested by the city seal. He shall have the custody of and safely keep all records and documents of the city except as otherwise provided by law. In addition to the duties above enumerated he shall perform such other duties as may be enjoined upon him by ordinance.

(Code 1962 § 2-47)

Secs. 2-70—2-80. Reserved.

DIVISION 3-CHIEF OF POLICE

See 3-5. CHIEF OF POLICE

City of Roswell

Legal Committee
Sec. 2-92 Qualifications

The city manager, Chief of Police shall have at least 15 years of law enforcement experience.

Sec. 2-93 Duties

(a) The chief of police shall be appointed by responsible for executing the mayor, with duties prescribed in § 3-13-2 and faithfully enforce the consent ordinances of the city. He shall keep such records and make such reports concerning the activities of his department as may be required by statute or by the city council.

(b) The chief shall be responsible for the performance of police department functions, and all personnel of the police department.

(c) The chief of police or his designee shall attend all meetings of the governing body, and shall be at the principal administrative officer request of a committee chair, unless excused by the city mayor. He shall be responsible to the execute all summons and requests of the governing body for the proper administration of all affairs of the city.

(Code 1962 §

Sec. 2-94 Deputy Chief

There shall be a Deputy Chief of Police who may exercise the powers and duties granted the chief of police in the absence or disability of the chief of police and as assigned by the chief of police. The deputy chief of police shall be recommended by the chief of police through the mayor’s nomination for approval by the governing body.

Sec 2-49)

State law reference(s)—Authority for manager, NMSA 1978, § 3-13-3; manager generally, NMSA 1978, § 3-14-13 et seq.
ARTICLE VII – Real Property Transactions

Sec. 2-201 - No Existing Municipal Purpose

(a) Prior to the sale, exchange, or donation of real property belonging to the city, such real property shall be determined to be not essential for any municipal purpose.

(b) The Mayor and City Manager or his designee shall make this determination in writing and communicate the determination to the governing body as appropriate under this article.

Sec. 2-202 - Appraisal

(a) Prior to sale, lease, or exchange of real property, the Mayor and City Manager or his designee shall cause an appraisal to be made by a qualified appraiser.\(^1\) For property appraised in excess of $25,000.00, excluding real property of any value normally leased in the regular operations, the following applies:\(^2\):

(1) If the sale or lease price is less than the appraised value, the Mayor and City Manager or his designee shall cause a detailed written explanation of that difference to be prepared prior to sale or lease, and the written explanation shall be made available to any interested member of the public upon demand.\(^3\)

(2) No real property shall be sold or exchanged for less than 90% of its appraised value unless for the development of affordable housing or to the state, any of its political subdivisions or to the federal government after a determination by the administration or governing body as provided herein that such sale, exchange, or donation is in the best interests of the City.

Sec. 2-203 - Notice and Approval of Sales

(a) Real property having a value of $10,000.00 or less may be sold for cash at a public or private exchange by the Mayor and City Manager or his designee without prior approval from the governing body.

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\(^1\) 3-54-1(b)
\(^2\) 3-54-1(a)
\(^3\) Id.
Such sales shall be communicated in writing to the legal committee by the administration at the next regular meeting of the governing body.

(b) Real property having a value in excess of $10,000.00 and up to $25,000.00 may be sold by a majority vote of the governing body.

(c) Real property having a value in excess of $25,000.00 shall be by ordinance of the municipality. Such an ordinance shall be effective forty-five days after its adoption, unless a referendum election is held pursuant to NMSA 1978, 3-54-1. The ordinance shall be published prior to adoption pursuant to the provisions of § 3-1-2(J) and Section §3-17-3 and shall be published after adoption at least once within one week after adoption pursuant to the provisions of §3-1-2(J). Such publications shall concisely set forth at least:

(1) the terms of the sale or lease;
(2) the appraised value of the real property;
(3) the time and manner of payments on the sale or lease;
(4) the amount of the sale or lease;
(5) the identities of the purchasers; and
(6) the purpose for the municipality making the sale or lease.

(d) All contracts which are submitted to the governing body in accordance with the requirements of this section shall be supported by the current appraisal relied upon to determine the value of the city property, the governing body’s determination that the property is not essential for a municipal purpose, and a description of the disposal process and the other offers received.

Sec. 2-204 - Zoning

(a) Prior to being sold, the real property’s description shall be submitted to City Planning for review of its zoning to determine that the zoning is appropriate in terms of the city's master plan and the potential use of the property. If Planning determines that the zoning is appropriate, it shall so notify the administration. If Planning determines that the zoning is not appropriate, it shall initiate a zone change to an appropriate zone, and it shall notify the administration of the final action taken on this request. No real property shall be appraised or disposed of until Planning has notified the administration that it is appropriately zoned or until Planning has notified the administration of final action on its request for a zone change.

Sec. 2-205 - Leases of Real Property owned by the City
(a) Leases or other conveyances normally leased in the course of regular operations for real
property for a specified term of an interest owned by the City, assignment of leases, or
amendments to such leases or other conveyances shall be submitted to the governing body
by the administration after negotiation or prior to bidding when:

(1) The term of the lease or other conveyance is proposed to be in excess of one (1)
year. For the purposes of this division, “term of conveyance” shall include not only
the initial term but also any option to renew where the option is at the sole discretion
of the lessee; or

(2) The term of the lease or other conveyance is proposed to be in excess of one month
and the income or other consideration to be received by the city is proposed to be
in excess of $5000.00 per month. For purposes of this section, an easement granted
to a utility operating under a franchise granted by the city shall not be considered
as a lease or other conveyance.

(b) The Mayor and Manager or his designee may enter into leases not subject to the provision
above. All leases not subject to prior governing body approval shall be communicated in
writing to the legal committee at its next regular meeting.

(1) Any lease not subject to a vote by the governing body shall be reported or presented
to the governing body with a written communication describing circumstances,
benefits, responsibilities, advantages of such a contract and the property’s appraised
value.

(c) A statement that all applicable federal regulation regarding use and lease pricing have been
met shall accompany all leases originating from the airport.

(d) Leases not made in the course of regular operations shall follow procedures as described
in Sec. 2-203.

Sec. 2-206 - Acquisition of Real Property

(a) The Mayor and Manager or his designee is authorized to enter into contracts for the
acquisition of any interest in real property, subject to the approval of the governing body
as provided below:

(1) The Mayor and City Manager or his designee may acquire real property when
sufficient money, designated for acquisition of the property, has been previously
appropriated by the governing body through the budget or other action.
(2) All other real property contracts shall not be executed until a majority of the governing body has approved and sufficient money has been appropriated by the governing body.

(b) All contracts subject to subsection (a) shall be reported or presented to the governing body with a written communication describing circumstances, benefits, responsibilities, advantages of such a contract and the property’s appraised value.

Sec. 2-207 Leasing of Real property by the City

(a) Leases or other conveyances, except construction and utility easements, for a specified term of an interest in real property to the city or amendments to such leases or other conveyances shall be submitted to the governing body for approval by the Mayor and Manager after negotiation when the term of the lease or other conveyance is proposed to be in excess of one (1) year and the income or other consideration to be paid by the city is proposed to be in excess of $1667.00 per month.

(1) All proposals which are submitted to the governing body in accordance with the requirements of this section shall be supported by a communication setting out the circumstances, benefits, responsibilities and advantages relative thereto.

(b) All leases or other conveyances, except construction and utility easements, for a specified term of an interest in real property to the city or amendments to such leases or other conveyances may be executed by the Mayor and City Manager or his designee if they are below the threshold established in subsection (a).

(1) All leases not subject to prior governing body approval shall be communicated in writing to the legal committee at its next regular meeting.

(2) The communication shall be supported by a message setting out the circumstances, benefits, responsibilities and advantages of the lease, and include a statement regarding how fair market value for the leased property was established and if the lease is below, at, or above such a value.

(c) The Mayor and Manager or his designee may enter into one interim lease for any particular transaction of no more than 45 days to allow for approval of the governing body. In the event the governing body does not approve of the lease within the 45 days, the lease shall terminate instantly upon such the disapproval or completion of 45 days.

Sec. 2-208 Misrepresentations and Omissions
Any person who misrepresents or intentionally omits information that is required to be communicated to the legal committee or the governing body regarding any transaction in this Article shall be guilty of a misdemeanor.
SECTION 2. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

SECTION 3. If any section, paragraph, clause or provisions of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

SECTION 5. This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED and APPROVED _________________ ______.

CITY SEAL

______________________________
Timothy Z. Jennings, Mayor

ATTEST

_____________________
Amalia Martinez, Interim City Clerk
ORDINANCE 24-XX

AN ORDINANCE AMENDING CHAPTER 2 THE ROSWELL CITY CODE

WHEREAS, the City of Roswell (the "City") has the authority and obligation under NMSA1978, §3-12-4 to provide for certain appointed officers; and

WHEREAS, the Attorney General in Opinion 22-02 has provided additional guidance on the interpretation of §3-12-4; and

WHEREAS, clarifications and additions regarding appointed officers and City Council procedures to the City’s Administrative Code would be beneficial to efficient and ethical running of City business and will improve accountability and administrative functions of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

SECTION 1. Chapter 2 of the Roswell City Code is hereby amended as follows:

ARTICLE II. GOVERNING BODY

DIVISION 1. GENERALLY

Sec. 2-21-35. Reserved

DIVISION 2. RULES OF ORDER AND PROCEDURE

Sec. 2-36. Conduct at meetings.

No disorderly conduct or obscene language shall be allowed while the governing body is in session. The presiding officer may have any person removed from the room for violating this section.

Sec. 2-37. Committees generally.

(a) The standing committees of the governing body shall be as follows:
   (1) Finance;
   (2) General services and Infrastructure;
   (3) Public safety;
   (4) Legal.

(b) The standing committees shall consist of five members of the governing body. All members of all committees shall be appointed by the mayor who shall designate the chair and vice chair thereof. Three members of each committee shall comprise a quorum to do business.
(c) No member of council who is appointed as a chair of any standing committee shall be appointed as chair or vice chair of any other standing committee.

(d) The mayor may also establish such temporary committees for specific purposes as needed, and appoint the members thereof. Unless otherwise authorized by the governing body, temporary committees shall be advisory only and may make recommendations which are not binding on the governing body.

Sec. 2-38. Committee referrals to the City Council
Generally, in order for a proposed action to go before the full governing body the action must be referred by the two most applicable committees. However, if not referred to the governing body by two committees, through written notice to the City Clerk, five (5) councilors or the mayor may place an item before the governing body.

Sec. 2-39. Roll call votes.
Any member of the governing body has the right to demand a vote by roll call on any question.

Sec. 2-40. Committee assignments and responsibilities.
The scope of assignments and responsibilities for the various standing committees in the following sections are descriptive and not intended to be exhaustive or mandatory.

Sec. 2-41. Finance committee.
The finance committee shall review and consider city finances, the city manager's proposed budget, amendments to adopted budgets, the financial aspects of the infrastructure capital improvements plan (ICIP), and financial policies, including those relating to investment, financial contingency management, and purchasing. The finance committee shall also review audits, certified annual financial reports (CAFR), and periodic financial reporting.

Sec. 2-42. General services and Infrastructure committee.
The general services and infrastructure committee shall review and consider policies that affect operations of the various departments of the city, other than those departments which fall under the public safety committee, including recommending policy changes regarding the provision of city services, fee structures, and operational hours. The general services and infrastructure committee shall also review and consider the award of bids and proposals solicited by the city as required by city policies, resolutions, ordinances and applicable state and federal law and consider proposed actions that concern the physical assets of the city, including vehicles, equipment, buildings, land, water and sewer systems and streets. The infrastructure committee shall propose capital improvement plans.

(Ord. No. 15-03, § 7, 4-9-2015)
Sec. 2-43. Public safety committee.

The public safety committee shall review and consider policies that affect the operations of the police department, fire department, code enforcement department, 911 dispatch, ambulance services, emergency management and preparedness, animal control, and other public safety programs such as alarm ordinance and neighborhood watch, and fees associated with the provision of the foregoing public safety services. The public safety committee shall also review and consider policies concerning behavioral health issues that were formerly considered by the city's commission on behavioral health.

(Ord. No. 15-03, § 9, 4-9-2015; Ord. No. 16-15, § 9, 7-14-2016)

Sec. 2-44. Legal committee.

The legal committee shall review and consider all proposed ordinances, codes, and policies which are adopted by the governing body, as well as issues such as eminent domain and annexation. The legal committee shall also review and consider proposed actions that pertain to development codes or plans which are general and legislative in nature, as opposed to actions which are adjudicatory in nature.

Sec. 2-45. Validity of actions taken by governing body; referral to committee not a prerequisite.

A proposed action by the governing body is not required to be referred to a standing or temporary committee for a recommendation before being considered and acted upon by the governing body, and the failure to refer a proposed item to committee prior to action by the governing body shall not affect the validity of any action taken by the governing body.

Secs. 2-47—2-50. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Sec. 2-51. Oath.

Every elected officer and appointed officer shall, before entering upon the duties of his office, take and subscribe the oath specified by law.

Sec. 2-52. Bonds.
Bonds executed or given by city officers or employees shall be filed with the clerk, who shall keep it in a secure place. The clerk shall record all bonds in a book to be kept for that purpose.

Sec. 2-53 Creation of Offices Appointed Officers

(a) There shall be independent offices apart from City departments. These offices are the office of the Clerk, Office of the Treasurer / Finance Officer, Office of the Chief of Police, and Office of the City Attorney.

(b) The appointive officers of the city shall be a city manager, city clerk, city treasurer / finance officer, chief of police, city auditor, and city attorney.

(c) All appointed officers must coordinate with the other appointed officers.

(d) The governing body, at its discretion, may in lieu of having an in-house office of the city attorney, contract with an outside individual or law firm for legal services.

Sec. 2-54 Appointment and Term

(a) With the exception of the Manager, at an organizational meeting of the city council the mayor shall submit for confirmation by the city council, the names of persons who shall fill the various appointive offices of the city or shall serve as members of the various boards or commissions of the city.

(b) If the city council fails to confirm any appointment, the mayor at the next regular meeting of the city council shall submit the name of another person to fill such office.

(c) All officers shall be at-will and every appointive officer shall hold a term provided for under state law.

Sec. 2-55 Compensation

The salaries, wages, fringe benefits, and compensation of city officers shall be as provided by the governing body through contract or through a compensation plan determined by the governing body.

SEC 2-56—2-65. Reserved.

DIVISION 2. CLERK

Sec. 2-66. Duties
(a) The city clerk shall have those duties as prescribed by state law, and in addition thereto and shall have such duties as may be prescribed by the city council.

(b) The city clerk shall be responsible for the performance, functions, and all personnel of his office.

Sec. 2-67. Licenses

It shall be the duty of the city clerk to issue all licenses upon receipt of proof of payment of any license fee and compliance with other ordinances. All licenses shall be signed by the city clerk or by an authorized person on behalf of the city clerk. All licenses shall have affixed thereto the city seal. Upon the face of the license shall be designated the purpose for which such license is granted and the length of time the license shall run. The city clerk shall keep and maintain in his office a record, to be known as the license record, which shall be a list of all licenses issued, the purpose of the license, the expiration date thereof, and the amount of money paid therefor.

Sec. 2-68. Seal.

The city seal shall be kept in the office of the city clerk and shall be affixed to all instruments and papers which by law or ordinance are required to be attested by the city seal. The city clerk shall have custody of and shall safely keep all public records, documents, ordinances, resolutions and orders of the city council and such other papers and documents as may be delivered into the custody of the city clerk.

Sec. 2-69. Deputy Clerks.

There shall be a Deputy City Clerk who may exercise the powers and duties granted the city clerk in the absence or disability of the city clerk and as assigned by the city clerk. The deputy city clerk shall be recommended by the city clerk through the mayor’s nomination for approval by the governing body.

Secs. 2-70—2-80. Reserved.

DIVISION 3. CITY MANAGER

Sec. 2-81. City Manager; Creation of office; appointment; powers and duties generally; qualifications.

(a) The office of city manager is created pursuant to NMSA 1978, § 3-13-3.

(b) The city manager shall be the Chief Administrative Officer of the City and have all of the powers and duties as set out in NMSA 1978, § 3-13-3.
(c) The manager shall work in conjunction with the governing body and other appointed officers to create the City’s budget and effectuate the polices and goals of the governing body.

(1) When administering contracts, the Manager may negotiate appropriate decreases or increases that are already within budget. This authority is not to exceed $20,000.00 for services or goods and $60,000.00 for professional services.

(d) The manager shall consult with the other appointed officers when taking any employment action, such as hiring, promoting, demoting, disciplining, or discharging, against employees that are part of the administrative service in the respective offices.

(e) The manager may create or reorganize the City’s departments as necessary with the consent of the governing body. Directors will be employed through the manager.

Sec. 2-82 Deputy City Manager

There shall be a Deputy City Manager who may exercise the powers and duties granted the manager in the absence or disability of the manager and as assigned by the manager. The deputy city manager shall be recommended by the manager through the mayor’s nomination for approval by the governing body.

Sec. 2-82 Bond

The city manager, within ten days after his appointment, shall furnish a surety bond approved by the city council, with such bond to be conditioned upon the faithful performance of his duties. The premium of the bond shall be paid by the city.

Sec. 2-83 Reserved

DIVISION 4. CITY ATTORNEY

Sec. 2-84 Qualifications

The City Attorney shall be admitted to the practice of law by the supreme court of the state, and he shall be in good standing in the State Bar of New Mexico. He shall have at a minimum 6 years of previous full time legal practice.

Sec. 2-85 Duties

The city attorney shall:
(a) be the chief legal officer of the City and legal adviser to the governing body. He shall attend all regular meetings of the council and such other meetings of the council as he shall be requested to attend by the mayor. He shall have the right to be heard at any meeting of the council at which matters involving questions of law are being discussed. He shall render to the council his opinion upon any question of law involving the interests of the city at all times when requested by the council to do so. He shall draft and prepare all contracts to be entered into by the city and shall submit the contracts to the council for its approval, whenever requested by the council to do so. He shall draft and prepare all city ordinances and shall submit the ordinances to the council for its approval, whenever requested by the council to do so.

(b) draft and prepare all process and papers for the use of police officers in the carrying out by them of the duties of their office, whenever requested by the police chief to do so. He may prosecute all actions brought in the municipal court on behalf of the city, whenever requested by the municipal judge to do so or whenever in his judgment it is for the general welfare of the city that any such action should be so prosecuted.

(c) supervise and pass upon the legality as to the manner and form of all bonds to be given by any city officer or by any person entering into such a contractual relationship with the city as requires the giving of a bond to the city.

(d) perform any other duties that are required by the governing and customary to the practice of law.

(e) The City Attorney shall be responsible for the performance, functions, and all personnel of his office.

(f) The City Attorney shall have pocket settlement authority of no more than $20,000.00 per occurrence. Such settlements shall not be made without the consent of the City Manager. The City Attorney shall make monthly reports of all settlement to the Legal Committee.

Sec. 2-86 Deputy City Attorney

There shall be a Deputy City Attorney who may exercise the powers and duties granted the city attorney in the absence or disability of the city attorney and as assigned by the city attorney. The deputy city attorney shall be recommended by the city attorney through the mayor’s nomination for approval by the governing body.

DIVISION 5. TREASURER / FINANCIAL OFFICER

Sec. 2-87 Qualifications

The Treasurer/Financial Officer shall have at minimum a bachelor’s degree in accounting, or hold
an advanced degree in an accounting or finance related field. The Treasurer/Financial Officer shall have 6 years’ experience in government accounting or finance or shall have 10 years of previous work in accounting, finance, or a related field.

Sec. 2-88 Duties.

(a) The Treasurer/Financial Officer shall be chief financial officer for the City.

(b) The treasurer shall receive all money belonging to the city, and shall keep his books and accounts in such a manner as may be prescribed by law. Such books and accounts shall always be subject to inspection of any member of the governing body. He shall keep a separate account of each fund or appropriation and the debts or credits belonging thereto. He shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and upon what account paid, and he shall file statements of such receipts with the chairman of the finance committee at the date of each monthly report. He shall, at the end of each month, and more often, if required, render an account to the city council or such officer as may be designated by ordinance, showing the state of the treasury. He shall also accompany such accounts with a statement of all money received into the treasury, and upon what account, during the preceding month, together with all warrants redeemed and paid by him, which warrants, with any and all vouchers held by him, shall be delivered to the governing body at the next regular meeting. He shall keep a register of all warrants redeemed and paid, which shall describe such warrants and show the date, amount, number, the fund from which paid, the name of the person to whom paid and when paid. He may be required to keep all money in his hands belonging to the city in such place of deposit as may be designated by ordinance; provided, that no such ordinance shall be passed by which the custody of such money shall be taken from him. He shall keep all money belonging to the city in his hands, separate and distinct from his own money, and he is hereby expressly prohibited from using, either directly or indirectly, the city money or warrants in his hands for his own use or benefit, or that of any other person whomsoever.

(c) The treasurer shall report to the finance committee, as often as required, a full and detailed account of all receipts and expenditures of the city, as shown by his books up to the time of his report, and he shall annually, in the month of July, make out and file a full and detailed account of all such receipts and expenditures and all his transactions as such treasurer during the preceding fiscal year.

(d) The Treasurer/Financial Officer shall be responsible for the performance, functions, and all personnel of his office.

Sec. 2-89 Bond

The Treasurer shall execute and deliver within ten days after appointment a surety bond of no more than $50,000.00 to be approved by the city council, with such bond to be conditioned upon the
faithful performance of the office’s duties. The premium of the bond shall be paid by the city.

Sec. 2-90 Deputy Treasurer

There shall be a Deputy Treasurer who may exercise the powers and duties granted the Treasurer in the absence or disability of the Treasurer and as assigned by the Treasurer. The deputy Treasurer shall be recommended by the Treasurer through the mayor’s nomination for approval by the governing body.

Sec. 2-91 Auditor

The office of Treasurer shall have an Auditor. The Auditor shall be nominated by the Mayor for approval by the governing body. If approved, the Auditor will be employed through the Treasurer’s office. The auditor will report directly to the governing body and the treasurer.

DIVISION 5. CHIEF OF POLICE

Sec. 2-92 Qualifications

The Chief of Police shall have at least 15 years of law enforcement experience.

Sec. 2-93 Duties

(a) The chief of police shall be responsible for executing the duties prescribed in § 3-13-2 and faithfully enforce the ordinances of the city. He shall keep such records and make such reports concerning the activities of his department as may be required by statute or by the city council.

(b) The chief shall be responsible for the performance of police department functions, and all personnel of the police department.

(c) The chief of police or his designee shall attend all meetings of the governing body or at the request of a committee chair, unless excused by the mayor. He shall execute all summons and requests of the governing body.

Sec. 2-94 Deputy Chief

There shall be a Deputy Chief of Police who may exercise the powers and duties granted the chief of police in the absence or disability of the chief of police and as assigned by the chief of police. The deputy chief of police shall be recommended by the chief of police through the mayor’s nomination for approval by the governing body.

Sec 2-95-2-99. Reserved.
ARTICLE VII. – Real Property Transactions

Sec. - 2-201 - No Existing Municipal Purpose

(a) Prior to the sale, exchange, or donation of real property belonging to the city, such real property shall be determined to be not essential for any municipal purpose.

(b) The Mayor and City Manager or his designee shall make this determination in writing and communicate the determination to the governing body as appropriate under this article.

Sec. 2-202 - Appraisal

(a) Prior to sale, lease, or exchange of real property, the Mayor and City Manager or his designee shall cause an appraisal to be made by a qualified appraiser. For property appraised in excess of $25,000.00, excluding real property of any value normally leased in the regular operations, the following applies:

(1) If the sale or lease price is less than the appraised value, the Mayor and City Manager or his designee shall cause a detailed written explanation of that difference to be prepared prior to sale or lease, and the written explanation shall be made available to any interested member of the public upon demand.

(2) No real property shall be sold or exchanged for less than 90% of its appraised value unless for the development of affordable housing or to the state, any of its political subdivisions or to the federal government after a determination by the administration or governing body as provided herein that such sale, exchange, or donation is in the best interests of the City.

Sec - 2-203 - Notice and Approval of Sales

(a) Real property having a value of $10,000.00 or less may be sold for cash at a public or private exchange by the Mayor and City Manager or his designee without prior approval from the governing body.

(1) Such sales shall be communicated in writing to the legal committee by the administration at the next regular meeting of the governing body.
(b) Real property having a value in excess of $10,000.00 and up to $25,000.00 may be sold by a majority vote of the governing body.

c) Real Property having a value in excess of $25,000.00 shall be by ordinance of the municipality. Such an ordinance shall be effective forty-five days after its adoption, unless a referendum election is held pursuant to NMSA 1978, 3-54-1. The ordinance shall be published prior to adoption pursuant to the provisions of § 3-1-2(J) and Section §3-17-3 and shall be published after adoption at least once within one week after adoption pursuant to the provisions of §3-1-2(J). Such publications shall concisely set forth at least:

1. the terms of the sale or lease;
2. the appraised value of the real property;
3. the time and manner of payments on the sale or lease;
4. the amount of the sale or lease;
5. the identities of the purchasers; add
6. the purpose for the municipality making the sale or lease.

(d) All contracts which are submitted to the governing body in accordance with the requirements of this section shall be supported by the current appraisal relied upon to determine the value of the city property, the governing body’s determination that the property is not essential for a municipal purpose, and a description of the disposal process and the other offers received.

Sec. 2-204 - Zoning

(a) Prior to being sold, the real property’s description shall be submitted to City Planning for review of its zoning to determine that the zoning is appropriate in terms of the city's master plan and the potential use of the property. If Planning determines that the zoning is appropriate, it shall so notify the administration. If Planning determines that the zoning is not appropriate, it shall initiate a zone change to an appropriate zone, and it shall notify the administration of the final action taken on this request. No real property shall be appraised or disposed of until Planning has notified the administration that it is appropriately zoned or until Planning has notified the administration of final action on its request for a zone change.

Sec. 2-205 - Leases of Real Property owned by the City

(a) Leases or other conveyances normally leased in the course of regular operations for real property for a specified term of an interest owned by the City, assignment of leases, or amendments to such leases or other conveyances shall be submitted to the governing body by the administration after negotiation or prior to bidding when:
(1) The term of the lease or other conveyance is proposed to be in excess of one (1)
year. For the purposes of this division, “term of conveyance” shall include not only
the initial term but also any option to renew where the option is at the sole discretion
of the lessee; or

(2) The term of the lease or other conveyance is proposed to be in excess of one month
and the income or other consideration to be received by the city is proposed to be
in excess of $5000.00 per month. For purposes of this section, an easement granted
to a utility operating under a franchise granted by the city shall not be considered
as a lease or other conveyance.

(b) The Mayor and Manager or his designee may enter into leases not subject to the provision
above. All leases not subject to prior governing body approval shall be communicated in
writing to the legal committee at its next regular meeting.

(1) Any lease not subject to a vote by the governing body shall be reported or presented
to the governing body with a written communication describing circumstances,
benefits, responsibilities, advantages of such a contract and the property’s appraised
value.

(c) A statement that all applicable federal regulation regarding use and lease pricing have been
met shall accompany all leases originating from the airport.

(d) Leases not made in the course of regular operations shall follow procedures as described
in Sec - 2-203.

Sec. 2-206 - Acquisition of Real Property

(a) The Mayor and Manager or his designee is authorized to enter into contracts for the
acquisition of any interest in real property, subject to the approval of the governing body
as provided below:

(1) The Mayor and City Manager or his designee may acquire real property when
sufficient money, designated for acquisition of the property, has been previously
appropriated by the governing body through the budget or other action.

(2) All other real property contracts shall not be executed until a majority of the
governing body has approved and sufficient money has been appropriated by the
governing body.

(b) All contracts subject to subsection (a) shall be reported or presented to the governing body
with a written communication describing circumstances, benefits, responsibilities, advantages of such a contract and the property’s appraised value.

Sec. 2-207 Leasing of Real property by the City

(a) Leases or other conveyances, except construction and utility easements, for a specified term of an interest in real property to the city or amendments to such leases or other conveyances shall be submitted to the governing body for approval by the Mayor and Manager after negotiation when the term of the lease or other conveyance is proposed to be in excess of one (1) year and the income or other consideration to be paid by the city is proposed to be in excess of $1667.00 per month.

(1) All proposals which are submitted to the governing body in accordance with the requirements of this section shall be supported by a communication setting out the circumstances, benefits, responsibilities and advantages relative thereto.

(b) All leases or other conveyances, except construction and utility easements, for a specified term of an interest in real property to the city or amendments to such leases or other conveyances may be executed by the Mayor and City Manager or his designee if they are below the threshold established in subsection (a).

(1) All leases not subject to prior governing body approval shall be communicated in writing to the legal committee at its next regular meeting.

(2) The communication shall be supported by a message setting out the circumstances, benefits, responsibilities and advantages of the lease, and include a statement regarding how fair market value for the leased property was established and if the lease is below, at, or above such a value.

(c) The Mayor and Manager or his designee may enter into one interim lease for any particular transaction of no more than 45 days to allow for approval of the governing body. In the event the governing body does not approve of the lease within the 45 days, the lease shall terminate instantly upon such the disapproval or completion of 45 days.

Sec. 2-208 Misrepresentations and Omissions

Any person who misrepresents or intentionally omits information that is required to be communicated to the legal committee or the governing body regarding any transaction in this Article shall be shall be guilty of a misdemeanor.
SECTION 2. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

SECTION 3. If any section, paragraph, clause or provisions of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

SECTION 5. This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED and APPROVED ________________, ______.

CITY SEAL

_____________________________
Timothy Z. Jennings, Mayor

ATTEST

___________________________
Amalia Martinez, Interim City Clerk
ARTICLE I. - IN GENERAL

Sec. 2-1. - City seal.

A seal, the impression of which shall be as follows: In the center the word "seal;" around the outer edge, the words, "City of Roswell, New Mexico;" shall be, and hereby is declared to be, the seal of the city.

Sec. 2-2. Governing Body Ethics

Members of the Governing Body shall:

(a) Always comply with the provisions of the Government Conduct Act, NMSA 1978, Chapter 10, Article 16.

(b) Not disclose or use confidential information concerning the property, government, or affairs of the City.

(c) Not vote or otherwise participate in the negotiation or the making of any contract with any business or entity in which the official has a direct private financial interest or there exists an interest of an immediate family member. A private interest includes a pecuniary or competitive advantage that exists or could foreseeably accrue as a result of the act or inaction of the official.

(d) Not vote or otherwise participate in any quasi-judicial matter where his impartiality may be reasonably questioned.

(e) Never exercise authority as a governing body member except when acting in a meeting with the full governing body or as delegated by law or the governing body.

(f) Never use the organization or his service on the governing body for his own personal advantage or for the individual advantage of his friends or supporters. This does not prohibit constituent services actions.

(g) Not accept any valuable gift, whether in the form of service, loan, thing or promise, from any employee of or applicant for employment with the City or from any person, firm or corporation which is interested directly or indirectly in any manner whatsoever, in business dealings with the City. This does not prohibit an incumbent candidate for any elective office from receiving duly disclosed campaign contributions.

(h) Not Accept and/or solicit campaign contributions for any candidate or Political Committee or other similar organization in any election or pre-election activity at a city workplace.
Sec 2-3. – Penalty

Any member of the governing body may bring a charge of violations of these Ethics Provisions. It shall be brought in writing before the City Manager and City Attorney. Following an investigation, if both concur that a violation occurred by a preponderance of the evidence, they shall cause the matter to be presented to the governing body. The charging governing body member shall present their case. If the governing body by majority vote agrees that any provision of Section 2-2 was violated the councilor may be subject to any discipline consistent with NMSA 1978, §3-12-3, including but not limited to reprimand, censure, and removal from committee assignments.
ROSWELL NEW MEXICO
AGENDA ITEM ABSTRACT

Regular Committee Meeting
Meeting Date: Thursday January 25, 2024
COMMITTEE: Legal
CONTACT: Hessel E. Yntema IV
CHAIR: Edward Heldenbrand

Item No. 7

ACTION REQUESTED:
Ordinance 24-XX Amending Chapter 21 Solid Waste of the Roswell City Code - Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 24-XX Amending Chapter 21 Solid Waste of the Roswell City Code with rate increase.

BACKGROUND:

Initiated by: Abraham Chaparro, Solid Waste Director

The Roswell City Code governing Solid Waste has not been updated in 35+ years and is in need of major revision. Currently, the Solid Waste Ordinance, as written, has 8 pages and 2 Articles. The amended Chapter 21 of the Roswell City Code currently has 50+ pages and 7 Articles.

Utilizing language from surrounding municipalities and out of state municipalities, staff has modernized Chapter 21 to reflect the appropriate terminology and current best practices. These revisions incorporate updated work methodologies to address the challenges that the city is facing by targeting deficiencies in the current code.

FINANCIAL CONSIDERATION

The proposed ordinance created no financial obligations for the city at this time.

LEGAL REVIEW:

The Ordinance was submitted to the City Attorney for review on May 1st, 2023.

BOARD AND COMMITTEE ACTION:

The Thursday January 25, 2024 meeting for Legal Committee will be the first meeting to consider this matter.

STAFF RECOMMENDATION:

Ordinance 24-XX Amending Chapter 21 Solid Waste of the Roswell City Code - Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 24-XX Amending Chapter 21 Solid Waste of the Roswell City Code with rate increase.

Attachments

ATT 1 - Ordinance 24-XX Amending Chapter 21 Solid Waste of the Roswell City Code DRAFT REDLINE
2 – Ordinance 24-XX Amending Chapter 21 Solid Waste of the Roswell City Code DRAFT CLEAN
3 – Solid Waste Department Executive Summary
CHAPTER 21 – SOLID WASTES

ARTICLE 1: IN GENERAL

Sec. 21-1 – Purpose

The purpose of this chapter is to establish minimum standards and requirements for the collection and disposal of solid wastes generated within the city in a manner consistent with guideline criteria promulgated by the environmental improvement agency, an instrumentality of the state. The provisions contained in this chapter are hereby declared to be regulatory and not for the purpose of revenue; and further, such regulations are necessary to protect and secure the public health, safety and general welfare, and are intended by way of implementation where they are not in conflict with pertinent laws and regulations of the state or any agency thereof in such case made and provided. In the event any requirement or provision herein shall be in conflict with or contrary to any such provision or regulation of state law, such state law or regulation shall prevail.

The purpose of this chapter is to protect the health and safety of the citizens of the City, and to protect the environment by establishing minimum standards for the storage, collection, treatment, transportation, processing, and disposal of solid wastes. The word “shall” is always mandatory and not merely directory. The provisions contained in this chapter are hereby declared to be regulatory; further, such regulations are necessary to protect and secure the public health, safety and general welfare, and are intended by way of implementation where they are not in conflict with pertinent laws and regulations of the state or any agency therefore in such case made and provided. In addition, this chapter identifies fees charged by the City to recover the city’s costs to fund the solid waste program. In the event any requirement or provision herein shall be in conflict with or contrary to any such provision or regulation of state law, such state law or regulation shall prevail.

Sec. 21-2 – Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section: the following definitions apply:

Abatement: To reduce in amount, degree or intensity or to eliminate.

Alley: A public passageway affording a secondary means of access to abutting property for utility, emergency, and solid waste vehicles.

Animal Waste: Consists of large animal waste, research animal waste, and small animal waste as defined herein:
A. Large animal waste: Is animal waste, discarded bedding, or flooring materials from yards, pens, corrals, stables, or other containment structures for domestic animals (such as cattle or horses) or permitted wild animals, that weigh more than 150 pounds.

B. Research animal waste: Is animal carcasses, body parts, or the bedding of animals that have been infected with agents that can cause human infection.

C. Small animal waste: Is animal waste, discarded bedding or flooring materials (such as straw, sawdust, or paper) from yards, kennels, dog or cat runs, chicken pens, aviaries, or other containment structures for domestic animals (such as dogs, cats, or fowl, including birds, chickens, ducks, or geese), or other tame or permitted wild animals, weighing 150 pounds or less.

Asbestos waste (Asbestos): A solid waste that contains more than 1 percent asbestos:

A. Friable asbestos material: Any material containing more than 1 percent asbestos that, when dry, can be crumbled pulverized, or reduced to powder by hand pressure;

B. Category I non-friable asbestos containing material: Means asbestos containing packing, gaskets, resilient floor covering, and asphalt roofing products containing more than 1% asbestos;

C. Category II non-friable asbestos containing material: Means any material, excluding category I non-friable asbestos containing material, containing more than 1% asbestos, that, when dry, cannot be crumbled pulverized or reduced to powder by hand; and

D. Regulated asbestos waste: Means friable asbestos material; category I non-friable asbestos containing material that has become friable; category I non-friable asbestos containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or category II non-friable asbestos containing material that has a high probability of becoming or has become broken, crumbled, pulverized, or reduced to powder by the forces expected to act on the Material in the Course of excavation, renovation, demolition, storage, transportation, or while exposed during disposal operations (NMAC 20.9.7).

Automated contained solid waste collection system: A contained waste collection system that utilizes City-specific solid waste containers and a solid waste collection vehicle equipped with a mechanized lifting device.

Biohazardous medical waste: Any waste that is composed of, or has a constituent of one of the following including but not limited to:
A. **Cultures and stocks:** Discarded cultures and stocks generated in the diagnosis, treatment, or immunization of human being or animal or in any research relating to that diagnosis, treatment, or immunization, or in the production of testing of bacteria.

B. **Human blood and blood products:** Discarded products and materials containing free-flowing blood or free-flowing blood components; and

C. **Human pathological waste:** Discarded organs and body parts removed during surgery.

**Bulk trash:** Items as defined in Section Sec. 21-32 – Residential bulk trash placement and collection services.

**Call Back:** A charged service for residential or commercial user(s) requesting additional service.

**Cell:** A confined area engineered for the disposal of solid waste (NMAC 20.9.2)

**City Block:** any territory smaller than five acres in size. An area in a City surrounded by streets.

**Clean fill:** Broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is uncontaminated, meaning the fill has not been mixed with any waste other than the foregoing and has not been subjected to any known spill or release of chemical contaminates, including petroleum product, nor treated to remediate such contamination; reinforcement materials which are an integral part, such as rebar, may be included as clean fill; clean fill must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste. (NMAC 20.9.2)

**Collection:** Providing a service of gathering solid waste from one or more persons or premises within the city, for the transportation to a point of disposal or recycling, or sanitary landfill, except in cases where such service is only incidental to the provision of other goods or services responsible for creation of the solid waste. Collection does not include the disposal of solid waste by the individual or entity that created it.

**Collection begins date:** The first day of the scheduled collection period, as established and published by the department.

**Commercial collection:** Solid Waste collected from any source other than from residential accounts.
Commercial containers: A solid waste container for use by a commercial user.

Commercial hauler: Any person transporting solid waste for hire by whatever means for the purpose of transferring, processing, storing or disposing of the solid waste in a solid waste facility, except that the term does not include an individual transporting solid waste generated on his residential or business premises for the purpose of disposing of it in a solid waste facility.

Commercial or industrial establishments: Any building, structure, or premises not defined as a dwelling unit in this section.

Compactor or roll-off system: A contained solid waste collection system that uses a stationary solid waste compactor and bins or open top roll-off containers.

Construction and demolition waste: All solid waste, building materials, rubble, soil and spoils resulting from construction, remodeling, repair, and demolition operations.

A. The term “construction and demolition solid waste” includes rocks, soil, tree remains, trees and other vegetative matter that normally results from clearing land.

B. The term “construction and demolition solid waste” does not include asbestos or liquids including but not limited to: waste paints, solvents, sealers, adhesives or potentially hazardous materials.

Contained solid waste materials: Solid Waste placed in designated containers for disposal.

Contaminated load: Any load of solid waste, green organics, or recyclables containing unacceptable materials.

Contaminated tire: An old discarded tire that is leaching chemicals and oils. Can also be tires with foam in them.

Department: The City of Roswell Solid Waste Department.

Director: The Solid Waste Director or the Director’s designee.

Disposal Facility: Means The sanitary landfill or site for the disposal of solid wastes.

Dwelling unit:

A. A single unit providing independent living facilities for one or more persons including provisions for living, sleeping, eating, cooking, and sanitation; or
B. One or more rooms within a building arranged, designed or used for residential purposes for one or more persons and containing independent sanitary and cooking facilities.

C. Dwelling unit and living unit are terms that may be used interchangeably.

_E-waste_: Electronic waste, e-scrap or end-of-life electronics. Used electronics that are nearing the end of their useful life.

_Fly tight_: The lid of the container must fit flush around all contact points and prevent entry of flies or rodents.

_Fiscal Year (FY):_ Fiscal Year is July 1-June 30

_Franchise_: An authorization granted by the City of Roswell to an individual or group enabling them to carry out specified Solid Waste collection and transporting activities.

_Garbage_: Swill, offal, and any accumulation of spoiled, partially or fully decomposed, rotting or discarded animal, vegetable, or other matter that attends the preparation, handling, consumption, storage, or decay of plant and animal matter including but not limited to: meats, fish, fowl, fruits, vegetable, or dairy products and their waste wrappers or containers.

_Gross vehicle weight (GVW):_ Weight of the vehicle plus load and driver of the vehicle used to determine the fee for the City of Roswell, Roswell Municipal Landfill.

_Hazardous Waste_: Polychlorinated biphenyls (PCBs) and any waste so defined by the New Mexico Environment Department as defined in 40 CFR 261.3.

_Home appliance_: Includes but is not limited to washers, dryers, stoves, dishwashers, hot water heaters, refrigerators, freezers, televisions and computer equipment.

_Hot load_: Any vehicle carrying solid waste observed to be smoldering, smoking, on fire, giving off toxic odor, or leaking a potentially caustic substance.

_Household hazardous waste_: Any waste that would otherwise be hazardous waste pursuant to (NMAC 20.4.1) but is excluded as a hazardous waste because it is generated by the normal day-to-day activities of households.

_Imminent health or safety hazard_: Condition of real property, solid waste container that places a person’s life, health, safety, or property in high risk of peril when such condition is immediate, impending on the point of happening and menacing.
**Incipient hazard:** Condition of real property that can become an imminent health hazard if further deterioration occurs that can cause unreasonable risk of death or severe personal injury.

**Inclement weather:** Severe or harsh weather that hinders landfill and collection services. This is so decided by the Director or the designee’s discretion.

**Industrial solid waste:** Any solid waste as defined in this section produced as a result of any industrial operation.

**Infectious solid waste:** A limited class of substances that carry a risk of transmitting disease, including but not limited to:

A. **Microbiological laboratory wastes:** Including clinical and stocks of infectious agents from clinical research and industrial laboratories, and disposable culture dishes and devices used to transfer, inoculate and mix cultures;

B. **Pathological wastes:** Including human or animal tissues, organs, and body parts, removed during surgery, autopsy, or biopsy;

C. **Disposable equipment:** Gloves, instruments, utensils, and other disposable materials which require special precautions because of contamination by highly contagious diseases;

D. **Blood and blood products:** Including waste blood, blood serum and plasma;

E. Used gloves, sharps, including used hypodermic needles, syringes, scalpel blades, Pasteur pipettes, and broken glass; and contaminated animal carcasses, body parts and bedding, especially those intentionally exposed to pathogens in research, in the production of biological or the in vivo testing of pharmaceuticals.

**Institutional establishment:** Any school, church, nonprofit organization, or government facility. Dwelling units owned and operated by the institutional establishment are not included in this definition.

**Landfill:** A New Mexico Environment Department (NMED) permitted landfill.

**Medical Sharps:** Discarded sharps used in animal or human patient care, medical research, or clinical laboratories. This includes hypodermic needles, syringes, pipettes, scalpel blades, blood vials, needles attached to tubing, broken and unbroken glassware, slides and cover slips.
Medical solid waste: Animal tissue or any part of an animal body that has been removed by surgery, and any contaminated material such as, but not limited to, tissues, bandages, and hypodermic needles.

Mobile home parks: Property owned and operated for the purpose of leasing or renting out mobile home space to tenants.

Motor vehicle: Any vehicle which is designed to be self-propelled and travel along the ground and shall include, but not be limited to, Automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, go-carts, golf carts, recreational vehicles, and motor homes.

Motor vehicle tire: A passenger car or light truck tire.

Multifamily dwelling units: A building or buildings attached to each other that contains two or more dwelling units. This term is intended to apply to dwelling unit types such as duplex, triplex, fourplex, and apartments.

NMED: New Mexico Environment Department.

Noncombustible solid waste: Any miscellaneous solid waste material that will not burn at ordinary incinerator operating temperatures (up to 2,000 degrees Fahrenheit or 1093.33 degrees Celsius) and are the inorganic component of solid waste.

Nonhazardous liquid waste: Any liquid waste defined as nonhazardous liquid waste by the NMED.

Notice: Any method of communication reasonably calculated to inform interested parties that a violation of ordinance is observed and includes, but is not limited to: in person notification, posting a notice and notification via United States Postal Service.

Obnoxious materials: Any solid waste that when exposed, is unpleasant or offensive to the senses due to its odor or condition.

Owner: A person, persons, or legal entity listed as current titleholder as recorded in the official records of the Chaves County Assessor’s Office.

Pathogenic liquid or solid waste: Any liquid or solid waste causing or capable of causing disease.

Person: means any person owning, operating or controlling any house, residence, shop, commercial establishment, hotel, restaurant, market, apartment, condominium or tenement house or any other place of business within the city, to include tenants, lessees or occupants. Any private individual, institution, state, municipal, county or private corporation, individual
partnership, or other entity.

Premises: means business houses, apartment houses, offices, theaters, hotels, residences, commercial establishments of any character, settlements hospitals, schools, vacant lots and all other places within the corporate limits where solid waste accumulates. Land, buildings, or other structures, or parts thereof, where solid waste is stored or accumulated.

Private property: shall mean Any real property within the city which is privately owned and which is not public property, as defined in this section.

Private Solid waste collection haulers: Solid waste collection operations owned and operated by private individuals or business that holds a Franchise Contract issued by the City.

Public buildings: All buildings or structures owned or leased by governmental agencies and used for the purpose of conducting public business.

