LEGAL COMMITTEE MEETING AGENDA
Thursday, April 23, 2020 at 4:00 PM
Roswell Convention & Civic Center
912 N. Main St. Meeting Room A, Roswell, NM 88201

Chair:  Judy Stubbs, Ward 3
Vice Chair:  George Peterson, Ward 4
Members:  Jason Perry, Ward 2
          Barry Foster, Ward 5
Staff Liason:  Parker Patterson

CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES
Approval of the minutes from the Legal Committee meeting on February 28, 2020.

REGULAR ITEMS
1. To recommend to full Council that the following RIAC agreements to existing leases be placed on the Consent agenda for approval: (page 6)
   (A) J&A Recycling (page 9)
   (B) Aersale (page 19)
   (C) Ergon Sale
   (D) Scope of Services for the Airport Engineering Consultant RFP (page 28)
2. Ord. 20-04 Sewer Use Ord - Review and recommend to full City Council any changes to draft ordinance prior to a public hearing on Ord. 20-04 relating to Industrial Wastewater Regulation updates. (page 34)
3. Ord. 20-xx Lodger’s Tax Update - Consider recommending to full City Council authorizing advertisement for a public hearing and vote on proposed Ordinance 20-xx Lodger’s Tax Update. (page 161)
4. Resolution 20-xx – Keep Roswell Beautiful Board - Consider recommending to full City Council approval of Resolution 20-XX: A Resolution Approving the Creation of the Keep Roswell Beautiful Community Board. (page 164)
5. Resolution 20-xx – ROAR (Revolving Loan) - Consider recommending approval to full City Council of Resolution 20-xx implementing the Business Revolving Loan Program. (page 167)
6. Ord. 20-xx Aircenetr Ord - Consider review and possible recommendation of authorization to advertise for a public hearing Ord. 20-xx Revising the Airport Ord, Chapter 5 of the Roswell City Code. (page 179)
7. Ord. 20-xx Aircenetr Ord Zoning - Consider review and possible recommendation of authorization to advertise for a public hearing Ord. 20-xx Revising Zoning Code on Airport Hazards. (page 186)
8. **Time and Date of Meeting** - Consider deciding the meeting time and dates for the Legal Committee. *(page 190)*

9. **Department Reports** *(page 191)*
   - Air Center
   - City Clerk
   - Human Resources
   - Legal
   - Planning and Zoning
   - Safety

**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 19-37.

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 if a summary or other type of accessible format is needed.

Printed and posted: **Friday, April 17, 2020**
Regular Meeting of the Legal Committee  
Held in the Conference Room at City Hall  
February 28, 2020

Notice of this meeting was given to the public in compliance with Section 10-15-1 through 10-15-4 NMSA and Resolution 19-37.

ROLL CALL
The meeting convened at 5:00 p.m. with Chair Stubbs presiding, with Councilors Peterson, and Foster being present and Councilor Sanchez being absent.

Staff present: Mike Matthews, Bill Morris, Chanel Rey, Renee Trujillo, Aaron Holloman, Parker Paterson, Mark Bleth

Guests present: Lisa Dunlap

APPROVAL OF AGENDA
Councilor Peterson moved to approve the February 28, 2020, Legal Committee meeting agenda as presented. Councilor Foster was the second. A voice vote was 3-0, and the motion passed with Councilor Sanchez being absent.

APPROVAL OF MINUTES
Councilor Foster moved to approve the January 23, 2020, Legal Committee minutes. Councilor Stubbs requested to amend the minutes as follows: 1.) REGULAR ITEMS 1.A date change from February 28, 202 to February 28, 2021. Councilor Peterson was the second. A voice vote was 3-0, and the motion passed with Councilor Sanchez being absent.

REGULAR ITEMS

1. RIAC Agreements

A. Jon E. Hitchcock, Robert B. Corn, James Patterson, Siavash Karimian, Brandon Arnold, John Berry, and Cliff Waide, individuals - Jon E. Hitchcock, Robert B. Corn, James Patterson, Siavash Karimian, Brandon Arnold, John Berry, and Cliff Waide leases the hangars for the purpose of aircraft storage and maintenance. 91A is 4,589 square feet with an approximately 750 square feet addition, and 91B is 4,623 square feet. New rent amount respectively is $860 and $850 monthly; $10,320 and $10,200 annually. Rent adjustment is 5% and 3%, respectively. Term: April 1, 2020 through March 31, 2021. Councilor Foster moved to send to recommend to full City Council on the consent agenda with Councilor Peterson as the second. A voice vote was 3-0, and the motion passed with Councilor Sanchez being absent.

B. Zachary Canright and Jared Putman, individuals - Zachary Canright and Jared Putman, lease the hangar for the purpose of aircraft storage and maintenance. 1,002 square feet. Rent amount is $191 monthly; $2,292 annually. Term: April 1, 2020 through March 31, 2021. Councilor
Foster moved to recommend to send to full City Council on the consent agenda with Councilor Peterson as the second. A voice vote was 3-0, and the motion passed with Councilor Sanchez being absent.

C. Thurston Woods - Thurston Woods, leases a portion of the building for the purpose of storage. 1798 square feet. New rent amount is $210 monthly; $2,520 annually. Rent adjustment is 15%. Thurston Woods has been a customer since April 2010. Term: April 1, 2020 through March 31, 2021. Councilor Foster moved to send to full City Council on the consent agenda with Councilor Peterson as the second. A voice vote was 3-0, and the motion passed with Councilor Sanchez being absent.

D. Tom Wadsworth, individual - Tom Wadsworth, leases the hangar for the purpose of aircraft storage and maintenance. Tom will be dropping this hangar from a lease in his name, to a new lease in both his name and Carlton Walker. Tom Wadsworth has been a customer since November 1992. Current rent amount of $187.58 monthly will be assigned to the new joint lease. Councilor Foster moved to send to full City Council on the consent agenda with Councilor Peterson as the second. A voice vote was 3-0, and the motion passed with Councilor Sanchez being absent.

E. Tom Wadsworth and Carlton Walker - Tom Wadsworth and Carlton Walker, will lease the hangar for the purpose of aircraft storage and maintenance. 1,002 square feet. Rent amount is $187.58 monthly; $2,250.96 annually. Term: April 1, 2020 through March 31, 2021. Councilor Foster moved to send to full City Council on the consent agenda with Councilor Peterson as the second. A voice vote was 3-0, and the motion passed with Councilor Sanchez being absent.

2. Proposed Ordinance 20-XX: Home Occupations – After a brief discussion it was postponed for another month until closer to a final draft. No action was taken.

3. Professional Service Agreement for development of TIDD/PIDD – Bill Morris discussed that Sherman and Howard have already entered into an agreement with Bernalillo County for the process of developing and implementing TIDDs and PIDS in that County. The primary use of these economic development tools is to allow for self-financing of infrastructure placement for specific geographic areas, specifically the Old Municipal Airport and the Railroad District Metropolitan Redevelopment Area (MRA). This professional service will allow the City to proceed with the drawing up the TIDD and PID documents. Councilor Foster moved to send to full City Council on the consent agenda with Councilor Peterson as the second. A voice vote was 3-0, and the motion passed with Councilor Sanchez being absent.

4. Proposed Ord. 20-XX Commission on Accessibility and ADA - Consider recommending to City Council to authorize advertisement for a public hearing on proposed Ordinance 20-xx relating to the Commission on Accessibility and ADA. After discussion, the need for a further study is necessary. No action was taken.

5. Lodgers’ Tax Ordinance Update Discussion – In 2019 the New Mexico State Legislature removed a provision from the Lodgers’ Tax statute that exempted certain places from collection if there were less than three rooms. City staff will be proposing an update to the
City’s ordinance to implement this change and allow the City to collect tax on those facilities as well. No action was taken.

6. **Air Center Master Fee Schedule Resolution** – Discuss new resolution regarding master fee schedule at the Air Center. No action was taken.