Public nuisance: Anything that is injurious or obnoxious to health, or is offensive to the senses, or is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by any considerable number of persons, or that obstructs the free passage or use, in the customary manner, of any street, alley, sidewalk, or public property.

Public Property: shall mean Any street or highway which shall include the entire width between the boundaries lines of every way publicly maintained for the purposes of vehicular travel and shall also mean other publicly owned property or facility.

Published by the Department: Publication of written information, materials or documents by the Department in a manner intended to provide notice of interested parties. Publication may be accomplished by direct mailing, conspicuous posting at City facilities, or posting on the City website.

Putrescible solid waste: Solid waste that is capable of being decomposed by microorganisms with sufficient rapidity to cause nuisances from odors or gases and capable of providing food for of attracting birds, insects, snakes, rodents, or animals capable of transferring a diseased bacterium or virus from one organism to another.

Radioactive waste: So, defined by the state of New Mexico in NMAC 20.9.2

Rear load container: A contained solid waste collection system utilizing 3 to 10 cubic yard containers that is serviced by rear-loading trucks.

Recycling: means The segregation of reusable materials preparatory to industrial processing of such materials, whereby such material is converted into a new product so that the original
product is no longer identifiable.

Refrigerants: Chlorofluorocarbon (CFC) and hydro chlorofluorocarbon (HCFC) and other ozone depleting substances as defined in EPA regulations (40 CFR Part 82, Subpart F) under Section 608 of the Clean Air Act and ammonia when used in an appliance.

Responsible party: An occupant, lessor, lessee, agent, licensee, owner, or other person having control over a structure or parcel of land.

Restricted Revenue/Expense Accounts: Funds restricted by ordinance as to use. Funds may only be used for stated purpose unless acted upon by resolution of the city council after required public hearing.

RML: Roswell Municipal Landfill.

Roll-off container: A container used to collect solid waste material that is ten cubic yards or greater and collected with a roll-off vehicle.

ROW: Right of Way, real property owned by the City, whether title is held in fee, easement, right-of-way, or otherwise, whether recorded or unrecorded, including prescriptive rights and licenses.

Sanitation fee: A fee assessed by the City for solid waste services.

Sanitation officer: means the department head of the sanitation department of the city.

Scavenging: means the removal of solid waste from a disposal facility. Includes but is not limited to any action or inaction to facilitate or participate in the unauthorized pilfering, searching, gathering segregating, removal, buying selling, trading or using material within or from the City properties, facilities, or work sites.

Schools: All public and private buildings used for preschool, elementary, specialized, or higher education purposes.

Solid waste: means Garbage, rejected or waste food, offal, swill, carrion, dirt, slop, wastewater, trash rubbish, cast-off items, parts of autos, clothing, mattresses, tires, paper, cartons, salvage or unwholesome materials of any kind or description but not including special or hazardous waste, or human body parts; except sewage, but including commercial, industrial, institutional and recreational wastes and any article or substance commonly discarded as waste or which, if discarded on the ground, will create or contribute to an unsanitary, offensive or unsightly condition.
**Solid waste container:** A receptacle owned and used by the City, purchased from the city or built to city specs, used exclusively for the storage of solid waste, excluding yard, hazardous, construction, and demolition waste, until it is collected.

**Solid waste disposal facility:** Any site owned, operated, or utilized by any person for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste. That is licensed through the New Mexico Environment Department.

**Special waste:** Solid waste that has unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety, including:

A. Treated formerly characteristic hazardous wastes (TFCH);

B. Packing house and killing plant offal;

C. Regulated asbestos waste;

D. Ash, except ash produced by a law enforcement pharmaceutical incinerator for the incineration of household pharmaceutical waste;

E. Infectious waste;

F. Sludge, except sludge that is land applied under 40 CFR Part 503 as intermediate or final cover at a landfill and meets the requirements of Subpart B of 40 CFR Part 503;

G. Industrial solid waste that, unless specially handled or disposed, may harm the environment or endanger the public health or safety;

H. Spill of a chemical substance or commercial product that, unless specially handled or disposed, may harm the environment or endanger the public health or safety; and

I. Petroleum contaminated soils that have a sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations of greater than 50 mg/kg, or benzene individually greater than 10 mg/kg or a total petroleum hydrocarbon concentration of greater than 100 mg/kg

(NMAC 20.9.2)

**Tare weight:** Empty weight of vehicle with driver.

**Townhouses or condominium:** All individually owned dwelling units sharing a common area and with two or more units sharing a common wall.
Unacceptable material: Any material the City has deemed improper for collection as determined by the Director and published by the Department.

Volume based service fee: A fee charged for collection or disposal services based on the quantity of waste material, the size of the container, or both.

Watertight: The lid of the container must fit flush around all contact points and prevent entry of rain.

State law reference – Municipal authority relative to solid wastes, NMSA 1978, 3-48-1 et seq.

Sec. 21-3 – Enforcement

It shall be the duty of the sanitation officer to supervise the handling and collection of all solid waste within and for the city, as well as the disposal thereof. He shall enforce such regulations as the governing body may from time to time adopt, relating to procedures, schedule of charges and frequency and times of solid waste collection, including the provisions of this chapter.

Sec. 21-3 – Authority of the Solid Waste Director.

The director, in order to protect the health and safety of the citizens and the environment of the City, is authorized and directed to implement and enforce the provisions of this chapter to control the storage, collection, treatment, transportation, processing, and disposal of solid waste. The director is further authorized and directed, to provide public solid waste disposal facilities for solid waste originating within the City. They shall enforce such regulations as the governing body may from time to time adopt, relating to procedures, schedule of charges, and frequency and times of solid waste collection, including the provisions of this chapter.

Nothing in this chapter is intended to or may be construed so as to infringe or supplant the authority of the New Mexico Department of Health, New Mexico Environment Department, and/or The United States Environmental Protection Agency in this area pursuant to Federal and State Laws.

A. Designation of Enforcement Authority: The Director may issue notice for lack of compliance or violation of this chapter, and/or the solid waste rules and regulations. Any city police officer, building inspector, code enforcement officer, fire marshal, or any other city employee authorized by the governing body, is authorized to issue citations for any violations of this chapter, and proceed with enforcement.

B. The Director will enforce the provisions of this chapter. In addition, the Director is authorized to abate conditions that in the opinion of the Director are an incipient
hazard and/or are an imminent threat to health and safety of any person or persons.

C. The Director is authorized to make reasonable and necessary rules and regulations to carry out provisions of this chapter.

Sec. 21-11 21-4 – City’s Exclusive Right to Collect Solid Wastes.

The City and its duly authorized agents, servants or employees reserve the exclusive right to engage in the collection of solid waste within the City. It shall be unlawful for any person to engage in the collection of solid waste within the city, except as permitted by the City pursuant to a duly authorized franchise contract per Sec. 21-34 – Franchise Fee.

Sec. 21-5 – 21-10 – Reserved

ARTICLE 2: MUNICIPAL COLLECTION AND DISPOSAL SERVICE SOLID WASTE CONTAINMENT

Sec. 21-13 – Manner of Disposal Generally.

A. Solid waste shall be disposed of in the manner prescribed by the sanitation officer.

B. No material as may be prohibited by the state environmental improvement agency will be accepted for disposal in the landfill.

Sec. 21-11 – Inspection of Containers.

Provisions shall be made for regular inspections by the Department to secure compliance with this chapter with reference to containment of solid waste. The Director has the right to enter commercial, industrial, and institutional establishments for inspection purposes only. (NMSA 24-1-16)

Sec. 21-14 — Use and Maintenance of Disposal Area

Solid waste collected by the city or other authorized persons shall be deposited at such point or areas as may be designated by the governing body as the solid waste disposal area. The solid waste disposal area shall be maintained in such a manner as not to become a public nuisance and, in any case, shall be maintained in accordance with the duly adopted regulations of the environmental improvement agency of the state.

Sec. 21-12 – Responsibility for Solid Waste

A. The Responsible party of any premises or business establishment is responsible for solid waste until those waste materials are collected by the City, agents of the City, or
licensed solid waste haulers.

B. The responsible party of any premises, business establishment or industry is responsible for the sanitary condition of said premises business establishment, or industry, and for the proper storage, containment, and placement for collection of all solid waste. Except as provided in this chapter, it is a violation for any person to bury, dump, dispose, or release upon any street, alley, right-of-way, or public land any solid waste including construction and demolition solid waste and tires.

(NMSA 3.48.2)

Sec. 21-13 – Accumulation of Solid Waste

A. No person shall allow any solid waste to accumulate upon premises or real property owned, leased, or occupied by them during intervals between collection thereof, except in the manner provided by this chapter.

B. It shall be unlawful to deposit any solid waste in or upon the streets, alleys, sidewalks, gutters, right of ways, or vacant land within the City, except in the assigned containers as hereinafter specified.

C. No person shall allow any material or solid waste on residential or commercial properties to accumulate in or around the circumference of a fire hydrant, objections must be submitted to the Fire Marshall. A minimum of 8 feet with no maximum, of clear space from the fire hydrant must be maintained at all times.

D. When a City of Roswell designated official deems an accumulation has become nuisance, create a fire hazard, or should it appear to be a matter of public necessity for health or safety reasons, or should such accumulation be otherwise violating this chapter, the responsible party of the premises shall be notified in person, by notice posted upon the premises or by mail. The notice shall describe the violation and shall establish a reasonable time limit for abatement thereof by the person/responsible party, at their own expense. Compliance shall be given within 15 days after the day of notice, except in cases where hazardous materials are involved, in which case the compliance period shall be shortened to 48 hours per Sec. 21-46 – Violations and Penalties.

E. In the event the responsible party does not respond to the notice of violation, or compliance, the city will proceed with enforcement and abatement pursuant of Sec. 21-48 – Abatement and appeal.

(NMSA 3.48.4)
Sec. 21-17—Disturbing contents of containers

It shall be unlawful for any person to disturb or scatter the solid waste or contents of the solid waste receptacles required by section 21-16.

Sec. 21-14 – Unobstructed Passage in Streets and Alleys.

A. It is a violation for any person to permit trees, shrubs, or brush growing upon their property to encroach on or over any public right-of-way so as to interfere with the movement of persons or vehicles. It is the responsibility of the responsible party to trim trees or shrubbery on their property and in the adjacent right-of-way back to their property line and allow 18-foot-high clearance measured from ground level.

B. It shall be unlawful to have any obstruction, including but not limited to parked vehicles, within 15 feet of a solid waste container placed out for collection service or to obstruct the solid waste operations in any other manner.

C. The property owner shall be responsible for trash, debris, weeds, bulk trash, accumulation of waste adjacent to their property line and adjacent to the city ROW.

Sec. 21-16 21-15 – Containers Generally Solid Waste Containers

General statement. The responsible party of any premises, business establishment, or industry is responsible for the sanitary conditions of the premises, business establishment, or industry and for the proper storage, containment, and placement for collection of solid waste. All solid waste must be stored in a manner that does not present a health or safety hazard and/or public nuisance. No person shall place, deposit, or allow to be placed or deposited on their premises or private property, any public street, alley, or right-of-way any solid waste except in a manner prescribed in this chapter.

A. Containers generally.

1. Every person owning, leasing or occupying premises within the city limits shall provide one or more of the following types of waste containers:


   b. Containers for automated pickup.

Such Containers shall be provided in sufficient number to contain and accommodate any and all solid waste accumulated by such person between collection periods. This will be assessed by the Director or their designee to ensure there is adequate service. If service is found to be
insufficient service will be adjusted accordingly in an effort to maintain the health and safety of the public, and appropriate fees will be charged per Sec. 21-70 – Fees for containers.

2. Containers shall conform to the following specifications:

a. Mechanically transported containers.

i. Mechanically transported containers shall be in accordance with specifications to be approved by the city manager Director, and no mechanically transported container shall be placed to serve any premises, either in the street or in the alley, without prior approval of the city manager Director. The sanitation officer Director or their designee is authorized to designate the locations of any such containers, considering, among other things, accessibility and convenience to collection crews equipment and to the customer, hazardous conditions such as electric wires, if any, and obstacles or means of approach.

ii. Each owner, tenant, occupant, lessee or person in charge of or controlling premises shall be held responsible for maintaining the area surrounding mechanically transported containers and racks in a clean and sanitary condition, free of weeds, tall grass, brush, briars, tree sprouts and solid waste scattered by reason of overturned dumpsters and they shall keep the lids on the dumpsters closed at all times to prevent the scattering of solid waste, and it will be their responsibility until the containers are serviced. (See Sec. 16-6. - Unsanitary or hazardous premises; certain solid wastes).

iii. Penalty. Violation of subsection ii of this section is punishable pursuant to Sec. 21-46 – Violations and Penalties.

iv. In addition to the penalty imposed pursuant to subsection iii of this section, a person in violation of subsection ii of this section must make restitution to the City for all cleanup and disposal costs incurred by the City by Fees per sec. 21-70 Fees.

b. Container for automated pickup.

i. In areas served by automated collection equipment the city shall furnish a sufficient number of containers to serve the area. At the city’s sole discretion containers may be placed to serve several surrounding residences or other users. When the city Director determines it is necessary, it shall supply individual roll-out
containers for a single user. Location of the container shall be
determined by the city Director.

ii. All persons using automated collection containers shall deposit solid
wastes for collection only in the containers, it shall not be deposited on
top of, and/or adjacent to the container. Material left outside a
container will not be collected except by arranged special collections.
Persons using any of the automated collection containers are
encouraged required to place waste material in plastic bags, tying the
bag shut prior to depositing it in the containers. No loose garbage or
similar wet material or loose material likely to be blown about shall be
placed in the automated collection containers unless it is first bagged
in a plastic bag of at least one mil thickness and tied shut. No garbage
shall be placed so it is higher than the lip of the container to keep it
from falling out when the container is serviced.

iii. All cardboard boxes shall be broken down and placed in the container
so that when it is inverted it will self-empty.

iv. Persons using individual automated collection containers and having
curbside pickup shall place them at the designated pickup location in
advance of scheduled collection times but shall not allow the
containers to remain at the curb for longer than 24 hours.

v. Containers shall be clearly visible and accessible to collection
equipment and employees, and free from any obstructions including
but not limited to, trees, shrubbery, walls, fences, and vehicles.

Incinerators. Incinerators located on the premises involved may be approved
for the burning of solid waste, such approval to be evidenced in writing by
the appropriate governmental authority

3. At the discretion of the Director, they shall eliminate 300-gallon alley service.
They shall then furnish 96-gallon curbside service with the following
notification procedure.

a. A notice will be sent out to the neighborhood in question giving them at
minimum 2-weeks notice (14 days) of the change to their containers.

b. The Solid Waste Department will provide instructions for the use of the
curbside containers.
c. An additional 2 weeks (14 days) for guidance and instruction will be given to the neighborhood after the transition.

4. All solid waste receptacles shall be maintained in a clean and sanitary condition by the owner or person using the receptacle, and such receptacles shall be located only in such places as shall be readily accessible for removing and emptying such receptacles, but shall not be placed in such a place or position as may constitute a nuisance or obstruction to vehicular or pedestrian traffic. In cases of dispute or complaint incidental to the location of any such receptacle placed for the removal of contents, the sanitation officer Director or designee shall designate a place, and such designation shall be final.

B. Use or damage to Containers

1. It is unlawful to maliciously damage any refuse container owned by the City. (See Sec. 10-65. - Destruction, misuse, etc., of public property).

2. Any individual who damages any container provided for the residential or commercial users shall be liable to the City for the cost of repair or replacement of the container. This shall include current cost of container and administration.

3. It is prohibited for any person, including children, to be on or in a sanitation container(s).

C. General requirements

1. All responsible parties using or occupying any dwelling unit commercial, industrial, or institutional establishment, or premises within the limits of the City where solid waste accumulate must store their solid waste in watertight and fly-tight containers.

2. Solid waste must be stored, collected, and hauled for disposal in accordance with NMSA 74-9-2.

3. It is the container users’ and responsible parties’ obligation to properly store solid waste generated on their premises and to keep the area around the container continuously clear and free of all debris. If the property has alley solid waste service, the term area includes the alley.

4. Every mobile home park shall provide for the collection of not less than ½ a cubic yard of refuse weekly per lot. If the Director determines that additional sanitation containers are necessary, they shall order such additional containers
as shall be required to prevent excessive litter or any hazard to the public or residents of the park. They will be appropriately charged per Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

5. Multi-dwelling units with three or more units shall provide for the collection of not less than ½ cubic yard of refuse weekly per unit. If the Director determines that additional sanitation containers are necessary, they shall order such additional containers as shall be required to prevent excessive litter or any hazard to the public or the residents of the complex. They will be appropriately charged per Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

6. All solid waste containers must be maintained in a sanitary condition by the responsible party. Containers shall not be stored or maintained in such a manner as to constitute a nuisance, health, sanitary, and/or safety hazard. (See Sec. 16-2. - Public nuisances, generally).

7. It is unlawful for any person not authorized by the responsible party to remove, collect, or disturb solid waste stored in such containers or to remove from a solid waste container any solid waste set out for collection and disposal by the City, agents of the City, or licensed solid waste haulers. This prohibition does not apply to law enforcement officers acting within the scope of their official duties pursuant of Sec. 21-62 – Scavenging, removal, or grazing at disposal area.

8. It is unlawful for any person to utilize the solid waste receptacles assigned to other persons for the disposal of solid waste without their permission. This does not apply to the automated solid waste system where residents share the use of common containers.

9. The lids or covers of any solid waste containers must at all times be kept secure in such a manner to prevent intrusion of moisture, infestation of insects, and scattering of solid waste, covers must be kept closed except when containers are being loaded or emptied. It is the responsibility of the persons using the container to report when the lid is no longer secure on the container.

10. Each solid waste container must be placed on or adjacent to the property of the authorized user at a location approved by the Director.

11. Alley solid waste containers must be placed on one side of the alley, as determined by the Director. No container may be placed so as to restrict egress from an exit door or beneath a fire escape. No container may be placed under a street floor window unless such window is of fire-resistant
construction.

12. Non-alley containers must be located in such a manner to not interfere with pedestrians or vehicles at a location approved by the Director.

13. It is unlawful to block or impede access to a container which is located as directed.

14. All boxes, cartons, and crates must be collapsed before being placed in solid waste containers and placed so when the container is inverted it will self empty.

15. Heavy accumulations such as rock, brick, broken cement, shingles, lumber, plaster and other heavy materials, shall not be placed in the receptacle. Such accumulations must be transported to the Landfill at the generators expense.

16. No dead animals shall be placed in the receptacle.

17. No person shall set fire or burn any material in a receptacle, paint or mark upon such receptacle, place any poster, placard or sign upon such receptacle, or damage such receptacles in any way.

18. Explosives or flammable materials of any kind shall not be placed in any solid waste container.

19. Hot ashes and other combustible material of any kind may not be placed in any solid waste container.

20. Corrosives, reactive, oxidizers, lead acid batteries, lithium batteries, or any hazardous waste shall not be disposed of in solid waste containers.

21. Pool chemicals containers must be emptied, rinsed, drained, and moisture free prior to being placed in a solid waste container.

22. Solid waste collection shall not accept special, infectious, or hazardous waste and may at any time refuse to collect waste the department determines would be detrimental to operation of the collection system or landfill. Waste deemed unacceptable by the department shall not be presented for disposal unless such determination is remedied prior to presentation or disposal. If the container is found to have special, infectious, or hazardous waste after the time of collection, the owner/responsible party will be fined pursuant of Sec. 21-48 – Abatement; Appeal.
23. Refuse containers servicing residential accounts shall be used only by residential customers for refuse generated on residential premises; those serving commercial accounts shall be used only by the customer served by the particular account and those authorized by that customer.

D. Residential user requirements

1. All household solid waste, grass, and leaves must be bagged and securely tied before being placed in a solid waste container. Solid waste must be drained of all liquids and tied in a waterproof bag(s) before being placed in a solid waste container.

2. Construction, yard and demolition solid waste shall not be placed in a solid waste container. If such construction, yard and demolition waste is generated the responsible party is responsible for the removal and disposal of such solid waste. All construction, yard and demolition waste must be removed promptly and shall not be stored in any location where it may be blown or otherwise dispersed beyond the construction site. The City may upon request from the responsible party, provide containers for such construction, yard and demolition waste for a different and separate fee Sec. 27-74 – Roll-Off Rentals and Fees.

3. It is unlawful to place material in any solid waste container of a volume or weight that prevents the collection vehicle from emptying the container or that damages the collection vehicle or container. The maximum weight of material placed in any container up to 100 gallons may not exceed 200 pounds. The maximum weight of material placed in a 300-gallon container may not exceed 500 pounds.

E. Commercial User Requirements

1. The owner or responsible party of any commercial or privately owned solid waste container placed on private property alley or in the City right-of-way is responsible for maintaining the area within a 25-foot radius around the container or bin in a sanitary condition and preventing the scattering or blowing around of materials deposited.

2. Solid waste collected by the City or other authorized persons shall be deposited at such point or areas as shall be designated by the Director as the solid waste disposal area. The solid waste disposal area shall be maintained in such a manner as not to become a public nuisance and, in any case, shall be maintained in accordance with the duly adopted regulations of the NMED.
3. All collection containers shall be loaded with bagged solid waste only and in such a manner as they will self-empty when inverted.

4. All solid waste collection containers shall be kept in a clean sanitary condition by the user. It shall be a violation of this chapter to deposit used grease from any commercial account holder established to produce food products. Grease from such shall be deposited into a grease dumpster. It shall be the responsible party of the account holder to prevent such activity.

5. Should the responsible party wish to temporarily or permanently relocate a collection container, or make a change in service they may request a review from the Director or designee. It is the responsibility of the owner of the premises to notify the department of any change in business type.

   a. Request must be submitted in writing 30 days before the change in service.

6. Commercial users must, where the volume of solid waste accumulated cannot be conveniently handled in cans or bags, provide bins or compactor bins for containment of solid waste. Such bins or compactor bins must be constructed of durable non-absorbent, noncombustible material, and have suitable fly-tight and watertight covers.

7. All commercial containers located on commercial users’ premises must be placed or concealed in such a manner so as to minimize visibility from the street or walkways.

8. All non-city solid waste containers and recycling containers that have a capacity in excess of 20 cubic yards, or are accessible to the general public, the container must be identifiable by indicating the responsible party’s name and telephone number on the container and must meet all zoning, permit and franchise requirements. The container identification must be legible from a minimum distance of 10 feet.

9. Commercial user will, upon request of the Director, be required to show documentation of the method of collection and removal of solid waste they generate.

State Law Reference – Municipal authority to compel the taking of refuse to designated places NMSA 1978 3-48-2.

Sec. 21-16 – Condemnation of Containers; Removal.
A. If use of a solid waste container is in violation of this chapter and presents a health and/or safety hazard, the Director shall issue a notice of violation to the responsible party. Notification may consist of tagging the solid waste container with a notice of violation, or by delivering a notice of violation in person or by mail to the responsible party in accordance with Sec. 21-46 – Violations and Penalties.

B. If action necessary to remedy the violation is not taken within the period specified, the Director has the right to remove the solid waste container and dispose of it in accordance with Sec. 21-48 – Abatement; Appeal.

Sec. 21-17 – Frequency of Collections

Solid wastes from all users of the city’s solid waste collection and disposal service shall be collected at least once a week.

A. A call back can be issued if a container was not out on time or the user has more trash needed for pickup. Call back’s must be issued before 12 pm or they will be serviced the following day at the end of a driver’s route. A fee shall be charged in accordance with Sec. 21-68 Level of Solid Waste fees; No exceptions.

B. A Commercial Call back fee will be charged in addition to a fee per container.

C. A flat residential call back fee will be charged.

Sec. 21-18 – Responsibility for Streets, Alleys and Sidewalks

A. The Owner and any responsible party in control of any land abutting a sidewalk, right of way, alley, or street must maintain the sidewalk, alley, or street free, within 3 feet from:

1. The accumulation of solid waste;

2. Trees, shrubs, or brush impeding pedestrian or vehicular traffic; and

3. Other conditions that present a health, fire, and/or safety hazard.

B. The areas required to be maintained pursuant to this section are:

1. Any portion of a street, that has been opened for public use, between the curb line and the abutting property line including sidewalks.

(NMSA 3.49.1)
ARTICLE 3 – MUNICIPAL COLLECTION AND DISPOSAL SERVICE

Sec. 21-12 21-27 – City’s duty to provide for disposal of solid wastes.

The city shall be responsible to provide and maintain suitable equipment to collect and dispose of solid waste generated within the City and adequate areas for the disposal thereof.

(NMSA 3.48.2)

Sec. 21-28 – Hours of Collection.

A. In order to prohibit the disturbance of the public peace and welfare, it shall be unlawful for the City or a private waste disposal company to collect or remove solid waste between the hours of 10:00 p.m. and 4:00 a.m.

B. For purpose of this section, private waste disposal company means any entity other than the city, whether commercial, nonprofit, or otherwise, collecting solid waste.

Sec. 21-29– Holidays.

The City shall observe holidays as non-collection days as approved annually by the City’s governing body. Residential collection shall occur on an alternative day approved by the department. Commercial collections during such holidays shall be performed on the day either prior or after the holiday.

Sec. 21-30 – Residential User Containers; Ownership, Placement, and Responsibility.

A. Collection days will be designated by the Director.

B. The Director determines the service level required and method of collection.

C. The City specifies and may purchase or own the containers that are provided to residents for no other purpose than as solid waste containers. Non-City owned containers will not be serviced.

D. The Director will decide on which side of the alley and where the containers will be placed. Residents receiving curbside service must place their containers at the curb in front of their residence in such a manner that allows for the safe and efficient operation of the collection vehicle and does not interfere with Pedestrian or vehicular traffic, or where the Director deems them to be placed. Containers must be placed so
that they open towards the street or alley.

E. A clear 5-foot radius around the curbside container must be maintained for the curbside container to be serviced. If there is anything within this 5-foot radius the can will not be serviced. A callback fee will be charged pursuant to Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions, to the water bill if the resident so asks for it.

F. All containers issued by the City for use in conjunction with an automated loading device remain the City’s property. The City is responsible for repairs to the City owned containers when damage is caused during normal usage. The responsible party will still need to report the damage so it may be repaired. Containers must be secured, between collection days, in such a manner that they are not readily susceptible to theft, vandalism or high winds. Anyone found to have intentionally or negligently damage a City-owned container will be liable for the replacement or repair cost.

G. Only the Director or their designee is authorized to remove any City-owned solid waste container from the assigned location. It is unlawful for any other person to remove a container from the address to which it is assigned.

H. To ensure containers are placed out on time, containers may be placed at the curb no earlier than 6 p.m. on the day preceding collection. Containers for street collection must be placed at the curb for service no later than 4:30 a.m. on the day of collection. They must be removed prior to 4:30 a.m. of the day after collection. It is unlawful to place or permit containers to remain adjacent to the curb except upon regular collection days. Containers must be stored, between collection days, on the user’s property so as not to interfere with pedestrian or vehicular traffic.

(NMSA 3.48.2)

Sec. 21-31 – Residential Collection

A. The City will provide solid waste collection service to all dwelling units including:

1. Single dwelling units.

2. All buildings with less than two dwelling units, including duplex. Multiple buildings on one lot cannot be aggregated to avoid the provisions of this chapter.

3. The city will charge commercial fees to any multi-family dwelling units that have over two units per Sec. 21-70 – Fee Schedule.
4. Townhouses and condominiums.

5. Carryout service is provided at no additional charge to individuals living alone who are elderly, ill or disabled and are incapable of conveying their solid waste container to the designated collection location. This does not include entering the dwelling unit. The resident may be required to produce a medical statement of present physical condition. No carryout service will be performed, if in the opinion of the Director, the terrain presents a safety hazard for equipment operators or collection vehicles.

6. Dwelling units that generate in excess of needing more than once a week pickup at any given time may be served utilizing an alternate collection system and charged according to a different and separate fee structure based on collection and disposal costs. This is lined out in Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

B. The City will provide service to institutional, commercial, and business establishments. They will be charged a separate fee.

(NMSA 3.48.2)

Sec. 21-18 21-32 – Preparation of Bulky Solid Waste for Collection Residential Bulk Trash Placement and Collection Services.

A. Subject to the other ordinances, solid waste such as boxes, cartons, cases, barrels, and other shipping containers, discarded furniture, trees, tree and shrubbery trimmings of size or bulk too great for the metal containers herein required may, at the option of the person in charge of the premises where such solid waste refuse accumulates, be prepared for collection as follows:

1. Such bulky solid waste shall be compressed as compactly as possible and broken or cut into shortened lengths, as the need may be, and securely tied in bundles not exceeding 4 feet in length and 50 pounds in weight.

2. Boxes, cartons cases, etc., shall be nested with the smaller boxes inside the larger boxes. The maximum overall dimensions of the nested solid waste shall not exceed 4 feet nor 50 pounds in weight.

3. In preparation of solid waste under either subsection 1 or 2 no refuse such as papers, light packing materials or other similar easily scattered materials shall be included in the bundling and nesting, and Any such nested solid waste may be placed adjacent to the metal containers for collection.
4. Such other method as may be approved by the sanitation officer Director may be adopted for the disposal and handling of salvage, appliances, tires, auto parts and other household items. If any such method approved by the sanitation officer Director shall require time of the sanitation department equipment and employees for such collection in excess of the time required for collection under subsection 1, 2, or 3 hereof here for, an additional charge over and above the normal monthly charge for collection and removal of solid waste from such premises will be made. Such additional charge will be computed upon the average hourly cost of equipment and for the additional hours per month required. The sanitation officer Director shall not in any case approve a plan for preparation for removal or holding for removal of any solid waste, bulky or otherwise, that permits the depositing of solid waste in any street, alley or public way in any manner which will permit its being scattered.

5. Grass clippings, leaves and weeds shall be put in plastic bags and/or cardboard boxes for pick-up with the weight of the containers not to exceed 35 pounds each. Grass Clippings, leaves and weeds not contained in plastic bags and/or cardboard boxes will not be picked up.

B. To be accepted for disposal tires larger than passenger tires must be cut into two pieces by cutting at center tread or by removing both beads by cutting sidewalls. Items of bulk trash that is acceptable:

1. Tree Limbs or brush
   a. Less than 4 feet in length and 12 inches in diameter.
2. Leaves, weeds, and grass, all bagged or boxed;
3. Metal material 20 pounds or less;
4. Pipe(s) less than 1 inch in diameter and less than 4 feet in length;
5. Home appliances that do not contain refrigerants.

C. Items of bulk trash that are not acceptable for normal residential collection include but are not limited to:

1. Un-bagged leaves, weeds, and grass;
2. Construction and demolition waste;
3. Items containing asbestos;
4. Household trash;
5. Cement, cement blocks, bricks, asphalt, shingles, stones, and dirt;
6. Lead acid, lithium batteries, or any hazardous, infectious, or medical solid waste;
7. Vehicle or equipment parts;
8. Motor vehicle tire or tires of any other type;
9. Liquids of any kind;
10. Appliances containing refrigerants;
11. Household hazardous waste;

D. Bulk trash placed out for collection must be in neat stacks.

E. For those who have alley trash collection, bulk trash must be placed adjacent to the property line. For those who have curbside collection, bulk trash must be placed on the resident’s property, parallel to the street or curb. The Director may designate alternative placement and collection points. Bulk trash may not be placed on the sidewalk or in the street, behind a fence or any other obstruction or barrier.

F. Bulk trash may not be placed within five feet of any fixed object, solid waste container or in any manner that would interfere with or be hazardous to pedestrians, bicyclists, equestrians or motorist.

G. Bulk trash may not be placed under trees, power lines, or next to gas meters.

H. Residential bulk trash in excess of 5 cubic yards will be charged in accordance with Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

I. Bulk trash placed for collection may not exceed a totally un-compacted volume of 5 cubic yards per collection.

J. It is a violation of this chapter to place unacceptable bulk trash items, bulk trash exceeding 5 cubic yards, or improperly placed bulk trash items out for collection. The responsible party must remove and dispose of all bulk trash improperly placed, bulk trash exceeding 5 cubic yards, and any unacceptable items of bulk trash at their own
expense.

K. Any yard waste, tree trimmings, and/or construction debris that is generated by a landscaping, or construction company is not allowed to be put out for bulk trash pickup and must be taken to the nearest solid waste disposal facility. If a company is found violating this subsection they will be fined per Sec. 21-46 – Violations and penalties.

L. The City may abate any violation of this section pursuant to Sec. 21-48 – Abatement; Appeal.

M. The City uses mechanical collection equipment. If bulk trash cannot be placed for collection set forth in subsection J and/or K of this section, the Director, at their discretion, may collect the bulk trash and may require a waiver that holds the City harmless for any and all damage associated with the collection activity. A waiver must be signed prior to collection.

Sec. 21-4 21-33 – Placement on Streets etc.; Transportation.

A. It shall be unlawful for any reason or any person to sweep, place or throw solid waste or other waste materials in or upon any sidewalk, street, alley or unoccupied premises. Included in the prohibited locations for deposit of solid waste are the streets and roadways providing access to the municipal landfill in the area of the corner of Brasher Road and Eisenhower Road and the properties adjoining such streets, specifically, but not limited to, Brasher Road from the City limits to the landfill and Eisenhower Road from the City limits to the landfill.

B. Size, location, quantity and type of service needed: The Director or their designee is responsible for evaluating the size, type of collection container, location, quantity and type of service or equipment necessary to provide the required services to residential and commercial accounts. In cases of disputes or complaints arising from such decisions, the department shall have final say in designating the size, location quantity, and type of service needed for said containers, taking into consideration among other things, convenience to collection crews, safety of employees, and if hazardous conditions exist.

C. No solid waste shall be transported upon the City’s sidewalks, streets, or alleys except in such manner that the waste is confined and bound to the transporting vehicle so as to prevent its blowing, falling or otherwise being accidentally separated from the vehicle during transit.

D. No Person shall throw, place, dump or dispose of any debris on any street, gutter, sidewalk or alley, nor shall any person allow the accumulation upon their property, of
any debris for longer than 7 days. Sites subject to an active building permit may accumulate these items for longer than 7 days, but such items must be maintained in an orderly fashion so as not to impede on the property of others or create a hazard or attractive nuisance. Materials must be removed upon the completion of the permitted construction. Per Section 16-17: Litter in Places Generally & Section 16-6 b: Unsanitary or Hazardous Premises; Certain Solid Wastes

E. No person shall cause or permit to remain upon any property, private or public, any dead animal, animal waste, vegetable or mineral, matter or any composition of residue thereof which is in an unsanitary condition or is hazardous to public health.

(NMSA 3.48.2)

Sec. 21-34 – Commercial/Business User Containers; Ownership, Placement, Responsibility, and Enclosures

A. Commercial collection times: Commercial containers shall be serviced between the hours of 4:30 a.m. and 1:30 p.m. on regularly scheduled pickup days.

B. It shall be the responsibility of the Department to determine the quantity, cubic yard size, and number of pickups per week for commercial containers. The minimum number of pickups shall be one time per week.

C. The Director can change the quantity, cubic yard size, and number of pickups per week if deemed insufficient and the user will be charged appropriately per Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

(NMSA 3.48.2)

Sec. 21-35 – Commercial/Business Collection

A. Commercial accounts including but not limited to:

1. Businesses

2. Churches

3. Non-profits

4. Schools

5. Mobile home parks
6. Mobile home developments

7. Multiplexes that are 3 dwelling units or more

8. Apartment complexes

B. All commercial solid waste must be bagged and securely tied before being placed in a solid waste container. Solid waste must be drained of all liquids and tied in waterproof bags before being placed in a solid waste container.

C. Construction, yard, and demolition solid waste may not be placed in a solid waste container(s). If such construction, yard, and/or demolition waste is generated the responsible party is responsible for the removal and disposal of such solid waste. All construction, yard and demolition waste must be removed promptly and may not be stored in any location where it may be blown or otherwise dispersed beyond the construction site.

1. The City may upon request from the responsible party, provide containers for such construction, yard, and demolition solid waste for a different and separate fee per Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

D. It is unlawful to place material in any solid waste container of a volume or weight that prevents the collection vehicle from emptying the container, or that damages the collection operator, vehicle, or container. The maximum weight of material placed in any container up to 100 gallons shall not exceed 200 pounds. The maximum weight placed in a 300-gallon container shall not exceed 500 pounds. The maximum weight placed in a 3-yard metal container shall not exceed 500 pounds.

1. If a violation of this subsection is found, a notice will be issued. If items are removed and a call-back is issued, they will be charged per Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

2. Continued violation of this subsection will result in an audit of waste generated per the Director and more solid waste containers placed.

3. Containers found in violation of this subsection will not be picked up. If the violation is abated and the customer wants it picked up a callback fee will be charged per Sec. 21-70 Levels of Solid Waste Fees; No Exceptions.

E. Container placement is done at the discretion of the director.

F. All solid waste container enclosures must be approved by the Director and constructed according to Code of Ordinances / Appendix A – Zoning Article 52
Section 14 – Dumpsters and Grease bins.

G. The owner or responsible party of any commercial or privately owned solid waste container placed on private property, alley, or in the city right of way is responsible for maintaining the area within a 25-foot radius around the container or bin in a sanitary condition and preventing the scattering or blowing around of materials deposited or accumulation of bulk trash or debris. (NMSA 3.49.1)

H. Trash must be placed in solid waste containers. Solid waste placed on top of containers or besides containers will not be picked up.

   1. If said solid waste blocks the access to the container, it will not be serviced. Until it is abated the container will not be serviced, if the customer wants it picked up a callback fee will be charged per Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

I. Solid waste containment areas must be kept grease free. If the containment area is deemed unsafe, a notice shall be issued and the containers will not be serviced.

   1. The responsible party has 24 hours before a fine will be issued per Sec. 21-46 – Violations and Fines.

J. All boxes placed in solid waste containers must be broken down and placed in the solid waste containers in such a way when the container is inverted it will self-empty.

K. The City services the current solid waste containers:

   1. 96-gallon rolling carts, owned by the City;
      a. 2 days a week pickup.

   2. 300-gallon containers, owned by the City;
      a. 1 day to 5 days a week pickup.

   3. 3-cubic yard containers, owned by the responsible party
      a. Must be built to City specifications
      b. Can be bought from the City
      c. 1 day to 6 days a week pickup

   4. Roll-Offs owned by the City;
      a. Separate fees and pickups

   5. Compactors owned by the responsible party;
      a. Separate fees and pickups
Sec. 21-36 – Franchise Fees

In consideration of the granting of the franchise herein, franchisees shall pay the city a franchise fee equal to 7% of the gross receipts of the franchisee for the services within the city limits. This franchise fee shall be paid each month. The city may inspect the books of the franchisee, with or without previous notice, at any time during business hours.

A. Franchise agreements will be 20 cubic yards and above, unless contracted differently;

B. Haulers found illegally servicing containers within the city will be (issued a citation/misdemeanor)

C. Containers must have responsible parties name and phone number visible from ten feet away.

Sec. 21-37 – Failure to Place in Proper Containers; Failure to use City Authorized Collection Service

The City shall remove or order the removal of any solid waste from any real property or any premises, IF:

A. Any person or responsible party of a property or premises that allows solid waste to be deposited or accumulated upon said property other than in the proper collection container and fails to remove solid waste or to place the solid waste in the proper collection container. (NMSA 3-48-3)

B. Any person or responsible party who owns or operates property within city limits with an active water meter cannot refuse Solid Waste Collection Provided by the City.

C. After such removal of solid waste, the city shall bill the owner of the property per the Chaves County Assessor’s office the fee for any required removal. The City may file a lien against the premises if the charges are not paid in full within 30 days after billing date. Failure to pay such charge is a violation of this chapter.

(NMSA 3.48.4)

Sec. 21-38 – Generally – Abandonment of Dangerous Containers

A. Abandonment of dangerous containers consists of any person or persons:
1. Abandoning, discarding or keeping in any place accessible to children, any refrigerator, icebox, freezer, airtight container, cabinet or similar container, of 1 ½ cubic feet or more, which is no longer in use, without having the attached doors, hinges, lids, and/or latches removed or without sealing the doors or other entrances so as to make it impossible for anyone to be imprisoned therein; or

2. Who being the owner, lessee, or manager of any premises, knowingly permits any abandoned or discarded refrigerator, icebox, freezer, airtight container, cabinet or similar container to remain upon such premises in a condition whereby a child may be imprisoned therein.

B. It shall be unlawful for any person to commit the offense defined in this section.

Sec 21-39 – 21-44 – Reserved;

ARTICLE 4 – ADMINISTRATION AND ENFORCEMENT

Sec. 21-44 – Enforcement Independent of Other Officials

The authority of the City to enforce provisions of this chapter is independent of and in addition to the authority of other City officials to enforce the provisions of any other ordinances of the City.

Sec. 21-45 – Issuance of Citations or Notice of Violation

A. If the City finds a violation of this chapter, the City may notify the owner or responsible party through the issuance of a notice of violation.

B. Any City authorized employee may issue a notice of violation to any person violating any provisions of this chapter. If the violation has not been corrected within the specified period, a civil citation or criminal complaint may be issued, or any police officer may issue a citation for any violation of this chapter. A notice of violation of this chapter includes:

1. Identification of the property in violation.

2. Statement of violations in sufficient detail to allow an owner or responsible party to identify and correct the problem.

3. Re-inspection date.
4. Address and phone number of a City representative to contact.

5. A cost estimate to correct violations, if the City intends to abate the violation pursuant to Sec. 21-48 – Abatement; Appeal.

6. Appeal procedures.

C. Any notice given for any purpose under this chapter will be deemed effective on the date when written notice is delivered or mailed to the property owner or respective party. If the City intends to abate the violation, any mailed service must be certified, verbal, or written notices at its discretion. If the City does elect to give any additional notice thereafter in the same or other situations.

D. Nothing in this section requires the issuance of a notice of violation prior to issuing a civil citation or criminal complaint.

E. Any notice of violation can be appealed to the Director for an administrative conference for review. A request for an administrative conference must be made in writing within the period set to correct the violation, as specified in the notice of violation. The timely filing of a request for an administrative conference will act as an automatic stay of enforcement of the notice of violation until the matter is finally determined by the Director.

Sec. 21-46 – Threats and Intimidation.

No person may, by threat or use of violence or physical force, or by threatening to do or doing any other act that can be reasonable anticipated to cause physical harm to any person including the perpetrator intentionally obstruct, impede, or interfere with any officer, employee, contractor, or authorized representative of the City who is lawfully and constitutionally engaged in the enforcement or execution of the provisions of this chapter.

Sec. 21-47 – Violations and penalties.

A. Any responsible party who causes, permits, facilitates, aides, or abets any violation of this chapter or who fails to perform any act or duty required by this chapter is subject to a civil sanction of not less than $100.00 nor more than $500.00.

B. Any responsible party who causes, permits, facilitates, aids or abets any violation of this chapter or who fails to perform any act or duty required by this chapter is guilty of a Class 1 misdemeanor.
C. Each day any violation of this chapter exists will constitute a separate violation or offense.

D. The owner of record, as recorded in the Chaves County Assessor’s office records of the property at which a violation of this chapter exists, may be presumed to be a person having lawful control over any building, structure or parcel of land. If more than one person is recorded as the owner of the property, said persons may be jointly and severally presumed to be persons having lawful control over the building, structure, or parcel of land.

E. If a responsible party served with a notice of violation or citation by the City fails to correct the violation within the period specified, the City may correct or abate the condition as described in the notice and, in addition to any fine that may be imposed for a violation of this chapter, the responsible party will be liable for all costs that may be assessed pursuant to this chapter for the correction or abatement of the condition.

F. If in the opinion of the Director, the Fire Marshal and Building Official the condition constitutes an imminent health and/or safety hazard, the Director may immediately abate the hazard in accordance without notice. Such abatement of an imminent health or safety hazard will be limited to the minimum work necessary to remove the hazard.

Sec. 21-48 – Abatement and Appeal

A. If a responsible part fails to correct a violation, the City may correct or abate the condition. The abatement will be limited to the minimum work necessary to correct or remove the violation or hazard.

B. The City will determine the cost of the work performed, including actual costs of any additional inspection and other incidental connected costs.

C. An invoice for the abatement costs incurred will be prepared by the Department and mailed to the responsible parties.

D. Failure to pay the invoice may be cause for the City to assess the property for the associated legal costs for abatement and pursue any or all means for recovery of cost if the assessment is not paid. Any liens or assessments filed with the County Assessors pursuant to previous provisions of this chapter or any similar ordinance will remain in effect under the same terms and conditions that existed at the time of recording.

E. The abatement costs incurred may be appealed to the Director for an administrative conference for review of such abatement and costs. A request for an administrative
conference must be made in writing to the director within 30 days of the abatement
action. The timely filing of a request for an administrative conference will act as an
automatic stay of collection of said costs until the matter is finally determined by the
Director.

Sec. 21-49 – Conflicts of Ordinances; Liability

A. In any case where a provision of this chapter is found to be in conflict with a
provision of any other ordinance or code of the city, the provision that establishes the
higher standard for this promotion and protection of the health and safety of the
people will prevail.

B. In cases where two or more sections of this chapter disagree, the most stringent or
restrictive will prevail.

C. When the Director or any City employee charged with the enforcement of this
chapter is acting in good faith and without malice in the discharge of their duties, and
if any suit is brought against the Director or City employee because of such act or
omission performed by them in the enforcement of any provisions of this chapter,
they such suit will be defended by the City Attorney until the final termination of the
proceedings and any judgement resulting therefrom is assumed by the City.

Sec. 21-50–21-55 – Reserved

ARTICLE 5: SOLID WASTE DISPOSAL; FACILITIES

Sec. 21-56 – Disposal of Special Waste, Lead Acid Batteries, Lithium Batteries, and
Motor Oil

A. Special waste is all solid waste that is listed or classified as a special waste pursuant
to NMED. Special waste will require prior approval from the Director and NMED
before accepted for disposal at any City solid waste disposal facility. The generator of
the waste may also be required to submit an analysis of the waste, at the generator’s
expense, to the City for disposal approval. Approval by the New Mexico
Environment Department for the disposal of the material does not guarantee approval
by the City.

B. Infectious waste from homes, hospitals, nursing homes, or other places where highly
infectious or contagious diseases have prevailed shall not be placed in containers for
regular collection. The producers of such waste shall dispose of it in accordance with
all applicable regulations. If hazardous or infectious waste is transported without
knowledge by the Solid Waste Department, any fines and/or associated costs for
abatement will be reimbursed to the City of Roswell by the responsible party.

C. Hazardous waste may only be disposed of in accordance with all City, County, State, and Federal regulations. The City further reserves the right to prohibit the disposal of materials otherwise identified or defined as hazardous waste.

Sec. 21-57 – City of Roswell Disposal Landfill User Requirements

A. Solid waste disposal facility users must obey all traffic signals and stay on designated roadways at all times.

B. Solid waste disposal facility users are to follow all instructions given to them by City solid waste disposal facility employee(s) (i.e. spotters, inspectors, attendants, etc.)

C. Alcohol beverages are not allowed in any City solid waste disposal facility.

D. The City reserves the right to reject any solid waste material(s) or load(s).

E. All solid waste loads must be covered, and/or secured while traveling to the solid waste disposal facilities or face up to $100 fine for unsecured loads.

F. Solid waste disposal facility users must be dressed in proper attire, including enclosed toe shoes for safety reasons.

G. Solid waste disposal facility City employees or their designee have the right to inspect any load, and at their discretion, require a load to be dumped in a segregated area to facilitate inspection.

H. Children and animals must remain in vehicles at all times.

I. Smoking and/or Vaping in any City solid waste facility is prohibited per NMED Permit and State Regulations.

J. No person may, by threat, or use of violence or physical force, or by threatening to do or doing any other act that can be reasonably anticipated to cause physical harm to any person including the perpetrator, intentionally obstruct, impede or interfere with any employee, contractor, and/or authorized representative of the City who is lawfully and constitutionally engaged in the enforcement or execution of the provisions of this chapter.

K. Collection vehicles that are hauling “hot loads” must notify a responsible party at the City solid waste disposal facility before proceeding to the unloading area.
L. Scavenging, including but not limited to the authorized pilfering, removal, buying, selling, trading, or using of material from any City solid waste disposal facility, is prohibited.

M. Violating user requirements may result in refusal of service.

N. Companies hauling Solid Waste must have a haulers permit from NMED on file with the Landfill.
   1. Companies are responsible to keep an up-to-date haulers permit on file.

Sec. 21-58 – Disposal of Infectious, Radioactive and Hazardous Waste

A. The requirements of these regulations apply to any generator of biohazardous medical waste as defined under NMED, as it may be amended from time to time.

B. The following materials will not be accepted at any solid waste disposal facility:
   1. Regulated hazardous waste;
   2. Untreated biohazardous waste;
   3. Radioactive waste;
   4. Regulated liquid waste; and
   5. Any other regulated waste without prior approval of the Director.

C. Biohazardous medical waste is any waste that is composed of, or has as a constituent one of the following (Reference NMED):
   1. Cultures and stocks. Discarded cultures and stocks generated in the diagnosis and treatment, or immunizations, or in the production or testing of bacteria.
   2. Human blood and blood products. Discarded products and materials containing free-flowing blood or free-flowing blood components.
   3. Medical sharps. Discarded sharps used in animal or human patient care, medical research, or clinical laboratories. This includes hypodermic needles, syringes, pipettes, scalpel blades, blood vials, needles attached to tubing, broken and unbroken glassware and slides and cover slips.
4. **Research animals waste.** Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.

D. Transporters may not deliver waste to a solid waste disposal facility that is prohibited under these regulations.

E. The transporter must notify the solid waste disposal facility when delivering loads that may contain biohazardous or other prohibited waste, and must identify the generator or generators of such waste. In addition to disposal fees, failure to notify the solid waste disposal facility prior to delivering and dumping these materials will result in the assessment of a fee sufficient to recover the City’s costs to properly handle these materials.

F. When prohibited materials are received, the transporter and the generator, if known, will be contacted and given 3-hours to remove the prohibited material and any contaminated material. Contaminated loads may involve all or a portion of a load. The solid waste disposal facility supervisor, inspector, or their designee will determine the extent of contamination and how much of the load must be removed. If the transported or generator fails to begin removal of the contaminated materials within 3-hours, a disposal company will be contacted to remove it. The City will bill the transporter or waste generator for all costs incurred.

G. Failure to pay disposal charges will result in a suspension of disposal privileges until those charges are paid.

H. Disposal site privileges may be suspended for those transporters or generators found to have more than 2 contaminated loads delivered to a solid waste disposal facility within a 12-month period from date of 1st incident.

**Sec. 21-59 – Unlawful Disposal; Penalty**

A. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill, or otherwise dispose of lead-acid storage battery except by delivery to:

1. A Battery retailer or wholesaler;

2. A secondary lead smelter; or

3. A collection or recycling facility authorized under the laws of the State of New Mexico or by the United States Environmental Protection Agency.
B. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city sanitary landfill for disposal, dispose of in the city sanitary landfill or otherwise dispose of any bulk or liquid waste oil or any used internal combustion engine oil filters except by delivery to a collection or recycling facility authorized to accept waste oil or used internal combustion engine filters. The Roswell Municipal Landfill will accept non-commercial waste oil up to 15 gallons in 5-gallon containers or less.

1. It is unlawful for any person to:

   a. Intentionally discharge waste oil into a sewer, drainage system, septic tank, surface water or ground water, watercourse or marine water;

   b. Directly dispose of waste oil on land;

   c. Apply waste oil to roads, or land for dust suppression, weed abatement, or other similar uses that introduce waste oil into the environment.

C. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill for disposal, dispose of in the city landfill, or otherwise dispose of any liquid paint, paint thinner or solvents except by delivery to a collection or recycling facility authorized to accept such material. The Roswell Municipal Landfill will accept non-commercial paint, paint thinner, and some solvents up to 15 gallons in 5-gallon containers or less.

D. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill for disposal, dispose of in the city landfill, or otherwise dispose of chemical barrels except by delivery to a collection or recycling facility authorized to accept such material. The Roswell Municipal Landfill will accept chemical barrels but they must be rinsed 3 times to remove any trace chemicals and be dried before brought out for disposal.

E. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill for disposal, dispose of in the city landfill, or otherwise dispose of any lightbulbs except by delivery to a collection or recycling facility authorized to accept such material. The Roswell Municipal Landfill will accept up to 24 lightbulbs at a time. Ballasts must be separated from the bulbs before the Landfill will accept them.

F. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill for disposal, dispose of in the landfill, or otherwise dispose of any hazardous material; including but not limited to:
1. Any poisons, acids, caustic materials, chemicals, explosives, wastes contaminated by infectious disease, radioactive waste, or dead animals.

2. Any toxic pollutant or infectious waste as defined by NMAC 20.9.2 which requires special handling or restricted disposal.

3. Any toxic pollutant as defined by federal regulation.

4. Any substance designated as a hazardous material by applicable New Mexico State Law or New Mexico Environment Department regulation.

5. Any flammable gas, explosive, flammable liquid, flammable solid, oxidizer, poison, or radioactive material as defined by federal regulation, any other explosive, pyrotechnic, flammable gas, flammable compressed gas, nonflammable compressed gas, flammable liquid, oxidizing material, and any gas under such pressure that explosion hazard exists, radioactive material, corrosive material, or liquefied petroleum gas.

6. Any other material not authorized for disposal at the landfill under New Mexico Environment Department permit.

G. Any person violating the provisions of this section shall, upon conviction be assessed a fine of not more than $500.00, or shall be imprisoned not more than 90 days, or shall be sentenced to both such fine and imprisonment.

Sec. 21-15 21-60 – Scavenging, Removal or grazing at disposal area.

All solid waste deposited in and upon the solid waste disposal area shall be the property of the city. It shall be unlawful for any person to:

A. Scavenge;

B. Separate, collect, recycle or carry off any solid waste in the solid waste disposal area without the special permission of the sanitation officer, Director;

C. Graze animals upon the area designated as the solid waste disposal area.

Sec. 21-61–21-67 – Reserved

ARTICLE VI – SOLID WASTE FEES/Expense Accounts

Sec. 21-67 – Application of Variances; Beginning of Charges
A. The director may adjust or waive all or part of the solid waste collection and disposal charges when unfamiliar circumstances occur.

B. Every person or entity owning real property within the City shall pay the solid waste collection and disposal fees established and provided for by this chapter, whether or not solid waste collection and disposal service is used by the owner of such real property within the city.

C. Fees prescribed by this article for all users who meet all requirements for solid waste collection service will commence when water service is started by a customer and terminate when water service is stopped. City residents who have their own water supply must establish a “Refuse Only” account with the Water Billing Department prior to receiving solid waste collection service.

Sec. 21-20 21-68 Fees Levels of Solid Waste Fees; No Exceptions

A. Every person or entity owning real property within the city shall pay the solid waste collection and disposal fees established and provided for by this chapter, whether or not the solid waste collection and disposal service is used by the owner of such real property within the city.

B. Monthly services for solid waste collection and disposal from dwellings and residential premises, and from commercial property, shall be assessed against the owner of the premises, as shown by the real estate records of the county clerk. Minimum charges for such service shall be set by fee resolution ordinance.

C. The sanitation solid waste department shall not accept special or hazardous waste and may at any time refuse to collect, or refuse to accept for disposal, waste the department determines would be detrimental to operation of the collection system or landfill. Waste deemed unacceptable by the department shall not be presented for disposal or disposed of at the city’s landfill unless such determination is amended prior to presentment or disposal.

D. There will be fees and charges established from time to time by resolution for the following special types of disposals:

1. Disposal of solid waste at the disposal area, for residential user only, on loads consisting of 300 pounds or less;

2. Disposal of solid waste at the disposal area, including, but not limited to, compacted loads, roll-offs, yard waste, etc., for all commercial loads and residential loads in excess of 300 pounds.
3. Disposal of heavy solid waste, defined as large tree trunks, asphalt roofing shingles, etc. that is not considered clean fill, at the disposal area.

4. Disposal of clean fill solid waste, defined as concrete, brick, rock, soil, asphalt, rebar, glass, etc. that meets clean fill standards as approved by the state environment department, at the disposal area.

5. Disposal of tires for residential users and for all commercial loads, at the disposal area.

6. Disposal of E-waste, defined as electronic waste such as but not limited to computer monitors, computer towers, printers, scanners, copy machines, batteries, universal surge protectors, telephones, two-way radios, cell phones, radios, VCR and DVD equipment, etc.

7. Disposal of refrigerant units, defined as any cooling or heating unit containing refrigerant that requires evacuation by state standards before disposal such as but not limited to refrigerators, freezers, heat pumps, AC units, drinking water coolers, etc., at the disposal area. Tickets for special disposals under this section will contain the customer name, address, date, receipt number, weigh master signature/identification number and materials description, and will be invoiced monthly.

E. All solid waste disposal fees shall be automatically adjusted at the beginning of each fiscal year, beginning July 1, 2012, to the nearest 25-cent point of the consumer price index for urban wage earners and clerical workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor.

F. For the purpose of convenience, the billing and collecting of the charges levied for service under subsections B of this section shall be done by the city water department, and all such charges shall be payable at the office of the city water department in the same manner as are other utility services billed and collection by the city water department.

G. The city may provide and maintain roll-off containers to the public at a rate per pull plus tonnage as weighed at the Roswell Landfill. Bins shall be place for service in a manner and location acceptable to the city. Length of time for use of a city owned roll-off container is 30 calendar days. Additional days will be charged at a rate per day up to 30 additional days. Continued usage of the containers over 60 days requires approval from the sanitation officer or agent. Businesses or individuals must give the solid waste department 24 hours notice when the roll-off containers need to be pulled and the content of the roll-off shall not exceed 40,000 pounds. Damage to the
A container will be the responsibility of the business or individual using the container and will be billed accordingly.

D. A Rate Study will be performed every 5 (five) years to make sure the department is charging correctly for their fees.

E. All dwelling units within the city must pay the fees as established in subsection G of this section.

F. All Commercial/Business that are eligible for City service, must pay the fees as established in subsection H of this section.

G. The monthly solid waste Residential Fees are set by Ordinance. Residential collection is broken down as follows:

<table>
<thead>
<tr>
<th>Level of Service</th>
<th>FY25</th>
<th>FY26</th>
<th>FY27</th>
<th>FY28</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Individual 96-gallon solid waste container; one residence</td>
<td>$27.73</td>
<td>$28.61</td>
<td>$29.65</td>
<td>$30.73</td>
</tr>
<tr>
<td>2 Each additional 96-gallon solid waste container</td>
<td>$27.73</td>
<td>$28.61</td>
<td>$29.65</td>
<td>$30.73</td>
</tr>
<tr>
<td>3 Shared 300-gallon solid waste container; four residences</td>
<td>$27.73</td>
<td>$28.61</td>
<td>$29.65</td>
<td>$30.73</td>
</tr>
<tr>
<td>5 Bulk Trash ¼ a truck or less (5 cubic yards)</td>
<td>$35.91</td>
<td>$37.71</td>
<td>$39.56</td>
<td>$41.57</td>
</tr>
<tr>
<td>6 Bulk Trash ½ a truck (10 cubic yards)</td>
<td>$75.99</td>
<td>75.42</td>
<td>$79.19</td>
<td>$83.15</td>
</tr>
<tr>
<td>7 Bulk Trash full truck load (20 cubic yards)</td>
<td>$143.66</td>
<td>$150.84</td>
<td>$158.38</td>
<td>$166.29</td>
</tr>
<tr>
<td>8 Call Back Flat Rate</td>
<td>$55.46</td>
<td>$57.22</td>
<td>$59.30</td>
<td>$61.46</td>
</tr>
</tbody>
</table>

H. The monthly solid waste Commercial fees are set by Fee ordinance. Commercial rate is number of containers times the frequency of service. Commercial Collection is broken down as follows:

<table>
<thead>
<tr>
<th>Level of Service</th>
<th>FY25</th>
<th>FY26</th>
<th>FY27</th>
<th>FY28</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Individual 96-gallon solid waste container; twice a week pickup</td>
<td>$27.73</td>
<td>$28.61</td>
<td>$29.65</td>
<td>$30.73</td>
</tr>
<tr>
<td>2 Individual 300-gallon solid waste container; Monday-Friday pickup</td>
<td>$60.92</td>
<td>$63.58</td>
<td>$66.37</td>
<td>$69.30</td>
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<tr>
<td>3 Individual 3-yard metal solid waste container with plastic lid; Monday-Saturday pickup</td>
<td>$107.42</td>
<td>$112.30</td>
<td>$117.52</td>
<td>$122.99</td>
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<tr>
<td>4 Bulk Trash ¼ a truck or less (5 cubic yards)</td>
<td>$35.91</td>
<td>$37.71</td>
<td>$39.56</td>
<td>$41.57</td>
</tr>
<tr>
<td>#</td>
<td>Description</td>
<td>1x Week</td>
<td>2x Week</td>
<td>3x Week</td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------------------------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>5</td>
<td>Bulk Trash ½ a truck (10 cubic yards)</td>
<td>$75.99</td>
<td>75.42</td>
<td>$79.19</td>
</tr>
<tr>
<td>6</td>
<td>Bulk Trash full truck load (20 cubic yards)</td>
<td>$143.66</td>
<td>$150.84</td>
<td>$158.38</td>
</tr>
<tr>
<td>7</td>
<td>Call Back Fee</td>
<td>$55.46</td>
<td>$57.22</td>
<td>$59.30</td>
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<tr>
<td>8</td>
<td>Call Back per 300- gallon containers</td>
<td>$15.23</td>
<td>$15.90</td>
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<td>9</td>
<td>Call Back per 3-yard metal containers</td>
<td>$26.86</td>
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### Roswell Solid Waste Rates, Commercial FY25

**Rates for 300 Gallon Plastic Container W/ Lid**

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<th># of 300(s)</th>
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<th>2x Week</th>
<th>3x Week</th>
<th>4x Week</th>
<th>5x Week</th>
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<td>1</td>
<td>$60.92</td>
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<td>$182.76</td>
<td>$243.68</td>
<td>$304.60</td>
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<td>$243.68</td>
<td>$365.52</td>
<td>$487.36</td>
<td>$609.20</td>
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<tr>
<td>3</td>
<td>$182.76</td>
<td>$365.52</td>
<td>$548.28</td>
<td>$731.04</td>
<td>$913.80</td>
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<tr>
<td>4</td>
<td>$243.68</td>
<td>$487.36</td>
<td>$731.04</td>
<td>$974.72</td>
<td>$1,218.40</td>
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<tr>
<td>5</td>
<td>$304.60</td>
<td>$609.20</td>
<td>$913.80</td>
<td>$1,218.40</td>
<td>$1,523.00</td>
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<tr>
<td>6</td>
<td>$365.52</td>
<td>$731.04</td>
<td>$1,096.56</td>
<td>$1,462.08</td>
<td>$1,827.60</td>
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<td>$852.88</td>
<td>$1,279.32</td>
<td>$1,705.76</td>
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<td>$1,462.08</td>
<td>$1,949.44</td>
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<td>$2,680.48</td>
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**Rates for 3-Yard Metal w/Plastic Lid**

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## Roswell Solid Waste Rates, Commercial FY26

### Rates for 300 Gallon Plastic Container W/ Lid

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### Rates for 3-Yard Metal w/Plastic Lid

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<th>4x Week</th>
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## Roswell Solid Waste Rates, Commercial FY27

### Rates for 300 Gallon Plastic Container W/ Lid

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### Rates for 3-Yard Metal w/Plastic Lid

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<th>2x Week</th>
<th>3x Week</th>
<th>4x Week</th>
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**Roswell Solid Waste Rates, Commercial FY28**

City of Roswell  218  Legal Committee
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<td>$2,079.00</td>
<td>$2,425.50</td>
</tr>
<tr>
<td>8</td>
<td>$554.40</td>
<td>$1,108.80</td>
<td>$1,663.20</td>
<td>$2,217.60</td>
<td>$2,772.00</td>
</tr>
<tr>
<td>9</td>
<td>$623.70</td>
<td>$1,247.40</td>
<td>$1,871.10</td>
<td>$2,494.80</td>
<td>$3,118.50</td>
</tr>
<tr>
<td>10</td>
<td>$693.00</td>
<td>$1,386.00</td>
<td>$2,079.00</td>
<td>$2,772.00</td>
<td>$3,465.00</td>
</tr>
<tr>
<td>11</td>
<td>$762.30</td>
<td>$1,524.60</td>
<td>$2,286.90</td>
<td>$3,049.20</td>
<td>$3,811.50</td>
</tr>
<tr>
<td>12</td>
<td>$831.60</td>
<td>$1,663.20</td>
<td>$2,494.80</td>
<td>$3,326.40</td>
<td>$4,158.00</td>
</tr>
<tr>
<td>13</td>
<td>$900.90</td>
<td>$1,801.80</td>
<td>$2,702.70</td>
<td>$3,603.60</td>
<td>$4,504.50</td>
</tr>
<tr>
<td>14</td>
<td>$970.20</td>
<td>$1,940.40</td>
<td>$2,910.60</td>
<td>$3,880.80</td>
<td>$4,851.00</td>
</tr>
<tr>
<td>15</td>
<td>$1,039.50</td>
<td>$2,079.00</td>
<td>$3,118.50</td>
<td>$4,158.00</td>
<td>$5,197.50</td>
</tr>
<tr>
<td>16</td>
<td>$1,108.80</td>
<td>$2,217.60</td>
<td>$3,265.40</td>
<td>$4,435.20</td>
<td>$5,544.00</td>
</tr>
<tr>
<td>17</td>
<td>$1,178.10</td>
<td>$2,356.20</td>
<td>$3,534.30</td>
<td>$4,712.40</td>
<td>$5,890.50</td>
</tr>
<tr>
<td>18</td>
<td>$1,247.40</td>
<td>$2,494.80</td>
<td>$3,742.20</td>
<td>$4,989.60</td>
<td>$6,237.00</td>
</tr>
<tr>
<td>19</td>
<td>$1,316.70</td>
<td>$2,633.40</td>
<td>$3,950.10</td>
<td>$5,266.80</td>
<td>$6,583.50</td>
</tr>
<tr>
<td>20</td>
<td>$1,386.00</td>
<td>$2,772.00</td>
<td>$4,158.00</td>
<td>$5,544.00</td>
<td>$6,930.00</td>
</tr>
<tr>
<td>21</td>
<td>$1,455.30</td>
<td>$2,910.60</td>
<td>$4,336.80</td>
<td>$5,890.50</td>
<td>$7,379.40</td>
</tr>
<tr>
<td>22</td>
<td>$1,524.60</td>
<td>$3,049.20</td>
<td>$4,563.00</td>
<td>$6,237.00</td>
<td>$7,862.50</td>
</tr>
<tr>
<td>23</td>
<td>$1,593.90</td>
<td>$3,186.50</td>
<td>$4,789.20</td>
<td>$6,583.50</td>
<td>$8,349.00</td>
</tr>
<tr>
<td>24</td>
<td>$1,663.20</td>
<td>$3,326.40</td>
<td>$5,015.40</td>
<td>$6,930.00</td>
<td>$8,825.50</td>
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<tr>
<td>25</td>
<td>$1,732.50</td>
<td>$3,465.00</td>
<td>$5,240.70</td>
<td>$7,237.00</td>
<td>$9,302.00</td>
</tr>
</tbody>
</table>

### Rates for 3-Yard Metal w/Plastic Lid

<table>
<thead>
<tr>
<th># of 3 yrd(s)</th>
<th>1x Week</th>
<th>2x Week</th>
<th>3x Week</th>
<th>4x Week</th>
<th>5x Week</th>
<th>6x Week</th>
<th>7x Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$122.99</td>
<td>$245.98</td>
<td>$368.97</td>
<td>$491.96</td>
<td>$614.95</td>
<td>$737.94</td>
<td>$860.93</td>
</tr>
<tr>
<td>2</td>
<td>$245.98</td>
<td>$491.96</td>
<td>$737.94</td>
<td>$983.92</td>
<td>$1,229.90</td>
<td>$1,475.88</td>
<td>$1,721.86</td>
</tr>
<tr>
<td>3</td>
<td>$368.97</td>
<td>$737.94</td>
<td>$1,106.91</td>
<td>$1,475.88</td>
<td>$1,844.85</td>
<td>$2,213.82</td>
<td>$2,582.79</td>
</tr>
<tr>
<td>4</td>
<td>$491.96</td>
<td>$983.92</td>
<td>$1,475.88</td>
<td>$1,967.84</td>
<td>$2,459.80</td>
<td>$2,951.76</td>
<td>$3,443.72</td>
</tr>
<tr>
<td>5</td>
<td>$614.95</td>
<td>$1,229.90</td>
<td>$1,844.85</td>
<td>$2,459.80</td>
<td>$3,074.75</td>
<td>$3,689.70</td>
<td>$4,304.65</td>
</tr>
<tr>
<td>6</td>
<td>$737.94</td>
<td>$1,475.88</td>
<td>$2,213.82</td>
<td>$2,951.76</td>
<td>$3,689.70</td>
<td>$4,427.64</td>
<td>$5,156.58</td>
</tr>
<tr>
<td>7</td>
<td>$860.93</td>
<td>$1,721.86</td>
<td>$2,582.79</td>
<td>$3,443.72</td>
<td>$4,304.65</td>
<td>$5,156.58</td>
<td>$6,026.51</td>
</tr>
<tr>
<td>8</td>
<td>$983.92</td>
<td>$1,967.84</td>
<td>$2,951.76</td>
<td>$3,935.68</td>
<td>$4,919.60</td>
<td>$5,903.52</td>
<td>$6,887.44</td>
</tr>
<tr>
<td>9</td>
<td>$1,106.91</td>
<td>$2,213.82</td>
<td>$3,320.73</td>
<td>$4,427.64</td>
<td>$5,534.55</td>
<td>$6,641.46</td>
<td>$7,748.37</td>
</tr>
<tr>
<td>10</td>
<td>$1,229.90</td>
<td>$2,459.80</td>
<td>$3,689.70</td>
<td>$4,919.60</td>
<td>$6,149.50</td>
<td>$7,379.40</td>
<td>$8,609.30</td>
</tr>
</tbody>
</table>

---

**Sec. 21-69 – Fees for Containers**
A. While the 96-gallon and 300-gallon containers are owned by the City. The 3-yard metal containers are owned by the customers.

   1. They shall be built to the specs provided by the department.
   2. Customers are required to repair the containers themselves.
   3. The Department shall not service containers that are unsafe to do so. A notice will be issued and may utilize an alternative container for up to 3 months.

Sec. 21-70 – Credits and Debits of Solid Waste Fees

A. The Director may not grant credits for missed pickups.

B. If an error occurs where either a customer has received City solid waste service but was not charged, or a customer was charged for solid waste service that was not received, except for missed pickups, a debit or credit may be approved.

C. The Director will research the customer account to determine whether a credit or debit is owed and the amount to be debited or credited.

D. The length of time for either a debit by the city or a credit to the customer will be limited to 12 months prior from the date when the customer notifies the City of the error.

Sec. 21-71 – Solid Waste Roswell Municipal Landfill; Permits, Fees, and Charge Accounts

A. All users must pay disposal fees at the time of disposal or establish a charge account. To establish a charge account, the user must file a Landfill Application form.

   1. Users are issued a $2,000.00 credit limit. If this is found to be insufficient, a written letter must be submitted for it to be increased.
   2. Invoices are sent out in the mail on the first of the month.
   3. Users must keep accounts current. Accounts at 90 days overdue must pay off the entire amount that is 90 days overdue.

      a. Accounts with 90 days past due balances will be submitted to Debt Collections
b. Accounts with 90 days past due balances will be on a pay-as-you go basis until account is current

4. Users continually found in violation of subsection 3 will be required to keep accounts current every month. User will risk having charge accounts suspended and will be on a pay-as-you go basis.

B. The Director may require any user to return to the scales for verification of the tare weight of any vehicle.

C. To prevent the spilling or blowing of solid waste from vehicles in transit to solid waste facilities, vehicles must have their loads enclosed, covered, or secured from point of origin. If the user does not comply, each vehicle/trailer will be charged up to a $100.00 Fine, for an unsecured load in addition to the applicable disposal fee.

D. For all non-special or non-hazardous waste the following fee schedule will apply:

1. A residential customer with the most current utility bill may receive one disposal of one load, of up to 300 pounds of solid waste, each calendar month at no charge upon complying with the following:

   a. Present a copy of their City utility bill showing they have an active account and is the most recent bill

   b. Present photo identification matching the name and/or address on the City utility bill account;

   c. The load must be properly enclosed, covered, or secured from point of origin to prevent the spilling or blowing of solid waste from vehicles in transit to solid waste facilities;

   d. The customer is responsible for all fees should the load exceed the 300-pound limit. Only one 300 pounds of solid waste generated from the customer’s dwelling unit is eligible for the monthly fee waiver and;

   e. This does not include tires, construction materials, e-waste, or heavy loads weighing more than 300 pounds;

   f. Loads must be able to fit within a pickup truck bed or 10-foot trailer.

2. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1, 2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure
in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>FY25</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Only 300 pounds or less</td>
<td>$6.32</td>
</tr>
<tr>
<td>SW Mixed Loads/Residential</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Commercial Loose Mixed Solid Waste</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Commercial Compacted Mixed Solid Waste</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Residential Compacted Mixed Solid Waste</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Yard Waste – Residential</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Yard Waste – Commercial</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Ag Waste – Residential</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Heavy Waste – Residential</td>
<td>$24.59 Per Ton</td>
</tr>
<tr>
<td>Heavy Waste – Commercial</td>
<td>$24.59 Per Ton</td>
</tr>
<tr>
<td>Clean Fill – Commercial</td>
<td>$18.59 Per Ton</td>
</tr>
<tr>
<td>Clean Fill – Commercial</td>
<td>$18.59 Per Ton</td>
</tr>
<tr>
<td>Dry Debris – Waste Water</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Dry Bones – No Tissue</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Bulk Tires</td>
<td>$333.93 Per Ton</td>
</tr>
<tr>
<td>Passenger Tire</td>
<td>$5.47 Per Unit &amp; $0.17 Per Pound</td>
</tr>
<tr>
<td>Truck Tire</td>
<td>$9.02 Per Unit &amp; $0.17 Per Pound</td>
</tr>
<tr>
<td>Large Tire</td>
<td>$0.17 Per Pound</td>
</tr>
<tr>
<td>Contaminated Tires</td>
<td>$728.67 Per Ton</td>
</tr>
<tr>
<td>Wheels with Rims</td>
<td>13.39 Per Unit &amp; $0.17 Per Pound</td>
</tr>
</tbody>
</table>

3. If there are more than 10 tires, a tire manifest is required for them. (20.9.20.50 NMAC)

4. Loads may be estimated on the basis of tare weight in accordance with the table in this subsection, when scales are inoperative, if the computerized system is not operational the option to use average weights from past history, when available may be used.

<table>
<thead>
<tr>
<th>Tare Weight (Pounds)</th>
<th>Estimated Types of Vehicles</th>
<th>Weight (Tons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9,000-9,999</td>
<td>One-ton Dump Trucks</td>
<td>3.00</td>
</tr>
<tr>
<td>10,000-19,999</td>
<td>2 ½ ton dump trucks, solid waste collection trucks</td>
<td>4.25</td>
</tr>
</tbody>
</table>
E. Hazardous Materials is not accepted at any City Solid Waste Disposal Facility except as provided in (NMED Permit).

1. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1, 2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Waste Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>How Fees are Charged</th>
</tr>
</thead>
<tbody>
<tr>
<td>Household Hazardous</td>
<td>Per Ton</td>
</tr>
<tr>
<td>Lightbulbs</td>
<td>Per Unit &amp; Per Ton</td>
</tr>
<tr>
<td>Ballasts</td>
<td>Per Unit &amp; Per Ton</td>
</tr>
<tr>
<td>E-Waste</td>
<td>Per Ton</td>
</tr>
<tr>
<td>Refrigeration Units</td>
<td>Per Ton</td>
</tr>
<tr>
<td>Evacuation of Refrigerator Units</td>
<td>Per Unit</td>
</tr>
</tbody>
</table>

F. All other Landfill fees that are charged.

1. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1, 2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Waste Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>How Fees are Charged</th>
</tr>
</thead>
<tbody>
<tr>
<td>Load Pull Charge</td>
<td>Straight Fee</td>
</tr>
<tr>
<td>Landfill Equipment Pull</td>
<td>Straight Fee</td>
</tr>
<tr>
<td>Cover/Tarp Charge</td>
<td>Fine up to $100.00</td>
</tr>
<tr>
<td>Trash in Brush Pile</td>
<td>Straight Fee</td>
</tr>
<tr>
<td>Metal Commercial</td>
<td>Per Ton</td>
</tr>
</tbody>
</table>
G. Grappler pickup/Bulk pickup fees.

1. Residents that want next day pickup and all businesses will be charged for Grappler pickup.
   a. Residents that place out more than 5 cubic yards of trash will be charged for pickup.

2. They must supply their utility account number. The charge will be shown as a past due item on their account.

3. The following fee descriptions will apply.
   a. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1, 2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Waste Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>FY25</th>
<th>FY26</th>
<th>FY27</th>
<th>FY28</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk Trash ¼ a truck or less (5 cubic yards)</td>
<td>$35.91</td>
<td>$37.71</td>
<td>$39.56</td>
<td>$41.57</td>
</tr>
<tr>
<td>Bulk Trash ½ a truck (10 cubic yards)</td>
<td>$75.99</td>
<td>75.42</td>
<td>$79.19</td>
<td>$83.15</td>
</tr>
<tr>
<td>Bulk Trash full truck load (20 cubic yards)</td>
<td>$143.66</td>
<td>$150.84</td>
<td>$158.38</td>
<td>$166.29</td>
</tr>
<tr>
<td>Call Back</td>
<td>$55.46</td>
<td>$57.22</td>
<td>$59.30</td>
<td>$61.46</td>
</tr>
</tbody>
</table>

Sec. 21-72 – Roll-Off Rentals and Fees

A. Before a roll-off can be rented, a roll-off account application must be completed and accepted.

B. A down payment of the first pull fee is required of all residential customers.

C. Placement of the roll-off container is done by the discretion of the driver.
D. Tires, Asbestos, and Hazardous waste such as, paint, pesticides, and oils are not allowed in the roll-off dumpster.

1. If Asbestos is suspected in the container, Customer will pay to have the material tested.

2. If tests positive for asbestos the customer will pay for the abatement of the container.

E. Open top containers cannot be filled over the top; if they are found to be so, you will be charged a grappler fee to get the debris below the top.

F. Concrete asphalt, and brick are limited to only 1/3 the size of the container. If it contains more than 1/3, it will exceed the maximum weight that can be hauled on city streets.

G. Roll-offs must be pulled once a calendar month or are charged the pull fee as the monthly minimum fee.

H. If the business owns the compactor, they do not pay for the monthly minimum fee but all other fees apply.

I. Additional charges will be applied if the load is over the NMDOT weight limit.

J. Roll-offs do not have a daily rental fee but instead have a pull fee plus the weight of the trash in the container.

K. The following fee description will apply:

1. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1,2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roll-Off Pull Charge</td>
<td>Straight Charge</td>
</tr>
<tr>
<td>SW Mixed Loads</td>
<td>Per Ton</td>
</tr>
<tr>
<td>Monthly Minimum Charge</td>
<td>Same as Roll-Off Pull Charge</td>
</tr>
</tbody>
</table>
L. For Companies hauling trash they must have a copy of the Trash Haulers Permit on file. Companies are required to keep it updated and send in copies of the updated permit. If companies fail to do so they will not be allowed to use the Roswell Municipal Landfill (NMED).

Sec. 21-73 – Recovery Expense

A. Any person, individual, corporation, association, partnership, firm, trustee, or legal representative causing or contributing to the cause of the placement of a prohibited substance as defined by the chapter in solid waste system or the sanitary landfill, shall be liable to the city for the recoverable expenses resulting from the action. This shall be in addition to any and all penalties provided by law.

B. Recoverable expenses are those expenses that are reasonable, necessary and allocable to the activities conducted to prevent or mitigate injury to human health or the environment from the release or threatened release of hazardous material into the solid waste handling system. Expenses allowable for recover may include, but are not limited to:

1. Disposable materials and supplies acquired, consumed, or expended specifically for the purpose of the abatement of the hazardous condition.

2. Compensation of employees for the time and efforts devoted specifically to the abatement action.

3. Rentals or leasing of equipment used specifically for the abatement action (such as protective equipment or clothing, scientific and technical equipment).

4. Replacement costs for equipment owned by the City that is contaminated beyond reuse or repair, if the equipment was a total loss and the loss occurred during the abatement period.

5. Decontamination of equipment contaminated during the abatement response.

6. Special technical services specifically required for the abatement response.

7. Other special services specifically required for the abatement action.

8. Laboratory costs for analyzing samples taken during the abatement action.

9. Costs of clean up, storage, or disposal of hazardous material.
10. Costs associated with the services, supplies and equipment procured for the
specific abatement.

11. Medical expenses incurred as a result of abatement activities.

12. Legal expenses that may be incurred as a result of the abatement action.

C. City personnel and departments involved in an abatement action shall keep an
itemized record of recoverable expenses resulting from the abatement. Promptly after
completion of an abatement action, the appropriate city department shall certify those
expenses to the city manager. The City shall submit a written itemized claim for the
total expenses incurred by the City for the abatement action to the responsible person
and a written notice that unless the amounts are paid in full within 30 days after the
date of the mailing of the claim and notice, the City will file a civil action seeking
recovery for the stated amount. The City may bring a civil action for recovery of
recoverable expenses against any and all persons causing or responsible for the
release or deposit of the hazardous material into the solid waste collection and landfill
system.

Sec. 21-73 – Enterprise Fund

Enterprise funds have been established by the city council for enterprise accounting and
budgetary purposes and will be maintained to account for revenue and expenditures of the
solid waste enterprise. All budgets, reports, audits, and financial operations of an enterprise
shall conform to and be prepared in accordance with generally accepted accounting
principals applicable to governmental (enterprise) units and other requirements of state law.

Sec. 21-74 – Revenue

All revenue for services and facilities provided by an enterprise, including rates, fees, tolls,
charges, and all other income of the enterprise shall be collected, used, and expended for
activities and purposes for which the enterprise was established as determined by the city
council in accordance with and as set forth in the fiscal budget for the enterprise adopted by
the city council pursuant to law. Rates for services and facilities provided by an enterprise
shall be established by the governing board and collected and enforced by the City.

Sec. 21-75 – Restricted Fund Accounts within the Enterprise Fund

The Finance Officer shall create the following restricted accounts within the Solid Waste
enterprise fund:

A. Debt Service Fund
a. This fund shall be used to pay any budgeted debt service from the respective enterprise funds. City council action during the annual budget process is required to expense from this fund. Unexpended funds within this account shall be carried over into subsequent fiscal years.

B. Capital Reinvestment Restricted Acct

a. This fund shall be used to pay for budgeted capital infrastructure projects. This is also the emergency repair fund to utilize when unbudgeted repairs or emergency situations arise. Specific city council action is required to expense funds from this account. Unexpended funds within this account shall be carried over into subsequent fiscal years.

C. Capital Outlay

a. This fund shall be used to pay for budgeted capital expenses to include, but not limited to, purchase of equipment, vehicles, and tools. Expenditures must be allowed under the restrictions on capital item purchases as directed by the Finance Officer/Treasurer. City council action during the annual budget process is required to expense from this fund. Unexpended funds within this account shall be carried over into subsequent fiscal years.

D. Bad Debt Fund

a. This fund shall be used to balance the enterprise fund accounts as a result of unpaid customer accounts. Specific city council action is required to expense funds from this account. Unexpended funds within this account shall be carried over into subsequent fiscal years.

Sec. 21-76 – Expenditure of Restricted Fund for any Purpose not Specifically Listed

The City Council shall, by ordinance, expend restricted funds for reasons not specifically listed. Prior to approving the expenditure, the city council shall advertise and hold a public hearing specifying the expenditure, amount, repayment option and specific reasons why restricted funds should be used. Such expenditures shall require a 2/3 majority approval of all city council members to pass.

Section 21-77 – 21-78 Reserved

ARTICLE VII: Illegal Dumping

Sec. 21-79 – Illegal Dumping of Solid Waste; Penalty
A. It is a violation for any person to dump, dispose, release, or cause to be dumped, disposed or released, any solid waste, special waste, or hazardous waste upon any street, alley, right of way, or public or private property within the City except as specifically permitted in this chapter or at a disposal site authorized by the Director.

B. **Penalty:** Violation of subsection A of this section is punishable pursuant to Section 21-46 – Violations and Penalties.

C. In addition to the penalty imposed pursuant to subsection B of this section, a person in violation of subsection A of this section must make restitution to the City for all cleanup and disposal costs and administrative cost incurred by the City per current fees.

D. If violation of this section involves a vehicle, the person or persons in whose name such vehicle is registered shall be presumed responsible for such violation.
CHAPTER 21 – SOLID WASTES

ARTICLE 1: IN GENERAL

Sec. 21-1 – Purpose

The purpose of this chapter is to protect the health and safety of the citizens of the City, and to protect the environment by establishing minimum standards for the storage, collection, treatment, transportation, processing, and disposal of solid wastes. The word “shall” is always mandatory and not merely directory. The provisions contained in this chapter are hereby declared to be regulatory; further, such regulations are necessary to protect and secure the public health, safety and general welfare, and are intended by way of implementation where they are not in conflict with pertinent laws and regulations of the state or any agency therefore in such case made and provided. In addition, this chapter identifies fees charged by the City to recover the city’s costs to fund the solid waste program. In the event any requirement or provision herein shall be in conflict with or contrary to any such provision or regulation of state law, such state law or regulation shall prevail.

Sec. 21-2 – Definitions

For the purposes of this chapter, the following definitions apply:

Abatement: To reduce in amount, degree or intensity or to eliminate.

Alley: A public passageway affording a secondary means of access to abutting property for utility, emergency, and solid waste vehicles.

Animal Waste: Consists of large animal waste, research animal waste, and small animal waste as defined herein:

A. Large animal waste: Is animal waste, discarded bedding, or flooring materials from yards, pens, corrals, stables, or other containment structures for domestic animals (such as cattle or horses) or permitted wild animals, that weigh more than 150 pounds.

B. Research animal waste: Is animal carcasses, body parts, or the bedding of animals that have been infected with agents that can cause human infection.

C. Small animal waste: Is animal waste, discarded bedding or flooring materials (such as straw, sawdust, or paper) from yards, kennels, dog or cat runs, chicken pens, aviaries, or other containment structures for domestic animals (such as dogs, cats, or fowl, including birds, chickens, ducks, or geese), or other tame or permitted wild animals,
weighing 150 pounds or less.

Asbestos waste (Asbestos): A solid waste that contains more than 1 percent asbestos:

A. Friable asbestos material: Any material containing more than 1 percent asbestos that, when dry, can be crumbled pulverized, or reduced to powder by hand pressure;

B. Category I non-friable asbestos containing material: Means asbestos containing packing, gaskets, resilient floor covering, and asphalt roofing products containing more than 1% asbestos;

C. Category II non-friable asbestos containing material: Means any material, excluding category I non-friable asbestos containing material, containing more than 1% asbestos, that, when dry, cannot be crumbled pulverized or reduced to powder by hand; and

D. Regulated asbestos waste: Means friable asbestos material; category I non-friable asbestos containing material that has become friable; category I non-friable asbestos containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or category II non-friable asbestos containing material that has a high probability of becoming or has become broken, crumbled, pulverized, or reduced to powder by the forces expected to act on the Material in the Course of excavation, renovation, demolition, storage, transportation, or while exposed during disposal operations (NMAC 20.9.7).

Automated contained solid waste collection system: A contained waste collection system that utilizes City-specific solid waste containers and a solid waste collection vehicle equipped with a mechanized lifting device.

Biohazardous medical waste: Any waste that is composed of, or has a constituent of one of the following including but not limited to:

A. Cultures and stocks: Discarded cultures and stocks generated in the diagnosis, treatment, or immunization of human being or animal or in any research relating to that diagnosis, treatment, or immunization, or in the production of testing of bacteria.

B. Human blood and blood products: Discarded products and materials containing free-flowing blood or free-flowing blood components; and

C. Human pathological waste: Discarded organs and body parts removed during surgery.
**Bulk trash:** Items as defined in Section Sec. 21-32 – Residential bulk trash placement and collection services.

**Call Back:** A charged service for residential or commercial user(s) requesting additional service.

**Cell:** A confined area engineered for the disposal of solid waste (NMAC 20.9.2)

**City Block:** any territory smaller than five acres in size. An area in a City surrounded by streets.

**Clean fill:** Broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is uncontaminated, meaning the fill has not been mixed with any waste other than the foregoing and has not been subjected to any known spill or release of chemical contaminates, including petroleum product, nor treated to remediate such contamination; reinforcement materials which are an integral part, such as rebar, may be included as clean fill; clean fill must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste. (NMAC 20.9.2)

**Collection:** Providing a service of gathering solid waste from one or more persons or premises within the city, for the transportation to a point of disposal or recycling, or sanitary landfill, except in cases where such service is only incidental to the provision of other goods or services responsible for creation of the solid waste. Collection does not include the disposal of solid waste by the individual or entity that created it.

**Collection begins date:** The first day of the scheduled collection period, as established and published by the department.

**Commercial collection:** Solid Waste collected from any source other than from residential accounts.

**Commercial containers:** A solid waste container for use by a commercial user.

**Commercial hauler:** Any person transporting solid waste for hire by whatever means for the purpose of transferring, processing, storing or disposing of the solid waste in a solid waste facility, except that the term does not include an individual transporting solid waste generated on his residential or business premises for the purpose of disposing of it in a solid waste facility.

**Commercial or industrial establishments:** Any building, structure, or premises not defined as a dwelling unit in this section.
Compactor or roll-off system: A contained solid waste collection system that uses a stationary solid waste compactor and bins or open top roll-off containers.

Construction and demolition waste: All solid waste, building materials, rubble, soil and spoils resulting from construction, remodeling, repair, and demolition operations.

A. The term “construction and demolition solid waste” includes rocks, soil, tree remains, trees and other vegetative matter that normally results from clearing land.

B. The term “construction and demolition solid waste” does not include asbestos or liquids including but not limited to: waste paints, solvents, sealers, adhesives or potentially hazardous materials.

Contained solid waste materials: Solid Waste placed in designated containers for disposal.

Contaminated load: Any load of solid waste, green organics, or recyclables containing unacceptable materials.

Contaminated tire: An old discarded tire that is leaching chemicals and oils. Can also be tires with foam in them.

Department: The City of Roswell Solid Waste Department.

Director: The Solid Waste Director or the Director’s designee.

Disposal Facility: The sanitary landfill or site for the disposal of solid wastes.

Dwelling unit:

A. A single unit providing independent living facilities for one or more persons including provisions for living, sleeping, eating, cooking, and sanitation; or

B. One or more rooms within a building arranged, designed or used for residential purposes for one or more persons and containing independent sanitary and cooking facilities.

C. Dwelling unit and living unit are terms that may be used interchangeably.

E-waste: Electronic waste, e-scrap or end-of-life electronics. Used electronics that are nearing the end of their useful life.
Fly tight: The lid of the container must fit flush around all contact points and prevent entry of flies or rodents.

Fiscal Year (FY): Fiscal Year is July 1-June 30

Franchise: An authorization granted by the City of Roswell to an individual or group enabling them to carry out specified Solid Waste collection and transporting activities.

Garbage: Swill, offal, and any accumulation of spoiled, partially or fully decomposed, rotting or discarded animal, vegetable, or other matter that attends the preparation, handling, consumption, storage, or decay of plant and animal matter including but not limited to: meats, fish, fowl, fruits, vegetable, or dairy products and their waste wrappers or containers.

Gross vehicle weight (GVW): Weight of the vehicle plus load and driver of the vehicle used to determine the fee for the City of Roswell, Roswell Municipal Landfill.