7. **Update to City Code Chapter 5 Aviation** – The Airport Advisory Commission has undertaken a comprehensive review and revision of the Aviation Chapter of the Roswell City Code. The ultimate goal would be to pare down the Ordinance of unnecessary and outdated provisions to allow more efficiency in the operations of the Air Center. No action was taken.

8. **Department Reports** – City Clerk’s office – For information only.

**CHAIR COMMENTS, REPORTS, ANNOUNCEMENTS**
None

**PUBLIC PARTICIPATION**
None

**ADJOURN**
The meeting adjourned at 6:23 p.m.

Legal Committee Meeting for Thursday, February 27, 2020, was postponed due to lack of quorum. The meeting was postponed until Friday, February 28, 2020, at 5:00 p.m.
RAC Matters:  
(A) J&A Recycling  
(B) Aersale  
(C) Ergon Sale  
(D) Scope of Services for the Airport Engineering Consultant RFP

ACTION REQUESTED:  
(A) Consider approval to authorize J & A Recycling, a New Mexico LLC, to lease an 800 sq. ft. portion of Building No. 100

BACKGROUND:  
(A) Initiated by: Scott Stark/Mark Bleth

J & A Recycling is a local plastic recycling company that will lease a portion of building 100 for the purpose of sorting recyclable plastics. The space they will be using will be in the SE corner of building 100, they will be leasing 800 sq. ft. out of the total of +5,700 square feet. J & A Recycling is a new tenant.

FINANCIAL CONSIDERATION:  
(A) J & A Recycling will pay $300 monthly; $3,600 annually. Term: June 1, 2020 through May 31, 2021.

LEGAL REVIEW:  
Contracts and Agreements generally require Council approval before adoption.

BOARD and/or COMMITTEE ACTION:  
The Legal Committee is scheduled to meet on Thursday, April 23, 2020.