Hazardous Waste: Polychlorinated biphenyls (PCBs) and any waste so defined by the New Mexico Environment Department as defined in 40 CFR 261.3.

Home appliance: Includes but is not limited to washers, dryers, stoves, dishwashers, hot water heaters, refrigerators, freezers, televisions and computer equipment.

Hot load: Any vehicle carrying solid waste observed to be smoldering, smoking, on fire, giving off toxic odor, or leaking a potentially caustic substance.

Household hazardous waste: Any waste that would otherwise be hazardous waste pursuant to (NMAC 20.4.1) but is excluded as a hazardous waste because it is generated by the normal day-to-day activities of households.

Imminent health or safety hazard: Condition of real property, solid waste container that places a person’s life, health, safety, or property in high risk of peril when such condition is immediate, impending on the point of happening and menacing.

Incipient hazard: Condition of real property that can become an imminent health hazard if further deterioration occurs that can cause unreasonable risk of death or severe personal injury.

Inclement weather: Severe or harsh weather that hinders landfill and collection services. This is so decided by the Director or the designee’s discretion.

Industrial solid waste: Any solid waste as defined in this section produced as a result of any industrial operation.
Infectious solid waste: A limited class of substances that carry a risk of transmitting disease, including but not limited to:

A. Microbiological laboratory wastes: Including clinical and stocks of infectious agents from clinical research and industrial laboratories, and disposable culture dishes and devices used to transfer, inoculate and mix cultures;

B. Pathological wastes: Including human or animal tissues, organs, and body parts, removed during surgery, autopsy, or biopsy;

C. Disposable equipment: Gloves, instruments, utensils, and other disposable materials which require special precautions because of contamination by highly contagious diseases;

D. Blood and blood products: Including waste blood, blood serum and plasma;

E. Used gloves, sharps, including used hypodermic needles, syringes, scalpel blades, Pasteur pipettes, and broken glass; and contaminated animal carcasses, body parts and bedding, especially those intentionally exposed to pathogens in research, in the production of biological or the in vivo testing of pharmaceuticals.

Institutional establishment: Any school, church, nonprofit organization, or government facility. Dwelling units owned and operated by the institutional establishment are not included in this definition.

Landfill: A New Mexico Environment Department (NMED) permitted landfill.

Medical Sharps: Discarded sharps used in animal or human patient care, medical research, or clinical laboratories. This includes hypodermic needles, syringes, pipettes, scalpel blades, blood vials, needles attached to tubing, broken and unbroken glassware, slides and cover slips.

Medical solid waste: Animal tissue or any part of an animal body that has been removed by surgery, and any contaminated material such as, but not limited to, tissues, bandages, and hypodermic needles.

Mobile home parks: Property owned and operated for the purpose of leasing or renting out mobile home space to tenants.

Motor vehicle: Any vehicle which is designed to be self-propelled and travel along the ground and shall include, but not be limited to, Automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, go-carts, golf carts, recreational vehicles, and motor homes.
**Motor vehicle tire:** A passenger car or light truck tire.

**Multifamily dwelling units:** A building or buildings attached to each other that contains two or more dwelling units. This term is intended to apply to dwelling unit types such as duplex, triplex, fourplex, and apartments.

**NMED:** New Mexico Environment Department.

**Noncombustible solid waste:** Any miscellaneous solid waste material that will not burn at ordinary incinerator operating temperatures (up to 2,000 degrees Fahrenheit or 1093.33 degrees Celsius) and are the inorganic component of solid waste.

**Nonhazardous liquid waste:** Any liquid waste defined as nonhazardous liquid waste by the NMED.

**Notice:** Any method of communication reasonably calculated to inform interested parties that a violation of ordinance is observed and includes, but is not limited to: in person notification, posting a notice and notification via United States Postal Service.

**Obnoxious materials:** Any solid waste that when exposed, is unpleasant or offensive to the senses due to its odor or condition.

**Owner:** A person, persons, or legal entity listed as current titleholder as recorded in the official records of the Chaves County Assessor’s Office.

**Pathogenic liquid or solid waste:** Any liquid or solid waste causing or capable of causing disease.

**Person:** Any private individual, institution, state, municipal, county or private corporation, individual partnership, or other entity.

**Premises:** Land, buildings, or other structures, or parts thereof, where solid waste is stored or accumulated.

**Private property:** Any real property within the city which is privately owned and which is not public property, as defined in this section.

**Private Solid waste collection haulers:** Solid waste collection operations owned and operated by private individuals or business that holds a Franchise Contract issued by the City.

**Public buildings:** All buildings or structures owned or leased by governmental agencies and used for the purpose of conducting public business.
Public nuisance: Anything that is injurious or obnoxious to health, or is offensive to the senses, or is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by any considerable number of persons, or that obstructs the free passage or use, in the customary manner, of any street, alley, sidewalk, or public property.

Public Property: Any street or highway which shall include the entire width between the boundaries lines of every way publicly maintained for the purposes of vehicular travel and shall also mean other publicly owned property or facility.

Published by the Department: Publication of written information, materials or documents by the Department in a manner intended to provide notice of interested parties. Publication may be accomplished by direct mailing, conspicuous posting at City facilities, or posting on the City website.

Putrescible solid waste: Solid waste that is capable of being decomposed by microorganisms with sufficient rapidity to cause nuisances from odors or gases and capable of providing food for of attracting birds, insects, snakes, rodents, or animals capable of transferring a diseased bacterium or virus from one organism to another.

Radioactive waste: So, defined by the state of New Mexico in NMAC 20.9.2

Rear load container: A contained solid waste collection system utilizing 3 to 10 cubic yard containers that is serviced by rear-loading trucks.

Recycling: The segregation of reusable materials preparatory to industrial processing of such materials, whereby such material is converted into a new product so that the original product is no longer identifiable.

Refrigerants: Chlorofluorocarbon (CFC) and hydro chlorofluorocarbon (HCFC) and other ozone depleting substances as defined in EPA regulations (40 CFR Part 82, Subpart F) under Section 608 of the Clean Air Act and ammonia when used in an appliance.

Responsible party: An occupant, lessor, lessee, agent, licensee, owner, or other person having control over a structure or parcel of land.

Restricted Revenue/Expense Accounts: Funds restricted by ordinance as to use. Funds may only be used for stated purpose unless acted upon by resolution of the city council after required public hearing.

RML: Roswell Municipal Landfill.
**Roll-off container:** A container used to collect solid waste material that is ten cubic yards or greater and collected with a roll-off vehicle.

**ROW:** Right of Way, real property owned by the City, whether title is held in fee, easement, right-of-way, or otherwise, whether recorded or unrecorded, including prescriptive rights and licenses.

**Sanitation fee:** A fee assessed by the City for solid waste services.

**Scavenging:** Includes but is not limited to any action or inaction to facilitate or participate in the unauthorized pilfering, searching, gathering segregating, removal, buying selling, trading or using material within or from the City properties, facilities, or work sites.

**Schools:** All public and private buildings used for preschool, elementary, specialized, or higher education purposes.

**Solid waste:** Garbage, rejected or waste food, offal, carrion, dirt, slop, wastewater, trash rubbish, cast-off items, parts of autos, clothing, mattresses, tires, paper, cartons, salvage or unwholesome materials of any kind or description but not including special or hazardous waste, or human body parts; except sewage, but including commercial, industrial, institutional and recreational wastes and any article or substance commonly discarded as waste or which, if discarded on the ground, will create or contribute to an unsanitary, offensive or unsightly condition.

**Solid waste container:** A receptacle owned and used by the City, purchased from the city or built to city specs, used exclusively for the storage of solid waste, excluding yard, hazardous, construction, and demolition waste, until it is collected.

**Solid waste disposal facility:** Any site owned, operated, or utilized by any person for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste. That is licensed through the New Mexico Environment Department.

**Special waste:** Solid waste that has unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety, including:

- A. Treated formerly characteristic hazardous wastes (TFCH);
- B. Packing house and killing plant offal;
- C. Regulated asbestos waste;
D. Ash, except ash produced by a law enforcement pharmaceutical incinerator for the incineration of household pharmaceutical waste;

E. Infectious waste;

F. Sludge, except sludge that is land applied under 40 CFR Part 503 as intermediate or final cover at a landfill and meets the requirements of Subpart B of 40 CFR Part 503;

G. Industrial solid waste that, unless specially handled or disposed, may harm the environment or endanger the public health or safety;

H. Spill of a chemical substance or commercial product that, unless specially handled or disposed, may harm the environment or endanger the public health or safety; and

I. Petroleum contaminated soils that have a sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations of greater than 50 mg/kg, or benzene individually greater than 10 mg/kg or a total petroleum hydrocarbon concentration of greater than 100 mg/kg

(NMAC 20.9.2)

Tare weight: Empty weight of vehicle with driver.

Townhouses or condominium: All individually owned dwelling units sharing a common area and with two or more units sharing a common wall.

Unacceptable material: Any material the City has deemed improper for collection as determined by the Director and published by the Department.

Volume based service fee: A fee charged for collection or disposal services based on the quantity of waste material, the size of the container, or both.

Watertight: The lid of the container must fit flush around all contact points and prevent entry of rain.

State law reference – Municipal authority relative to solid wastes, NMSA 1978, 3-48-1 et seq.

Sec. 21-3 – Authority of the Solid Waste Director.

The director, in order to protect the health and safety of the citizens and the environment of the City, is authorized and directed to implement and enforce the provisions of this chapter to control the storage, collection, treatment, transportation, processing, and disposal of solid
waste. The director is further authorized and directed, to provide public solid waste disposal facilities for solid waste originating within the City. They shall enforce such regulations as the governing body may from time to time adopt, relating to procedures, schedule of charges, and frequency and times of solid waste collection, including the provisions of this chapter. Nothing in this chapter is intended to or may be construed so as to infringe or supplant the authority of the New Mexico Department of Health, New Mexico Environment Department, and/or The United States Environmental Protection Agency in this area pursuant to Federal and State Laws.

A. Designation of Enforcement Authority: The Director may issue notice for lack of compliance or violation of this chapter, and/or the solid waste rules and regulations. Any city police officer, building inspector, code enforcement officer, fire marshal, or any other city employee authorized by the governing body, is authorized to issue citations for any violations of this chapter, and proceed with enforcement.

B. The Director will enforce the provisions of this chapter. In addition, the Director is authorized to abate conditions that in the opinion of the Director are an incipient hazard and/or are an imminent threat to health and safety of any person or persons.

C. The Director is authorized to make reasonable and necessary rules and regulations to carry out provisions of this chapter.

Sec. 21-4 – City’s Exclusive Right to Collect Solid Wastes.

The City and its employees reserve the exclusive right to engage in the collection of solid waste within the City. It shall be unlawful for any person to engage in the collection of solid waste within the city, except as permitted by the City pursuant to a duly authorized franchise contract per Sec. 21-34 – Franchise Fee.

Sec. 21-5 – 21-10 – Reserved

ARTICLE 2: SOLID WASTE CONTAINMENT

Sec. 21-11 – Inspection of Containers.

Provisions shall be made for regular inspections by the Department to secure compliance with this chapter with reference to containment of solid waste. The Director has the right to enter commercial, industrial, and institutional establishments for inspection purposes only. (NMSA 24-1-16)

Sec. 21-12 – Responsibility for Solid Waste
A. The Responsible party of any premises or business establishment is responsible for solid waste until those waste materials are collected by the City, agents of the City, or licensed solid waste haulers.

B. The responsible party of any premises, business establishment or industry is responsible for the sanitary condition of said premises business establishment, or industry, and for the proper storage, containment, and placement for collection of all solid waste. Except as provided in this chapter, it is a violation for any person to bury, dump, dispose, or release upon any street, alley, right-of-way, or public land any solid waste including construction and demolition solid waste and tires.

(NMSA 3.48.2)

Sec. 21-13 – Accumulation of Solid Waste

A. No person shall allow any solid waste to accumulate upon premises or real property owned, leased, or occupied by them during intervals between collection thereof, except in the manner provided by this chapter.

B. It shall be unlawful to deposit any solid waste in or upon the streets, alleys, sidewalks, gutters, right of ways, or vacant land within the City, except in the assigned containers as hereinafter specified.

C. No person shall allow any material or solid waste on residential or commercial properties to accumulate in or around the circumference of a fire hydrant, objections must be submitted to the Fire Marshall. A minimum of 8 feet with no maximum, of clear space from the fire hydrant must be maintained at all times.

D. When a City of Roswell designated official deems an accumulation has become nuisance, create a fire hazard, or should it appear to be a matter of public necessity for health or safety reasons, or should such accumulation be otherwise violating this chapter, the responsible party of the premises shall be notified in person, by notice posted upon the premises or by mail. The notice shall describe the violation and shall establish a reasonable time limit for abatement thereof by the person/responsible party, at their own expense. Compliance shall be given within 15 days after the day of notice, except in cases where hazardous materials are involved, in which case the compliance period shall be shortened to 48 hours per Sec. 21-46 – Violations and Penalties.

E. In the event the responsible party does not respond to the notice of violation, or compliance, the city will proceed with enforcement and abatement pursuant of Sec. 21-48 – Abatement and appeal.
Sec. 21-14 – Unobstructed Passage in Streets and Alleys.

A. It is a violation for any person to permit trees, shrubs, or brush growing upon their property to encroach on or over any public right-of-way so as to interfere with the movement of persons or vehicles. It is the responsibility of the responsible party to trim trees or shrubbery on their property and in the adjacent right-of-way back to their property line and allow 18-foot-high clearance measured from ground level.

B. It shall be unlawful to have any obstruction, including but not limited to parked vehicles, within 15 feet of a solid waste container placed out for collection service or to obstruct the solid waste operations in any other manner.

C. The property owner shall be responsible for trash, debris, weeds, bulk trash, accumulation of waste adjacent to their property line and adjacent to the city ROW.

Sec. 21-15 – Solid Waste Containers

General statement. The responsible party of any premises, business establishment, or industry is responsible for the sanitary conditions of the premises, business establishment, or industry and for the proper storage, containment, and placement for collection of solid waste. All solid waste must be stored in a manner that does not present a health or safety hazard and/or public nuisance. No person shall place, deposit, or allow to be placed or deposited on their premises or private property, any public street, alley, or right-of-way any solid waste except in a manner prescribed in this chapter.

A. Containers generally.

1. Every person owning, leasing or occupying premises within the city limits shall provide one or more of the following types of waste containers:

   a. Mechanically transported containers.

   b. Containers for automated pickup.

Such Containers shall be provided in sufficient number to contain and accommodate any and all solid waste accumulated by such person between collection periods. This will be assessed by the Director or their designee to ensure there is adequate service. If service is found to be insufficient service will be adjusted accordingly in an effort to maintain the health and safety of the public, and appropriate fees will be charged per Sec. 21-70 – Fees for containers.
2. Containers shall conform to the following specifications:

a. Mechanically transported containers.

i. Mechanically transported containers shall be in accordance with specifications to be approved by the Director, and no mechanically transported container shall be placed to serve any premises, either in the street or in the alley, without prior approval of the Director. The Director or their designee is authorized to designate the locations of any such containers, considering, among other things, accessibility and convenience to collection equipment.

ii. Each owner, tenant, occupant, lessee or person in charge of or controlling premises shall be held responsible for maintaining the area surrounding mechanically transported containers in a clean and sanitary condition, free of weeds, tall grass, brush, briars, tree sprouts and solid waste scattered by reason of overturned dumpsters they shall keep the lids on the dumpsters closed at all times to prevent the scattering of solid waste, and it will be their responsibility until the containers are serviced. (See Sec. 16-6. - Unsanitary or hazardous premises; certain solid wastes).

iii. Penalty. Violation of subsection ii of this section is punishable pursuant to Sec. 21-46 – Violations and Penalties.

iv. In addition to the penalty imposed pursuant to subsection iii of this section, a person in violation of subsection ii of this section must make restitution to the City for all cleanup and disposal costs incurred by the City by Fees per sec. 21-70 Fees.

b. Container for automated pickup.

i. In areas served by automated collection equipment the city shall furnish a sufficient number of containers to serve the area. At the city’s sole discretion containers may be placed to serve several surrounding residences or other users. When the Director determines it is necessary, it shall supply individual roll-out containers for a single user. Location of the container shall be determined by the Director.

ii. All persons using automated collection containers shall deposit solid wastes for collection only in the containers, it shall not be deposited on top of, and/or adjacent to the container. Material left outside a container will not be collected. Persons using any of the automated
collection containers are required to place waste material in plastic bags, tying the bag shut prior to depositing it in the containers. No loose garbage or similar wet material or loose material likely to be blown about shall be placed in the automated collection containers unless it is first bagged in a plastic bag and tied shut. No garbage shall be placed so it is higher than the lip of the container to keep it from falling out when the container is serviced.

iii. All cardboard boxes shall be broken down and placed in the container so that when it is inverted it will self-empty.

iv. Persons using individual automated collection containers and having curbside pickup shall place them at the designated pickup location in advance of scheduled collection times but shall not allow the containers to remain at the curb for longer than 24 hours.

v. Containers shall be clearly visible and accessible to collection equipment and employees, and free from any obstructions including but not limited to, trees, shrubbery, walls, fences, and vehicles.

3. At the discretion of the Director, they shall eliminate 300-gallon alley service. They shall then furnish 96-gallon curbside service with the following notification procedure.

   a. A notice will be sent out to the neighborhood in question giving them at minimum 2-weeks notice (14 days) of the change to their containers.

   b. The Solid Waste Department will provide instructions for the use of the curbside containers.

   c. An additional 2 weeks (14 days) for guidance and instruction will be given to the neighborhood after the transition.

4. All solid waste receptacles shall be maintained in a clean and sanitary condition by the owner or person using the receptacle, and such receptacles shall be located only in such places as shall be readily accessible for removing and emptying such receptacles, but shall not be placed in such a place or position as may constitute a nuisance or obstruction to vehicular or pedestrian traffic. In cases of dispute or complaint incidental to the location of any such receptacle placed for the removal of contents, the Director or designee shall designate a place, and such designation shall be final.

City of Roswell

Legal Committee
B. Use or damage to Containers

1. It is unlawful to maliciously damage any refuse container owned by the City. (See Sec. 10-65. - Destruction, misuse, etc., of public property).

2. Any individual who damages any container provided for the residential or commercial users shall be liable to the City for the cost of repair or replacement of the container. This shall include current cost of container and administration.

3. It is prohibited for any person, including children, to be on or in a sanitation container(s).

C. General requirements

1. All responsible parties using or occupying any dwelling unit commercial, industrial, or institutional establishment, or premises within the limits of the City where solid waste accumulate must store their solid waste in watertight and fly-tight containers.

2. Solid waste must be stored, collected, and hauled for disposal in accordance with NMSA 74-9-2.

3. It is the container users’ and responsible parties’ obligation to properly store solid waste generated on their premises and to keep the area around the container continuously clear and free of all debris. If the property has alley solid waste service, the term area includes the alley.

4. Every mobile home park shall provide for the collection of not less than ½ a cubic yard of refuse weekly per lot. If the Director determines that additional sanitation containers are necessary, they shall order such additional containers as shall be required to prevent excessive litter or any hazard to the public or residents of the park. They will be appropriately charged per Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

5. Multi-dwelling units with three or more units shall provide for the collection of not less than ½ cubic yard of refuse weekly per unit. If the Director determines that additional sanitation containers are necessary, they shall order such additional containers as shall be required to prevent excessive litter or any hazard to the public or the residents of the complex. They will be appropriately charged per Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.
6. All solid waste containers must be maintained in a sanitary condition by the responsible party. Containers shall not be stored or maintained in such a manner as to constitute a nuisance, health, sanitary, and/or safety hazard. (See Sec. 16-2. - Public nuisances, generally).

7. It is unlawful for any person not authorized by the responsible party to remove, collect, or disturb solid waste stored in such containers or to remove from a solid waste container any solid waste set out for collection and disposal by the City, agents of the City, or licensed solid waste haulers. This prohibition does not apply to law enforcement officers acting within the scope of their official duties pursuant of Sec. 21-62 – Scavenging, removal, or grazing at disposal area.

8. It is unlawful for any person to utilize the solid waste receptacles assigned to other persons for the disposal of solid waste without their permission. This does not apply to the automated solid waste system where residents share the use of common containers.

9. The lids or covers of any solid waste containers must at all times be kept secure in such a manner to prevent intrusion of moisture, infestation of insects, and scattering of solid waste, covers must be kept closed except when containers are being loaded or emptied. It is the responsibility of the persons using the container to report when the lid is no longer secure on the container.

10. Each solid waste container must be placed on or adjacent to the property of the authorized user at a location approved by the Director.

11. Alley solid waste containers must be placed on one side of the alley, as determined by the Director. No container may be placed so as to restrict egress from an exit door or beneath a fire escape. No container may be placed under a street floor window unless such window is of fire-resistant construction.

12. Non-alley containers must be located in such a manner to not interfere with pedestrians or vehicles at a location approved by the Director.

13. It is unlawful to block or impede access to a container which is located as directed.

14. All boxes, cartons, and crates must be collapsed before being placed in solid waste containers and placed so when the container is inverted it will self empty.
15. Heavy accumulations such as rock, brick, broken cement, shingles, lumber, plaster and other heavy materials, shall not be placed in the receptacle. Such accumulations must be transported to the Landfill at the generator’s expense.

16. No dead animals shall be placed in the receptacle.

17. No person shall set fire or burn any material in a receptacle, paint or mark upon such receptacle, place any poster, placard or sign upon such receptacle, or damage such receptacles in any way.

18. Explosives or flammable materials of any kind shall not be placed in any solid waste container.

19. Hot ashes and other combustible material of any kind may not be placed in any solid waste container.

20. Corrosives, reactive, oxidizers, lead acid batteries, lithium batteries, or any hazardous waste shall not be disposed of in solid waste containers.

21. Pool chemicals containers must be emptied, rinsed, drained, and moisture free prior to being placed in a solid waste container.

22. Solid waste collection shall not accept special, infectious, or hazardous waste and may at any time refuse to collect waste the department determines would be detrimental to operation of the collection system or landfill. Waste deemed unacceptable by the department shall not be presented for disposal unless such determination is remedied prior to presentation or disposal. If the container is found to have special, infectious, or hazardous waste after the time of collection, the owner/responsible party will be fined pursuant of Sec. 21-48 – Abatement; Appeal.

23. Refuse containers servicing residential accounts shall be used only by residential customers for refuse generated on residential premises; those serving commercial accounts shall be used only by the customer served by the particular account and those authorized by that customer.

D. Residential user requirements

1. All household solid waste, grass, and leaves must be bagged and securely tied before being placed in a solid waste container. Solid waste must be drained of all liquids and tied in a waterproof bag(s) before being placed in a solid waste container.
2. Construction, yard and demolition solid waste shall not be placed in a solid waste container. If such construction, yard and demolition waste is generated the responsible party is responsible for the removal and disposal of such solid waste. All construction, yard and demolition waste must be removed promptly and shall not be stored in any location where it may be blown or otherwise dispersed beyond the construction site. The City may upon request from the responsible party, provide containers for such construction, yard and demolition waste for a different and separate fee Sec. 27-74 – Roll-Off Rentals and Fees.

3. It is unlawful to place material in any solid waste container of a volume or weight that prevents the collection vehicle from emptying the container or that damages the collection vehicle or container. The maximum weight of material placed in any container up to 100 gallons may not exceed 200 pounds. The maximum weight of material placed in a 300-gallon container may not exceed 500 pounds.

E. Commercial User Requirements

1. The owner or responsible party of any commercial or privately owned solid waste container placed on private property alley or in the City right-of-way is responsible for maintaining the area within a 25-foot radius around the container or bin in a sanitary condition and preventing the scattering or blowing around of materials deposited.

2. Solid waste collected by the City or other authorized persons shall be deposited at such point or areas as shall be designated by the Director as the solid waste disposal area. The solid waste disposal area shall be maintained in such a manner as not to become a public nuisance and, in any case, shall be maintained in accordance with the duly adopted regulations of the NMED.

3. All collection containers shall be loaded with bagged solid waste only and in such a manner as they will self-empty when inverted.

4. All solid waste collection containers shall be kept in a clean sanitary condition by the user. It shall be a violation of this chapter to deposit used grease from any commercial account holder established to produce food products. Grease from such shall be deposited into a grease dumpster. It shall be the responsible party of the account holder to prevent such activity.

5. Should the responsible party wish to temporarily or permanently relocate a collection container, or make a change in service they may request a review from the Director or designee. It is the responsibility of the owner of the
premises to notify the department of any change in business type.

a. Request must be submitted in writing 30 days before the change in service.

6. Commercial users must, where the volume of solid waste accumulated cannot be conveniently handled in cans or bags, provide bins or compactor bins for containment of solid waste. Such bins or compactor bins must be constructed of durable non-absorbent, noncombustible material, and have suitable fly-tight and watertight covers.

7. All commercial containers located on commercial users’ premises must be placed or concealed in such a manner so as to minimize visibility from the street or walkways.

8. All non-city solid waste containers and recycling containers that have a capacity in excess of 20 cubic yards, or are accessible to the general public, the container must be identifiable by indicating the responsible party’s name and telephone number on the container and must meet all zoning, permit and franchise requirements. The container identification must be legible from a minimum distance of 10 feet.

9. Commercial user will, upon request of the Director, be required to show documentation of the method of collection and removal of solid waste they generate.

State Law Reference – Municipal authority to compel the taking of refuse to designated places NMSA 1978 3-48-2.

Sec. 21-16 – Condemnation of Containers; Removal.

A. If use of a solid waste container is in violation of this chapter and presents a health and/or safety hazard, the Director shall issue a notice of violation to the responsible party. Notification may consist of tagging the solid waste container with a notice of violation, or by delivering a notice of violation in person or by mail to the responsible party in accordance with Sec. 21-46 – Violations and Penalties.

B. If action necessary to remedy the violation is not taken within the period specified, the Director has the right to remove the solid waste Container and dispose of it in accordance with Sec. 21-48 – Abatement; Appeal.

Sec. 21-17 – Frequency of Collections
Solid wastes from all users of the city’s solid waste collection and disposal service shall be collected at least once a week.

A. A call back can be issued if a container was not out on time or the user has more trash needed for pickup. Call back’s must be issued before 12 pm or they will be serviced the following day at the end of a driver’s route. A fee shall be charged in accordance with Sec. 21-68 Level of Solid Waste fees; No exceptions.

B. A Commercial Call back fee will be charged in addition to a fee per container.

C. A flat residential call back fee will be charged.

Sec. 21-18 – Responsibility for Streets, Alleys and Sidewalks

A. The Owner and any responsible party in control of any land abutting a sidewalk, right of way, alley, or street must maintain the sidewalk, alley, or street free, within 3 feet from:
   1. The accumulation of solid waste;
   2. Trees, shrubs, or brush impeding pedestrian or vehicular traffic; and
   3. Other conditions that present a health, fire, and/or safety hazard.

B. The areas required to be maintained pursuant to this section are:
   1. Any portion of a street, that has been opened for public use, between the curb line and the abutting property line including sidewalks.

(NMSA 3.49.1)

Sec. 21-19 – 21-26 – Reserved.

ARTICLE 3 – MUNICIPAL COLLECTION AND DISPOSAL SERVICE

Sec. 21-27 – City’s duty to provide for disposal of solid wastes.

The city shall be responsible to provide and maintain suitable equipment to collect and dispose of solid waste generated within the City and adequate areas for the disposal thereof.

(NMSA 3.48.2)

Sec. 21-28 – Hours of Collection.
A. In order to prohibit the disturbance of the public peace and welfare, it shall be unlawful for the City or a private waste disposal company to collect or remove solid waste between the hours of 10:00 p.m. and 4:00 a.m.

B. For purpose of this section, private waste disposal company means any entity other than the city, whether commercial, nonprofit, or otherwise, collecting solid waste.

Sec. 21-29 – Holidays.

The City shall observe holidays as non-collection days as approved annually by the City’s governing body. Residential collection shall occur on an alternative day approved by the department. Commercial collections during such holidays shall be performed on the day either prior or after the holiday.

Sec. 21-30 – Residential User Containers; Ownership, Placement, and Responsibility.

A. Collection days will be designated by the Director.

B. The Director determines the service level required and method of collection.

C. The City specifies and may purchase or own the containers that are provided to residents for no other purpose than as solid waste containers. Non-City owned containers will not be serviced.

D. The Director will decide on which side of the alley and where the containers will be placed. Residents receiving curbside service must place their containers at the curb in front of their residence in such a manner that allows for the safe and efficient operation of the collection vehicle and does not interfere with Pedestrian or vehicular traffic, or where the Director deems them to be placed. Containers must be placed so that they open towards the street or alley.

E. A clear 5-foot radius around the curbside container must be maintained for the curbside container to be serviced. If there is anything within this 5-foot radius the can will not be serviced. A callback fee will be charged pursuant to Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions, to the water bill if the resident so asks for it.

F. All containers issued by the City for use in conjunction with an automated loading device remain the City’s property. The City is responsible for repairs to the City owned containers when damage is caused during normal usage. The responsible party will still need to report the damage so it may be repaired. Containers must be secured, between collection days, in such a manner that they are not readily susceptible to theft, vandalism or high winds. Anyone found to have intentionally or negligently
damage a City-owned container will be liable for the replacement or repair cost.

G. Only the Director or their designee is authorized to remove any City-owned solid waste container from the assigned location. It is unlawful for any other person to remove a container from the address to which it is assigned.

H. To ensure containers are placed out on time, containers may be placed at the curb no earlier than 6 p.m. on the day preceding collection. Containers for street collection must be placed at the curb for service no later than 4:30 a.m. on the day of collection. They must be removed prior to 4:30 a.m. of the day after collection. It is unlawful to place or permit containers to remain adjacent to the curb except upon regular collection days. Containers must be stored, between collection days, on the user’s property so as not to interfere with pedestrian or vehicular traffic.

(NMSA 3.48.2)

Sec. 21-31 – Residential Collection

A. The City will provide solid waste collection service to all dwelling units including:

1. Single dwelling units.

2. All buildings with less than two dwelling units, including duplex. Multiple buildings on one lot cannot be aggregated to avoid the provisions of this chapter.

3. The city will charge commercial fees to any multi-family dwelling units that have over two units per Sec. 21-70 – Fee Schedule.

4. Townhouses and condominiums.

5. Carryout service is provided at no additional charge to individuals living alone who are elderly, ill or disabled and are incapable of conveying their solid waste container to the designated collection location. This does not include entering the dwelling unit. The resident may be required to produce a medical statement of present physical condition. No carryout service will be performed, if in the opinion of the Director, the terrain presents a safety hazard for equipment operators or collection vehicles.

6. Dwelling units that generate in excess of needing more than once a week pickup at any given time may be served utilizing an alternate collection system and charged according to a different and separate fee structure based on collection and disposal costs. This is lined out in Sec. 21-70 – Levels of
Solid Waste Fees; No Exceptions.

B. The City will provide service to institutional, commercial, and business establishments. They will be charged a separate fee.

(NMSA 3.48.2)

Sec. 21-32 – Residential Bulk Trash Placement and Collection Services.

A. Subject to the other ordinances, solid waste such as boxes, cartons, cases, barrels, and other shipping containers, discarded furniture, trees, tree and shrubbery trimmings of size or bulk too great for the containers herein required may, at the option of the person in charge of the premises where such solid waste refuse accumulates, be prepared for collection as follows:

1. Such bulky solid waste shall be compressed as compactly as possible and broken or cut into shortened lengths, as the need may be, and securely tied in bundles not exceeding 4 feet in length and 50 pounds in weight.

2. Boxes, cartons cases, etc., shall be nested with the smaller boxes inside the larger boxes. The maximum overall dimensions of the nested solid waste shall not exceed 4 feet nor 50 pounds in weight.

3. In preparation of solid waste under either subsection 1 or 2 no refuse such as papers, light packing materials or other similar easily scattered materials shall be included in the bundling and nesting. Any such nested solid waste may be placed adjacent to the containers for collection.

4. Such other method as may be approved by the Director may be adopted for the disposal and handling of appliances, mattresses, and other household items. If any such method approved by the Director shall require time of the sanitation department equipment and employees for such collection in excess of the time required for collection under subsection here for, an additional charge over and above the normal monthly charge for collection and removal of solid waste from such premises will be made. Such additional charge will be computed upon the average hourly cost of equipment and for the additional hours per month required. The Director shall not in any case approve a plan for preparation for removal or holding for removal of any solid waste, bulky or otherwise, that permits the depositing of solid waste in any street, alley or public way in any manner which will permit its being scattered.

5. Grass clippings, leaves and weeds shall be put in plastic bags and/or cardboard boxes for pick-up with the weight of the containers not to exceed
35 pounds each. Grass Clippings, leaves and weeds not contained in plastic bags and/or cardboard boxes will not be picked up.

B. Items of bulk trash that is acceptable:

1. Tree Limbs or brush
   a. Less than 4 feet in length and 12 inches in diameter.

2. Leaves, weeds, and grass, all bagged or boxed;

3. Metal material 20 pounds or less;

4. Pipe(s) less than 1 inch in diameter and less than 4 feet in length;

5. Home appliances that do not contain refrigerants.

C. Items of bulk trash that are not acceptable for normal residential collection include but are not limited to:

1. Un-bagged leaves, weeds, and grass;

2. Construction and demolition waste;

3. Items containing asbestos;

4. Household trash;

5. Cement, cement blocks, bricks, asphalt, shingles, stones, and dirt;

6. Lead acid, lithium batteries, or any hazardous, infectious, or medical solid waste;

7. Vehicle or equipment parts;

8. Motor vehicle tire or tires of any other type;

9. Liquids of any kind;

10. Appliances containing refrigerants;

11. Household hazardous waste;
D. Bulk trash placed out for collection must be in neat stacks.

E. For those who have alley trash collection, bulk trash must be placed adjacent to the property line. For those who have curbside collection, bulk trash must be placed on the resident’s property, parallel to the street or curb. The Director may designate alternative placement and collection points. Bulk trash may not be placed on the sidewalk or in the street, behind a fence or any other obstruction or barrier.

F. Bulk trash may not be placed within five feet of any fixed object, solid waste container or in any manner that would interfere with or be hazardous to pedestrians, bicyclists, equestrians or motorist.

G. Bulk trash may not be placed under trees, power lines, or next to gas meters.

H. Residential bulk trash in excess of 5 cubic yards will be charged in accordance with Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

I. Bulk trash placed for collection may not exceed a totally un-compacted volume of 5 cubic yards per collection.

J. It is a violation of this chapter to place unacceptable bulk trash items, bulk trash exceeding 5 cubic yards, or improperly placed bulk trash items out for collection. The responsible party must remove and dispose of all bulk trash improperly placed, bulk trash exceeding 5 cubic yards, and any unacceptable items of bulk trash at their own expense.

K. Any yard waste, tree trimmings, and/or construction debris that is generated by a landscaping, or construction company is not allowed to be put out for bulk trash pickup and must be taken to the nearest solid waste disposal facility. If a company is found violating this subsection they will be fined per Sec. 21-46 – Violations and penalties.

L. The City may abate any violation of this section pursuant to Sec. 21-48 – Abatement; Appeal.

M. The City uses mechanical collection equipment. If bulk trash cannot be placed for collection set forth in subsection J and/or K of this section, the Director, at their discretion, may collect the bulk trash and may require a waiver that holds the City harmless for any and all damage associated with the collection activity. A waiver must be signed prior to collection.

Sec. 21-33 – Placement on Streets etc.; Transportation.
A. It shall be unlawful for any reason or any person to sweep, place or throw solid waste or other waste materials in or upon any sidewalk, street, alley or unoccupied premises. Included in the prohibited locations for deposit of solid waste are the streets and roadways providing access to the municipal landfill in the area of the corner of Brasher Road and Eisenhower Road and the properties adjoining such streets, specifically, but not limited to, Brasher Road from the City limits to the landfill and Eisenhower Road from the City limits to the landfill.

B. Size, location, quantity and type of service needed: The Director or their designee is responsible for evaluating the size, type of collection container, location, quantity and type of service or equipment necessary to provide the required services to residential and commercial accounts. In cases of disputes or complaints arising from such decisions, the department shall have final say in designating the size, location quantity, and type of service needed for said containers, taking into consideration among other things, convenience to collection crews, safety of employees, and if hazardous conditions exist.

C. No solid waste shall be transported upon the City’s sidewalks, streets, or alleys except in such manner that the waste is confined and bound to the transporting vehicle so as to prevent its blowing, falling or otherwise being accidentally separated from the vehicle during transit.

D. No Person shall throw, place, dump or dispose of any debris on any street, gutter, sidewalk or alley, nor shall any person allow the accumulation upon their property, of any debris for longer than 7 days. Sites subject to an active building permit may accumulate these items for longer than 7 days, but such items must be maintained in an orderly fashion so as not to impede on the property of others or create a hazard or attractive nuisance. Materials must be removed upon the completion of the permitted construction. Per Section 16-17: Litter in Places Generally & Section 16-6 b: Unsanitary or Hazardous Premises; Certain Solid Wastes

E. No person shall cause or permit to remain upon any property, private or public, any dead animal, animal waste, vegetable or mineral, matter or any composition of residue thereof which is in an unsanitary condition or is hazardous to public health.

(NMSA 3.48.2)

Sec. 21-34 – Commercial/Business User Containers; Ownership, Placement, Responsibility, and Enclosures

A. Commercial collection times: Commercial containers shall be serviced between the hours of 4:30 a.m. and 1:30 p.m. on regularly scheduled pickup days.
B. It shall be the responsibility of the Department to determine the quantity, cubic yard size, and number of pickups per week for commercial containers. The minimum number of pickups shall be one time per week.

C. The Director can change the quantity, cubic yard size, and number of pickups per week if deemed insufficient and the user will be charged appropriately per Sec. 21-70 – Levels of Solid Waste Fees; No Exceptions.

(NMSA 3.48.2)

Sec. 21-35 – Commercial/Business Collection

A. Commercial accounts including but not limited to:

1. Businesses
2. Churches
3. Non-profits
4. Schools
5. Mobile home parks
6. Mobile home developments
7. Multiplexes that are 3 dwelling units or more
8. Apartment complexes

B. All commercial solid waste must be bagged and securely tied before being placed in a solid waste container. Solid waste must be drained of all liquids and tied in waterproof bags before being placed in a solid waste container.

C. Construction, yard, and demolition solid waste may not be placed in a solid waste container(s). If such construction, yard, and/or demolition waste is generated the responsible party is responsible for the removal and disposal of such solid waste. All construction, yard and demolition waste must be removed promptly and may not be stored in any location where it may be blown or otherwise dispersed beyond the construction site.

1. The City may upon request from the responsible party, provide containers for such construction, yard, and demolition solid waste for a different and
D. It is unlawful to place material in any solid waste container of a volume or weight that
prevents the collection vehicle from emptying the container, or that damages the
collection operator, vehicle, or container. The maximum weight of material placed in
any container up to 100 gallons shall not exceed 200 pounds. The maximum weight
placed in a 300-gallon container shall not exceed 500 pounds. The maximum weight
placed in a 3-yard metal container shall not exceed 500 pounds.

1. If a violation of this subsection is found, a notice will be issued. If items are
removed and a call-back is issued, they will be charged per Sec. 21-70 –
Levels of Solid Waste Fees; No Exceptions.

2. Continued violation of this subsection will result in an audit of waste
generated per the Director and more solid waste containers placed.

3. Containers found in violation of this subsection will not be picked up. If the
violation is abated and the customer wants it picked up a callback fee will be
charged per Sec. 21-70 Levels of Solid Waste Fees; No Exceptions.

E. Container placement is done at the discretion of the director.

F. All solid waste container enclosures must be approved by the Director and
constructed according to Code of Ordinances / Appendix A – Zoning Article 52
Section 14 – Dumpsters and Grease bins.

G. The owner or responsible party of any commercial or privately owned solid waste
container placed on private property, alley, or in the city right of way is responsible
for maintaining the area within a 25-foot radius around the container or bin in a
sanitary condition and preventing the scattering or blowing around of materials
deposited or accumulation of bulk trash or debris. (NMSA 3.49.1)

H. Trash must be placed in solid waste containers. Solid waste placed on top of
containers or besides containers will not be picked up.

1. If said solid waste blocks the access to the container, it will not be serviced.
Until it is abated the container will not be serviced, if the customer wants it
picked up a callback fee will be charged per Sec. 21-70 – Levels of Solid
Waste Fees; No Exceptions.

I. Solid waste containment areas must be kept grease free. If the containment area is
deemed unsafe, a notice shall be issued and the containers will not be serviced.
1. The responsible party has 24 hours before a fine will be issued per Sec. 21-46 – Violations and Fines.

J. All boxes placed in solid waste containers must be broken down and placed in the solid waste containers in such a way when the container is inverted it will self-empty.

K. The City services the current solid waste containers:

1. 96-gallon rolling carts, owned by the City;
   a. 2 days a week pickup.

2. 300-gallon containers, owned by the City;
   a. 1 day to 5 days a week pickup.

3. 3-cubic yard containers, owned by the responsible party
   a. Must be built to City specifications
   b. Can be bought from the City
   c. 1 day to 6 days a week pickup

4. Roll-Offs owned by the City;
   a. Separate fees and pickups

5. Compactors owned by the responsible party;
   a. Separate fees and pickups

Sec. 21-36 – Franchise Fees

In consideration of the granting of the franchise herein, franchisees shall pay the city a franchise fee equal to 7% of the gross receipts of the franchisee for the services within the city limits. This franchise fee shall be paid each month. The city may inspect the books of the franchisee, with or without previous notice, at any time during business hours.

A. Franchise agreements will be 20 cubic yards and above, unless contracted differently;

B. Haulers found illegally servicing containers within the city will be (issued a citation/misdemeanor)

C. Containers must have responsible parties name and phone number visible from ten feet away.

Sec. 21-37 – Failure to Place in Proper Containers; Failure to use City Authorized Collection Service
The City shall remove or order the removal of any solid waste from any real property or any premises, IF:

A. Any person or responsible party of a property or premises that allows solid waste to be deposited or accumulated upon said property other than in the proper collection container and fails to remove solid waste or to place the solid waste in the proper collection container. (NMSA 3-48-3)

B. Any person or responsible party who owns or operates property within city limits with an active water meter cannot refuse Solid Waste Collection Provided by the City.

C. After such removal of solid waste, the city shall bill the owner of the property per the Chaves County Assessor’s office the fee for any required removal. The City may file a lien against the premises if the charges are not paid in full within 30 days after billing date. Failure to pay such charge is a violation of this chapter.

(NMSA 3.48.4)

Sec. 21-38 – Generally – Abandonment of Dangerous Containers

A. Abandonment of dangerous containers consists of any person or persons:

1. Abandoning, discarding or keeping in any place accessible to children, any refrigerator, icebox, freezer, airtight container, cabinet or similar container, of 1 ½ cubic feet or more, which is no longer in use, without having the attached doors, hinges, lids, and/or latches removed or without sealing the doors or other entrances so as to make it impossible for anyone to be imprisoned therein; or

2. Who being the owner, lessee, or manager of any premises, knowingly permits any abandoned or discarded refrigerator, icebox, freezer, airtight container, cabinet or similar container to remain upon such premises in a condition whereby a child may be imprisoned therein.

B. It shall be unlawful for any person to commit the offense defined in this section.

Sec 21-39 – 21-44 – Reserved;

ARTICLE 4 – ADMINISTRATION AND ENFORCEMENT

Sec. 21-44 – Enforcement Independent of Other Officials
The authority of the City to enforce provisions of this chapter is independent of and in
addition to the authority of other City officials to enforce the provisions of any other
ordinances of the City.

**Sec. 21-45 – Issuance of Citations or Notice of Violation**

A. If the City finds a violation of this chapter, the City may notify the owner or
   responsible party through the issuance of a notice of violation.

B. Any City authorized employee may issue a notice of violation to any person violating
   any provisions of this chapter. If the violation has not been corrected within the
   specified period, a civil citation or criminal complaint may be issued, or any police
   officer may issue a citation for any violation of this chapter. A notice of violation of
   this chapter includes:

   1. Identification of the property in violation.
   2. Statement of violations in sufficient detail to allow an owner or responsible
      party to identify and correct the problem.
   3. Re-inspection date.
   4. Address and phone number of a City representative to contact.
   5. A cost estimate to correct violations, if the City intends to abate the violation
      pursuant to Sec. 21-48 – Abatement; Appeal.
   6. Appeal procedures.

C. Any notice given for any purpose under this chapter will be deemed effective on the
date when written notice is delivered or mailed to the property owner or respective
party. If the City intends to abate the violation, any mailed service must be certified,
verbal, or written notices at its discretion. If the City does elect to give any additional
notice thereafter in the same or other situations.

D. Nothing in this section requires the issuance of a notice of violation prior to issuing a
civil citation or criminal complaint.

E. Any notice of violation can be appealed to the Director for an administrative
conference for review. A request for an administrative conference must be made in
writing within the period set to correct the violation, as specified in the notice of
violation. The timely filing of a request for an administrative conference will act as an
automatic stay of enforcement of the notice of violation until the matter is finally
determined by the Director.

Sec. 21-46 – Threats and Intimidation.

No person may, by threat or use of violence or physical force, or by threatening to do or
doing any other act that can be reasonable anticipated to cause physical harm to any person
including the perpetrator intentionally obstruct, impede, or interfere with any officer,
employee, contractor, or authorized representative of the City who is lawfully and
constitutionally engaged in the enforcement or execution of the provisions of this chapter.

Sec. 21-47 – Violations and penalties.

A. Any responsible party who causes, permits, facilitates, aids, or abets any violation of
this chapter or who fails to perform any act or duty required by this chapter is subject
to a civil sanction of not less than $100.00 nor more than $500.00.

B. Any responsible party who causes, permits, facilitates, aids or abets any violation of
this chapter or who fails to perform any act or duty required by this chapter is guilty
of a Class 1 misdemeanor.

C. Each day any violation of this chapter exists will constitute a separate violation or
offense.

D. The owner of record, as recorded in the Chaves County Assessor’s office records of
the property at which a violation of this chapter exists, may be presumed to be a
person having lawful control over any building, structure or parcel of land. If more
than one person is recorded as the owner of the property, said persons may be jointly
and severally presumed to be persons having lawful control over the building,
structure, or parcel of land.

E. If a responsible party served with a notice of violation or citation by the City fails to
correct the violation within the period specified, the City may correct or abate the
condition as described in the notice and, in addition to any fine that may be imposed
for a violation of this chapter, the responsible party will be liable for all costs that
may be assessed pursuant to this chapter for the correction or abatement of the
condition.

F. If in the opinion of the Director, the Fire Marshal and Building Official the condition
constitutes an imminent health and/or safety hazard, the Director may immediately
abate the hazard in accordance without notice. Such abatement of an imminent health
or safety hazard will be limited to the minimum work necessary to remove the hazard.
Sec. 21-48 – Abatement and Appeal

A. If a responsible part fails to correct a violation, the City may correct or abate the condition. The abatement will be limited to the minimum work necessary to correct or remove the violation or hazard.

B. The City will determine the cost of the work performed, including actual costs of any additional inspection and other incidental connected costs.

C. An invoice for the abatement costs incurred will be prepared by the Department and mailed to the responsible parties.

D. Failure to pay the invoice may be cause for the City to assess the property for the associated legal costs for abatement and pursue any or all means for recovery of cost if the assessment is not paid. Any liens or assessments filed with the County Assessors pursuant to previous provisions of this chapter or any similar ordinance will remain in effect under the same terms and conditions that existed at the time of recording.

E. The abatement costs incurred may be appealed to the Director for an administrative conference for review of such abatement and costs. A request for an administrative conference must be made in writing to the director within 30 days of the abatement action. The timely filing of a request for an administrative conference will act as an automatic stay of collection of said costs until the matter is finally determined by the Director.

Sec. 21-49 – Conflicts of Ordinances; Liability

A. In any case where a provision of this chapter is found to be in conflict with a provision of any other ordinance or code of the city, the provision that establishes the higher standard for this promotion and protection of the health and safety of the people will prevail.

B. In cases where two or more sections of this chapter disagree, the most stringent or restrictive will prevail.

C. When the Director or any City employee charged with the enforcement of this chapter is acting in good faith and without malice in the discharge of their duties, and if any suit is brought against the Director or City employee because of such act or omission performed by them in the enforcement of any provisions of this chapter, they such suit will be defended by the City Attorney until the final termination of the proceedings and any judgement resulting therefrom is assumed by the City.
ARTICLE 5: SOLID WASTE DISPOSAL; FACILITIES

Sec. 21-56 – Disposal of Special Waste, Lead Acid Batteries, Lithium Batteries, and Motor Oil

A. Special waste is all solid waste that is listed or classified as a special waste pursuant to NMED. Special waste will require prior approval from the Director and NMED before accepted for disposal at any City solid waste disposal facility. The generator of the waste may also be required to submit an analysis of the waste, at the generator’s expense, to the City for disposal approval. Approval by the New Mexico Environment Department for the disposal of the material does not guarantee approval by the City.

B. Infectious waste from homes, hospitals, nursing homes, or other places where highly infectious or contagious diseases have prevailed shall not be placed in containers for regular collection. The producers of such waste shall dispose of it in accordance with all applicable regulations. If hazardous or infectious waste is transported without knowledge by the Solid Waste Department, any fines and/or associated costs for abatement will be reimbursed to the City of Roswell by the responsible party.

C. Hazardous waste may only be disposed of in accordance with all City, County, State, and Federal regulations. The City further reserves the right to prohibit the disposal of materials otherwise identified or defined as hazardous waste.

Sec. 21-57 – City of Roswell Disposal Landfill User Requirements

A. Solid waste disposal facility users must obey all traffic signals and stay on designated roadways at all times.

B. Solid waste disposal facility users are to follow all instructions given to them by City solid waste disposal facility employee(s) (i.e. spotters, inspectors, attendants, etc.)

C. Alcohol beverages are not allowed in any City solid waste disposal facility.

D. The City reserves the right to reject any solid waste material(s) or load(s).

E. All solid waste loads must be covered, and/or secured while traveling to the solid waste disposal facilities or face up to $100 fine for unsecured loads.
F. Solid waste disposal facility users must be dressed in proper attire, including enclosed
   toe shoes for safety reasons.

G. Solid waste disposal facility City employees or their designee have the right to
   inspect any load, and at their discretion, require a load to be dumped in a segregated
   area to facilitate inspection.

H. Children and animals must remain in vehicles at all times.

I. Smoking and/or Vaping in any City solid waste facility is prohibited per NMED
   Permit and State Regulations.

J. No person may, by threat, or use of violence or physical force, or by threatening to do
   or doing any other act that can be reasonably anticipated to cause physical harm to
   any person including the perpetrator, intentionally obstruct, impede or interfere with
   any employee, contractor, and/or authorized representative of the City who is
   lawfully and constitutionally engaged in the enforcement or execution of the
   provisions of this chapter.

K. Collection vehicles that are hauling “hot loads” must notify a responsible party at the
   City solid waste disposal facility before proceeding to the unloading area.

L. Scavenging, including but not limited to the authorized pilfering, removal, buying,
   selling, trading, or using of material from any City solid waste disposal facility, is
   prohibited.

M. Violating user requirements may result in refusal of service.

N. Companies hauling Solid Waste must have a haulers permit from NMED on file with
   the Landfill.

   1. Companies are responsible to keep an up-to-date haulers permit on file.

Sec. 21-58 – Disposal of Infectious, Radioactive and Hazardous Waste

A. The requirements of these regulations apply to any generator of biohazardous medical
   waste as defined under NMED, as it may be amended from time to time.

B. The following materials will not be accepted at any solid waste disposal facility:

   1. Regulated hazardous waste;
2. Untreated biohazardous waste;

3. Radioactive waste;

4. Regulated liquid waste; and

5. Any other regulated waste without prior approval of the Director.

C. Biohazardous medical waste is any waste that is composed of, or has as a constituent one of the following (Reference NMED):

1. *Cultures and stocks.* Discarded cultures and stocks generated in the diagnosis and treatment, or immunizations, or in the production or testing of bacteria.

2. *Human blood and blood products.* Discarded products and materials containing free-flowing blood or free-flowing blood components.

3. *Medical sharps.* Discarded sharps used in animal or human patient care, medical research, or clinical laboratories. This includes hypodermic needles, syringes, pipettes, scalpel blades, blood vials, needles attached to tubing, broken and unbroken glassware and slides and cover slips.

4. *Research animals waste.* Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.

D. Transporters may not deliver waste to a solid waste disposal facility that is prohibited under these regulations.

E. The transporter must notify the solid waste disposal facility when delivering loads that may contain biohazardous or other prohibited waste, and must identify the generator or generators of such waste. In addition to disposal fees, failure to notify the solid waste disposal facility prior to delivering and dumping these materials will result in the assessment of a fee sufficient to recover the City’s costs to properly handle these materials.

F. When prohibited materials are received, the transporter and the generator, if known, will be contacted and given 3-hours to remove the prohibited material and any contaminated material. Contaminated loads may involve all or a portion of a load. The solid waste disposal facility supervisor, inspector, or their designee will determine the extent of contamination and how much of the load must be removed. If the transported or generator fails to begin removal of the contaminated materials within 3-hours, a disposal company will be contacted to remove it. The City will bill
the transporter or waste generator for all costs incurred.

G. Failure to pay disposal charges will result in a suspension of disposal privileges until those charges are paid.

H. Disposal site privileges may be suspended for those transporters or generators found to have more than 2 contaminated loads delivered to a solid waste disposal facility within a 12-month period from date of 1st incident.

Sec. 21-59 – Unlawful Disposal; Penalty

A. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill, or otherwise dispose of lead-acid storage battery except by delivery to:

1. A Battery retailer or wholesaler;
2. A secondary lead smelter; or
3. A collection or recycling facility authorized under the laws of the State of New Mexico or by the United States Environmental Protection Agency.

B. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city sanitary landfill for disposal, dispose of in the city sanitary landfill or otherwise dispose of any bulk or liquid waste oil or any used internal combustion engine oil filters except by delivery to a collection or recycling facility authorized to accept waste oil or used internal combustion engine filters. The Roswell Municipal Landfill will accept non-commercial waste oil up to 15 gallons in 5-gallon containers or less.

1. It is unlawful for any person to:

   a. Intentionally discharge waste oil into a sewer, drainage system, septic tank, surface water or ground water, watercourse or marine water;

   b. Directly dispose of waste oil on land;

   c. Apply waste oil to roads, or land for dust suppression, weed abatement, or other similar uses that introduce waste oil into the environment.

C. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill for disposal, dispose of in the city landfill, or otherwise dispose of any liquid paint, paint thinner or solvents except by
delivery to a collection or recycling facility authorized to accept such material. The Roswell Municipal Landfill will accept non-commercial paint, paint thinner, and some solvents up to 15 gallons in 5-gallon containers or less.

D. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill for disposal, dispose of in the city landfill, or otherwise dispose of chemical barrels except by delivery to a collection or recycling facility authorized to accept such material. The Roswell Municipal Landfill will accept chemical barrels but they must be rinsed 3 times to remove any trace chemicals and be dried before brought out for disposal.

E. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill for disposal, dispose of in the city landfill, or otherwise dispose of any lightbulbs except by delivery to a collection or recycling facility authorized to accept such material. The Roswell Municipal Landfill will accept up to 24 lightbulbs at a time. Ballasts must be separated from the bulbs before the Landfill will accept them.

F. It is unlawful for any person to set out for collection, place within any city-owned refuse container, transport to the city landfill for disposal, dispose of in the landfill, or otherwise dispose of any hazardous material; including but not limited to:

1. Any poisons, acids, caustic materials, chemicals, explosives, wastes contaminated by infectious disease, radioactive waste, or dead animals.

2. Any toxic pollutant or infectious waste as defined by NMAC 20.9.2 which requires special handling or restricted disposal.

3. Any toxic pollutant as defined by federal regulation.

4. Any substance designated as a hazardous material by applicable New Mexico State Law or New Mexico Environment Department regulation.

5. Any flammable gas, explosive, flammable liquid, flammable solid, oxidizer, poison, or radioactive material as defined by federal regulation, any other explosive, pyrotechnic, flammable gas, flammable compressed gas, nonflammable compressed gas, flammable liquid, oxidizing material, and any gas under such pressure that explosion hazard exists, radioactive material, corrosive material, or liquefied petroleum gas.

6. Any other material not authorized for disposal at the landfill under New Mexico Environment Department permit.
G. Any person violating the provisions of this section shall, upon conviction be assessed a fine of not more than $500.00, or shall be imprisoned not more than 90 days, or shall be sentenced to both such fine and imprisonment.

Sec. 21-60 – Scavenging, Removal or grazing at disposal area.

All solid waste deposited in and upon the solid waste disposal area shall be the property of the city. It shall be unlawful for any person to:

A. Scavenge;

B. Separate, collect, recycle or carry off any solid waste in the solid waste disposal area without the special permission of the Director;

C. Graze animals upon the area designated as the solid waste disposal area.

Sec. 21-61–21-67 – Reserved

ARTICLE VI – SOLID WASTE FEES/Expense Accounts

Sec. 21-67 – Application of Variances; Beginning of Charges

A. The director may adjust or waive all or part of the solid waste collection and disposal charges when unfamiliar circumstances occur.

B. Every person or entity owning real property within the City shall pay the solid waste collection and disposal fees established and provided for by this chapter, whether or not solid waste collection and disposal service is used by the owner of such real property within the city.

C. Fees prescribed by this article for all users who meet all requirements for solid waste collection service will commence when water service is started by a customer and terminate when water service is stopped. City residents who have their own water supply must establish a “Refuse Only” account with the Water Billing Department prior to receiving solid waste collection service.

Sec. 21-68 Levels of Solid Waste Fees; No Exceptions

A. Every person or entity owning real property within the city shall pay the solid waste collection and disposal fees established and provided for by this chapter, whether or not the solid waste collection and disposal service is used by the owner of such real property within the city.
B. Monthly services for solid waste collection and disposal from dwellings and residential premises, and from commercial property, shall be assessed against the owner of the premises, as shown by the real estate records of the county clerk. Minimum charges for such service shall be set by fee ordinance.

C. The solid waste department shall not accept special or hazardous waste and may at any time refuse to collect, or refuse to accept for disposal, waste the department determines would be detrimental to operation of the collection system or landfill. Waste deemed unacceptable by the department shall not be presented for disposal or disposed of at the city’s landfill unless such determination is amended prior to presentment or disposal.

D. A Rate Study will be performed every 5 (five) years to make sure the department is charging correctly for their fees.

E. All dwelling units within the city must pay the fees as established in subsection G of this section.

F. All Commercial/Business that are eligible for City service, must pay the fees as established in subsection H of this section.

G. The monthly solid waste Residential Fees are set by Ordinance. Residential collection is broken down as follows:

<table>
<thead>
<tr>
<th>Level of Service</th>
<th>FY25</th>
<th>FY26</th>
<th>FY27</th>
<th>FY28</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Individual 96-gallon solid waste container; one residence</td>
<td>$27.73</td>
<td>$28.61</td>
<td>$29.65</td>
<td>$30.73</td>
</tr>
<tr>
<td>2 Each additional 96-gallon solid waste container</td>
<td>$27.73</td>
<td>$28.61</td>
<td>$29.65</td>
<td>$30.73</td>
</tr>
<tr>
<td>3 Shared 300-gallon solid waste container; four residences</td>
<td>$27.73</td>
<td>$28.61</td>
<td>$29.65</td>
<td>$30.73</td>
</tr>
<tr>
<td>5 Bulk Trash ¼ a truck or less (5 cubic yards)</td>
<td>$35.91</td>
<td>$37.71</td>
<td>$39.56</td>
<td>$41.57</td>
</tr>
<tr>
<td>6 Bulk Trash ½ a truck (10 cubic yards)</td>
<td>$75.99</td>
<td>75.42</td>
<td>$79.19</td>
<td>$83.15</td>
</tr>
<tr>
<td>7 Bulk Trash full truck load (20 cubic yards)</td>
<td>$143.66</td>
<td>$150.84</td>
<td>$158.38</td>
<td>$166.29</td>
</tr>
<tr>
<td>8 Call Back Flat Rate</td>
<td>$55.46</td>
<td>$57.22</td>
<td>$59.30</td>
<td>$61.46</td>
</tr>
</tbody>
</table>

H. The monthly solid waste Commercial fees are set by Fee ordinance. Commercial rate is number of containers times the frequency of service. Commercial Collection is broken down as follows:

<table>
<thead>
<tr>
<th>Level of Service</th>
<th>FY25</th>
<th>FY26</th>
<th>FY27</th>
<th>FY28</th>
</tr>
</thead>
</table>

City of Roswell

Legal Committee
<table>
<thead>
<tr>
<th></th>
<th>Individual 96-gallon solid waste container; twice a week pickup</th>
<th>$27.73</th>
<th>$28.61</th>
<th>$29.65</th>
<th>$30.73</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Individual 300-gallon solid waste container; Monday-Friday pickup</td>
<td>$60.92</td>
<td>$63.58</td>
<td>$66.37</td>
<td>$69.30</td>
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<tr>
<td>3</td>
<td>Individual 3-yard metal solid waste container with plastic lid; Monday-Saturday pickup</td>
<td>$107.42</td>
<td>$112.30</td>
<td>$117.52</td>
<td>$122.99</td>
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<tr>
<td>4</td>
<td>Bulk Trash ¼ a truck or less (5 cubic yards)</td>
<td>$35.91</td>
<td>$37.71</td>
<td>$39.56</td>
<td>$41.57</td>
</tr>
<tr>
<td>5</td>
<td>Bulk Trash ½ a truck (10 cubic yards)</td>
<td>$75.99</td>
<td>75.42</td>
<td>$79.19</td>
<td>$83.15</td>
</tr>
<tr>
<td>6</td>
<td>Bulk Trash full truck load (20 cubic yards)</td>
<td>$143.66</td>
<td>$150.84</td>
<td>$158.38</td>
<td>$166.29</td>
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<tr>
<td>7</td>
<td>Call Back Fee</td>
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<td>Call Back per 300-gallon containers</td>
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### Roswell Solid Waste Rates, Commercial FY25

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<th># of 300(s)</th>
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<th>4x Week</th>
<th>5x Week</th>
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<tr>
<td>3</td>
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<td>$365.52</td>
<td>$548.28</td>
<td>$731.04</td>
<td>$913.80</td>
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<tr>
<td>4</td>
<td>$243.68</td>
<td>$487.36</td>
<td>$731.04</td>
<td>$974.72</td>
<td>$1,218.40</td>
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<tr>
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<td>$609.20</td>
<td>$913.80</td>
<td>$1,218.40</td>
<td>$1,523.00</td>
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<tr>
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<td>$731.04</td>
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<td>$1,827.60</td>
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### Rates for 3-Yard Metal w/Plastic Lid

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<th>2x Week</th>
<th>3x Week</th>
<th>4x Week</th>
<th>5x Week</th>
<th>6x Week</th>
<th>7x Week</th>
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### Roswell Solid Waste Rates, Commercial FY26

#### Rates for 300 Gallon Plastic Container W/ Lid

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<th># of 300(s)</th>
<th>1x Week</th>
<th>2x Week</th>
<th>3x Week</th>
<th>4x Week</th>
<th>5x Week</th>
</tr>
</thead>
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### Roswell Solid Waste Rates, Commercial FY27

#### Rates for 300 Gallon Plastic Container W/ Lid

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#### Rates for 3-Yard Metal w/Plastic Lid

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Sec. 21-69 – Fees for Containers

A. While the 96-gallon and 300-gallon containers are owned by the City. The 3-yard metal containers are owned by the customers.

1. They shall be built to the specs provided by the department.

2. Customers are required to repair the containers themselves.

3. The Department shall not service containers that are unsafe to do so. A notice will be issued and may utilize an alternative container for up to 3 months.

Sec. 21-70 – Credits and Debits of Solid Waste Fees

A. The Director may not grant credits for missed pickups.

B. If an error occurs where either a customer has received City solid waste service but was not charged, or a customer was charged for solid waste service that was not received, except for missed pickups, a debit or credit may be approved.

C. The Director will research the customer account to determine whether a credit or debit is owed and the amount to be debited or credited.

D. The length of time for either a debit by the city or a credit to the customer will be limited to 12 months prior from the date when the customer notifies the City of the error.

Sec. 21-71 – Solid Waste Roswell Municipal Landfill; Permits, Fees, and Charge Accounts

A. All users must pay disposal fees at the time of disposal or establish a charge account. To establish a charge account, the user must file a Landfill Application form.

1. Users are issued a $2,000.00 credit limit. If this is found to be insufficient, a written letter must be submitted for it to be increased.

2. Invoices are sent out in the mail on the first of the month.
3. Users must keep accounts current. Accounts at 90 days overdue must pay off the entire amount that is 90 days overdue.

   a. Accounts with 90 days past due balances will be submitted to Debt Collections.

   b. Accounts with 90 days past due balances will be on a pay-as-you go basis until account is current.

4. Users continually found in violation of subsection 3 will be required to keep accounts current every month. User will risk having charge accounts suspended and will be on a pay-as-you go basis.

B. The Director may require any user to return to the scales for verification of the tare weight of any vehicle.

C. To prevent the spilling or blowing of solid waste from vehicles in transit to solid waste facilities, vehicles must have their loads enclosed, covered, or secured from point of origin. If the user does not comply, each vehicle/trailer will be charged up to a $100.00 Fine, for an unsecured load in addition to the applicable disposal fee.

D. For all non-special or non-hazardous waste the following fee schedule will apply:

   1. A residential customer with the most current utility bill may receive one disposal of one load, of up to 300 pounds of solid waste, each calendar month at no charge upon complying with the following:

      a. Present a copy of their City utility bill showing they have an active account and is the most recent bill.

      b. Present photo identification matching the name and/or address on the City utility bill account;

      c. The load must be properly enclosed, covered, or secured from point of origin to prevent the spilling or blowing of solid waste from vehicles in transit to solid waste facilities;

      d. The customer is responsible for all fees should the load exceed the 300-pound limit. Only one 300 pounds of solid waste generated from the customer’s dwelling unit is eligible for the monthly fee waiver and;
e. This does not include tires, construction materials, e-waste, or heavy loads weighing more than 300 pounds;

f. Loads must be able to fit within a pickup truck bed or 10-foot trailer.

2. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1, 2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Waste Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>FY25</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Only 300 pounds or less</td>
<td>$6.32</td>
</tr>
<tr>
<td>SW Mixed Loads/Residential</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Commercial Loose Mixed Solid Waste</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Commercial Compacted Mixed Solid Waste</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Residential Compacted Mixed Solid Waste</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Yard Waste – Residential</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Yard Waste – Commercial</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Ag Waste – Residential</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Heavy Waste – Residential</td>
<td>$24.59 Per Ton</td>
</tr>
<tr>
<td>Heavy Waste – Commercial</td>
<td>$24.59 Per Ton</td>
</tr>
<tr>
<td>Clean Fill – Commercial</td>
<td>$18.59 Per Ton</td>
</tr>
<tr>
<td>Clean Fill – Commercial</td>
<td>$18.59 Per Ton</td>
</tr>
<tr>
<td>Dry Debris – Waste Water</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Dry Bones – No Tissue</td>
<td>$50.56 Per Ton</td>
</tr>
<tr>
<td>Bulk Tires</td>
<td>$333.93 Per Ton</td>
</tr>
<tr>
<td>Passenger Tire</td>
<td>$5.47 Per Unit &amp; $0.17 Per Pound</td>
</tr>
<tr>
<td>Truck Tire</td>
<td>$9.02 Per Unit &amp; $0.17 Per Pound</td>
</tr>
<tr>
<td>Large Tire</td>
<td>$0.17 Per Pound</td>
</tr>
<tr>
<td>Contaminated Tires</td>
<td>$728.67 Per Ton</td>
</tr>
<tr>
<td>Wheels with Rims</td>
<td>13.39 Per Unit &amp; $0.17 Per Pound</td>
</tr>
</tbody>
</table>

3. If there are more than 10 tires, a tire manifest is required for them. *(20.9.20.50 NMAC)*

4. Loads may be estimated on the basis of tare weight in accordance with the table in this subsection, when scales are inoperative, if the computerized
system is not operational the option to use average weights from past history, when available may be used.

<table>
<thead>
<tr>
<th>Tare Weight (Pounds)</th>
<th>Estimated Types of Vehicles</th>
<th>Weight (Tons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9,000-9,999</td>
<td>One-ton Dump Trucks</td>
<td>3.00</td>
</tr>
<tr>
<td>10,000-19,999</td>
<td>2 ½ ton dump trucks, solid waste collection trucks</td>
<td>4.25</td>
</tr>
<tr>
<td>20,000-29,999</td>
<td>Bin trucks, automated solid waste collection trucks</td>
<td>6.00</td>
</tr>
<tr>
<td>30,000 and over</td>
<td>Large bin trucks</td>
<td>8.25</td>
</tr>
<tr>
<td>30,000 and over</td>
<td>Semi-trucks</td>
<td>15.00</td>
</tr>
</tbody>
</table>

E. Hazardous Materials is not accepted at any City Solid Waste Disposal Facility except as provided in (NMED Permit).

1. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1, 2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Waste Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>How Fees are Charged</th>
</tr>
</thead>
<tbody>
<tr>
<td>Household Hazardous</td>
<td>Per Ton</td>
</tr>
<tr>
<td>Lightbulbs</td>
<td>Per Unit &amp; Per Ton</td>
</tr>
<tr>
<td>Ballasts</td>
<td>Per Unit &amp; Per Ton</td>
</tr>
<tr>
<td>E-Waste</td>
<td>Per Ton</td>
</tr>
<tr>
<td>Refrigeration Units</td>
<td>Per Ton</td>
</tr>
<tr>
<td>Evacuation of Refrigerator Units</td>
<td>Per Unit</td>
</tr>
</tbody>
</table>

F. All other Landfill fees that are charged.

1. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1, 2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Waste Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>How Fees are Charged</th>
</tr>
</thead>
</table>

City of Roswell 278 Legal Committee
Load Pull Charge | Straight Fee
---|---
Landfill Equipment Pull | Straight Fee
Cover/Tarp Charge | Fine up to $100.00
Trash in Brush Pile | Straight Fee
Metal Commercial | Per Ton

G. Grappler pickup/Bulk pickup fees.

1. Residents that want next day pickup and all businesses will be charged for Grappler pickup.
   
a. Residents that place out more than 5 cubic yards of trash will be charged for pickup.

2. They must supply their utility account number. The charge will be shown as a past due item on their account.

3. The following fee descriptions will apply.
   
a. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1,2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Waste Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>FY25</th>
<th>FY26</th>
<th>FY27</th>
<th>FY28</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk Trash ¼ a truck or less (5 cubic yards)</td>
<td>$35.91</td>
<td>$37.71</td>
<td>$39.56</td>
<td>$41.57</td>
</tr>
<tr>
<td>Bulk Trash ½ a truck (10 cubic yards)</td>
<td>$75.99</td>
<td>75.42</td>
<td>$79.19</td>
<td>$83.15</td>
</tr>
<tr>
<td>Bulk Trash full truck load (20 cubic yards)</td>
<td>$143.66</td>
<td>$150.84</td>
<td>$158.38</td>
<td>$166.29</td>
</tr>
<tr>
<td>Call Back</td>
<td>$55.46</td>
<td>$57.22</td>
<td>$59.30</td>
<td>$61.46</td>
</tr>
</tbody>
</table>

Sec. 21-72 – Roll-Off Rentals and Fees

A. Before a roll-off can be rented, a roll-off account application must be completed and accepted.
B. A down payment of the first pull fee is required of all residential customers.

C. Placement of the roll-off container is done by the discretion of the driver.

D. Tires, Asbestos, and Hazardous waste such as, paint, pesticides, and oils are not allowed in the roll-off dumpster.

1. If Asbestos is suspected in the container, Customer will pay to have the material tested.

2. If tests positive for asbestos the customer will pay for the abatement of the container.

E. Open top containers cannot be filled over the top; if they are found to be so, you will be charged a grappler fee to get the debris below the top.

F. Concrete asphalt, and brick are limited to only 1/3 the size of the container. If it contains more than 1/3, it will exceed the maximum weight that can be hauled on city streets.

G. Roll-offs must be pulled once a calendar month or are charged the pull fee as the monthly minimum fee.

H. If the business owns the compactor, they do not pay for the monthly minimum fee but all other fees apply.

I. Additional charges will be applied if the load is over the NMDOT weight limit.

J. Roll-offs do not have a daily rental fee but instead have a pull fee plus the weight of the trash in the container.

K. The following fee description will apply:

1. The fees shall automatically be adjusted 5% at the beginning of each Fiscal year beginning July 1,2024 and continue until July 1, 2028. A rate study should have already been completed by July 1, 2028 and a new rate structure in place. If for some reason there is not a new rate study in place by July 1, 2028 the fee shall go up per the Consumer Price Index for Urban Waste Earners and Clerical Workers (CPI-W) information obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. The description of fees that are charged are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roll-Off Pull Charge</td>
<td>Straight Charge</td>
</tr>
</tbody>
</table>
L. For Companies hauling trash they must have a copy of the Trash Haulers Permit on file. Companies are required to keep it updated and send in copies of the updated permit. If companies fail to do so they will not be allowed to use the Roswell Municipal Landfill (NMED).

Sec. 21-73 – Recovery Expense

A. Any person, individual, corporation, association, partnership, firm, trustee, or legal representative causing or contributing to the cause of the placement of a prohibited substance as defined by the chapter in solid waste system or the sanitary landfill, shall be liable to the city for the recoverable expenses resulting from the action. This shall be in addition to any and all penalties provided by law.

B. Recoverable expenses are those expenses that are reasonable, necessary and allocable to the activities conducted to prevent or mitigate injury to human health or the environment from the release or threatened release of hazardous material into the solid waste handling system. Expenses allowable for recover may include, but are not limited to:

1. Disposable materials and supplies acquired, consumed, or expended specifically for the purpose of the abatement of the hazardous condition.

2. Compensation of employees for the time and efforts devoted specifically to the abatement action.

3. Rentals or leasing of equipment used specifically for the abatement action (such as protective equipment or clothing, scientific and technical equipment).

4. Replacement costs for equipment owned by the City that is contaminated beyond reuse or repair, if the equipment was a total loss and the loss occurred during the abatement period.

5. Decontamination of equipment contaminated during the abatement response.

6. Special technical services specifically required for the abatement response.

7. Other special services specifically required for the abatement action.

8. Laboratory costs for analyzing samples taken during the abatement action.
9. Costs of clean up, storage, or disposal of hazardous material.

10. Costs associated with the services, supplies and equipment procured for the specific abatement.

11. Medical expenses incurred as a result of abatement activities.

12. Legal expenses that may be incurred as a result of the abatement action.

C. City personnel and departments involved in an abatement action shall keep an itemized record of recoverable expenses resulting from the abatement. Promptly after completion of an abatement action, the appropriate city department shall certify those expenses to the city manager. The City shall submit a written itemized claim for the total expenses incurred by the City for the abatement action to the responsible person and a written notice that unless the amounts are paid in full within 30 days after the date of the mailing of the claim and notice, the City will file a civil action seeking recovery for the stated amount. The City may bring a civil action for recovery of recoverable expenses against any and all persons causing or responsible for the release or deposit of the hazardous material into the solid waste collection and landfill system.

Sec. 21-73 – Enterprise Fund

Enterprise funds have been established by the city council for enterprise accounting and budgetary purposes and will be maintained to account for revenue and expenditures of the solid waste enterprise. All budgets, reports, audits, and financial operations of an enterprise shall conform to and be prepared in accordance with generally accepted accounting principals applicable to governmental (enterprise) units and other requirements of state law.

Sec. 21-74 – Revenue

All revenue for services and facilities provided by an enterprise, including rates, fees, tolls, charges, and all other income of the enterprise shall be collected, used, and expended for activities and purposes for which the enterprise was established as determined by the city council in accordance with and as set forth in the fiscal budget for the enterprise adopted by the city council pursuant to law. Rates for services and facilities provided by an enterprise shall be established by the governing board and collected and enforced by the City.

Sec. 21-75 – Restricted Fund Accounts within the Enterprise Fund

The Finance Officer shall create the following restricted accounts within the Solid Waste enterprise fund:
A. Debt Service Fund

a. This fund shall be used to pay any budgeted debt service from the respective enterprise funds. City council action during the annual budget process is required to expense from this fund. Unexpended funds within this account shall be carried over into subsequent fiscal years.

B. Capital Reinvestment Restricted Acct

a. This fund shall be used to pay for budgeted capital infrastructure projects. This is also the emergency repair fund to utilize when unbudgeted repairs or emergency situations arise. Specific city council action is required to expense funds from this account. Unexpended funds within this account shall be carried over into subsequent fiscal years.

C. Capital Outlay

a. This fund shall be used to pay for budgeted capital expenses to include, but not limited to, purchase of equipment, vehicles, and tools. Expenditures must be allowed under the restrictions on capital item purchases as directed by the Finance Officer/Treasurer. City council action during the annual budget process is required to expense from this fund. Unexpended funds within this account shall be carried over into subsequent fiscal years.

D. Bad Debt Fund

a. This fund shall be used to balance the enterprise fund accounts as a result of unpaid customer accounts. Specific city council action is required to expense funds from this account. Unexpended funds within this account shall be carried over into subsequent fiscal years.

Sec. 21-76 – Expenditure of Restricted Fund for any Purpose not Specifically Listed

The City Council shall, by ordinance, expend restricted funds for reasons not specifically listed. Prior to approving the expenditure, the city council shall advertise and hold a public hearing specifying the expenditure, amount, repayment option and specific reasons why restricted funds should be used. Such expenditures shall require a 2/3 majority approval of all city council members to pass.

Section 21-77 – 21-78 Reserved

ARTICLE VII: Illegal Dumping
Sec. 21-79 – Illegal Dumping of Solid Waste; Penalty

A. It is a violation for any person to dump, dispose, release, or cause to be dumped, disposed or released, any solid waste, special waste, or hazardous waste upon any street, alley, right of way, or public or private property within the City except as specifically permitted in this chapter or at a disposal site authorized by the Director.

B. Penalty: Violation of subsection A of this section is punishable pursuant to Section 21-46 – Violations and Penalties.

C. In addition to the penalty imposed pursuant to subsection B of this section, a person in violation of subsection A of this section must make restitution to the City for all cleanup and disposal costs and administrative cost incurred by the City per current fees.

D. If violation of this section involves a vehicle, the person or persons in whose name such vehicle is registered shall be presumed responsible for such violation.
Solid Waste Department
Rate Study
Executive Summary Report
December, 2023
“There is no such thing as ‘away’. When we throw anything away it must go somewhere”

~Anonymous

While the City of Roswell's Solid Waste Department has been working diligently to provide the best possible trash-collection services to the citizens of Roswell, a critical level of budget shortfalls has been reached. Adding to the current financial burden are ever-evolving industry best practices that must be implemented, increased government regulations, and failing infrastructure. As a result of these factors past and present, a rate increase has become necessary.

Financial stability is crucial for the Solid Waste Department to operate effectively for years to come. Adequate funding is necessary to maintain and upgrade equipment, vehicles and facilities. By ensuring an adequate stream of funding, we can establish a strong foundation for this department as it plays a key role in the overall development, growth and prosperity of our city.

A well-funded waste-management enterprise fund enables the Solid Waste Department to enhance the attractiveness of the city for businesses, residents and visitors. An increase in solid waste rates will help bring the financial stability that will allow us to better allocate funds to improve efficiency and effectiveness of our services by implementing modern industry practices to upgrade and maintain our vital resources, meet increasing government regulations and position Roswell as a progressive, healthy and sustainable city.

Abraham Chaparro
Solid Waste Director
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Executive Summary

1.1 Introduction

The City of Roswell, NM (City) provides trash service to over 15,108 customer accounts, pickup up over 18,329 trash containers a week. The City’s Solid Waste Department is funded from residential pickups, and commercial 300-gallon and 3-yard pickups.

The Solid Waste Department has a three-fold mission of protecting public health, protecting the environment and providing superior trash service to our customers. The Solid Waste Department must be fiscally sustainable in order to meet this mission. Financial sustainability requires having adequate revenues to fund revenue requirements, maintain appropriate cash reserves and having adequate debt service coverage.

The City Manager authorized staff to review the department’s financial status and to recommend rate adjustments, as necessary, to ensure the department’s continuing financial sustainability. This study includes:

- Development of a Solid Waste financial plan for the five-year study period, which included the second half of FY24 through FY28;

- Analysis of sanitation customer class cost of service for FY24 through FY28; and

- Design of sanitation rates to be included for the second half of FY24 through FY28
The following words are used throughout the report and are defined as follows:

- **Fiscal Year (FY)** – The year July 1 through June 30
- **Existing Rates** – sanitation rates in effect since July 1, 2023
- **Cost of Service** – The amount of annual operating expense, personnel expense, debt service and capital cost to provide trash collection service to each customer class
- **90s** – 96-gallon containers that are rolled out and placed on the curb
- **300s** – 300-gallon containers found in alleys that can be shared or for singular properties
- **3-yrd (yard)** – 3-yard metal containers
1.2 Study Assumptions

This rate study is based on numerous assumptions. Changes in the assumptions could have a material effect on study findings. Staff incorporated the following key assumptions into the study:

- Based on recent historical trends, the number of containers/accounts will increase 0.0% during FY24 and 0.01% annually during FY25 through FY28.
  - US Census Bureau Historic & Future Growth Statistics

- While there will be a slight decrease in containers/pickups for commercial accounts it should not make a significant difference
  - The Solid Waste Ordinance gives precedence over how many pickups/containers a property needs

- Operating costs will increase at the following annual inflation rates:
  - On average the rate of inflation is 5% for FY26-FY27
  - FY25 Operational Budget includes a 21.68% increase for the flat or reduced budget of the last 4 years
  - Personnel Cost projections are 5.0% per year through FY28
  - Collections Debt Service is scheduled to end in 8 years
• The Solid Waste Department will strive to create, fund and maintain minimum emergency reserves based on the cost of the most expensive capital item. Currently, this includes emergency cleanup of Cell 1, the unlined cell at the landfill, in the estimated amount of $25 million.

• Considerable assumptions were made for the number of containers serviced. When Tyler was setup, some businesses were not being accurately charged for the type and number of services they were receiving. Landfill Admin staff is diligently working to fix this, but each business has to be called in advance for clarification. Utilizing the new Rubicon system, all accounts are being audited for accuracy.
1.3 Capital Reinvestment Program

With the direction of the City Manager, staff has developed two Capital Reinvestment Program (CRP) alternatives:

- Health, Safety and Regulatory (HSR) – CPR projects that satisfy NMED Standards
- Best Practices – CPR projects that include not only all NMED Standards, but also includes the best practices for proactive rehabilitation and replacement of facilities and equipment

Table 1-1 compares the projected 5-year CRP costs of each alternative. The City selected the HSR alternative. The remainder of this report focuses on this alternative.

Table 1-1.

<table>
<thead>
<tr>
<th>CRP Alternative Description</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
</tr>
</thead>
<tbody>
<tr>
<td>HSR</td>
<td>$0.5</td>
<td>$1.0</td>
<td>$1.0</td>
<td>$1.0</td>
<td>$1.0</td>
</tr>
<tr>
<td>Best Practices</td>
<td>$1.0</td>
<td>$2.5</td>
<td>$5.0</td>
<td>$5.5</td>
<td>$6.0</td>
</tr>
</tbody>
</table>
1.4 Solid Waste Department

1.4.1 Financial Plan

Staff will develop a Solid Waste five-year financial plan for each capital improvement alternative. For each alternative, revenue from existing rates is inadequate to meet projected revenue requirements, to provide adequate reserves and to produce required debt service coverage during the study period. Table 1-2 shows the revenue adjustments projected during the study period to meet the criteria.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Average CRP</th>
</tr>
</thead>
<tbody>
<tr>
<td>2024</td>
<td>42.81%</td>
</tr>
<tr>
<td>2025</td>
<td>39.64%</td>
</tr>
<tr>
<td>2026</td>
<td>3.69%</td>
</tr>
<tr>
<td>2027</td>
<td>3.94%</td>
</tr>
<tr>
<td>2028</td>
<td>3.96%</td>
</tr>
</tbody>
</table>

1.4.2 Financial Plan Cost Analysis

Staff conducted comprehensive cost of service analysis for the Solid Waste Department in accordance with standard methods supported by the American Water Works Association, M1 Principles of Water Rates, Fees and Charges. These determined the cost of providing trash service for each size of trash container. The findings from the cost-of-service analysis serve as a target for each container size.
The Financial Plan includes the following categories:

<table>
<thead>
<tr>
<th>Expenses</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel</td>
<td>Sanitation Fees</td>
</tr>
<tr>
<td>Operating</td>
<td>Other Income</td>
</tr>
<tr>
<td>Debt Service</td>
<td></td>
</tr>
<tr>
<td>Capital</td>
<td></td>
</tr>
<tr>
<td>Transfers</td>
<td></td>
</tr>
</tbody>
</table>

Staff is proposing to create the following restricted accounts:

<table>
<thead>
<tr>
<th>Debt Service</th>
<th>Capital Outlay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Reinvestment</td>
<td>Bad Debt</td>
</tr>
</tbody>
</table>

Restricting accounts, by ordinance, limits the use of those funds for that particular purpose as stated above. The only way to transfer money from these accounts is through Council action.
Table 1-3 compares the total monthly cost per customer to the monthly cost per customer with a restriction for infrastructure reinvestment.

**Table 1-3.**

**Comparison of Monthly Revenue and Cost per Container based on 18,329 Trash Containers using Restricted Accounts**

*Fiscal Years 24-28*

<table>
<thead>
<tr>
<th>FY</th>
<th>Revenue with Proposed Rate Schedule</th>
<th>Debt Service</th>
<th>Capital Reinvestment</th>
<th>Capital Outlay</th>
<th>Bad Debt</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Revenue</td>
<td>Monthly Cost</td>
<td>Revenue</td>
<td>Monthly Cost</td>
<td>Revenue</td>
</tr>
<tr>
<td>24-1</td>
<td>$3,521,073.82</td>
<td>$284,389</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$676,725.50</td>
</tr>
<tr>
<td>24-2</td>
<td>$3,521,073.82</td>
<td>$284,389</td>
<td>$500,000</td>
<td>$4.55</td>
<td>$676,725.50</td>
</tr>
<tr>
<td>25</td>
<td>$9,833,626.54</td>
<td>$568,538</td>
<td>$1,000,000</td>
<td>$4.55</td>
<td>$1,439,790.70</td>
</tr>
<tr>
<td>26</td>
<td>$10,196,806.77</td>
<td>$569,229</td>
<td>$1,000,000</td>
<td>$4.55</td>
<td>$1,511,780.24</td>
</tr>
<tr>
<td>27</td>
<td>$10,598,689.05</td>
<td>$569,313</td>
<td>$1,000,000</td>
<td>$4.55</td>
<td>$1,587,369.25</td>
</tr>
<tr>
<td>28</td>
<td>$11,018,869.62</td>
<td>$567,675</td>
<td>$1,000,000</td>
<td>$4.55</td>
<td>$1,666,737.71</td>
</tr>
</tbody>
</table>

1.4.3 Rate Design

Staff has designed a proposed Collections rate structure beginning the second half of FY24 through FY28 to increase annual Solid Waste Revenues. The Proposed FY24 rates also take the 3-yard metal containers to one price instead of two, decreasing billing confusion. The proposed FY24 through FY28 rates are shown in subsequent sections of this report.

- To distribute the Operations and Personnel Costs between the three rates, we looked at the amount of service given to each class of container

- 300-gallon containers is considered our base. Residential is a quarter of the amount of the base, while 3-yard containers is double the base
- Commercial 96-gallon / shared 300-gallon containers is calculated the same as Residential as it is considered the same amount of service

### Table 1-4. Weighted Averages

<table>
<thead>
<tr>
<th>Type</th>
<th>Number of Customers/Containers</th>
<th>Weighted</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>13,513</td>
<td>3,378</td>
<td>40%</td>
</tr>
<tr>
<td>96/300 Shared</td>
<td>661</td>
<td>165</td>
<td>0%</td>
</tr>
<tr>
<td>300-Gallon</td>
<td>2,941</td>
<td>2,941</td>
<td>33%</td>
</tr>
<tr>
<td>3-Yard</td>
<td>1,214</td>
<td>2,428</td>
<td>27%</td>
</tr>
<tr>
<td>Totals:</td>
<td>18,329</td>
<td>8,913</td>
<td>100%</td>
</tr>
</tbody>
</table>
1.5 Sanitation Rates

Sanitation rates are split into four (4) categories based on the amount of service that is needed per container. Residential, Commercial 96-gallon / Commercial 300-gallon shared containers, while being broken out differently, all share the same rates. All rates shown are for the base rate of the Service: Residential, 96-gallon / shared 300-gallon containers all get serviced twice a week; 300-gallon and 3-yard containers is containers times days per week of pick up.

1.5.1 Residential Rates/Commercial 96-Gallon & Shared 300s

Existing Residential Rates have been in effect since July 1, 2023. This charge is for either 1 (one) 96-gallon container or 1 (one) 300-gallon container shared between 4 (four) households.

- 96-gallon customers may request a second container for their residence, but it will double their sanitation rate

- 300-gallon customers may request to have their own 300-gallon container, but they are then charged the Commercial base rate for the container

- All new water accounts, per state ordinance, are charged this rate. If the water account is active, they have to pay this rate, whether or not they have a container
Table 1-5.
Comparison of Existing Rates and Proposed Second Half of 2024 Residential, Commercial 96-Gallon / Shared 300s

<table>
<thead>
<tr>
<th>Container</th>
<th>Current Rate</th>
<th>Rate Increase</th>
<th>New Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>$21.27</td>
<td>$5.20</td>
<td>$26.47</td>
</tr>
<tr>
<td>Comm. 96-Gallon</td>
<td>$21.27</td>
<td>$5.20</td>
<td>$26.47</td>
</tr>
<tr>
<td>Comm. Shared 300-Gallon</td>
<td>$21.27</td>
<td>$5.20</td>
<td>$26.47</td>
</tr>
</tbody>
</table>

1.5.2 300-Gallon Commercial Rates

Existing 300-Gallon Commercial rates have been in effect since July 1, 2023. This rate starts at one container, one day a week and goes up to 25 containers, up to 5 days a week, serviced Monday-Friday.