STAFF RECOMMENDATION:  
(A) Recommend to full Council approval to authorize J & A Recycling, to enter into a lease agreement for a portion of Building 100 consisting of 800 sq. ft. for $3,600 payable in 12 monthly installments of $300 subject to all terms and conditions of the lease.
<table>
<thead>
<tr>
<th>ACTION REQUESTED:</th>
<th>(B) Consider approval to authorize Aersale Inc, a Florida corporation, to lease + 1 acre of vacant land west of building 240.</th>
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<tbody>
<tr>
<td>BACKGROUND:</td>
<td>(B) Initiated by: Scott Stark/Mark Bleth</td>
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<td>Aersale is in the process of clearing ramp area of parts storage to make room for aircraft storage and this requires more fenced property to move parts to. Aersale has been customers since March 2009.</td>
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<tr>
<td>FINANCIAL CONSIDERATION:</td>
<td>(B) Aersale Inc. will pay $250 monthly; $3,000 annually. Term: June 1, 2020 through May 31, 2025.</td>
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<tr>
<td>LEGAL REVIEW:</td>
<td>Contracts and Agreements generally require Council approval before adoption.</td>
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<tr>
<td>BOARD and/or COMMITTEE ACTION:</td>
<td>The Legal Committee is scheduled to meet on Thursday, April 23, 2020.</td>
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<tr>
<td>STAFF RECOMMENDATION:</td>
<td>(B) Recommend to full Council approval to authorize Aersale, Inc., to enter into a lease agreement for + 1 acre of vacant land west of building 240 for $3,000 payable in 12 monthly installments of $250 subject to all terms and conditions of the lease.</td>
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<tr>
<td>ACTION REQUESTED:</td>
<td>(C) Discussion of ordinance regarding the sale of + 12 acres of land located at the Roswell Air Center to Ergon Asphalt and Emulsions Inc, a Mississippi Corporation.</td>
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<tr>
<td>BACKGROUND:</td>
<td>(C) Initiated by: Scott Stark/Mark Bleth</td>
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<td>Ergon Asphalt and Emulsions currently has a leasehold at the Roswell Air Center and pays $1,030.47 per month. They would like to purchase the land that is currently in their leasehold in order to invest in plant expansion. Their current lease expires February 28, 2028. Ergon has been a customer since December 2016.</td>
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<td>FINANCIAL CONSIDERATION:</td>
<td>(C) The land has an appraised value of $340,000.</td>
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<td>LEGAL REVIEW:</td>
<td>Sale of City property is effective after notice and passage of an ordinance and subject to a referendum.</td>
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<td>BOARD and/or COMMITTEE ACTION:</td>
<td>The Legal Committee is scheduled to meet on Thursday, April 23, 2020.</td>
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<tr>
<td>STAFF RECOMMENDATION:</td>
<td>(C) (Discussion of ordinance regarding the sale of + 12 acres of land located at the Roswell Air Center to Ergon Asphalt and Emulsions Inc, a Mississippi Corporation.</td>
</tr>
<tr>
<td>ACTION REQUESTED:</td>
<td>(D) Consider approval of Scope of Services for the Airport Engineering Consultant RFP.</td>
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| BACKGROUND:                  | (D) Initiated by: Scott Stark/Mark Bleth  
Roswell Air Center requires engineering services to maintain a safe airport. |
| FINANCIAL CONSIDERATION:     | (D) The Air Center Engineering contract is project based and is paid with Airport Improvement Funding (AIP). Term: October 1, 2020 through September 30, 2021 with four 1 year options. |
| LEGAL REVIEW:                | Under City Policy PC0001, RFP Procedures Guide, City Council is asked to review the Scope of Services for a proposed RFP. After approval by Council, the RFP process may proceed with publication of the RFP to allow offerors to submit proposals. |
| BOARD and/or COMMITTEE ACTION: | The Legal Committee is scheduled to meet on Thursday, April 23, 2020. |
| STAFF RECOMMENDATION:        | (D) Consider approval of Scope of Services for the Airport Engineering Consultant RFP. |
THIS LEASE executed in Roswell, New Mexico on this 14th day of May 2020 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter designated “Landlord”, and J & A RECYCLING, a New Mexico limited liability corporation, 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:

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 No. 100 consisting of 800 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).

2. TERM. The Lease term is for one (1) year, commencing on June 1, 2020 and ending May 31, 2021 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Three Thousand, Six Hundred Dollars and No Cents ($3,600.00), payable in 12 monthly installments of $300.00. 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 off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid $300.00 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 and c. the cost of removal of any hazardous material not properly disposed of by Tenant. 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. 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.

6. 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.

7. 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.

8. 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.

9. 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 9.

   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. 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.

10. INSURANCE.
   a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease. Tenant agrees to reimburse Landlord for the amount of 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 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.

11. 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 rent 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, 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: (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 rent 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.

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.

12. 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.

13. 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, 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.
14. 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; or

   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 the 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 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 sixty (60) consecutive days; or

   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.
15. 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.

16. 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.
17. 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.

18. USE OF THE PREMISES.

   a. Tenant shall use the Leased Premises solely for the purpose of carpet cleaning, janitorial business and 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. 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 International 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 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 (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 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.

   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 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
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.

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:

      J & A Recycling
      2215 S Union
      Roswell, NM 88203

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 or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

30. TERMINATION. This Lease may be terminated by either party by giving thirty (30) days written notice.

31. 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 Landlord’s Governing Body.

IN WITNESS WHEREOF, this Lease Agreement is executed this ______ day of __________, 2020.

CITY SEAL

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

______________________
Dennis J. Kintigh, Mayor

ATTEST:

______________________
Sharon Coll, City Clerk

TENANT:

______________________
Dr. R. Ryan Wooley, Co-Owner
J & A Recycling LLC
THIS LEASE executed in Roswell, New Mexico on this 14th day of May, 2020 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter designated “Landlord”, and AERSALE, INC. a Florida corporation, 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:

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. 240 consisting of 1 acre 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 five (5) years, commencing on June 1, 2020 and ending May 31, 2025 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Three Thousand Dollars and No Cents ($3,000.00), payable in 12 monthly installments of $250.00 the first year of the lease. Thereafter rent will be adjusted annually by CPI or 3%, 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 off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid $0 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 and c. the cost of removal of any hazardous material not properly disposed of by Tenant. 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. 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.