Table 1-6.
Comparison of Existing and Proposed Second Half of 2024 Commercial 300-Gallon Containers

<table>
<thead>
<tr>
<th>Container</th>
<th>Current Rate</th>
<th>Rate Increase</th>
<th>New Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial 300-Gallon Container</td>
<td>$32.61</td>
<td>$18.56</td>
<td>$51.17</td>
</tr>
</tbody>
</table>
### Table 1-7.
**Commercial 300 Gallon Rates for the Second Half of 2024**

<table>
<thead>
<tr>
<th># of 300(s)</th>
<th>1x Week</th>
<th>2x Week</th>
<th>3x Week</th>
<th>4x Week</th>
<th>5x Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$51.17</td>
<td>$102.34</td>
<td>$153.51</td>
<td>$204.68</td>
<td>$255.85</td>
</tr>
<tr>
<td>2</td>
<td>$102.34</td>
<td>$204.68</td>
<td>$307.02</td>
<td>$409.36</td>
<td>$511.70</td>
</tr>
<tr>
<td>3</td>
<td>$153.51</td>
<td>$307.02</td>
<td>$460.53</td>
<td>$614.04</td>
<td>$767.55</td>
</tr>
<tr>
<td>4</td>
<td>$204.68</td>
<td>$409.36</td>
<td>$614.04</td>
<td>$818.72</td>
<td>$1,023.40</td>
</tr>
<tr>
<td>5</td>
<td>$255.85</td>
<td>$511.70</td>
<td>$767.55</td>
<td>$1,023.40</td>
<td>$1,279.25</td>
</tr>
<tr>
<td>6</td>
<td>$307.02</td>
<td>$614.04</td>
<td>$921.06</td>
<td>$1,228.08</td>
<td>$1,535.10</td>
</tr>
<tr>
<td>7</td>
<td>$358.19</td>
<td>$716.38</td>
<td>$1,074.57</td>
<td>$1,432.76</td>
<td>$1,790.95</td>
</tr>
<tr>
<td>8</td>
<td>$409.36</td>
<td>$818.72</td>
<td>$1,228.08</td>
<td>$1,637.44</td>
<td>$2,046.80</td>
</tr>
<tr>
<td>9</td>
<td>$460.53</td>
<td>$921.06</td>
<td>$1,381.59</td>
<td>$1,842.12</td>
<td>$2,302.65</td>
</tr>
<tr>
<td>10</td>
<td>$511.70</td>
<td>$1,023.40</td>
<td>$1,535.10</td>
<td>$2,046.80</td>
<td>$2,558.50</td>
</tr>
<tr>
<td>11</td>
<td>$562.87</td>
<td>$1,125.74</td>
<td>$1,688.61</td>
<td>$2,251.48</td>
<td>$2,814.35</td>
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<tr>
<td>12</td>
<td>$614.04</td>
<td>$1,228.08</td>
<td>$1,842.12</td>
<td>$2,456.16</td>
<td>$3,070.20</td>
</tr>
<tr>
<td>13</td>
<td>$665.21</td>
<td>$1,330.42</td>
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<td>$2,660.84</td>
<td>$3,326.05</td>
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<tr>
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<td>$2,149.14</td>
<td>$2,865.52</td>
<td>$3,581.90</td>
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<tr>
<td>15</td>
<td>$767.55</td>
<td>$1,535.10</td>
<td>$2,302.65</td>
<td>$3,070.20</td>
<td>$3,837.75</td>
</tr>
<tr>
<td>16</td>
<td>$818.72</td>
<td>$1,637.44</td>
<td>$2,456.16</td>
<td>$3,274.88</td>
<td>$4,093.60</td>
</tr>
<tr>
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<tr>
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<td>$2,763.18</td>
<td>$3,684.24</td>
<td>$4,605.30</td>
</tr>
<tr>
<td>19</td>
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</tr>
<tr>
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<td>$1,279.25</td>
<td>$2,558.50</td>
<td>$3,837.75</td>
<td>$5,117.00</td>
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</tbody>
</table>

#### 1.5.3 Commercial 3-Yard Containers

Existing 3-yard containers’ fees have been in place since July 1, 2023. Currently, they are broken into two categories: those that are not picked up on Saturdays and those that are. With this new rate, the Solid Waste Department is combining them together to create one rate for 3-yards instead of two. This rate starts at 1 (one) 3-yrd container once a day pickup.
and goes upwards to 10 (ten) containers picked up a day and up to 7 (seven) pickups a week, Monday-Saturday with a double pickup on Saturday.

**Table 1-8.**

**Comparison of Existing and Proposed Second Half of 2024 for Commercial 3-Yard Containers**

<table>
<thead>
<tr>
<th>Container</th>
<th>Current Rate</th>
<th>Rate Increase</th>
<th>New Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial 3-Yard Metal Container No Saturday</td>
<td>$65.24</td>
<td>$19.07</td>
<td>$84.31</td>
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<tr>
<td>Pickup</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial 3-Yard Metal Container with Saturday</td>
<td>$73.10</td>
<td>$13.21</td>
<td>$84.31</td>
</tr>
<tr>
<td>Pickup</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Table 1-9.**

**Commercial 3-Yard Rates for Second Half of 2024**

<table>
<thead>
<tr>
<th># of 3 yrd(s)</th>
<th>1x Week</th>
<th>2x Week</th>
<th>3x Week</th>
<th>4x Week</th>
<th>5x Week</th>
<th>6x Week</th>
<th>7x Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$84.31</td>
<td>$168.62</td>
<td>$252.93</td>
<td>$337.24</td>
<td>$421.55</td>
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<td>$590.17</td>
</tr>
<tr>
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<td>$168.62</td>
<td>$337.24</td>
<td>$505.86</td>
<td>$674.48</td>
<td>$843.10</td>
<td>$1,011.72</td>
<td>$1,180.34</td>
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<tr>
<td>3</td>
<td>$252.93</td>
<td>$505.86</td>
<td>$758.79</td>
<td>$1,011.72</td>
<td>$1,264.65</td>
<td>$1,517.58</td>
<td>$1,770.51</td>
</tr>
<tr>
<td>4</td>
<td>$337.24</td>
<td>$674.48</td>
<td>$1,011.72</td>
<td>$1,348.96</td>
<td>$1,686.20</td>
<td>$2,023.44</td>
<td>$2,360.68</td>
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<tr>
<td>5</td>
<td>$421.55</td>
<td>$843.10</td>
<td>$1,264.65</td>
<td>$1,686.20</td>
<td>$2,107.75</td>
<td>$2,529.30</td>
<td>$2,950.85</td>
</tr>
<tr>
<td>6</td>
<td>$505.86</td>
<td>$1,011.72</td>
<td>$1,517.58</td>
<td>$2,023.44</td>
<td>$2,529.30</td>
<td>$3,035.16</td>
<td>$3,541.02</td>
</tr>
<tr>
<td>7</td>
<td>$590.17</td>
<td>$1,180.34</td>
<td>$1,770.51</td>
<td>$2,360.68</td>
<td>$2,950.85</td>
<td>$3,541.02</td>
<td>$4,131.19</td>
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<tr>
<td>8</td>
<td>$674.48</td>
<td>$1,348.96</td>
<td>$2,023.44</td>
<td>$2,697.92</td>
<td>$3,372.40</td>
<td>$4,046.88</td>
<td>$4,721.36</td>
</tr>
<tr>
<td>9</td>
<td>$758.79</td>
<td>$1,517.58</td>
<td>$2,276.37</td>
<td>$3,035.16</td>
<td>$3,793.95</td>
<td>$4,552.74</td>
<td>$5,311.53</td>
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<tr>
<td>10</td>
<td>$843.10</td>
<td>$1,686.20</td>
<td>$2,529.30</td>
<td>$3,372.40</td>
<td>$4,215.50</td>
<td>$5,058.60</td>
<td>$5,901.70</td>
</tr>
</tbody>
</table>

Spreadsheet 1 – Expense Breakdown/Cost per Customer/Container per Month (Proposed)
### COLLECTIONS PROPOSED RATE INCREASES

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Budget:</strong></td>
<td>$3,215,534.45</td>
<td>$3,746,883.47</td>
<td>$8,430,879.39</td>
<td>$8,746,585.69</td>
<td>$9,097,194.12</td>
<td>$9,463,450.26</td>
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</tr>
<tr>
<td><strong>Other Income</strong></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Trash Collections Revenue</td>
<td>$3,215,534.45</td>
<td>$3,746,883.47</td>
<td>$8,430,879.39</td>
<td>$8,746,585.69</td>
<td>$9,097,194.12</td>
<td>$9,463,450.26</td>
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<td>Personnel Exp</td>
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<td>$1,504,874.12</td>
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<td>$1,254,021.10</td>
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<tr>
<td>NMFA Loan #1</td>
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<td>$284,389.00</td>
<td>$568,538.00</td>
<td>$569,229.00</td>
<td>$569,313.00</td>
<td>$567,675.00</td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Capital - Total</strong></td>
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<td>$1,176,725.50</td>
<td>$2,439,790.70</td>
<td>$2,511,780.24</td>
<td>$2,587,369.25</td>
<td>$2,666,737.71</td>
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</tr>
<tr>
<td><strong>Debt Service Restricted Acct</strong></td>
<td>$284,389.00</td>
<td>$284,389.00</td>
<td>$568,538.00</td>
<td>$569,229.00</td>
<td>$569,313.00</td>
<td>$567,675.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Operation &amp; Personnel</strong></td>
<td>$1,936,503.70</td>
<td>$1,936,503.70</td>
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<td>$5,278,975.24</td>
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</tr>
<tr>
<td>Per Month/Per Residential Customer</td>
<td>$10.24</td>
<td>$10.24</td>
<td>$10.72</td>
<td>$11.26</td>
<td>$11.82</td>
<td>$12.41</td>
<td></td>
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</tr>
<tr>
<td><strong>Per Month/Per Commercial 96 Gallon/Shared 300</strong></td>
<td>$10.24</td>
<td>$10.24</td>
<td>$10.72</td>
<td>$11.26</td>
<td>$11.82</td>
<td>$12.41</td>
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</tr>
<tr>
<td>Per Month/Per Commercial 300 Gallon</td>
<td>$34.02</td>
<td>$34.02</td>
<td>$42.64</td>
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<td>$47.01</td>
<td>$49.36</td>
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<td></td>
</tr>
<tr>
<td>Per Month/Per Commercial 3 Yard</td>
<td>$63.81</td>
<td>$63.81</td>
<td>$84.52</td>
<td>$88.74</td>
<td>$93.18</td>
<td>$97.84</td>
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<tr>
<td><strong>Capital Reinvestment</strong></td>
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<td>$1,000,000.00</td>
<td>$1,000,000.00</td>
<td>$1,000,000.00</td>
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</tr>
<tr>
<td><strong>Per Month/Per Container</strong></td>
<td>$0.00</td>
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<td>$4.55</td>
<td>$4.55</td>
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</tr>
<tr>
<td><strong>Capital Outlay</strong></td>
<td>$676,725.50</td>
<td>$676,725.50</td>
<td>$1,439,790.70</td>
<td>$1,511,780.24</td>
<td>$1,587,369.25</td>
<td>$1,666,737.71</td>
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<td><strong>Per Month/Per Container</strong></td>
<td>$6.15</td>
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<td>$6.55</td>
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<td>Bad Debt - Unpaid Bills</td>
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<td>$270,066.67</td>
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### Spreadsheet 2 – Sanitation Fees and Revenues

#### Residential/Commercial

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## City of Roswell
### Solid Waste Department Rate Study
#### Executive Summary Report

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## FY25 Rates

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## FY26 Rates

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<td>$39,916.80</td>
<td>$239,500.80</td>
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<tr>
<td>10-300 2 Day</td>
<td>$1,386.00</td>
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<td>10-300 3 Day</td>
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<td>$24,948.00</td>
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<tr>
<td>11-300 2 Day</td>
<td>$1,524.60</td>
<td>2</td>
<td>$36,590.40</td>
<td>$219,542.40</td>
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<tr>
<td>12-300 2 Day</td>
<td>$1,663.20</td>
<td>3</td>
<td>$59,875.20</td>
<td>$359,251.20</td>
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<tr>
<td>12-300 3 Day</td>
<td>$2,494.80</td>
<td>1</td>
<td>$29,937.60</td>
<td>$179,625.60</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>----------</td>
<td>------------</td>
<td>------</td>
<td>--------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td>17-300 2 Day</td>
<td>$2,356.20</td>
<td>1</td>
<td>$28,274.40</td>
</tr>
<tr>
<td></td>
<td>18-300 2 Day</td>
<td>$2,494.80</td>
<td>1</td>
<td>$29,937.60</td>
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<tr>
<td></td>
<td>25-300 2 Day</td>
<td>$3,465.00</td>
<td>1</td>
<td>$41,580.00</td>
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<tr>
<td></td>
<td>1-3Yd 1 Day</td>
<td>$122.99</td>
<td>13</td>
<td>$19,186.44</td>
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<tr>
<td></td>
<td>1-3Yd 2 Day</td>
<td>$245.98</td>
<td>47</td>
<td>$138,732.72</td>
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<tr>
<td></td>
<td>1-3Yd 3 Day</td>
<td>$368.97</td>
<td>34</td>
<td>$150,539.76</td>
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<td></td>
<td>1-3Yd 4 Day</td>
<td>$491.96</td>
<td>7</td>
<td>$41,324.64</td>
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<tr>
<td></td>
<td>1-3Yd 5 Day</td>
<td>$614.95</td>
<td>16</td>
<td>$118,070.40</td>
</tr>
<tr>
<td></td>
<td>2-3Yd 1 Day</td>
<td>$245.98</td>
<td>1</td>
<td>$2,951.76</td>
</tr>
<tr>
<td></td>
<td>2-3Yd 2 Day</td>
<td>$491.96</td>
<td>22</td>
<td>$129,877.44</td>
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<tr>
<td></td>
<td>2-3Yd 3 Day</td>
<td>$737.94</td>
<td>11</td>
<td>$97,408.08</td>
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<tr>
<td></td>
<td>2-3Yd 4 Day</td>
<td>$983.92</td>
<td>5</td>
<td>$59,035.20</td>
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<tr>
<td></td>
<td>2-3Yd 5 Day</td>
<td>$1,229.90</td>
<td>23</td>
<td>$339,452.40</td>
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<tr>
<td></td>
<td>3-3Yd 2 Day</td>
<td>$737.94</td>
<td>3</td>
<td>$26,565.84</td>
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<td></td>
<td>3-3Yd 3 Day</td>
<td>$1,106.91</td>
<td>5</td>
<td>$66,414.60</td>
</tr>
<tr>
<td></td>
<td>3-3Yd 5 Day</td>
<td>$1,844.85</td>
<td>3</td>
<td>$66,414.60</td>
</tr>
<tr>
<td></td>
<td>4-3Yd 2 Day</td>
<td>$983.92</td>
<td>3</td>
<td>$35,421.12</td>
</tr>
<tr>
<td></td>
<td>4-3Yd 3 Day</td>
<td>$1,475.88</td>
<td>1</td>
<td>$17,710.56</td>
</tr>
<tr>
<td></td>
<td>4-3Yd 5 Day</td>
<td>$2,459.80</td>
<td>1</td>
<td>$29,517.60</td>
</tr>
<tr>
<td></td>
<td>8-3Yd 3 Day</td>
<td>$2,951.76</td>
<td>1</td>
<td>$35,421.12</td>
</tr>
<tr>
<td></td>
<td>9-3Yd 2 Day</td>
<td>$2,213.82</td>
<td>1</td>
<td>$26,565.84</td>
</tr>
<tr>
<td></td>
<td>2-3Yd 6 Day Sat</td>
<td>$1,475.88</td>
<td>8</td>
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</tr>
<tr>
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<td>2-3Yd 7 Day Sat</td>
<td>$1,721.86</td>
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</tr>
<tr>
<td></td>
<td>3-3Yd 4 Day Sat</td>
<td>$1,475.88</td>
<td>2</td>
<td>$35,421.12</td>
</tr>
<tr>
<td></td>
<td>5-3Yd 4 Day Sat</td>
<td>$2,459.80</td>
<td>1</td>
<td>$29,517.60</td>
</tr>
<tr>
<td></td>
<td>10-3Yd 6 Day Sat</td>
<td>$7,379.40</td>
<td>1</td>
<td>$88,552.80</td>
</tr>
</tbody>
</table>
### Spreadsheet 3 – Net Position

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Net Position*</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY19</td>
<td>$9,254,374.00</td>
</tr>
<tr>
<td>FY20</td>
<td>$9,485,873.00</td>
</tr>
<tr>
<td>FY21</td>
<td>$8,694,308.00</td>
</tr>
<tr>
<td>FY22</td>
<td>$7,453,193.00</td>
</tr>
</tbody>
</table>

Recognition

Debbie Reyer  
Administrative Assistant Sr.

Janie Davis  
Finance Director

Robert Glenn  
Superintendent, Water Maintenance & Transmission

Todd Wildermuth  
Public Information Officer

Becky Hicks  
Transit Director
Regular Committee Meeting  Item No. 8
Meeting Date: Thursday January 25, 2024
COMMITTEE: Legal
CONTACT: Hessel E. Yntema IV  CHAIR: Edward Heldenbrand

ACTION REQUESTED:
Ordinance 24-XX Amending Chapter 26, Water & Wastewater Utilities of the Roswell City Code - Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 24-XX Amending Chapter 26, Water & Wastewater Utilities of the Roswell City Code along with Appendix A.

BACKGROUND:
Initiated by: Robert Glenn, Deputy Water Maintenance.

July, 2022, The City Manager authorized staff to review and update Chapter 26 of the Roswell Municipal Code. Due to the amount of changes needing to be made, the decision was made to do a repeal and replace of Chapter 26. Since September, 2022, staff and the Infrastructure Committee have been working on the rewrite of Chapter 26 along with the Water & Wastewater Rate studies.

FINANCIAL CONSIDERATION
The ordinance, as written, will implement the findings of the Water & Wastewater Rate Studies.

LEGAL REVIEW:
The City Attorney has reviewed attached documents have been submitted for review. Articles 1-4 & 6 have been previously submitted for review. Complete draft of the ordinance and Appendix A were submitted for review November 13, 2023.

BOARD AND COMMITTEE ACTION:
The Infrastructure Committee completed their review at the November 20, 2023 meeting and by consensus sent it to Finance Committee for review on December 7, 2023. Finance Committee reviewed Article V and recommended by consensus to forward to the Legal Committee in January to begin the adoption process. The January 25, 2024 will be the first time Ordinance 24-XX has been before the Legal Committee

STAFF RECOMMENDATION:
Ordinance 24-XX Amending Chapter 26, Water & Wastewater Utilities of the Roswell City Code - Consider recommending approval to authorize to advertise for a public hearing for Proposed Ordinance 24-XX Amending Chapter 26, Water & Wastewater Utilities of the Roswell City Code along with Appendix A.

Attachments
ATTACHMENT: 1 - Chapter 26, Water & Wastewater Utilities of the Roswell City Code
2 – Appendix A, Rates and Fees
City of Roswell
Chaves County, New Mexico

Chapter 26 – Water & Wastewater Utilities

Ordinance 2024-XX adopted on the 7th day of March, 2024, effective July 1, 2024
Chapter 26 – Title

This ordinance shall be known as the “Revised Roswell Utility Ordinance” hereinafter referred to as “ordinance”. Within this text, “City,” and “City Council” mean and refer to the City of Roswell and the Roswell City Council.

Chapter 26, Article I General Provisions
Division I – Intent and Governing Laws

Sec. 26-1 Purpose and Scope of Ordinances
This ordinance is intended to set forth the rates and rules under which the City of Roswell provides services to the City’s property owners and ratepayers.

NMSA 1978, §3-18-1

Sec. 26-2 Authority
This ordinance is adopted pursuant to the enabling authority contained in New Mexico Statutes Annotated, 1978, and specifically Chapter 3 – Municipalities MNSA, 1978. Whenever any provisions of this ordinance refers to or cites a section of the New Mexico Statutes Annotated and that section is later amended or superseded, the ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

Sec. 26-2-1 Authority to Enforce
The Utility Director and his designated employees, Water Conservation Specialist, Code Enforcement, Plumbing Inspector, Building Inspector, Fire Marshal and any Peace Officer shall have the authority to enforce the provisions of this ordinance.

NMSA 1978, §3-18-1

Sec. 26-2-2 Authority to Operate
The Utility Director and his designated employees, possessing the required operator certifications, or Utility Department employees working under direct supervision of a certified operator shall have the sole authority to operate the water and wastewater systems of the City. Operational decisions of the Utility Director shall be final.

NMSA 1978, §61-33-2, 61-33-6

Sec. 26-3 Jurisdiction and Applicability
The provisions of this ordinance shall apply to all land, buildings, structures, and uses thereof on properties served by the City and to any person claiming an ownership in or right to occupy or use such.

NMSA 1978, §3-27-3, 3-27-8

Sec. 26-4 Existing Regulations
These ordinances augment and enhance federal and state laws. These ordinances are meant to provide enforceable provisions, remedies and penalties and whenever any of these ordinances provide for more restrictive standards or requirements, this ordinance will prevail.
Division II – Interpretation and Conflict

Sec. 26-5 Minimum Standards

The regulations, restrictions, and requirements of this ordinance shall be held to be the minimum standards to carry out the purpose of this ordinance. This ordinance is not intended to interfere with, abrogate, or annul an easement, covenant, or other agreement between parties but in the event of a conflict, this Ordinance shall prevail.

Sec. 26-6 Severability

The provisions of this ordinance are severable, and if any provisions, sentences, clauses, sections, or parts hereof are held to be illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this ordinance or their application to the persons or circumstances.

Sec. 26-7 Intent

It is hereby declared to be the intent of the City of Roswell that this ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, and even if the person or circumstances to which this ordinance or part thereof is inapplicable had been specifically exempted there from.

Sec. 26-8 Headings, Illustrations and Text

In case of any difference of meaning or implication between the text of these ordinances and any heading, drawing, table, figure or illustration, the text shall control.

Sec. 26-9 Lists and Examples

Unless otherwise specifically indicated, lists of items or examples that use terms such as “for example,” “including,” and “such as,” or similar language are intended to provide examples. They are not intended to be exhaustive lists of all possibilities.

Sec. 26-10 Computation of Time

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City of Roswell, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or observed holiday. References to days are calendar days unless otherwise stated.

Sec. 26-11 References to Other Regulations, Publications and Documents

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.
Sec. 26-12 Delegation of Authority

Whenever a provision requires an official, the head of a department or another officer or employee of the City to perform an act or duty, that provision shall be construed as authorizing that official, department head, officer, or employee to delegate that responsibility to others over whom they have authority.

Sec. 26-13 Technical and Non-technical Terms

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning. Technical industry language shall be defined using current New Mexico Environment Department, New Mexico Office of the State Engineer and American Water Works Association definitions.

Sec. 26-14 Mandatory and Discretionary Terms

The words “shall,” “will,” and “must” are always mandatory. The words “may” and “should” are discretionary terms.

Sec. 26-15 Conjunctions

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows: (1) “And” indicates that all connected items, conditions, provisions or events apply; and (2) “Or” indicates that one or more of the connected items, conditions, provisions or events apply.

Sec. 26-16 Tenses and Plurals

Words used in one tense (past, present or future) include all other tenses, unless the context clearly indicates the contrary. The singular includes the plural, and the plural includes the singular.
Division III – Other Provisions

Except as otherwise provided herein:

Sec 26-17 Repeal or Amendment

The repeal or amendment of any portion of this ordinance shall not affect any penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal for an offense committed under the ordinance repealed or amended.

Sec. 26-18 Delivery of Notice

Except as may be provided herein, notice by the City to the Customer may be given orally, by telephone or in writing.

Sec. 26-19 Comply with Codes and Regulations

All customer installations shall comply with the Plumbing Code of the State of New Mexico and any other applicable codes, regulations, or statutes.

NMSA 1978, §3-17-6

Sec. 26-20 Written Communication Required

In the event of a dispute, only written communication will be considered as proof of notice.

Sec. 26-21 Tampering with, Obstructing, Operating, Damaging Water/Wastewater Infrastructure

It shall be unlawful for any person to remove, obstruct, damage, or without authority, to meddle or tamper in any way with a fire hydrant, valve, valve box or cover, meter, meter box or cover, stopcock or cover, or in any manner damage pipe, apparatus or fixtures or property of the waterworks or sewage disposal systems. The meter or meter box shall not be obstructed at any time and should allow for free access by authorized City personnel. The City’s water shut off valve shall only be operated by Utility Department personnel or a Plumber licensed by the New Mexico Regulation & Licensing Department.

Water service terminated by the City for non-payment shall only be restored by Utility Department personnel. It shall be unlawful for any customer to restore their own service. The Utility Department has 24 hours from the time of payment to restore service to the customer.

42 U.S. Code §300i-1, NMSA 1978, §61-33-6

Sec. 26-22 Obstructing Department Operations

It shall be unlawful for any person to willfully obstruct department operation or employee by means of intimidation, physical force or interference or if by any other independently unlawful act he:

a. Prevents access to a water meter in order to collect a required reading or repair;

b. Obstructs access to any element of the City’s water/wastewater infrastructure;

c. Prevents any department employee from preforming their lawful duties;

d. Purposely providing false information on any department form or application for service;

e. Purposely providing false information to any department employee relating to the status of their billing account during non-payment disconnection operations.

NMSA 1978, §3-18-1.F,G

Sec. 26-23 through 26-30 RESERVED
## Division IV – Definitions

<table>
<thead>
<tr>
<th>Access</th>
<th>A way of approaching or entering a property primarily devoted to vehicular or pedestrian use from a public street, highway or to a private street or alley. Access includes ingress and egress.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act of the Act</td>
<td>Means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended (33 United States Code § 1251 et seq.).</td>
</tr>
<tr>
<td>Accessory Building or Use</td>
<td>A subordinate building or use which is incidental to and customary in connection with the principal building or use and which is located on the same lot with such principal building or use.</td>
</tr>
<tr>
<td>Apartment Building or House</td>
<td>One or more structures each containing two or more dwelling units arranged in suites of connecting rooms designed for independent housekeeping, but with certain mechanical conveniences, such as heat, in common to all families occupying the building.</td>
</tr>
<tr>
<td>Approval Authority</td>
<td>The regional administrator for the environmental protection agency or his authorized representative.</td>
</tr>
</tbody>
</table>
| Authorized representative of industrial user | An authorized representative of an industrial user may be:  
(1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;  
(2) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater permit requirements.  
(3) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively;  
(4) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates. |
<p>| Batch Discharge               | Any indirect discharge at an inconsistent rate in a quantity or quality less than a slug discharge.                                                                                                  |
| Bathroom                      | A room containing a washbasin, toilet, and bathtub or shower. Rooms referred to locally as one-half or three quarter baths are one bath for the purpose of this ordinance. |
| Best Management Practices or BMP | Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>sections 26-98 and 26-99. BMP</td>
<td>include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks sludge or waste disposal, or drainage from raw materials storage.</td>
</tr>
<tr>
<td>B.O.D., BOD, BOD5</td>
<td><em>(denoting biochemical oxygen demand)</em> The quantity of oxygen utilized in the biochemical oxidation of organic matter by standard methods procedure in five days at 20 degrees centigrade expressed in milligrams per liter (mg/l).</td>
</tr>
<tr>
<td>Building</td>
<td>Any structure having a roof supported by columns or walls built for the support, shelter, or enclosure of persons, animals, chattels, vehicles or property of any kind. When any portion of a building is completely separated from any other portion thereof by a division wall without openings or by a firewall then each such portion shall be deemed to be a separate building.</td>
</tr>
<tr>
<td>Building (Principal)</td>
<td>The building occupied by the principal use of the property.</td>
</tr>
<tr>
<td>Building sewer</td>
<td>The extension from the building drain to the public sewer or other place of disposal.</td>
</tr>
<tr>
<td>Business</td>
<td>Use or activity engaged in for gain or livelihood.</td>
</tr>
<tr>
<td>Categorical pretreatment standard or categorical standard</td>
<td>Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307 and of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.</td>
</tr>
<tr>
<td>Chronically Delinquent Customer</td>
<td>A customer of the City who, during the prior twelve (12) months has been disconnected by the City for non-payment, or who during the prior twelve (12) months has not paid a bill by the date that a subsequent bill is rendered on three (3) or more occasions.</td>
</tr>
<tr>
<td>City</td>
<td>The City of Roswell, New Mexico and its authorized employees, representatives, agents and contractors.</td>
</tr>
<tr>
<td>C.O.D, COD</td>
<td><em>(denoting chemical oxygen demand)</em> A measure of the oxygen-consuming capacity of organic and inorganic matter present in wastewater expressed as the amount of oxygen consumed from a chemical oxidant as under standard laboratory procedure in milligrams per liter (mg/l).</td>
</tr>
<tr>
<td>Commerce</td>
<td>The exchange of goods, productions, or property of any kind.</td>
</tr>
<tr>
<td>Commercial</td>
<td>Activity connected with trade or commerce</td>
</tr>
<tr>
<td>Commercial Unit</td>
<td>Premises operated for commercial purposes.</td>
</tr>
<tr>
<td>Composite Sample</td>
<td>Combination of individual samples of water or wastewater taken at selected intervals (generally hourly or some similar specified period), to minimize the effect of the variability of the individual sample. Individual samples may have equal volume or may be roughly proportional to the flow at time of sampling.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Condominium</td>
<td>Real estate, portions of which are designed for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. The undivided interests in the common elements are vested in the unit owners.</td>
</tr>
<tr>
<td>Contiguous</td>
<td>Adjacent to or touching, separated by not more than an easement.</td>
</tr>
<tr>
<td>Control Authority</td>
<td>The approval authority and/or the director in an approved city pretreatment program under the provisions of 40 CFR., 403.11.</td>
</tr>
<tr>
<td>Cooling Water</td>
<td>The water discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant is heat.</td>
</tr>
<tr>
<td>Cross-connection</td>
<td>Any physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other of unknown or questionable safety, or an un-metered supply, whereby water may flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.</td>
</tr>
<tr>
<td>Customer</td>
<td>Any person, firm, association, corporation, or any agency of the federal, state, or local government, being supplied with, desiring or responsible for payment for, water, wastewater or related services by the City.</td>
</tr>
<tr>
<td>Customer’s water line</td>
<td>The piping owned and installed by the customer which is connected to the customer side of the meter.</td>
</tr>
<tr>
<td>Day, Calendar Day, Business Day</td>
<td>A day shall, unless otherwise defined, be a Business Day. A Business Day is Monday – Friday, excluding weekends and city recognized holidays. A Calendar Day shall include all 7 days in a week including weekends and holidays.</td>
</tr>
<tr>
<td>Delinquent</td>
<td>The status of a bill rendered to a customer for service which remains unpaid after the due date.</td>
</tr>
<tr>
<td>Direct Discharge</td>
<td>The discharge of treated or untreated wastewater directly to the ground or surface waters of the state.</td>
</tr>
<tr>
<td>Director</td>
<td>The Utility Director or his authorized representative.</td>
</tr>
<tr>
<td>Discontinuance of Service</td>
<td>An intentional cessation of service by the City not voluntarily requested by the customer.</td>
</tr>
<tr>
<td>Duplex</td>
<td>A dwelling unit that has two single-family living areas that are attached by a common wall.</td>
</tr>
<tr>
<td>Dwelling Unit</td>
<td>A room or suite of rooms with kitchen, sleeping facilities, and bath facilities designed as a unit for occupancy by one family.</td>
</tr>
<tr>
<td>Easement</td>
<td>A right, liberty, privilege or advantage of use over the property of another.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Environmental Protection Agency or EPA</td>
<td>The U.S. Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of said agency</td>
</tr>
<tr>
<td>Estimated bill</td>
<td>A bill for a metered service which is not based on an actual reading of the meter for the period billed.</td>
</tr>
<tr>
<td>Garbage</td>
<td>Solid Waste from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storing and sale of produce.</td>
</tr>
<tr>
<td>Grab Sample</td>
<td>A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.</td>
</tr>
<tr>
<td>Hazardous Waste</td>
<td>Substances, materials, waters or wastes which are hazardous as defined by 40 CFR Part 261 and/or any other applicable state or federal regulation.</td>
</tr>
<tr>
<td>Holding Tank (waste)</td>
<td>Any wastes from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.</td>
</tr>
<tr>
<td>Indirect Discharge</td>
<td>The discharge or the introduction of nondomestic pollutants from any source regulated under Section 307 or of the Act (33 United States Code § 1277), into the POTW (including holding tank waste discharged into the public sewer).</td>
</tr>
<tr>
<td>Industrial Liquid Waste</td>
<td>All waterborne solids, liquids or gaseous wastes resulting from any industrial, manufacturing or food processing operation or process, or from the development of any natural resource, or any mixture of these with water or domestic wastewater as distinct from normal domestic wastewater. Industrial manufacturing processes shall include, but are not limited to: ordinance; and accessories; food and allied products; tobacco manufacturers; textile mill products; apparel and other finished products, furniture and fixtures; printing; publishing and allied industries; chemicals and allied products; petroleum refining and related industries; rubber and miscellaneous plastics products; leather and leather products; stone, clay, glass, and concrete products; primary metal industries; fabricated metal products, machinery and transportation equipment; electrical machinery, equipment and supplies; transportation equipment professional, scientific and controlling instruments; photographic and optical goods; watches and clocks; miscellaneous manufacturing industries.</td>
</tr>
<tr>
<td>Industrial User</td>
<td>Any user who discharges industrial liquid wastes into the city's POTW.</td>
</tr>
<tr>
<td>Interference</td>
<td>The inhibition or disruption of the POTW treatment processes or operations which contributes to a violation of any requirement of the city's NPDES permit. The term includes prevention of wastewater sludge use or disposal by the POTW in accordance with Section 405 of the Act (33 U.S.C. 1354), or any criteria, guidelines or regulations developed (present or future) pursuant to the Solid Waste Disposal Act (SWDA),</td>
</tr>
<tr>
<td><strong>Irrigation System</strong></td>
<td>A system which replaces or supplements rainfall with water from another source in order to grow ground covers, plants, shrubs, and trees. The system generally consists of a control unit that controls one or more zones, together with lines to carry water and heads to apply water.</td>
</tr>
<tr>
<td><strong>Irrigation System, Backflow Valve</strong></td>
<td>A valve that prevents contents of the irrigation line from flowing backward into the potable water system when a pressure drop occurs in the potable water system.</td>
</tr>
<tr>
<td><strong>Irrigation System, Drip</strong></td>
<td>A sub-surface irrigation system which delivers water at or near the root zone, drop by drop, eliminating water loss due to evaporation and run-off.</td>
</tr>
<tr>
<td><strong>Irrigation System, Rain Sensor</strong></td>
<td>An irrigation shutoff device that prevents an automatic irrigation or sprinkler system from turning on during and after a rainstorm. When the collected rainwater has evaporated from the device, scheduled irrigations resume.</td>
</tr>
<tr>
<td><strong>Irrigation System, Shutoff</strong></td>
<td>A device equipped with a ball valve that disconnects the irrigation system from the potable water supply.</td>
</tr>
<tr>
<td><strong>Landscaping</strong></td>
<td>The planting and maintenance of live plants including trees, shrubs, ground cover, vegetables, flowers, or other low-growing plants that are native or adaptable to the climatic conditions of Chaves County. It may include inorganic and manufactured materials such as rocks, fountains, reflecting pools, works of art, benches and other types of casual furniture.</td>
</tr>
<tr>
<td><strong>Landscaping Plan</strong></td>
<td>An accurate plan, drawn to scale, which outlines all proposed areas to be covered with impervious materials, proposed planting beds and vegetative ground cover area, and specifies the location, size and species of all proposed trees and shrubs.</td>
</tr>
<tr>
<td><strong>Leak Credit</strong></td>
<td>In the discretion of the Utility Director, a customers’ bill may be adjusted downward if the customer has been diligent in discovering and fixing the leak.</td>
</tr>
<tr>
<td><strong>Limits</strong></td>
<td>Local limits and pretreatment standards.</td>
</tr>
<tr>
<td><strong>Local Limits</strong></td>
<td>The limits on the discharge or regulation of pollutants to the POTW as developed by the director.</td>
</tr>
<tr>
<td><strong>Lot</strong></td>
<td>A division, piece, portion, tract or parcel of land platted and placed on the County Clerk's record in accordance with laws and ordinances.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
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<td>------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Monitoring Facility</td>
<td>Any facility required to be installed to meet the requirements of the pretreatment program. This includes cleanouts, sample ports, mini manholes, manholes, samplers, meters and other facilities or appurtenances to facilitate observation, sampling and measurement of wastes as required by the director.</td>
</tr>
<tr>
<td>Municipal Sewer System</td>
<td>All sanitary sewers, pumping stations, sewage treatment plants, main sewers, interceptor sewers, outfall sewers, and works for the collection, transportation, pumping and treatment of wastewater, sewage and/or industrial liquid wastes thereto, necessary in the maintenance and operation of the same.</td>
</tr>
<tr>
<td>Multi-Family Dwelling</td>
<td>A structure containing two or more dwelling units.</td>
</tr>
<tr>
<td>National Categorical Pretreatment Standard or pretreatment standard</td>
<td>Any (present or future) regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 and of the Act (33 U.S.C. 1317) which applies to a specific category of industrial users.</td>
</tr>
<tr>
<td>National Prohibitive Discharge Standard or prohibitive discharge standard</td>
<td>Any (present or future) regulation developed under the authority of 307 of the Act and 40 CFR, Section 403.5.</td>
</tr>
<tr>
<td>Natural Outlet</td>
<td>Any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.</td>
</tr>
</tbody>
</table>
| New Source                               | (1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307 of the Act that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
   a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
   b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
   c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
   (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of section (1) or above but otherwise alters, replaces, or adds to existing process or production equipment.
   (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
      a. Begun, or caused to begin, as part of a continuous onsite construction
1. Any placement, assembly, or installation of facilities or equipment; or
2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

<p>| Normal Domestic Wastewater | Waterborne wastes normally discharging from the sanitary conveniences of buildings (including apartment houses and hotels), office buildings, factories and institutions, free from storm surface water and industrial wastes. Normal domestic wastewater for the city shall be wastewater with an average concentration of five-day BOD is established at 200 milligrams per liter (mg/l); the average concentration of suspended solids is established at 200 milligrams per liter (mg/l). |
| Owner | The word &quot;owner&quot; shall, when applied to a building or land, include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such building or land. |
| PH | The negative logarithm of the concentration of hydrogen ions in grams per liter of a solution. |
| Pass through | A discharge which exits the POTW into waters of the United States in quantities of concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation). |
| Person | Any individual, firm, co-partnership, joint venture association, social club, country club, fraternal organization, corporation, estate, trust, business trust, receiver, syndicate, political subdivision, or other group or combination, acting as a unit. |
| Point of delivery | The point of delivery shall be the point where the facilities of the City connect to the facilities furnished by the customer. |
| Pollutant | Any dredged spoil, solid waste, incinerator residue, wastewater, garbage, wastewater sludge, munitions, chemical wastes, biological materials, radioactive materials, hot, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, city and agricultural waste discharged into water. |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pollution</td>
<td>The man-made or man-induced alteration of the chemical, physical, biological, thermal, and radiological integrity of water.</td>
</tr>
<tr>
<td>Premises</td>
<td>A lot or area, together with all improvements, buildings, and structures thereon.</td>
</tr>
<tr>
<td>Pressure regulating device</td>
<td>Device that maintains a constant water pressure at its immediate downstream side which is less than the inlet pressure to the device, unless the pressure on the inlet side is lower than the pressure setting for the downstream side.</td>
</tr>
<tr>
<td>Pressure, normal</td>
<td>Under normal conditions, including expected peak, water pressure at the customer’s meter connection shall not be less than 30 psi. nor more than 125 psi.</td>
</tr>
<tr>
<td>Pretreatment or treatment</td>
<td>The reduction of the amount of pollutants, the removal of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes or process changes by other means, except as prohibited by 40 CFR § 403.6.</td>
</tr>
<tr>
<td>Pretreatment requirements</td>
<td>Any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.</td>
</tr>
<tr>
<td>Pretreatment Standard</td>
<td>Any (present or future) regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307 and of the Act, which applies to industrial users.</td>
</tr>
<tr>
<td>Property Owner</td>
<td>The owner of any parcel of real property as listed on the records of the Chaves County NM Assessor’s Office.</td>
</tr>
<tr>
<td>Private Well</td>
<td>A well that is not owned and operated by the City.</td>
</tr>
<tr>
<td>Publicly Owned Treatment Works</td>
<td>A treatment works as defined by Section 212 of the Act, which is owned by the city. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of city wastewater of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a wastewater treatment plant. For the purposes of this division, &quot;POTW&quot; shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are users of the city's POTW.</td>
</tr>
<tr>
<td>POTW treatment plant</td>
<td>that portion of the POTW designed to provide treatment to wastewater.</td>
</tr>
<tr>
<td>Public Sewer</td>
<td>A sewer in which all owners of abutting properties shall have equal rights, and is controlled by public authority.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Reconnect charge</td>
<td>A charge made by the City at the time application is made for reconnection of water service at a place where water service has been previously disconnected.</td>
</tr>
<tr>
<td>Restricted Revenue/Expense Accounts</td>
<td>Funds restricted by ordinance as to use. Funds may only be used for stated purpose unless acted upon by resolution of the city council after required public hearing.</td>
</tr>
<tr>
<td>Remuneration</td>
<td>Compensation, money, rent or other bargained for consideration given in return for goods or services, or occupancy, possession or use of real property.</td>
</tr>
<tr>
<td>Roadway</td>
<td>That portion of a street, improved, designed, platted, or dedicated for vehicular traffic.</td>
</tr>
<tr>
<td>Sanitary Sewer</td>
<td>The public sewer portion of a POTW which transports wastewater and to which storm, surface and groundwater are not intentionally admitted.</td>
</tr>
<tr>
<td>Seriously ill person</td>
<td>Person residing in a living unit to which the City supplies water, whose life would be endangered in the event of termination of such service.</td>
</tr>
<tr>
<td>Sewage</td>
<td>A combination of water-carried wastes from users together with such ground, surface and storm waters as may be present.</td>
</tr>
<tr>
<td>Single Family Dwelling</td>
<td>A dwelling unit which is occupied, as a rule, for permanent residence purposes by a housekeeping unit maintaining a household.</td>
</tr>
<tr>
<td>Significant Industrial User</td>
<td>Any user meeting the criteria as described in 40 CFR 403.3.</td>
</tr>
<tr>
<td>Significant Violating User</td>
<td>Any user meeting the criteria as described in 40 CFR 403.8(2)(vii).</td>
</tr>
<tr>
<td>Site Development Plan</td>
<td>A map or maps with text that shows proposed building configurations, heights, colorations, elevations and other structural elements, together with proposed walls, landscaping, berms, parking, grading, drainage, access, paving, schedule of development, and site elements on and adjacent to the lot(s) proposed for development. Requirements for all elements of the site plan shall be as determined by the Planning And Zoning Commission. Site Development Plans (Site Plans) may become the basis for building permits issued in conformance with approved drawings.</td>
</tr>
<tr>
<td>Sludge Discharge</td>
<td>Any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or permit conditions.</td>
</tr>
<tr>
<td>Special Disposal Fees</td>
<td>Fees charged for disposal of approved Miscellaneous Waste at the WWTP</td>
</tr>
</tbody>
</table>
| Standard industrial classification (SIC)| A classification pursuant to the standard industrial classification manual issued by the executive office of the president, office of management and
<table>
<thead>
<tr>
<th><strong>Standard methods</strong></th>
<th>The laboratory procedures set forth in the latest edition, at the time of analysis, of standard methods for the examination of water and wastewater, as prepared, approved and published jointly by the American Public Health Association and American Water Works Association and the Water Pollution Control Federation.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Stormwater</strong></td>
<td>Any flow occurring during or following any form of natural precipitation and resulting therefrom.</td>
</tr>
<tr>
<td><strong>Storm sewer</strong></td>
<td>A sewer which carries storm and surface waters and drainage, but excludes wastewater, sewage, and industrial liquid wastes other than unpolluted cooling water.</td>
</tr>
<tr>
<td><strong>Street</strong></td>
<td>That portion of a public right-of-way or private way or thoroughfare which is primarily devoted to vehicular use. Such right-of-way or thoroughfare normally shall provide access to abutting property.</td>
</tr>
<tr>
<td><strong>Structure</strong></td>
<td>Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground, including, but without limiting the generality of the foregoing, a building, fence or wall, advertising signs, billboards, backstops for tennis courts, and pergolas, but not including tents or vehicles.</td>
</tr>
<tr>
<td><strong>Suspended Solids (SS)</strong></td>
<td>Solids that either float on the surface of, or are suspended in water, wastewater or other liquids and which are removable by laboratory filtering.</td>
</tr>
<tr>
<td><strong>Termination</strong></td>
<td>Disconnection of water or wastewater service.</td>
</tr>
<tr>
<td><strong>Total toxic organics</strong></td>
<td>The summation of all quantifiable values greater than 0.01 mg/l for the organic compounds listed in 40 CFR 433.11.</td>
</tr>
<tr>
<td><strong>Town home or Townhouse</strong></td>
<td>A dwelling unit usually connected to a similar structure by a common wall and commonly sharing and owning in common the surrounding grounds. Ownership includes the building.</td>
</tr>
<tr>
<td><strong>Toxic Pollutants</strong></td>
<td>Any pollutant or combination of pollutants listed as toxic in (present or future) regulations promulgated by the administrator of the EPA under the provision of Section 307(1) of the Act.</td>
</tr>
<tr>
<td><strong>Trap</strong></td>
<td>A device for retaining sand, silt, grit mineral material, petroleum solvent, grease or oil by gravity-differential separation from wastewater and of a design and capacity approved by the city.</td>
</tr>
<tr>
<td><strong>Unpolluted process water</strong></td>
<td>Any water or waste containing none of the following: Free or emulsified grease or oil; acid or alkali, phenols, or other substances imparting taste and odor to receiving water; toxic substances in suspension, colloidal state or solution and noxious or odorous gases.</td>
</tr>
</tbody>
</table>

15
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>User or Industrial user</td>
<td>Any person who contributes, causes or permits the contribution of wastewater into the city's POTW.</td>
</tr>
<tr>
<td>Waste Hauler</td>
<td>Any person who collects holding tank waste.</td>
</tr>
<tr>
<td>Wastewater</td>
<td>The liquid and water-carried wastes from residences, business buildings, institutions and industrial establishments either treated, pretreated or untreated, together with such ground, surface and storm waters which are contributed into or permitted to enter the POTW.</td>
</tr>
<tr>
<td>Wastewater discharge permit or permit</td>
<td>The permit issued by the director which stipulates the conditions under which the user may discharge to the POTW.</td>
</tr>
<tr>
<td>Wastewater service</td>
<td>General term for providing for the collection, transportation, treatment, and disposal of sewage from customers.</td>
</tr>
<tr>
<td>Wastewater treatment works</td>
<td>An arrangement of devices and structures for treating wastewater, industrial wastes and sludge. The term is sometimes synonymous with waste treatment plant or wastewater treatment plant.</td>
</tr>
<tr>
<td>Water Meter Fee</td>
<td>A fee charged for administration and installation of new water connections.</td>
</tr>
<tr>
<td>Water service</td>
<td>General term for furnishing the customer with water; also the pipe connection from a distribution water main to a customer’s water meter.</td>
</tr>
<tr>
<td>Water Shutoff Valve</td>
<td>A valve which is installed on customer premises adjacent to the City’s meter which allows the customer to turn off water without access to the City’s meter can. A Shutoff Valve is required on all water service connections.</td>
</tr>
<tr>
<td>Water Utility Expansion Fee</td>
<td>A fee charged concurrent with the installation of a new water meter which is intended to account for the burden of new customer service on upgrading and expanding the entire water system which includes water rights, well production, storage, treatment, transmission, and distribution. This is added to the Water Infrastructure Improvement Fund.</td>
</tr>
<tr>
<td>Water of the State</td>
<td>All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.</td>
</tr>
<tr>
<td>Water of the United States</td>
<td>All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the United States or any portion thereof.</td>
</tr>
</tbody>
</table>
Abbreviations used in this division shall have these designated meanings:

1) **BMP.** Best management practice.
2) **BOD.** Biochemical oxygen demand (five-day, unless otherwise noted as "ultimate BOD").
3) **CFR.** Code of federal regulations.
4) **COD.** Chemical oxygen demand.
5) **EPA.** Environmental Protection Agency.
6) **L.** Liter.
7) **mg.** Milligrams.
8) **mg/l.** Milligrams per liter.
9) **NMEID.** New Mexico Environment Department.
10) **NPDES.** National Pollutant Discharge Elimination System.
11) **POTW.** Publicly owned treatment works.
13) **USC.** United States Code.
14) **SIC.** Standard industrial classification.
Article II – Water Service

Sec. 26-31 Applicability
The regulations set forth herein shall apply to all property within the City and to property outside the City to which the City may elect to furnish water.
NMSA 1978, §3-27-1, 3-27-2, 3-27-8

Sec. 26-32 Residential and Commercial - Character of Service.
Water service for domestic, commercial, industrial, sanitary and other purposes will be furnished under conditions as stated herein and in any policies, rules and regulations adopted by the City Council. There shall be one (1) meter for each "living unit" or “commercial unit”. Service is to the property in question and all amounts due for service may be liens on the property served.
NMSA 1978, §3-23-6

Sec. 26-33 Private wells.
The City strongly discourages and will object to the drilling and use of private wells.
The permitting and use of private wells is governed by State law and may be further governed and limited by conditions of subdivision approval and property covenants.
Any property owner connected to the City’s potable water system who applies to the State for a permit to drill and use a private well is required to provide written notice to the City of the application. The notice shall include a copy of the application and shall be postmarked not later than the application filing date by registered mail to the City at the address provided on the City’s water bills.