6. 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, fire suppression 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.

7. 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.

8. 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.

9. 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 9.

   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. 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.

10. INSURANCE.
   a. Landlord will provide fire and extended coverage to the improvements on the Premises during the term of the Lease; provided however, Tenant agrees to reimburse Landlord for the amount of premium based upon the pro-rata per square footage attributable to the Premises as determined and billed by Landlord.

   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, 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.

   c. Landlord agrees to waive any rights of subrogation that it may have against Tenant in the event any insurance proceeds are paid to Landlord based upon any act or failure to act by Tenant. Tenant agrees to waive any rights of subrogation that it may have against Landlord in the event any insurance proceeds are paid to Tenant based upon any act or failure to act by Landlord.

11. 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 rent 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, 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: (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 rent 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.

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.

12. 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.

13. 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, 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.

14. 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; or
b. Default in the observance of any of the Tenants’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; 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 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 sixty (60) consecutive days; or

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.

15. 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.

16. 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.

17. 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.

18. USE OF THE PREMISES.

a. Tenant shall use the Leased Premises solely for the purpose of providing commercial aircraft component parts to the secondary market, 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 Tenant. 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.

c. 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.

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 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
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.

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:
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 or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

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

31. 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 Landlord’s Governing Body.

IN WITNESS WHEREOF, this Lease Agreement is executed this ________ day of ____________, 2020.

LANDLORD:

CITY SEAL

CITY OF ROSWELL, NEW MEXICO

Dennis J. Kintigh, Mayor

ATTEST:

TENANT:

AERSALE, INC.

Sharon Coll, City Clerk

Ron Wolf, Vice President
I. CITY’S INTENT

The City of Roswell, New Mexico (referred to herein as "Sponsor"), as owners of the Roswell Air Center, is requesting proposals from consulting firms ("Proposers") qualified and experienced in the field of airport engineering.

The Sponsor plans to award a one-year contract with possibly four (4) one year renewals for engineering services for any and all engineering projects subject to federal assistance under the Airport and Airway Improvement Act of 1982 as amended. Contemplated projects under this contract may include:
a. Rehabilitate Taxiway asphalt shoulders A, B, D, E, F, J, K, M
b. Reconstruct Runway 17/35
c. Master Plan Update
d. Widen Taxiway B
e. Replace Taxiway light on A, B, C, D, E, F, G, H, North and South Hammer
f. Rehabilitate terminal and GA aprons
g. T Hangar development
h. Large Hangar development
i. Widen east perimeter road
j. E-ALP
k. Drainage Study & Improvements
l. Terminal parking reconstruction and expansion
m. Terminal remodeling, expansion and rehabilitation
n. Prepare Disadvantaged Business Enterprise program plan and goals
o. Prepare grant applications and development objectives, Capital planning assistance
p. Construction and grant administration, management including inspection and testing
q. On call minor engineering and architecture services
r. Environmental Assessment
s. Pavement Maintenance and Management System
t. Safety Management System (SMS)
u. Airport signage, marking plan update

The above-contemplated projects are dependent upon federal AIP funding and State Aviation Division funding and approval of the Sponsor, so it shall be understood that some of the services related to the above-listed projects may be deleted and that the Sponsor reserves the right to initiate additional services not included in the initial procurement

II. BACKGROUND

The Roswell Air Center is located approximately five miles south of Roswell New Mexico. The air center terminal is located at:

Roswell Air Center
Scott Stark, Airport Director
#1 Jerry Smith Circle
Roswell New Mexico 88203
(575) 347-5703. Direct Phone Number
(575) 347-2595. Fax Number
Email: s.stark@roswell-nm.gov

The Airport is a Certificated FAR Part 139 airport with an operating FAA ATCT.