It is the intent of this provision to allow the City specific notice and sufficient time to evaluate the probable impact of the application upon the City’s ability to provide and furnish water to its customers.
All private wells within the City of Roswell will at all times comply with the back flow prevention section of this ordinance and back flow provisions of the adopted Plumbing Code.
NMSA 1978, §3-53-1.1

Sec. 26-34 Residential and Commercial - Connection Required.
All property in the City used for human habitation or occupancy shall be connected with the City’s water and wastewater system.

Sec. 26-34-1 Tapping of City Mains
No one other than the Utility Department, or their authorized project contractor, shall make a tap connections to the City’s water mains.

Sec. 26-35 Customer piping.
The piping system on Customer's premise shall be inspected and approved by the City Plumbing Inspector. Before water service will be connected, proof of inspection is required with plumbing inspector's approval.
Cross connections or back flow possibilities revealed by any inspection shall be eliminated before water service is provided to a new Customer or continued to an existing Customer. The City does
not assume responsibility for piping inspections and shall not be held liable for failure of Customer's piping or installation.

The City shall not be responsible for the stoppage or obstruction or breaks in facilities or lines of the customer.

Customer is required to have a Water Shutoff Valve installed between the meter and customer premises.

City is not responsible for excess pressure in lines and it is recommended that each customer have an operational Pressure Control Valve.

It shall be the responsibility of the customer to protect the meter, meter box and their piping from freezing.

NMSA 1978, §3-17-6

Sec. 26-36 New Connections

The City, after consulting with the property owner, shall determine the point of service to any premise.

Temporary (Construction) Service:

a. Each application for Temporary Service on a previously unimproved property shall be accompanied by a valid building permit issued by the appropriate authority. Upon approval, the City shall have a reasonable time thereafter to provide water service.

b. A one time Water Meter Fee as specified in Appendix A: Fee Schedule shall be paid in advance of connection to the system. All Connections purchased, whether the meter is installed or not, will be subject to the minimum bill starting the first month from purchase date.

c. A one time Water Utility Expansion Fee as specified in Appendix A: Fee Schedule shall be paid in advance of connection to the system.

d. Temporary Service shall be limited to one year unless the applicant makes a written request for a six (6) month extension. No more than two (2) such extensions will be granted by the City.

e. Service will be disconnected unless Temporary Service is converted to Permanent Service while the Temporary Service remains in effect.

Permanent service:

a. Each application for Permanent Service on a property shall be accompanied by a valid Certificate of Occupancy issued by the authority of the City Building Official.

Each living unit and commercial unit shall be individually metered.

No more than one (1) domestic service line shall be installed on the premises for any one customer unless agreed to by the City where special circumstances exist.

City’s service laterals shall terminate at the property line and it shall be the owner’s responsibility and expense to install a Water Shutoff Valve and to make the necessary connection from the City’s service lateral to the building to be served. For those systems providing fire protection, the customer shall install a pressure regulating device.

Water service furnished by the City to any customer shall be used only in connection with such customer’s residence or business to which the service is piped. No additional facilities, unit sites, or supplies shall be connected to the existing service, nor shall service be piped from one residence,
business, or building to another without first obtaining written authorization from the City. The City will endeavor to install meters as close as possible to the property line provided there is public access to the meter location.

All taps not physically installed, but paid for, shall be subject to any and all tap fee increases up to the time of installation.

Upon installation of a meter, the Fire Protection Fees for the calendar year shall be pro-rated to the month in which the meter is installed.

NMSA 1978, §3-27-4

Sec. 26-37 through 26-44 Reserved

Sec. 26-44 Interruptions of Service

The City agrees to use reasonable diligence in rendering continuous service and in furnishing a regular and uninterrupted supply of water, but the City does not guarantee continuous service and supply and shall not be liable for damages in case the supply should be interrupted or fail by reasons of an act of God, the public enemy, accidents, strikes, legal process, state, county or municipal interferences, breakdowns or damage to the machinery of supply, process and distribution, or any cause beyond the control of the City.

The City reserves the right to discontinue water service for the purpose of making connections or extensions, repairs, raising or lowering of its pipe, or for alterations, improvements, repairs, emergencies, or in connection with its business and will not be liable for damages occasioned by interruption of, or reduction in, service when such interruptions or reductions are necessary to make repairs or changes in the City’s transmission or distribution facilities. The City will endeavor to give reasonable notice in advance of any planned shutoff.

Sec. 26-45 Limitation on use

The City, by resolution of the City Council, reserves the right to limit each property to a maximum daily average use where circumstances warrant. The Utility Director, may in an emergency, limit usage until such time as a meeting of the City Council can be called.

NMSA 1978, §3-53-2

Sec. 26-46 Right of Ingress and Egress

Duly authorized agents or employees of the City, carrying proper credentials and identification, shall have free access at all reasonable hours to all parts of the premises of the customer for the purpose of inspection and testing, or for reading, changing, or removing its water meters. If such duly authorized agents or employees, after showing proper credentials and identifications, are refused admittance or hindered or prevented from making such inspections, the service may be discontinued until free access is given.

Sec. 26-47 Private Use of Fire Hydrants and Standpipes.

Connection to fire hydrants and standpipes at any location is prohibited except by written permit issued by the City and is subject to charges as specified in Appendix A: Fee Schedule.

Connections to fire hydrants and standpipes will be permitted only at the fire hydrant or standpipe designated in the permit. Water taken from fire hydrants and standpipes shall be metered with a meter provided by the City.

NMSA 1978, §3-27-4

Sec. 26-37 through 26-44 Reserved

Sec. 26-44 Interruptions of Service

The City agrees to use reasonable diligence in rendering continuous service and in furnishing a regular and uninterrupted supply of water, but the City does not guarantee continuous service and supply and shall not be liable for damages in case the supply should be interrupted or fail by reasons of an act of God, the public enemy, accidents, strikes, legal process, state, county or municipal interferences, breakdowns or damage to the machinery of supply, process and distribution, or any cause beyond the control of the City.

The City reserves the right to discontinue water service for the purpose of making connections or extensions, repairs, raising or lowering of its pipe, or for alterations, improvements, repairs, emergencies, or in connection with its business and will not be liable for damages occasioned by interruption of, or reduction in, service when such interruptions or reductions are necessary to make repairs or changes in the City’s transmission or distribution facilities. The City will endeavor to give reasonable notice in advance of any planned shutoff.

Sec. 26-45 Limitation on use

The City, by resolution of the City Council, reserves the right to limit each property to a maximum daily average use where circumstances warrant. The Utility Director, may in an emergency, limit usage until such time as a meeting of the City Council can be called.

NMSA 1978, §3-53-2

Sec. 26-46 Right of Ingress and Egress

Duly authorized agents or employees of the City, carrying proper credentials and identification, shall have free access at all reasonable hours to all parts of the premises of the customer for the purpose of inspection and testing, or for reading, changing, or removing its water meters. If such duly authorized agents or employees, after showing proper credentials and identifications, are refused admittance or hindered or prevented from making such inspections, the service may be discontinued until free access is given.

Sec. 26-47 Private Use of Fire Hydrants and Standpipes.

Connection to fire hydrants and standpipes at any location is prohibited except by written permit issued by the City and is subject to charges as specified in Appendix A: Fee Schedule.

Connections to fire hydrants and standpipes will be permitted only at the fire hydrant or standpipe designated in the permit. Water taken from fire hydrants and standpipes shall be metered with a meter provided by the City.
Connections to fire hydrants and standpipes not in accordance with this section are a violation of this Ordinance.

NMSA 1978, §3-53-2

Sec. 26-48 Resale and Transfer of Water

Water provided by the City shall only be resold with current business license

NMSA 1978, §3-53-2

Sec. 26-49 Meters

All meters used in conjunction with metered service shall be installed, maintained, and owned by the City.

Entry into the meter can, including use of the City’s meter shut-off valve, by the Customer or the Customer’s agent is prohibited and is cause for disconnection of service.

Each meter shall be tested and in good order before being installed.

Upon request by the customer, the City shall make a test of the meter serving the customer and shall advise the customer that he may be present.

a. If the customer wishes to be present, he should so notify the City at the time of his request for the meter test. The City shall give the customer reasonable advance notice as to the day, time, and place of the meter test.

b. A report of the results of the test shall be made to the customer within a reasonable time after the completion of test, and a record of the report shall be kept on file at the City Utility Billing office.

c. When a meter is found to be in excess of two percent (2%) error against the customer, the City shall credit the customers account an amount equal to the excess charge for the water incorrectly metered. The period of which the correction is to be made shall be the time of apparent failure; provided, however, the period shall not exceed six (6) months. No part of the Monthly Base Charge shall be refunded.

d. When a meter is found to be in excess of two percent (2%) error in favor of the customer, the City shall bill an amount equal to the undercharge for the water incorrectly metered. The period of which the correction is to be made shall be the time of apparent failure; provided, however, the period shall not exceed six (6) months. The Customer will not be billed for incorrectly metered water for period between the request and the test if the interval exceeds are reasonable period of time under the circumstances.

e. In the event of the stoppage or failure of the meter to registered the full amount of water consumed, the customer will be billed for such period from the time elapsed since the last previous test or the time of apparent failure provided however that the period shall not exceed six (6) months. Estimated consumption shall be based upon customer’s use of water in a similar period of like use.

f. The City reserves the right to test any meter at any time.
Sec. 26-50 Flushing of Premises Lines

The City will allow a flushing credit when it becomes necessary to flush premises lines due to excessive sediment in the premises lines.

Limitations: no more than one Flushing Credit shall be allowed in any one billing period. Credit shall not exceed 1,500 gallons. Customer must have a Water Shutoff Valve installed between the City meter and service entry to customer premises.

Requirements:

a. Customer must take meter reading prior to flushing and when flushing is complete.
b. Before and after meter readings must be provided to the office within 24 hours.

The Utility Director must authorize all flushing credits. Flushing credit adjustments will be computed by subtracting the flushing credit from the bill at the highest rate(s) used in calculating the bill.

Sec 26-51 Illegal Use of Water

No customer supplied with water from the waterworks shall use the water for any other purpose than stated in the application or supply water in any other way to others or permit others to use water furnished them by the city waterworks.

It shall be unlawful for the City’s water system to service any cannabis growing operation.

U.S. Bureau of Reclamation Advisory, May, 2014

Sec. 26-52 Liability for City for Leakage or Breakage

The City shall not be liable, except through its own negligence, for any damage or injury by reason of leakage or breakage of any pipes, lines, meters, valves or other fixtures owned by the customer.

Sec. 26-53 through 26-69 Reserved

Article III – Wastewater Service
Division I - Generally

Sec. 26-70 Applicability

The regulations set forth herein shall apply to all property connected to the City’s wastewater system.

NMSA 1978 §3-26-1, 3-26-2, 3-26-3

Sec. 26-71 Character of Service

Wastewater service will be provided where City infrastructure is available within 300ft of an occupied dwelling.

Wastewater service for domestic, commercial, industrial, sanitary and other purposes will be furnished under conditions as stated herein and in any policies, rules and regulations adopted by the City Council. There shall be one connection for each "living unit" or "commercial unit." Service is to the property in question and all amounts due for service shall be liens on the property served.
Sec. 26-72 Connection Required.

Single family residences which do lie within four hundred (400) feet of the City’s wastewater collection line may be connected to a State-approved on-site wastewater disposal system.

All occupied property in the City used for human habitation or occupancy which lies within four hundred (400) feet of the City’s wastewater collection line shall be connected with the public sewer system; and no person shall maintain, use or operate a privy, cesspool or septic tank located on property which can be served by the public sewer system; provided that no person shall be required to cross the private property of any person to make such sewer connection.

A written or printed notice to connect with the public sewer system shall be given by order of the Utility Director to all owners or occupants of property which is not connected with the system but which is capable of being served by the public sewer system. Unless the time for connection is extended by the Utility Director, all connections shall be made within 90 days after mailing of the required notice.

NMSA 1978 §3-26-3

Sec. 26-73 Customer piping

The piping system on Customer's premise shall be inspected and approved by the City Plumbing Inspector. Before wastewater service will be connected, proof of inspection is required with plumbing inspector's approval. The City does not assume responsibility for piping inspections and shall not be held liable for failure of Customer's piping or installation.

The City shall not be responsible for the stoppage or obstruction or breaks in facilities or lines of the customer including yard lines.

Sec 26-74 New Connections

The City, after consultation with the property owner, shall determine the point of service to any premises.

The Customer is responsible to install sewer tap and is responsible for the service from the property to the City’s wastewater main, including the tap on the main.

A one time New Connection Fee as specified in Appendix A: Fee Schedule shall be paid in advance of connection to the system. All Connections purchased, whether the tap is installed or not, will be subject to the minimum bill starting the first month from purchase date.

All taps not physically installed, but paid for, shall be subject to any and all tap fee increases up to the time of installation.

Each application for service on a previously unimproved property shall be accompanied by a valid building permit issued by the City Building Official.

Each living unit and commercial unit shall be individually connected to the City’s mains.

No more than one (1) service line shall be installed on the premises for any one customer unless agreed to by the City where special circumstances exist.

It shall be the owner’s responsibility and expense to make the necessary connection from the City’s main to the building to be served.

Wastewater service furnished by the City to any customer shall be used only in connection with such customer’s residence or business to which the service is piped. No additional facilities, unit sites, or supplies shall be connected to the existing service, nor shall service be piped from on residence, business, or building to another without first obtaining written authorization from the Utility Director.
A one time New Sewer Connection Fee as specified in Appendix A: Fee Schedule shall be paid in advance of connection to the system. All Connections purchased will be subject to the minimum bill starting the first month from purchase date.

All connections not physically installed, but paid for, shall be subject to any and all connection fee increases up to the time of installation.

NMSA 1978 §3-26-3

Sec. 26-75 Base Charges

The owner of each property with a sewer connection paid for or installed (whichever first occurs) shall pay a Monthly Base charge as specified in Appendix A: Fee Schedule.

NMSA 1978 §3-26-2

Sec. 26-76 Commodity Charge

The owner of each property shall pay a Commodity Charge as specified in Appendix A: Fee Schedule. The Commodity Charge shall be multiplied by the customer’s average monthly water consumption measured in thousands of gallons. The customer’s average monthly water consumption shall be determined annually in March of each year and shall be based on the customer’s total water use during the prior December, January and February.

Sec. 26-77 Wastewater - Disconnection

If the City disconnects water service for non-payment, the property owner will continue to be liable for the Base Charge and Commodity charges.

Where the property owner changes the use of the property such that wastewater service is no longer required, the property owner shall disconnect the wastewater line and cap the connection. The owner shall pay a Disconnect Charge as specified in Appendix A: Fee Schedule. Should wastewater service be installed at a later date, it will be subject to the then effective conditions and charges for New Connections. It shall be a violation of this ordinance for the property to be connected to wastewater service from another property.

NMSA 1978 §3-23-1

Sec. 26-78 Fees and Charges for users outside City limits.

The owner of each property outside the City’s boundaries, which is provided wastewater by the City, shall pay Fees and Charges as specified in Appendix A: Fee Schedule.

NMSA 1978 §3-26-2

Sec. 26-79 Interruptions of Service

The City reserves the right to discontinue water service for the purpose of making wastewater connections or extensions, repairs, raising or lowering of its pipe, or for alterations, improvements, repairs, emergencies, or in connection with its business and will not be liable for damages occasioned by interruption of, or reduction in, service when such interruptions or reductions are necessary to make repairs or changes in the City’s wastewater facilities. The City will endeavor to give reasonable notice in advance of any planned shutoff.

Sec. 26-80 Right of Ingress and Egress

Duly authorized agents or employees of the City, carrying proper credentials and identification, shall have free access at all reasonable hours to all parts of the premises of the customer for the purpose of
inspection, testing, and repairs to the City’s equipment and facilities. If such duly authorized agents or employees, after showing proper credentials and identifications, are refused admittance or hindered or prevented from making such inspections, the service may be discontinued until free access is given.

Sec 26-81 to 26-89 reserved

DIVISION II. - INDUSTRIAL WASTE

Sec. 26-90. - Short title.

This division shall govern the disposal of Industrial Waste within the City of Roswell Wastewater System

NMSA 1978 §3-26-1, 3-26-2, 3-26-2; 33 USC 1251; 40 CFR Part 403

Sec. 26-91 - Reserved

Sec. 26-92. - Purpose and policy.

This division sets forth uniform requirements for users of the public-owned treatment works for the city and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 USC section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the Code of Federal Regulations Part 403).

The purpose of this division is:

(1) To prevent the introduction of pollutants into the municipal wastewater system which could interfere with the normal operation of the system, and/or contaminate the resulting sludge;

(2) To prevent the introduction of pollutants into the municipal wastewater system which could pass through the system, inadequately treated, into receiving waters or otherwise be incompatible with the treatment plant; and

(3) To improve the opportunity to recycle and reclaim wastewaters and sludges from the system.

(4) To enable the city to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the publicly-owned treatment works is subject.

NMSA 1978 §3-26-3

Sec. 26-93. - Scope.

This division shall apply to the city, to certain nondomestic users, and to the persons outside the city who are, by contract or agreement with the city, users of the POTW.

Sec. 26-94. - Enforcement.

Except as otherwise provided in this division, the director shall administer, implement and enforce the provisions of this division.
Sec. 26-95. - Effect of additional state or federal requirements.

(a) Users must comply with the categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471.

(b) Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this division for sources in that subcategory, shall immediately supersede the limitations imposed under this division. The director shall notify all affected users of the applicable reporting requirements under 40 CFR, Section 403.12.

(c) State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this division.

Sec. 26-96. - Local limits.

(a) Specific discharge limitation are specified in Appendix B: Local Discharge Limits.

Sec. 26-97. - Stormwater discharges.

(a) No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

(b) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the director of the city. Industrial cooling water or unpolluted process waters may be discharged on approval of the director, to a storm sewer, or natural outlet.

Sec. 26-98. - General prohibitions.

No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all such users of a POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state or local pretreatment standards or requirements.

Sec. 26-99. - Specifically prohibited discharges.

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the director, that such wastes can harm the POTW or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming an opinion as to the acceptability of these wastes, the director will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature and capacity of the POTW, degree of treatability of wastes in the wastewater treatment works and other pertinent factors. The substances which must be considered include, but are not limited to, the following:

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius using the test methods specified in 40 CFR 261.21.

(2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with the POTW, constitute a hazard to humans or animals; create a public nuisance, or create any hazard in the
receiving waters of the wastewater treatment works. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act.

(3) Any herbicides and pesticides.

(4) Any waters or wastes having a pH lower than 6.0, or higher than 11.0, or having other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW.

(5) Solids, natural or manmade fibers, insoluble or emulsified oils, fats, greases, slurries or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the POTW such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, paunch manure, hair and fleshing, paper, bones, spent lime, stone and marble dust, grass clippings, spent grain and hops, asphalt residues and residues from refining or processing of fuel and lubricating oils.

(6) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.

(7) Any substance which will cause the POTW to violate its NPDES permit or the receiving water quality standards.

(8) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which a user knows or has reason to know will cause interference to the POTW. Discharges of BOD concentrations over 200 mg/l shall be subject to section 26-80, cost recovery system. In no case shall a slug load be discharged.

(9) Any wastewater having a temperature which will inhibit biological activity in the wastewater treatment works resulting in interference, but in no case wastewater with a temperature at the introduction into the wastewater treatment plant which exceeds 40 degrees Celsius (104 degrees Fahrenheit).

(10) Any waters or wastes containing motor or transmission oils, whether emulsified or not, or containing substances which may solidify or become viscous at temperatures between 32 degrees and 150 degrees Fahrenheit (zero to 65 degrees Celsius), in concentrations which the user knows or has reason to know will cause interference with the POTW. Discharges of oil and grease concentrations over 100 mg/L shall be subject to cost recovery system as set forth in Article 5: Rates and Cost Recovery.

(11) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(12) Any waters or wastes containing reducing substances of an organic or inorganic nature, toxic or nontoxic, which exert an immediate chlorine demand, shall not be discharged into the POTW or if discharge of such agents will prevent the achievement of an adequate chlorine residual in the effluent of the wastewater treatment works.
(13) Any waters or wastes containing phenols or other taste or odor-producing substances, in concentration exceeding limits established by the director, after treatment of the composite sewage, to meet the requirements of the state, federal, or other public agencies of jurisdiction for such discharge to the receiving waters.

(14) Any radioactive wastes or isotopes of such half-life or concentrations as may exceed limits established by the director in compliance with applicable state and federal regulations.

(15) Materials which exert or cause:
   a. Unusual concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
   b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

(16) Any noxious or malodorous liquids, gases or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

(17) Any waters or wastes containing cadmium, chromium, copper, cyanide, lead, mercury, nickel, silver, zinc and/or other objectionable or toxic substances in concentrations or mass proportions which exceed the established limits.

(18) Trucked or hauled pollutants, except at discharge points designated by the director in accordance with section 26-101.1 of this division;

(19) Any chlorinated solvents.

Sec. 26-100. - Corrective action for noncompliance.

If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in section 26-99, and which, in the judgment of the director, may have a deleterious effect upon the POTW or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the director, may:

(1) Reject the wastes;

(2) Require pretreatment to an acceptable condition for discharge to the public sewers; or

(3) Require control over the quantities and rates of discharge; and/or

(4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or user charges;

(5) Discontinue water service.

Sec. 26-101. - Dilution of discharge.

No industrial user shall increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards, or any other pollutant-specific limitations developed by the city or state unless expressly authorized by an applicable pretreatment standard or requirement. The director may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

(a) Septic tank waste may be introduced into the POTW only at locations designated by the director, and at such times as are established by the director. Such waste shall not violate the provisions this division or any other requirements established by the City. The director may require septic tank waste haulers to obtain individual wastewater discharge permits.

(b) The director may require haulers of industrial waste to obtain individual wastewater discharge permits. The director may require generators of hauled industrial waste to obtain individual wastewater discharge permits. The director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this division.

(c) Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without prior consent of the director. the director may collect samples of each hauled load to ensure compliance with applicable standards. The director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

Sec. 26-102. - Accidental discharges.

(a) Each industrial user, subject to the requirements of this division, may be required to provide protection from accidental discharge of prohibited materials or other substances regulated by this division through a plan or other measures as determined necessary by the director. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the user's own cost and expense. Detailed plans, showing facilities and operating procedures to provide this protection, or other actions as required by the director shall be submitted to the director for review and shall be approved by the director before construction of the facility. No user who commences contribution to the POTW after June 29, 1983 shall be permitted to introduce pollutants into the POTW until accidental discharge procedures have been approved by the director.

(b) An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the director of any accidental or slug discharge, as required by section 26-102 of this division; and

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(c) Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the facility as necessary to meet the requirements of this division. In the case of an accidental discharge, it is the responsibility of the user to immediately notify the director of the incident. The notification shall include location of discharge, type of
waste, concentration and volume and corrective actions.

(d) Significant industrial users are required to notify the director immediately of any changes at its facility affecting the potential for a slug discharge.

(e) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a slug discharge or slug load, that might cause potential problems for the POTW, the user shall immediately telephone and notify the director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(f) Within five days following an accidental discharge, the user shall submit to the director a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills or other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this division or other applicable law.

(g) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

Sec. 26-103. - Hazardous waste storage.

The storage of hazardous materials in sewered areas or in areas draining into the municipal sewer system which, because of discharge or leakage from such storage, may create an explosion hazard in the POTW or in any other way have a deleterious effect upon the POTW or constitute a hazard to human health, animals, or the receiving stream, shall be subject to review of the director, who at his discretion may require reasonable safeguards to prevent discharge or leakage of such materials.

Sec. 26-104. - Wastewater discharge permit.

(a) It shall be unlawful to discharge without a city permit to any area under the jurisdiction of the city and/or to the POTW any wastewater except as authorized by the director in accordance with the provisions of this division. The following users shall be required to obtain a permit in accordance with this division:

(1) Users subject to National Categorical Pretreatment Standards;

(2) Significant industrial users;

(3) Any other user as determined by the director.

(b) Users required to obtain a wastewater discharge permit shall complete and file with the city, an application in the form prescribed by the city, and accompanied by a fee of $50.00. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

(1) The name and address of the facility, including the name of the operator and owner (if different from the address);

(2) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended;

(3) A list of any environmental control permits held by or for the facility;
(4) Wastewater constituents and characteristics. Sampling and analysis shall be performed in accordance with 40 CFR 403.12(b)(5)(vi);

(5) Time and duration of contribution;

(6) Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in Section 2.2C (40 CFR 403.6(e)).

(7) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections and appurtenances by the size, location and elevation;

(8) A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.

(9) The nature and concentration of any pollutants in the discharge which are limited by any city, state or federal pretreatment standards and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance and/or additional pretreatment is required for the user to meet applicable pretreatment standards. As to each pollutant:

   a. The categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.
   b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated process.
   c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
   d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 26-107(h) of this division. Where the standard requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the director or the applicable standards to determine compliance with the standard.

(10) Sampling must be performed in accordance with procedures set out as indicated in this division.

(11) If additional pretreatment or other measures will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:

   a. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., selecting a consulting engineer, completing preliminary plans, review and approval of construction plans by director, executing contract for major components, commencing construction,
completing construction, plant start-up, etc.).

b. No increment referred to as indicated in this division shall exceed nine months.

c. Not later than 14 days following each date in the schedule and the final date for compliance, the authorized representative of the user shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the director.

(12) Each product produced by type, amount, process or processes and rate of production;

(13) Type and amount of raw materials processed (average and maximum per day);

(14) Number and type of employees and hours of operation of plant and proposed or actual hours of operation of pretreatment system;

(15) Any other information as may be deemed by the director to be necessary to evaluate the permit application.

The director will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the director may issue a wastewater discharge permit subject to terms and conditions provided herein, if it is determined by the director that the characteristics of the discharge are not in compliance with the provisions of this division, the application may be denied and the applicant advised by the director of steps which must be taken to ensure compliance with the provisions of this division.

(c) Wastewater discharge permits shall be expressly subject to all provisions of this division and all other applicable regulations, and charges and fees established by the city.

(1) Permits must contain the following:

a. A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;

b. A statement that the wastewater discharge permit is nontransferable without prior notification to the city, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

c. Effluent limits, including best management practices, based on applicable pretreatment standards;

d. Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.

e. Requirements to control slug discharge, if determined by the director to be necessary.

(2) Permits may contain, but need not be limited to, the following conditions:

a. Limits on the average and maximum wastewater constituents and characteristics.
Pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four-day average, limitations. Where such standards are being applied, the same production or flow figure shall be used in calculating both average and maximum equivalent limitation.

b. Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;

c. Requirements for installation and maintenance of inspection and sampling facilities; requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

d. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

e. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;

f. Compliance schedules;

g. Requirements for submission of technical reports or discharge reports;

h. Requirements for maintaining and retaining plant records of the user relating to wastewater discharge as specified by the director, and affording director access thereto;

i. Requirements for notification of the director of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the POTW;

j. Requirements for notification of slug and/or batch discharges;

k. Requirements for notification of potential discharge problems;

l. Statement regarding the applicable civil and criminal penalties for violations and noncompliance with the permit;

m. Statement that the city will monitor and inspect the permitted premises at a minimum frequency of once per year.

n. Other conditions as deemed appropriate by the city to ensure compliance with this division.

(d) Permits shall be issued for a specific time period, not to exceed five years. The user shall apply for permit reissuance a minimum of 90 days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the city during the term of the permit as limitations or requirements are modified or other just causes exist. The user shall be informed of any proposed changes 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(e) Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation without the prior approval of the director.
(f) Any user who violates the following conditions of this division or applicable state and federal regulations, is subject to having his permit revoked:

1. Failure of a user to factually report the wastewater constituents and characteristics of his discharge;
2. Failure of the user to report significant changes in operations, or wastewater constituents and characteristics;
3. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring.

(g) Any violation of the terms and conditions of an individual wastewater discharge permit shall be deemed a violation of this division and subjects the wastewater discharge permittee to the sanctions set out in sections 26-113 and 26-116 of this division. Obtaining an individual wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law.

Sec. 26-105. - Request for determination of categorical or sub categorical standard.
Any user may request a determination of categorical or subcategorical standards in accordance with 40 CFR 403.6(a).

Sec. 26-106. - Variance of categorical standard.
Any user may request a variance from categorical pretreatment standards in accordance with 40 CFR 403.13.

Sec. 26-107. - Reporting requirements.
(a) Baseline reporting requirements.
1. Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report which contains the information listed in subsection (2), below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in subsection (2), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

2. Users described above shall submit the information set forth below.
   a. All information required in subsections 26-104(b)(1), (3), (6), (8).
      1. The user shall provide the information required in section 26-104(b)(9).
      2. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
      3. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated
process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 CFR 403.6(e) to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the control authority;

4. Sampling and analysis shall be performed in accordance with subsection 26-107(h);

5. The director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

6. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

c. Compliance certification. A statement, reviewed by the user’s authorized representative as defined in this division and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

d. Compliance schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in subsection 26-107(b) of this division.

e. Signature and report certification. All baseline monitoring reports must be certified in accordance with section 26-107(k) of this division and signed by an authorized representative as defined in this division.

(b) Compliance schedule progress reports. The following conditions shall apply to the compliance schedule required by 26-107(a)(2)d. of this division:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(2) No increment referred to above shall exceed nine months;

(3) The user shall submit a progress report to the director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
(4) In no event shall more than nine months elapse between such progress reports to the director.

(c) Reports on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the director a report containing the information described in section 26-104(b)(6) and (9) and 26-107(a)(1) of this division. For users subject to equivalent mass or concentration limits established in accordance with the procedures in section 26-95, this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with section 26-107(k) of this division. All sampling will be done in conformance with subsection 26-107(i).

(d) Periodic compliance reports.

(1) Except as specified in section 26-107(d)(3), all users must, at a frequency determined by the director submit no less than twice per year (June and December or on dates specified) reports indicating the nature, concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a best management practice (BMP) or pollution prevention alternative, the user must submit documentation required by the director or the pretreatment standard necessary to determine the compliance status of the user.

(2) The city may reduce the requirement for periodic compliance reports to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the EPA/state, where the industrial user's total categorical wastewater flow does not exceed any of the following:

   a. 0.01 percent of the POTW's design dry-weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches.

   b. 0.01 percent of the design dry-weather organic treatment capacity of the POTW; and

   c. 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed in accordance with section 26-97 of this division.

Reduced reporting is not available to industrial users that have in the last two years been in significant noncompliance, as defined in section 26-104 of this division. In addition, reduced reporting is not available to an industrial user with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the director, decreasing the reporting requirement for this industrial user would result in data that are not representative of conditions occurring during the reporting period.

(3) All periodic compliance reports must be signed and certified in accordance with subsection 26-107(k) of this division.
(4) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(5) If a user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the director, using the procedures prescribed in subsection 26-107(i) of this division, the results of this monitoring shall be included in the report.

(e) Reports of changed conditions. Each user must notify the director of any significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 14 days before the change.

(1) The director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under subsection 26-104 of this division.

(2) The director may issue an individual wastewater discharge permit or modify an existing wastewater discharge permit of this division in response to changed conditions or anticipated changed conditions.

(f) Notice of violation/repeat sampling and reporting. If sampling performed by a user indicates a violation, the user must notify the director within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within 30 days after becoming aware of the violation. Resampling by the industrial user is not required if the city performs sampling at the user's facility at least once a month, or if the city performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the city receives the results of this sampling, or if the city has performed the sampling and analysis in lieu of the industrial user.

(g) Notification of the discharge of hazardous waste.

(1) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under subsection 26-107(e) of this division. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of subsections 26-107(a), (c), and (d) of this
(2) Dischargers are exempt from the requirements of subsection (1), above, during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(4) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this division, a permit issued thereunder, or any applicable federal or state law.

(h) Analytical requirements. All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the director or other parties approved by EPA.

(i) Sample collection. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

(1) Except as indicated in subsection (2) and (3) below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the director. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.
(2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(3) For sampling required in support of baseline monitoring and 90-day compliance reports required in subsection 26-107(a) and (c), a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the director may authorize a lower minimum. For the reports required by subsection 26-107(d) (40 CFR 403.12(e) and 403.12(h)), the industrial user is required to collect the number of grab samples necessary to assess and assure compliance by with applicable pretreatment standards and requirements.

(j) Recordkeeping. Users subject to the reporting requirements of this division shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this division, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with best management practices established under subsection 26-96(a)(3). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the director.

(k) Certification statements. Certification of permit applications, user reports and initial monitoring waiver—The following certification statement is required to be signed and submitted by users submitting permit applications; users submitting baseline monitoring reports under subsection 26-107(a)(2)e.; users submitting reports on compliance with the categorical pretreatment standard deadlines under subsection 26-107(c); users submitting periodic compliance reports required by subsection 26-107(d) (1) to (4), and users submitting an initial request to forego sampling of a pollutant on the basis of subsection 26-107(a)(2). The following certification statement must be signed by an authorized representative as defined in subsection 26-91:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sec. 26-108. - Grease, oil and sand traps.

Grease, oil and sand traps shall be provided when, in the opinion of the director, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts; or any flammable wastes, sand, or other harmful ingredients; except that such traps shall not be required for private living quarters or dwelling units. All traps shall be of a type and capacity approved by the director, and shall be located as to be readily and easily accessible for cleaning and inspection. Grease, oil and/or sand traps shall be installed in all new automotive service stations, garages, restaurants and other new facilities wherein heavy discharge of grease and oil is to be expected.
Sec. 26-109. - Monitoring facilities.

(a) When required by the director, the owner of any property serviced by a building sewer carrying industrial liquid wastes shall install a suitable monitoring facility in the building sewer.

(b) Such facility shall be accessibly and safely located and constructed in such a manner as to prevent infiltration of ground and surface waters, and shall be constructed in accordance with plans approved by the director. The monitoring facility shall be located such that sampling of the industrial wastes will be performed prior to discharge into the POTW and shall be safe and accessible at all times.

(c) The director shall require monitoring facilities to be provided and operated at the user's own expense and to allow inspection, sampling and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the director may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public right-of-way and located so that it will not be obstructed by landscaping or parked vehicles.

(d) There shall be ample room in or near such sampling manhole or monitoring facility to allow accurate sampling and preparation of samples for analysis. The monitoring facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

(e) Whether constructed on public or private property, sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the director.

Sec. 26-110. - Inspections and sampling.

(a) The city may inspect the facilities of any user to ascertain whether the purpose of this division is being met and all requirements are being complied with. The city, NMEID and the EPA shall have the right to copy any and all of the user's records and to install on the user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and/or metering operations.

(b) The director shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this division and any individual wastewater discharge permit or order issued hereunder. Users shall allow the director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the director shall be permitted to enter without delay for the purposes of performing specific responsibilities.

(2) The director shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(3) The director may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated to manufacturer specifications to ensure their accuracy.
(4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the director and shall not be replaced. The costs of clearing such access shall be borne by the user.

(5) Unreasonable delays in allowing the director access to the user's premises shall be a violation of this division.

(c) All sampling and analysis of the characteristics of waters and wastes shall be in accordance with 40 CFR 403.12(b)(5)(vi), and shall be taken at the monitoring facility provided.

Sec. 26-111. - Pretreatment facilities.

(a) Users shall provide necessary wastewater treatment as required to comply with this division and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the director shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the director for review and shall be acceptable to the director before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the director under the provisions of this division. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the director prior to the user's initiation of the changes.

(b) All records relating to compliance with pretreatment standards shall be made available to officials of the EPA or NMEID upon request, except that information deemed confidential as defined in section 26-112.

(c) Construction of approved pretreatment facilities shall be completed within the time frame established by the director.

Sec. 26-112. - Confidentiality of reports, etc.

(a) Information and data on a user obtained from reports, questionnaires, monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the governing body that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

(b) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this division, the national pollutant discharge elimination system (NPDES) permit, and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(c) Information, accepted by the governing body as confidential, shall not be transmitted to any governmental agency or to the general public by the governing body until and unless a ten-day notification is given to the user.

Sec. 26-113. - Miscellaneous enforcement provisions.

(a) Whenever the director finds that any user has violated or is violating this division, the city shall
serve upon such person a written notice stating the nature of the violation. Within ten days of receipt of such notice, the user shall submit to the director an explanation of the violation and a plan for satisfactorily correcting such violation. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(b) Whenever the director finds that any user has violated or continues to violate this division, he may issue an order to the user responsible for the violation directing that, following a specified time period, further enforcement proceedings will be pursued unless adequate treatment facilities, devices, or other related appurtenances have been properly installed and are properly operated. These administrative orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional monitoring and management practices.

(c) Emergency suspensions.

(1) The city may suspend the wastewater treatment service, water service and/or wastewater discharge permit when such suspension is necessary, in the opinion of the director, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes the city to violate any condition of its NPDES permit. The city may also suspend the wastewater treatment service, water service and/or wastewater discharge permit when such suspension is necessary, in the opinion of the director, to enforce user's compliance with the requirements of their permit, information requirements for permit issuance or construction of pretreatment facilities and/or monitoring facilities.

a. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless the termination proceedings are initiated against the user.

b. A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any hearing under this division.

(2) Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(d) Any person affected by an order or directive of the city issued pursuant to this division may, within ten days of the issuance of such order or directive, request a hearing before the city to show cause why such order should be modified or made not to apply to such person. Such request shall be in writing and addressed to the director at 425 N. Richardson Avenue, City Hall, Roswell, New Mexico, 88201. The city shall hold the requested hearing as soon as practical after receiving the request. At the conclusion of the hearing the director shall issue a written response to the person.
requesting the hearing either affirming or modifying the questioned order or directive. Any appeal of the director's decision shall be as provided by state law.

Sec. 26-114. - Falsified information.

It is unlawful for any person to knowingly make any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this division, or wastewater discharge permit, or to falsify, tamper with or knowingly render inaccurate any monitoring device or method required under this division.

Sec. 26-115. - Liens, remedies, fees and collections.

All remedies prescribed or liens created hereunder or pursuant to law for collection and enforcement of the fees shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this division or any liens created by the law. The fees fixed by this division shall be a lien in favor of the city upon the personal property of the person used in connection with the sewer use which gave rise to the fee and such lien shall be imposed, collected, enforced and paid as provided by the law. No property of any person shall be exempt from levy and sale of execution issued for the collection of a judgment for any fee imposed by this division.

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Sec. 26-116. - Violations.

(a) Administrative fines.

(1) When the director finds that a user has violated, or continues to violate, any provision of this division, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the director may fine such user in an amount not to exceed $1,000.00. Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

(2) Unpaid charges, fines, and penalties shall, after 30 calendar days, be assessed an additional penalty of ten percent of the unpaid balance, and interest shall accrue thereafter at a rate of ten percent per month. A lien against the User's property shall be sought for unpaid charges, fines, and penalties.

(3) Users desiring to dispute such fines must file a written request to reconsider the fine along with full payment of the fine amount within ten days of being notified of the fine. Where a request has merit, the city manager may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The city may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(4) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

(b) Injunction. When the director finds that a user has violated, or continues to violate, any provision of this division, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the director may petition the district court through the city attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual wastewater discharge permit, order, or other requirement imposed by this division on activities of the user. The director may also seek such other
action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(c) Civil penalties.

(1) A user who has violated, or continues to violate, any provision of this division, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty of $1,000.00 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(2) The director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.

(3) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

(4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(d) Criminal penalties.

(1) A user who willfully or negligently violates any provision of this division, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a petty misdemeanor, punishable by a fine of not more than $1,000.00 per violation, per day, or imprisonment for not more than 90 days, or both.

(2) A User who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a petty misdemeanor and be subject to a penalty of at least $1,000.00, or be subject to imprisonment for not more than 90 days, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.

(3) A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this division, individual wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this division shall, upon conviction, be punished by a fine of not more than $1,000.00 per violation, per day, or imprisonment for not more than 90 days, or both.

(e) Nonexclusive remedies. The remedies provided for in this division are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the director may take other action against any user when the circumstances warrant. Further, the director is empowered to take more than one enforcement action against any noncompliant user.
(f) 40 CFR 403.16, up. et provision, and 40 CFR 403.17, bypass, shall be incorporated and become part of this section.

NMSA 1978 §3-17-1 (3)

Sec. 26-117. - Publication of users in significant noncompliance.

The director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the users which, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be applicable to all significant industrial users (or any other industrial user that violates paragraphs this section) and shall mean:

1. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined;

2. Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

3. Any other violation of a pretreatment standard or requirement as defined (daily maximum, long-term average, instantaneous limit, or narrative standard) that the director determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

4. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the director's exercise of its emergency authority to halt or prevent such a discharge;

5. Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

6. Failure to provide within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

7. Failure to accurately report noncompliance; or any other violation(s), which may include a violation of best management practices, which the director determines will adversely affect the operation or implementation of the local pretreatment program.

Sec.26-118. – Cost Recovery System for Pretreatment

(a) The city shall take necessary steps to establish a rate schedule for sewer service that assures an equitable system of cost recovery. The purpose hereof is that the industrial users shall pay for the costs incurred by the city in the construction, operation and maintenance of that portion of the POTW related to industrial wastes.

(b) The cost recovery system shall satisfy the following conditions:

1. The apportionment of costs must take into consideration the individual industrial user's contribution as related to the total waste load taking into account the volume and strength of all discharges.
(2) The costs to be considered should include, but are not limited to:
   a. Amortization of the applicant's indebtedness for the cost of the treatment works (plant and interceptors);
   b. Operation and maintenance of the treatment works;
   c. Fees for reimbursement of costs of setting up and operating the pretreatment program;
   d. Fees for monitoring, inspections and surveillance procedures;
   e. Fees for reviewing accidental discharge procedures and construction;
   f. Fees for filing appeals;
   g. Fees for consistent removal by the POTW of pollutants otherwise subject to federal pretreatment standards;
   h. Fees for permit applications;
   i. Other fees as the director may deem necessary to carry out the requirements contained herein.

(3) Substantial prepayment of the capital investment or other financial commitments will be required from each industry that contributes 30 percent or more of the total volume or strength of the waste load to be treated by the project.

(c) The following cost recovery system is hereby adopted. The system is based on a basic rate for wastes, which do not exceed the concentration of "normal" domestic sewage (with respect to BOD and SS), plus a surcharge for wastes which exceed the concentration of "normal" sewage. The industrial charge (IC) will be calculated with the following formula:

\[
IC = jV + V(a(BOD - 200^*) + b(SS 200^*))
\]

where:
- \( IC \) = Industrial charge per month
- \( V \) = Volume discharged in millions of gallons per month
- \( j \) = Basic rate $40.00 per million gallons treated per month
- \( a \) = BOD surcharge factor (dollars per million gallons per milligram per liter) based on the treatment costs attributable to the removal of BOD= $0.10
- \( BOD \) = Five-day @ 20* C. BOD of the industrial wastes (mg/l) to be measured at intervals from composite samples
- \( b \) = SS surcharge factor (dollars per million gallons per milligram per liter) based on the treatment costs attributable to the removal of SS = $0.04
- \( SS \) = Suspended solids of the industrial waste (mg/l) to be measured at intervals from composite samples

* The assumed concentration of BOD and SS in "normal" domestic wastewater is 200 mg/l.

**Basis of calculation:**
- Annual capital cost: Collection system @ 2%, 50 yr .....$44,000.00
- Annual capital cost: Treatment plant @ 5%, 20 yr .....60,000.00
- Plant operation and maintenance (annual) .....93,000.00
- 33% of O&M attributable to BOD removal.
- 10% of O&M attributable to SS removal.