The contract issued to the successful consultant is subject to the provisions of Executive Order 11246 (Affirmative Action to Ensure Equal Employment Opportunity) and to the provisions of the Department of Transportation Regulation 49 CRF Part 26 (Disadvantaged Business Enterprise Participation). DBE firms are encouraged to participate.
III. SCOPE OF WORK

Basic engineering services normally required for airport development projects involves services generally of an architectural, civil, geotechnical, structural, mechanical, and electrical engineering nature. In addition, there may be some services outside those normally considered basic that are discussed in paragraph F. Special Services. The basic services are usually conducted in, but are not limited to, five distinct and sequential phases. Proposers are required to set out their qualifications and to propose on the following scope of work.

A. Preliminary Phase: This phase involves those activities required for defining the scope of a project and establishing preliminary requirements. Some examples of activities within this phase of a project include, but are not limited to:

1. Coordinating with the Sponsor on project scope requirements, finances, schedules, operational safety and phasing considerations, site access and other pertinent matters.

2. As applicable, coordinating project with local FAA personnel and other interested stakeholders to identify potential impacts to their operations.

3. Assisting the Sponsor in the preparation of necessary pre-applications, applications, and required documents for federal grants, including Disadvantaged Business Enterprise (DBE) plan and goals, and exhibits.

4. Planning, procuring, and/or preparing necessary surveys, geotechnical engineering investigations, field investigations, and architectural and engineering studies required for design considerations.

5. Develop design schematics, sketches, environmental and aesthetic considerations, project recommendations, and preliminary layouts and cost estimates.

6. Preparing project design criteria and other bridging documents commonly used for alternative project delivery methods such as design-build contracting.

B. Design Phase: This phase includes all activities required to undertake and accomplish a full and complete project design. Examples include, but are not limited to:

1. Conducting and attending meetings and design conferences to obtain information and to coordinate or resolve design matters.

2. Collecting engineering data and undertaking field investigations; performing geotechnical engineering studies; and performing architectural, engineering, and special environmental studies.

3. Preparing necessary engineering reports and recommendations.

4. Preparing detailed plans, specifications, cost estimates, and design/construction schedules.

6. Printing and providing necessary copies of engineering drawings and contract specifications.

C. Bidding or Negotiation Phase: This phase, at a minimum, involves providing plans, specifications, and all bid documents. The phase also includes assisting the Sponsor in advertising and securing bids, negotiating for services, analyzing bid results, furnishing recommendations on the award of contracts, and preparing contract documents.

D. Construction Phase: This phase includes all basic services rendered after the award of a construction contract including, but not limited to:

1. Providing consultation and advice to the Sponsor during all phases of construction.

2. Representing the Sponsor at preconstruction conferences.

3. Providing on site construction inspection and management involving the services of a full-time resident engineer, inspector, or manager during the construction or installation phase of a project, and providing appropriate reports to the Sponsor.

4. Reviewing and approving shop and erection drawings submitted by contractors for compliance with design concept/drawings.

5. Reviewing, analyzing, and accepting laboratory and mill test reports of materials and equipment.

6. Preparing and negotiating change orders and supplemental agreements.

7. Observing or reviewing performance tests required by specifications.

8. Determining amounts owed to contractors and assisting Sponsors in the preparation of payment requests for amounts reimbursable from grant projects.

9. Conducting wage rate reviews of certified payrolls.

10. Making final inspections and submitting punch-lists and a report of the completed project to the Sponsor, including "as built" drawings.