**Industrial charges:**
- Basic Charge per/million gals. treated .....$40.00
- Cost per pound BOD Removal .....0.0122
- Surcharge (BOD greater than 200 mg/l): 1 mg/l Per Million Gals. Treated/Mo .....0.10
- Cost per pound SS Removal .....0.005
- Surcharge - (SS greater than 200 mg/l): 1 mg/l per Million Gals. Treated/Mo .....0.04

(b) The following supplemental cost recovery system is hereby adopted and shall be applied to industrial users contributing wastes having oil and grease levels in excess of 100 mg/l. For industrial users contributing wastes having oil and grease levels exceeding 100 mg/l, the industrial charge (IC) will be calculated with the following formula:

\[
IC = jV + V(a(BOD-200) + b(SS-200) + c(OG-100))
\]
c = Oil and grease surcharge factor (dollars per million gallons per milligram per liter) based on the treatment costs attributable to the removal of oil and grease = $0.92.
OG = Oil and grease of the industrial waste (mg/l) to be measured at intervals as prescribed by the director.

Sec. 26-119 through 26-129 Reserved

**Article IV – Service: Establishing, Changing, Discontinuing**

**Sec. 26-130. - Purpose**

Establish requirements and procedures for establishing, transferring, and canceling water and wastewater services provided by the City of Roswell.

NMSA 1978 §3-18-25, §3-23-1

**Sec. 26-131. - Application for service**

All applications for water and wastewater, and shall be made on forms promulgated by the City.

The City shall not be required to provide service to any property until all accrued charges for the property have been paid. A statement will be furnished upon request of the property owner.

All provisions of this Ordinance and any policies, rules and regulations of the City Council shall be considered a part of the contract of every person taking water from the water system or delivering wastewater to the wastewater system of the City and every person taking water or delivering wastewater shall be considered as having expressly consented to be bound thereby.

**Sec. 26-132. – Rental or Leased Property Accounts**

For rental/leased properties, all City Utility services shall be in the name of the property owner. At no time shall a tenant be allowed to establish service for property they do not own.

**Sec. 26-133. - Infrastructure extensions**

Applications for Infrastructure extension shall include plans and specifications that show all mains, service lines, fireplugs, and construction details. The installation shall equal or exceed standards set forth in all applicable policies, rules, regulations, codes and law and all requirements of the City.

Water service extensions will be limited to available capacity in water rights, production, transmission, and distribution facilities.

Wastewater service extensions will be limited to available capacity in wastewater collection and treatment facilities.

Each Infrastructure extension shall be made under a specific contract. All contract terms shall be such that no adverse financial burden will be imposed on existing customers. This means that the effect of a specific contract shall not cause an increase in rates for service to existing customers.

a. All lines shall be installed in existing public roads, alleys, or easements. The applicant shall furnish such rights-of-way as required, without charge, to the City.

b. All line extensions shall be sized to provide adequate water, wastewater and fire protection service. The City shall have the final decision in the design of line extensions.
c. The City’s cost to construct the line extension will be paid in full by the applicant requesting the extension or will be constructed by the applicant, to City specifications, and will be transferred to the City without charge. Where the City is to construct the lines, the applicant shall be required to deposit with the City, sufficient funds to cover the costs of extending service.

d. Facilities constructed by the applicant shall not be accepted by the City until inspected by the City and found to comply with City specifications.

Sec. 26-134. - Transfer of Service

Customers who intend to move from the premises shall give the City ten (10) days prior written notice of such intention and the Customer will be liable for all services until such notice is given and the City has made final meter reading. The existing owner shall be responsible for all services until such notice is given and the City has made final meter reading. The existing owner shall be responsible for all Water, Wastewater, Solid Waste, and System Upgrade Fee(s) up to and including the date of transfer. The transfer of service to a new owner shall be effected within 30 days of the final meter reading.

When ownership of a property receiving one or more services from the City changes, a Reconnection Fee as specified in Appendix A: Fee Schedule shall be paid by the new owner.

Sec. 26-135. - Permanent Discontinuance of service

Water and wastewater service shall be discontinued in accordance with the provisions for each type of service. Permanent discontinuance of service may also occur if an account is closed and the meter is removed from a premise for violation of sections 26-21 or 26-22. If such discontinuance occurs, the customer would be required to submit a new application and may be subject to a new deposit.

Sec. 26-136 - Restoration of service

Water and wastewater service shall be restored in accordance with the provisions for each type of service.

Sec 26-137 through 26-139 reserved.

Article V – Billing, Deposits, Payment, Rates and Enterprise Funds

Division I - Generally

Sec. 26-140 - Rendering of Bills

Bills for residential, commercial services and vacant lots will be rendered monthly.

Sec. 26-141 - Estimated use

In the event of the stoppage of, or the failure by any meter to register the full amount of water consumed, or inaccessibility of the meter, or failure by the City to read the meter, the Customer will be billed for such period on an estimated consumption based upon the use of water in a similar period of like use.

The City shall not render a bill based on estimated use for more than two (2) consecutive periods without the consent of the customer.

If the City underestimates use, the customer shall be given the opportunity to participate in an installment payment plan with respect to the underestimated amount.

Sec. 26-142 - Responsibility for Charges
The property owner will be responsible for all fees charged by the City for any specified address or parcel.

With respect to rental or leased property, the account shall be in the name of the property owner. Utility service accounts shall not be in the name of tenants, renters or leasers.

Temporary and special services shall be charged based on the determination of the Superintendent.

**Sec. 26-143 - Taxes, fees and charges added to billing**

Billings will be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees or charges (exclusive of ad valorem, state and federal income taxes) payable by the utility and levied or assessed by any governmental authority on the service rendered, or on the right or privilege of rendering the service or on any event incidental to the rendition of the service.

**Sec. 26-144 Payment of Bills**

All bills shall become due on and delinquent after the due date specified on the bill which shall be not less than fifteen (15) calendar days from the date of mailing. If the last day for payment of a bill falls on a day when the Utility offices are not open to the general public, the due date shall be extended through the next business day.

If not timely paid, a Late Payment Fee and interest will be assessed as specified in Appendix A: Fee Schedule.

In the event a Customer's check or bank draft is returned for insufficient funds, the City shall apply to the Customer’s account balance, an Insufficient Funds Fee as specified in Appendix A: Fee Schedule.

In the event the City must mail the Customer a Delinquent Account and Service Termination Notice, the City shall apply to the Customer’s account balance, a Delinquent Account and Service Termination Notice Fee as specified in Appendix A: Fee Schedule.

**Sec. 26-145 - Disputed Bills**

The City agrees to investigate any question as to accuracy of metering or of bills for service rendered, and if the bill is in error, the City shall submit a corrected bill to the Customer as promptly as circumstances permit.

In the event the customer disputes the amount of a bill for services rendered, the City shall promptly make a complete investigation of the matter and, if the bill is correct, use its best efforts to explain the questionable points to the customer.

While the City investigates the disputed amount, the customer shall not incur a Late Payment Fee or interest on the disputed amount.

When a customer complains about a meter and the City does a meter test the customer will be charged a Meter Test Fee as specified in Appendix A: Fee Schedule for each meter test if the meter does not test in excess of 2% fast or slow and if the meter has been tested within the last 12 months.

**Sec 26-146 - Lien for charges**

The City shall have a lien on each lot or parcel of land served by the City for all charges made or imposed and for all charges for all services rendered or made available plus interest at the maximum statutory rate. Notice of such liens shall be filed and liens shall be enforced as authorized by statute.

**Sec. 26-147 - Security Deposits**
a. A deposit shall be required of the following customers of water and sewer service:

   (1) A customer who has not previously had utility service with the City of Roswell and who has not established an acceptable credit rating;

   (2) A chronically delinquent customer;

   (3) As a condition of re-connection of service following discontinuance of service; and

   (4) A customer who in an unauthorized manner has interfered with or diverted the service of the City of Roswell.

b. The City shall establish an acceptable credit rating by use of a credit check service provided by a vendor serve agreement established by RFP.

   (1) Poor/fair (RED) score shall require a full deposit.

   (2) Good (Yellow) score shall require 2/3 of the full deposit

   (3) Very good/exceptional (Green) shall require 1/3 of the full deposit.

c. A deposit shall be equal to three (3) months of the average monthly bill for this type of customer.

d. Any customer who has not been chronically delinquent for the 12-month period from the date of deposit shall promptly receive a credit for the amount of the deposit. Any deposit that cannot be refunded to the person making the deposit will be charged an accounting fee of one-twelfth of the deposit per month.

e. If any customer fails to pay the utility service bill, the amount thereof may be taken from the deposit.

   NMSA 1978, § 3-23-1.

Sec. 26-148 – Delinquency Procedures

Disconnection of Service

Water and Wastewater services shall be disconnected at such time as City utility bills become two (2) months delinquent.

Filing of liens

Liens for delinquent water and wastewater service shall be filed at such time as water and/or wastewater bills become five (5) months delinquent.

Liens shall carry the maximum interest rate allowable by law.

Foreclosure

Liens for delinquent services may be foreclosed not more than eighteen (18) months following the date on which the lien is filed.

   NMSA 1978 §3-23-6, §3-36

Sec. 26-149 through 26-159 Reserved

Division II – Service: Involuntary Termination

Sec. 26-160 - Purpose
Establish requirements and procedures for involuntary termination of water, wastewater, and other services by the City.

NMSA 1978 §3-23-1

Sec. 26-161 - Cause

Failure to timely pay all water, wastewater, and solid waste fees, charges, deposits, penalties, interest or any other amounts due the City shall be cause for termination of service.

Customer’s failure to comply with the provisions of this Ordinance.

Sec. 26-162 - Notification

A customer shall be given a minimum ten (10) calendar days written notice of termination. Notice shall be delivered to the customer in person or by mail to the customer’s billing address and shall include:

a. The reasons for termination
b. The customer’s rights relating to termination of service
c. The title(s), address, phone number, and working hours of the Utility Billing office.
d. The amount owed and the date by which the customer must either pay the amount due or make other arrangements with the City. Payment arrangements will not be accepted after service has been terminated for non-payment.

The following shall be cause for termination earlier than the fifteen (15) days provided above.

a. Without notice for a condition determined by the City’s Certified Water Operators to be hazardous.
b. Without notice for use of equipment in such manner as to adversely affect the City’s equipment or the City’s service to others.
c. Without notice for tampering with, damaging, or destroying the equipment furnished and owned by the City.
d. Without notice in the event of unauthorized use.
e. Without notice for by-passing a meter or otherwise interfering with the proper registration of water used. The water service shall not be reconnected until the bypass is removed and payment is made for any damages resulting from the installation and for the value of estimated water service for the period during which the meter was tampered with has been made. Added thereto shall be a penalty equal to 100% of same amount.
f. Without notice for failure of the Customer to permit the City reasonable access to its equipment.
g. Without notice for failure of the Customer to permit the City reasonable access to inspect and test lines for leaks and unauthorized connections.
h. Without notice for use of the City's curb or meter shut-off valve by Customer or Customer's agent. Any damage to the valve shall be the responsibility of the customer.
i. If the City finds evidence of waste of water by a Customer, the City will advise the Customer of such condition. If after a reasonable time (not to exceed 7 calendar days) corrections or repairs have not been made by the Customer, the City shall discontinue service to the offending Customer.
j. If the City finds evidence of non-compliance with Water Conservation provisions of this Ordinance, the City will advise the Customer of such condition. If after a reasonable time (not to exceed 48 hours or 3 business days) corrections or repairs have not been made by the Customer, the City shall discontinue service to the offending Customer.

Sec. 26-163 - Appeal

It is recognized that a Customer may disagree with the notice of termination and may file a letter of appeal with the Utility Billing office. The filing of a good faith letter of appeal shall stay termination of service until the Utility Director, or their designee, makes a decision which will be final, binding and not subject to appeal. This prohibition against termination pending final action on a complaint shall not apply unless a dispute is in good faith.

Sec. 26-164 - Plan of payment

The City shall attempt to arrange with every non-chronically delinquent residential customer who expresses an inability to pay his charges, a deferred payment plan for the payment of past due charges. The plan shall be signed by both parties. The City shall maintain a record of the provisions of the plan which record shall be conclusive as to the plan agreed upon. In the event the customer fails to comply with the plan agreed upon, then the City shall terminate service. The Utility Billing Supervisor, or their designee, is hereby authorized to enter into an agreement with the customer for a deferred payment plan in accordance with the Finance Departments policy and procedures.

In the event any customer complains that either (a) a proposed repayment plan is unreasonable, (b) a charge is not due and owing, or (c) he has not violated any agreed upon repayment plan, then in such event a review of such customer's complaint shall be conducted by the City. The review shall be conducted by the Utility Director or any person appointed by him who has the authority to rescind the termination order, correct charges, extend a repayment plan, or to take other appropriate action that he may deem appropriate. The reviewing person shall take all circumstances into consideration and shall use his discretion in the review and try to accommodate Customer's who are in a temporarily difficult financial position and attempt to be fair and equitable, but not to allow Customer's who are unwilling to make a good faith effort to pay their utility charges to take advantage of the City and to assure that just and due bills are paid so as to avoid subsidization by those Customer's who pay readily of those Customer's who fail to do so.

Sec. 26-165 - Termination

Except as otherwise provided, if Customer’s default is not cured the date specified in the Termination Notice, then service may be terminated on or after the date specified which shall be at least ten (10) days after the Termination Notice was mailed.

Holidays and weekends

Utility service may not be discontinued less than twenty-four (24) hours prior to a City recognized holiday or weekend.

Seriously Ill Customers

A the City will not discontinue water service to any residence where a seriously ill person resides or person whose life may be endangered by termination of water service. It shall be the Customer’s responsibility to provide the City, on the form designated by the City, with evidence from a licensed medical practitioner. The practitioner shall possess a current, unencumbered licensed by the City of Roswell.
the New Mexico Medical Board or a current, unencumbered APRN Certified Nurse Practitioner licensed by the New Mexico Board of Nursing.

The District shall charge a Disconnect fee as set forth in Appendix A: Fee Schedule for each disconnection of service.

Sec. 26-166 - Restoration of service

Service shall be restored only upon payment of the delinquent amounts plus the cost of reconnection or any additional deposits required. The City shall restore service as soon as possible, however, shall be required to restore service within 24 hours of payment.

The City shall charge a Reconnection fee as set forth in Appendix A: Fee Schedule for each reconnection of service.

NMSA 1978 §3-23-1 B

Sec 26-167 through 26-179 Reserved

Division III – Rates and Revenue/Expense Accounts

Sec. 26-180 - Rate Setting

Effective with the beginning of each Fiscal Year, the City Council shall review and adjust all rates for changes occurring since the beginning of the previous Fiscal Year or the last rate adjustment, which ever shall have last occurred.

The Utility Director shall, each January, review all costs and rates and shall report to the Finance Committee, at their April meeting, proposed rate adjustments to insure that each class of customer is carrying its share of costs, debt service, and reserves.

The rates, tolls, fees and charges in Appendix A: Fee Schedule may be amended by the City Council by ordinance.

NMSA 1978 §3-18-1

Sec. 26-181 – Schedule of Utility Rates

The City Council shall set rates for which utility services shall be provided through the City’s systems and at such levels as may be required to pay for the operation and administration, maintenance, debt service, reserves, rehabilitation of infrastructure, additions and extensions, improvements, and capital project requirements of the Utilities Department.

The monthly charge includes a access (base) fee per service connection and a per thousand (1000) gallon of use charge ("consumption charge"), which is based on the total number of gallons above the amount included in the base service fee which are used within the billing period. The access (base) fee is determined by the meter size installed.

Except as provided by written agreement entered into under special or qualifying conditions, rates established in Appendix A: Fee Schedule shall apply.

Service Categories and Definitions

Single Family Residential

Available in the City of Roswell for the exclusive use of a single metered family residence for domestic purposes

Access (Base) fee based on size of meter and includes the first 3000 gallons.
Consumption billed per thousand (1000) gallons after the first 3001 gallons. Usage in excess of the first 3000s is assessed the Access (base) rate plus a six (6) block increasing volume charge. Blocks increase in 3000-gallon increments.

**Small Commercial**

Available in the City of Roswell for any establishment engaged in the operation of a business or institution, whether or not for profit. The rate applies to such customers whose consumption averages less than 50,000 gallons for the twelve months of the rate classification period. (City Fiscal Year)

Access (Base) fee based on size of meter and includes the first 3000 gallons.

Consumption billed per thousand (1000) gallons after the first 3001 gallons. Usage in excess of the first 3000s is assessed the Access (base) rate plus a six (6) block increasing volume charge. Blocks increase in 3000-gallon increments.

**Large Commercial**

Available in the City of Roswell for any establishment engaged in the operation of a business or institution, whether or not for profit. The rate applies to such customers whose consumption averages 50,001 gallons for the twelve months of the rate classification period. (City Fiscal Year)

Access (Base) Fee based on size of meter and includes the first 3000 gallons.

Consumption billed per thousand (1000) gallons after the first 3001 gallons. Usage in excess of the first 3000s is assessed the Access (base) rate plus a three (3) block increasing volume charge. Blocks increase in 10,000-gallon increments.

**Lawn (Irrigation)**

Available in the City of Roswell to residential and commercial customers for landscape irrigation purpose.

Access (Base) Fee based on size of meter and DOES NOT include any usage.

Consumption billed per thousand (1000) gallons. Usage is assessed with the Access (base) rate plus a three (3) block increasing volume charge. Blocks increase in 50,000-gallon increments.

**Sec. 26-183 – Out of City Limits Service**

The City shall have the authority to provide water and wastewater services for use outside the city limits, but such services shall provide for limitations of delivery of water and wastewater utilities to whatever extent may be necessary to enable the utilities department to provide an adequate supply of utility services to the people within the boundaries of the City and provided, further, that every such utility services shall be billed at double the rate of services inside the city boundaries.

Use of water outside the city limits of the City is subject to the paramount rights of the users within the City and in periods of water shortage or scarcity, the city council may reduce, curtail or shut off the supply to users outside the city limits.

NMSA 1978 §3-27-8

**Sec. 26-184 – Enterprise Fund**

Enterprise funds have been established by the city council for enterprise accounting and budgetary
purposes and will be maintained to account for revenue and expenditures of the water activity enterprise and the wastewater activity enterprise. All budgets, reports, audits, and financial operations of an enterprise shall conform to and be prepared in accordance with generally accepted accounting principles applicable to governmental (enterprise) units and other requirements of state law.

Sec. 26-185 – Revenue

All revenue for services and facilities provided by an enterprise, including rates, fees, tolls, charges, and all other income of the enterprise shall be collected, used, and expended for activities and purposes for which the enterprise was established as determined by the city council in accordance with and as set forth in the fiscal budget for the enterprise adopted by the city council pursuant to law. Rates for services and facilities provided by an enterprise shall be established by the governing board and collected and enforced by the City.

Sec. 26-186 – Restricted Fund Accounts within the Enterprise Funds

The Finance Officer/Treasurer shall create the following restricted accounts within the utility enterprise funds:

**Emergency Repair Fund**

This fund shall be used to pay for unbudgeted repairs to the water and wastewater system that are beyond the ability of the of the utilities maintenance budget to cover.

Specific city council action is required to expense funds from this account.

Unexpended funds within this account shall be carried over into subsequent fiscal years.

**Infrastructure Reinvestment Fund**

This fund shall be used to pay for budgeted existing infrastructure improvement projects. Funds shall only be expensed on existing infrastructure improvements. This fund shall not be used to extend or add new infrastructure.

City council action during the annual budget process is required to expense from this fund.

Unexpended funds within this account shall be carried over into subsequent fiscal years.

**Capital Outlay Fund**

This fund shall be used to pay for budgeted capital expenses to include, but not limited to, purchase of equipment, vehicles, tools, real property and expansion of the water and wastewater systems. Expenditures must be allowed under the restrictions on capital item purchases as directed by the Finance Officer/Treasurer.

City council action during the annual budget process is required to expense from this fund.

Unexpended funds within this account shall be carried over into subsequent fiscal years.

**Debt Service Fund**

This fund shall be used to pay any budgeted debt service from the respective enterprise funds.

City council action during the annual budget process is required to expense from this fund.

Unexpended funds within this account shall be carried over into subsequent fiscal years.

**Bad Debt/Assistance Program Fund**

This fund shall be used to balance the enterprise fund accounts as a result of unpaid
customer accounts. Funds may also be used as authorized by the city council to create and fund a customer assistance program.

Specific city council action is required to expense funds from this account

Unexpended funds within this account shall be carried over into subsequent fiscal years.

NMSA 1978 §3-23-4

Sec. 26-187 – Expenditure of Restricted Fund for any Purpose not Specifically Listed

The city council may, by resolution-ordinance, expend restricted funds for reasons not specifically listed. Prior to approving the expenditure, the city council shall advertise and hold a public hearing specifying the expenditure, amount, repayment option and specific reasons why restricted funds should be used.

NMSA 1978 §3-23-7

Such expenditures shall require a 2/3 majority approval of all city council members to pass.

Sec. 26-188 – Transfers to the General Fund for Indirect Costs

Transfers to the General Fund for services provided to the enterprise fund by the City of Roswell shall be limited to the percentage of revenue from Water and Wastewater Service. This percentage shall be listed in Appendix A. This shall be done in accordance with relevant State Law.

NMSA 1978 §3-23-4

Sec. 26-189 through 26-199 Reserved
Article VI - Cross Connection and Backflow Prevention

Sec. 26-200. - Applicability

Compliance with this Article shall be a precondition to receiving or continuing to receive water service from the City of Roswell.

Sec. 26-201. - Purpose

This Article sets forth uniform requirements for, and applies to all customers of the City of Roswell.

The purpose of this Article is to enable the City of Roswell to comply with applicable state and federal laws, including the Safe Drinking Water Act of 1974.

The objectives of this Article are to:

- Protect the public potable water supply from the possibility of contamination or pollution by isolating--within the customer’s internal distribution system or the customer’s private water system--such contaminants or pollutants which could backflow into the public water system; and

- Establish and maintain a Cross Connection control program that will systematically and effectively prevent the contamination or pollution of all potable water systems under the jurisdiction of the City of Roswell.

This Article provides for monitoring, compliance and enforcement activities; establishes administrative and judicial review procedures; requires submission of test reports; and provides for the setting of fees for inspection and administration.

Sec. 26-202. – Adoption of Technical Specifications

The City of Roswell may adopt technical specifications to define backflow prevention assembly installation standards from, but not limited to, the International Association of Plumbing and Mechanical Officials (IAPMO) Uniform Plumbing Code (UPC), and the University of Southern California Manual of Cross Connection Control. The City shall update the City’s portion of the City of Roswell’s Standards and Specifications for Public Works Construction to incorporate the provisions of this Article.

Sec. 26-203. – Responsibility

It shall be the responsibility of the Utilities Director to administer and enforce the provisions of this Article. This Article also assigns responsibilities to customers, certified backflow prevention assembly testers, Plumbing Inspector and repairmen as described in this section.

City Plumbing Inspector. The City Plumbing Inspector shall be responsible for the protection of the
public water system from contamination or pollution due to the backflow of contaminants or pollutants through the water service connection. The City of Roswell shall enforce all provisions of this Article that relate to cross connection control by containment; shall approve all cross connection control backflow prevention assemblies; shall administer a continuing cross connection containment control program; maintain a customer and current backflow prevention assembly data base; and shall not knowingly install, maintain or approve installation of a water service connection unless the public water system is protected as required by this Article.

Customer. All customers shall be responsible, without further notice, for the prevention of contaminants, pollutants, water from alternate sources, or water from auxiliary water supplies from entering the public water system. Customers shall provide approved backflow prevention assemblies as required by local plumbing codes and this Article. Regardless of the location of the containment backflow prevention assembly, the customer’s responsibility begins at the service connection and extends throughout the entire length of the water system within the premises. No tees, branches or possible connection fittings or openings are allowed between the containment backflow prevention assembly and the service connection. Customers shall install, have tested, and maintain, at their own expense, backflow prevention assemblies as directed by the City of Roswell.

Certified Backflow Prevention Assembly Tester. Only certified backflow prevention assembly testers are permitted to inspect and test backflow prevention assemblies. They shall complete and provide accurate test reports to the Plumbing Inspector and Customer. They shall submit test gauge calibration test reports annually to the Plumbing Inspector. They shall report to the customer and the Plumbing Inspector any discovered discrepancies or violations that the tester may have observed during the course of testing a backflow prevention assembly.

Certified Backflow Prevention Assembly Repairman. Only certified backflow prevention assembly repairmen are permitted to inspect, repair, replace, and test backflow prevention assemblies. They shall complete and provide accurate test reports to the Plumbing Inspector and customer. They shall submit test gauge calibration certification reports annually to the Plumbing Inspector. They shall report to the customer and the Plumbing Inspector any discovered discrepancies or violations which the repairman may have observed during the course of testing and or repairing a backflow prevention assembly. Such repairman shall not change the design, material or operational characteristics of a backflow prevention assembly without prior approval of the Plumbing Inspector.

Sec 26-204. – Requirements.

Mandatory cross connection control by containment:

Effective January 1, 2025 all new non-residential premises shall have a containment reduced pressure principle backflow prevention assembly approved by the City of Roswell installed after the domestic service connection, as set forth in the UPC and this Article. No tees, branches or possible connection fittings or openings will be allowed between the containment backflow prevention assembly and the service connection unless protected by a Backflow Prevention Assembly.

Effective January 1, 2034 all existing non-residential premises shall have a containment reduced pressure principle backflow prevention assembly approved by the City of Roswell installed after the domestic service connection, as set forth in the UPC and this Article. No tees, branches or
possible connection fittings or openings will be allowed between the containment backflow prevention assembly and the service connection unless protected by a Backflow Prevention Assembly. A Backflow Prevention Assembly may be required immediately if it is determined there is a high hazard or likelihood of contamination of the public water system.

Effective January 1, 2024 all remodeled non-residential premises, when the work area of the building undergoing repairs, alterations or rehabilitation, as defined in the International Existing Building Code, exceeds 50 percent of the aggregate area of the building regardless of the costs of repairs, alteration, or rehabilitation, shall have a containment reduced pressure principle backflow prevention assembly approved by the City of Roswell installed after the domestic service connection, as set forth in the UPC and this Article. No tees, branches or possible connection fittings or openings are allowed between the containment backflow prevention assembly and the service connection unless protected by a Backflow Prevention Assembly.

All construction premises with temporary service connection shall have a containment reduced pressure principle backflow prevention assembly approved by the City of Roswell installed at each temporary service connection to the construction site, as set forth in the UPC and this Article.

All non-residential irrigation water systems connected to the public water system shall have a pressure vacuum breaker, spill-resistant pressure vacuum breaker or a reduced pressure principle backflow prevention assembly installed after the service connection. Such devices shall be approved by the City of Roswell. No tees, branches or possible connection fittings or openings are allowed between the containment backflow prevention assembly and the service connection.

All non-residential customers connected via piping to an alternative water source or an auxiliary water supply and the public water system shall install a containment reduced pressure principle backflow prevention assembly approved by the City of Roswell after the potable service connection.

Effective January 1, 2024 new ¾” and 1” service lines will be installed with a check valve incorporated into the meter box.

Effective January 1, 2024 all new and replacement water heaters will require a thermal expansion tank to be installed.

Effective January 1, 2024 all residential connections shall have backflow prevention at either the meter box or at the service entrance into the residence.

All residential irrigation water systems connected to the public water system shall have a pressure vacuum breaker, spill-resistant pressure vacuum breaker or a reduced pressure principle backflow prevention assembly installed after the service connection. Such devices shall be approved by the City of Roswell. No tees, branches or possible connection fittings or openings are allowed between the containment backflow prevention assembly and the service connection.

Any residential premises having existing private wells and who desire to connect to the public water system shall have two (2) options as follows:

City of Roswell

Legal Committee
Customers shall permanently abandon the use of private wells by plugging the wells as accepted by the City of Roswell prior to connecting to the public water system; or Customers who choose to maintain their private wells shall install a containment reduced pressure principle backflow prevention assembly approved by the City of Roswell. The assembly shall be installed immediately after the water meter on the customers service line.

All fire hydrants used for drawing water for filling tanks and tank trucks and for temporary irrigation systems must use a hydrant meter with backflow prevention provided by the City of Roswell.

Effective January 1, 2024, all new services to private fire protection systems shall be equipped with a containment reduced pressure principal backflow prevention assembly approved by the City of Roswell and Fire Marshal having jurisdiction installed after the service connection. No tees, branches or possible connection fittings or openings are allowed between the containment backflow prevention assembly and the service connection. A double check valve assembly approved by the City of Roswell and Fire Marshal having jurisdiction may be installed instead of a reduced pressure backflow prevention assembly provided the private fire protection system meets or exceed ANSI/NSF Standard 60 61 throughout the entire private fire protection system, the fire sprinkler drain discharges into atmosphere, and there are no reservoirs, fire department connections nor-connections from auxiliary water supplies.

Premises with existing private fire protection systems containing double check valve assemblies installed and approved by the City of Roswell prior to 2024 are approved to continue in service as long as the device tests and functions properly.

Effective January 1, 2025 all remodeled non-residential premises, when the work area of the building undergoing repairs, alterations or rehabilitation, as defined in the International Existing Building Code, exceeds 50 percent of the aggregate area of the building regardless of the costs of repairs, alteration, or rehabilitation with existing private fire protection systems without a containment backflow prevention assemblies shall be retrofitted with an approved reduced pressure principle backflow prevention assembly approved by the City of Roswell and Fire Marshal having jurisdiction. Assembly shall be installed at each private fire protection after the service connection to the customers water system. Approved reduced pressure principle backflow prevention assembly shall be installed by a person who is licensed by the appropriate mechanical classification in accordance with the New Mexico Construction Industries Licensing Act. Fire sprinkler system hydraulic performance shall be verified by an engineer registered in accordance with the State of New Mexico Board of Licensure for Professional Engineers and Surveyors, pursuant to the Engineering and Surveying Practice Act, NMSA 1978 §§ 61- 23-1 through 61-23-32.

Once an approved backflow prevention assembly is installed at a premises, as a cross connection control containment assembly, the assembly shall not be removed without prior approval from the City of Roswell. Containment backflow prevention assemblies that cannot be repaired must be replaced in-kind per the terms of this Article.

Once an approved backflow prevention assembly for containment has been properly installed the assembly shall not be modified.
Inspection of premises.

Right of entry. Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the City of Roswell or its authorized representative has reasonable cause to believe that there exists in any building or upon any premises, any condition which may endanger the public water supply, the City of Roswell or its authorized representative may enter such building or premises at reasonable times to inspect the same or to perform any duty imposed upon the City of Roswell by this Article; provided that if such building or premises be occupied, the City of Roswell representative will first present proper credentials and demand entry; and if such building or premises be unoccupied, the City of Roswell representative will first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If entry and or inspection is refused, the City of Roswell may immediately terminate water service to the premises.

Inspection of premises. The purpose and authority to conduct such an inspection shall be disclosed to the customer. If actual or potential cross connections, which could result in backflow of contaminants, pollutants, water from auxiliary water supplies or water from non-potable water systems are determined to exist during the premises inspection, the City of Roswell shall proceed as follows:

In the event contamination of the public water supply is determined to exist, the City of Roswell shall immediately terminate water service to the premises. The City of Roswell shall restore water service to the premises once the contamination hazard has been controlled or eliminated.

In the event no contamination is determined to exist, but actual or potential cross connections require control by containment, the City of Roswell shall give the customer written notice to install an approved backflow prevention assembly as a cross connection control containment assembly after the service connection at the customer’s own expense. The backflow assembly shall be installed, inspected and tested within 15 calendar days from the date of the notice. For good cause, the City of Roswell may extend the time to comply with the requirements of this Article.

Re-inspection. Re-inspection of premises shall be conducted by the City of Roswell to verify corrective action has been implemented as required by this Article.

Installation of backflow prevention assemblies. Any contractor licensed by the appropriate mechanical classification in accordance with the New Mexico Construction Industries Licensing Act may install backflow prevention assemblies in accordance with the UPC and this Article. The contractor shall be responsible for obtaining all required approvals, such as approved plans, permits and inspections. Such contractor shall not change the design, material or operational characteristics of a backflow prevention assembly without prior approval of the City of Roswell.

Tests and maintenance of backflow prevention assemblies. Customers shall have their existing
containment and isolation backflow prevention assemblies tested at least once a year by a certified backflow prevention assembly tester. Assemblies that fail a test shall be repaired or replaced by a certified backflow prevention assembly repairman and immediately retested by a certified backflow prevention assembly tester. A test report shall be submitted to the customer and the City of Roswell within seven (7) calendar days of test, or the test will be void, and retesting will be required. Tests and repairs shall be at the expense of the customer.

All new installations of backflow prevention assemblies shall be tested immediately upon installation (if/when water service is available) and test reports submitted to the City of Roswell within seven (7) calendar days or the tests will become void and retesting would be required. Once the backflow prevention assembly is tested and operating properly, water service to the premises may continue. City of Roswell shall inspect all newly installed containment backflow prevention assemblies.

The repairman and tester shall use separate tools and gauges for testing backflow prevention assemblies on potable water systems, such tools and gauges are never to be used on non-potable water, including alternate water sources. They shall submit all test reports to the City of Roswell and customer with seven (7) calendar days of the test, or the test becomes void, and retesting of assembly would be required. The City of Roswell shall provide the test report form to customers, certified backflow prevention assembly testers, and repairmen upon request. They shall submit test gauge calibration test report annually to the Cross Connection Manager. Tests performed with a test gauge that has not had a yearly calibration certification are void. Accurate records of all inspections, tests, repairs, and replacement of backflow prevention assemblies shall be maintained by the customer for a period of three (3) years.

Existing previously approved backflow prevention assemblies. Any existing backflow prevention assemblies that were previously approved may be approved to continue in service provided that the assemblies test and function properly. When required, obsolete assemblies shall be replaced with current, approved backflow prevention assemblies.

Certification of testers and repairmen. To be certified as a backflow prevention assembly tester, a person shall attend a training course that has been approved by the City of Roswell and successfully complete the written and practical examinations administered as part of the approved training course. A person who is licensed by the appropriate mechanical classification in accordance with the New Mexico Construction Industries Licensing Act and attends and successfully completes the approved training course may be certified as a backflow prevention assembly repairman.

Re-certification of testers and repairmen. A certified tester or repairman who wishes to remain active as a backflow assembly tester or repairman shall renew their certification every three (3) years. To re-certify, prior to existing certification expiring, testers and repairmen must complete an approved eight (8) hour training course and accrue 16 hours of approved continuing education credits. Otherwise, the certified tester or repairman must complete an approved 40-hour training course. Testers or repairmen with non-expired certifications shall provide proof of training credits earned and training course attended prior to re-certification.

Approved training courses. The City of Roswell shall approve training courses. The approved course shall be conducted by an instructor who is a certified tester and repairman; duration of
the course shall be at least 40 hours; and the minimum material covered shall either be based on the University of Southern California's Foundation for Cross Connection Control and Hydraulic Research training course or an ANSI accredited listing agency.

The approved re-certification training course shall be conducted by an instructor who is a certified tester and repairman; duration of the course shall be at least eight (8) hours and the course shall include rules, regulations, the Cross Connection Article, practical training and practical examinations.

The instructor conducting the certification and re-certification courses shall administer the written and practical examinations. A performance of over 70% on the written examination and satisfactory completion of the practical examination constitutes successful completion of the course.

Administrator of the approved training course or approved recertification training course shall submit the course syllabus once a year, or upon any changes to the syllabus for approval by the City of Roswell.

Sec. 26-205 - Fees.

Fees and associated costs shall be set forth in Article 5 and Appendix A of this ordinance.

Sec. 26-206- Violations and Penalties.

Notice of Violation. When the Plumbing Inspector finds that a customer has violated, or continues to violate, any provision of this Article or order issued by the Plumbing Inspector, City Engineer or Utilities Director, the City may serve upon the customer a written notice of violation. Within fifteen (15) days after receipt of the notice of violation, the customer shall give the Plumbing Inspector an explanation of the violation and a plan for correcting and preventing the violation, including the specific actions that may be required. Submission of a plan shall not relieve the customer of liability for any violations occurring before or after receipt of the notice of violation. Customers issued a third notice of violation may be required to relocate the containment backflow prevention assembly next to the water meter, property line or easement line.

Revocation. The City of Roswell may suspend or revoke a tester’s certification for any of the following:

- falsification of tests, records or reports;
- failure to properly maintain test equipment;
- failure to submit test gauge calibration test report annually;
- recurrent submittal of inaccurate or incomplete test reports;
- alterations or removal of an existing backflow prevention assembly without the approval of the City of Roswell;
- failure to inform the City of Roswell of an observed cross connection; or
- certified backflow prevention assembly tester/repairman is working outside of his/her certification.
Sec. 26-207. – Grounds for Termination of Water Service under Article VI.

Any person who willfully removes, modifies or bypasses any approved backflow prevention assembly without prior approval of the City of Roswell, falsifies tests records or reports, obtains water from a fire hydrant in violation of cross connection control requirements, connects an alternate water source to potable water service, connects an auxiliary water supply to potable water service, or connects City of Roswell reclaimed water to non-potable water without approved backflow protection, thus creating a cross connection, or otherwise violates any provision of this Article may have water service terminated immediately.

In the event the Plumbing Inspector, Utility Director or City of Roswell State Certified Water Operator determines that a potential contamination exists and may be a threat to the public water system, water service to the premises shall be terminated immediately. The City of Roswell shall restore water service to the premises once the customer has controlled or eliminated the contamination hazard.

Failure to install required backflow prevention assemblies as directed by the City of Roswell, failure to conduct required tests, failure to submit accurate test reports within seven (7) calendar days of the test, failure to perform testing and maintenance of backflow prevention assemblies, or failure to allow the City of Roswell entry into a premises shall constitute grounds for termination of water service to the premises. Service shall not be restored until such conditions or defects are corrected. If water service is terminated for any of these reasons, a turn-off and turn-on water service fee will be assessed to the customer as per Article 5 and Appendix A of this ordinance.

The City of Roswell may terminate water service for non-payment of the fees included in this Article and in accordance with other Articles of Chapter 26, as it may be amended.

Sec. 26-208.- Termination of Water Service for Violations of Article VI; Hearing.

The Plumbing Inspector, Utilities Director or City of Roswell Certified Water Operator may terminate the water service to the property for failure on the part of the customer to comply with any provision of this Article.

In order to terminate service, a written notice shall be sent to the customer giving him/her at least ten (10) calendar days’ notice of the proposed termination of water service and notice of his/her right to protest the City’s action at a hearing. However, the City shall immediately terminate water service to the premises in the event that contamination is determined to exist or entry for an inspection to a premises is denied.

In the event a hearing is requested, the water service shall not be terminated until and in accordance with the decision of the governing body. However, the City shall immediately terminate water service to the premises in the event that contamination is determined to exist or entry for an inspection to a premises is denied.

The customer must request a hearing be held by delivering such request in writing to the City Clerk on or before the date the water services are to be terminated. In the case of immediate termination, such written request shall be delivered within ten (10) calendar days after the date of termination. At such hearing, the customer may present evidence as the governing body finds relevant. The
governing body shall make findings and conclusions in accordance with applicable state and federal laws, including the Safe Drinking Water Act of 1974. The decision of the governing body may be appealed to the District Court.

Sec. 26-209 through 26-229 Reserved

Article VI – Water Restrictions
Future Use

Article VII – Water Conservation
Future Use
## City of Roswell

### Legal Committee

**Service Termination**

- Service Disconnect
- Late Payment Fee
- Non-Payment disconnect fee

**Sec. 26-188 Transfer percentage for Indirect Cost:** 8%

Revised 1-15-24

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### INSIDE RATES-

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<tr>
<th>Size</th>
<th>OLD RATE</th>
<th>NEW RATE</th>
<th>INCREASE</th>
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**Minimum Access (base) rate is charged with or without usage.**

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### Irrigation Only

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**Wastewater**

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<td>6.44 per THOUSAND GALLONS</td>
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Minimum Access (base) rate is charged with or without usage.
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<td>Meter Test Fee</td>
<td>Free if meter found compliant</td>
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<td>Non-Sufficient Funds Fee</td>
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<td>10 Day Disconnect Notice Mailing Fee</td>
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<td>Emergency Shut off during work hours</td>
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<td>New Water Service</td>
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<td>Water Utility Expansion Fee</td>
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<td>Pretreatment Services</td>
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<td>Pretreatment charges are outlined in Chapter 118. Section 26.</td>
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ACTION REQUESTED:
Resolution 24-XX New Mexico Open Meetings Act: Consider recommending approval for adoption of Resolution 24-XX pursuant to the New Mexico Open Meetings Act.

BACKGROUND:
Initiated by: Amalia Martinez, City Clerk

Section 10-15-1 of the New Mexico Open Meetings Act requires that the city determine on an annual basis in a public meeting what notice is reasonable for the City Council and its standing committees.

FINANCIAL CONSIDERATION
The proposed resolution creates no financial obligations for the City.

LEGAL REVIEW:
The City Attorney has reviewed the proposed amended resolution.

Resolutions require a majority of the Governing Body for adoption

BOARD AND COMMITTEE ACTION:
The Thursday January 25, 2024 meeting for Legal Committee will be the first meeting to consider this matter.

STAFF RECOMMENDATION:
Resolution 24-XX New Mexico Open Meetings Act: Consider recommending approval for adoption of Resolution 24-XX pursuant to the New Mexico Open Meetings Act.

Attachments
ATT 1 - Resolution 24-XX New Mexico Open Meetings Acts DRAFT
RESOLUTION 244-XX

A RESOLUTION AMENDING RESOLUTION 244-04XX PURSUANT TO THE OPEN MEETINGS ACT

WHEREAS, Section 10-15-1 (B) of the Open Meetings Act (NMSA 1978, Sections 10-15-1 to 4) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any council, commission, committee, or other policy-making body of any state or local public agency held for the purpose of formulating public policy, discussing public business, or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1 (D) of the Open Meetings Act requires the City Council of the City of Roswell to determine annually what constitutes reasonable notice of its public meetings as well as meetings of any commission, committee, or other policy making body of the city;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

1. All meetings of the Roswell City Council shall be held at the Roswell Convention & Civic Center, 912 N Main Street, Roswell, New Mexico, or as indicated in the meeting notice.

2. Unless otherwise specified, regular meetings shall be held each month on the second Thursday at 6:00 p.m. The agenda will be available from the City Clerk, whose office is located at City Hall in Roswell, New Mexico, at least seventy-two (72) hours prior to the meeting. In addition, for the convenience of its citizens, it is the goal of the City to enhance this process by also posting the agenda on its website located at www.roswell-nm.gov. Notice of any other regular meetings of the City Council will be given ten (10) days in advance of the meeting date. The notice shall indicate how a copy of the agenda may be obtained.

3. Regular meetings of the standing committees of the City Council shall be held monthly at the same time and on the same day of the same week of the month as determined by each standing committee at the Roswell City Hall Conference Room, 425 N Richardson Street, Roswell, New Mexico, or as indicated in the meeting notice. The agenda will be available from the City Clerk, whose office is located at City Hall in Roswell, New Mexico, at least seventy-two (72) hours prior to the meeting. In addition, for the convenience of its citizens, it is the goal of the City to enhance this process by also posting the agenda on its website located at www.roswell-nm.gov. Notice of any other regular meeting of a standing committee will be given ten (10) days in advance of the meeting date. The notice shall indicate how a copy of the agenda may be obtained. As of the date of this resolution, the
standing committees of the City Council meet regularly as follows (unless otherwise posted):

Finance Committee: first Thursday of each month at 2:00 p.m.
General Services Committee: fourth Wednesday of each month at 4:30 p.m.
Infrastructure Committee: fourth Monday of each month at 4:30 p.m.
Public Safety Committee: first Tuesday after City Council meeting at 4:30 p.m.
Legal Committee: fourth Thursday of each month at 2:00 p.m.

4. Special meetings may be called by the Mayor or a majority of the members of the City Council or by the Chair of a standing committee at least seventy-two (72) hours prior to any special meeting. The notice shall include an agenda for the meeting or information on how members of the public may obtain a copy of the agenda. The agenda shall be available to the public at least seventy-two (72) hours prior to any special meeting.

5. Emergency meetings will be called only under unforeseen circumstances which demand immediate action to protect the health, safety, and property of citizens or to protect the public body from substantial financial loss in accordance with all state and local laws. The City Council will avoid emergency meetings whenever possible. Emergency meetings may be called by the Mayor or by a majority of the members of the City Council upon twenty-four (24) hours notice, unless threat of personal injury or property damage requires less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda.

6. For the purposes of regular meetings described in paragraphs 2 and 3 of this resolution, notice requirements are met if notice of the date, time, place, and agenda is sent, i.e. emailed, to newspapers of general circulation and posted on the City Hall Electronic Bulletin Board located at 425 North Richardson Avenue, Roswell, New Mexico or other location determined by the City of Roswell if 425 N. Richardson Avenue is not available. The City Clerk shall also email copies of the written notice to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation which have made a written request for notice of public meetings. In addition, for the convenience of its citizens, it is the goal of the City to enhance this process by also posting the agenda on its website located at www.roswell-nm.gov.

7. For the purposes of special meetings and emergency meetings described in paragraph 4 and 5 of this resolution, notice requirements shall be met by posting notice of the date, time, place and agenda on the City Hall located at Electronic Bulletin Board, 425 North Richardson, Roswell, New Mexico. The City Clerk shall also provide email notice to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

8. For the purpose of telephonic conference or voting and the approval of the presiding officer, a member of the City Council may participate by telephone or other similar communications equipment when it is difficult or impossible for the Councilor to attend the meeting in person, provided that the Councilor can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the Council.
9. In addition to the information specified above, all notices shall include the following language: If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Human Resources at 575-624-6700 if a summary or other type of accessible format is needed.

10. The Council or Committee may close a meeting to the public only if the subject matter of such discussion or action is exempted from the open meeting requirement under Section 10-15-1 (H) of the Open Meetings Act.

   a. If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the Council or Committee taken during the open meeting. The authority for closure and the subjects to be discussed shall be stated in the motion for closure and the vote on closure of each individual member shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in a closed meeting.

   b. Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

   c. Except as provided in Section 10-15-1 (H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by the vote of the Council or Committee in an open public meeting.

PASSED, ADOPTED AND APPROVED this ___ day of ___________ 2023.

CITY SEAL

Timothy Z. Jennings, Mayor

ATTEST:

Amalia Martinez, City Clerk