E. Project Closeout Phase: This phase includes all basic services rendered after the completion of a construction contract, including, but not limited to:

1. Making final inspections and submitting punch-lists and a report of the completed project to the Sponsor.

2. Providing record drawings.

3. Preparing summary of material testing report.
4. Preparing summary of project change orders.

5. Preparing grant amendment request and associated justification, if applicable.

6. Preparing final project reports including financial summary.

7. Obtaining release of liens from all contractors.

F. **Special Services:** The development of some projects may involve activities or studies outside the scope of the basic design services routinely performed by the consultant. These special services may vary greatly in scope, complexity, and timing and may involve a number of different disciplines and fields of expertise. Proposers may be required to provide special services, or subcontract with third party individuals or companies for such services. Special services include, but are not limited to, the following:

1. Soils investigation, including core sampling, laboratory tests, related analyses, and reports.

2. Detailed mill, shop, and/or laboratory inspections of materials and equipment.

3. Land surveys and topographic maps.

4. Field and/or construction surveys.

5. Photogrammetry surveys.

6. Onsite construction inspection and/or management involving the services of a full-time resident engineer(s), inspector(s), or manager(s) during the construction or installation phase of a project. This differs from the periodic inspection responsibilities included as part of the basic services.

7. Miscellaneous plans, studies, and assessment reports including environmental, noise, etc.

8. Expert witness testimony in litigation involving specific projects.

9. Project feasibility studies.

10. Assist Sponsor in preparing equipment (i.e. snow removal, Airport Rescue and Fire Fighting, etc.) specifications for procurement purposes.

11. Public information and community involvement surveys, studies, and activities.

13. Assisting the Sponsor in the preparation of necessary applications for local, State, and Federal grants.


15. Preparation of property maps.


17. Preparation of final report.

IV. EVALUATION PROCESS

1. The Evaluation process will be in strict accordance with Federal Aviation Advisory Circular 150/5100-14E, Architectural, Engineering and Planning Consultant Services for Airport Grant Projects and 49 CFR Part 18.

V. EVALUATION CRITERIA

Evaluation criteria contained in FAA Advisory Circular 150/5100-14D Chapter Two, will be applied in the following order of importance:

<table>
<thead>
<tr>
<th>EVALUATION CRITERIA</th>
<th>POSSIBLE POINTS</th>
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<tbody>
<tr>
<td>(1) Recent experience in airport planning and development projects</td>
<td>30</td>
</tr>
<tr>
<td>(2) Capability to perform all aspects of project</td>
<td>30</td>
</tr>
<tr>
<td>(3) Reputation</td>
<td>20</td>
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<tr>
<td>(4) Ability to meet schedules</td>
<td>20</td>
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<tr>
<td>(5) Quality of previous airport project undertaken</td>
<td>25</td>
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<tr>
<td>(6) Familiarity with Sponsor and project location</td>
<td>25</td>
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<tr>
<td>(7) Understanding the airport and proposed projects</td>
<td>30</td>
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<tr>
<td>(8) Understanding the Sponsor’s special concerns</td>
<td>10</td>
</tr>
<tr>
<td>(9) Interest shown</td>
<td>10</td>
</tr>
<tr>
<td>(10) Interviews (if held)</td>
<td>50</td>
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</table>

A short list may be developed from the submittals received. Consultants on the short list may be asked to attend an interview prior to final Evaluation being made. A schedule of fees will be negotiated with the selected consultant for the services to be performed under the initial NMDOT - Aviation Division or FAA grant. Subsequent fees will be negotiated on a task order basis as additional grants are obtained.

It is the intent of the Sponsor to enter into a contract with the most qualified firm no later than OCTOBER 1, 2020. The consulting firm most qualified to perform engineering services for the contemplated projects will be selected and consulting fees for each project will be negotiated in accordance with FAA regulations.
AGENDA ITEM NO. 2 – ABSTRACT
LEGAL COMMITTEE MEETING
Thursday, April 23, 2020 at 4:00 PM
Roswell Convention & Civic Center
912 N. Main St. Meeting Room A, Roswell, NM 88201
Ord. 20-04
Industrial Pretreatment Sewer Use

**ACTIONS REQUESTED:** Review and recommend to full City Council any changes to draft ordinance prior to a public hearing on Ord. 20-04 relating to Industrial Wastewater Regulation updates.

**BACKGROUND:**
Initiated by: Aaron Holloman/James Norton

The City maintains its own water and sewer system. Pursuant to statutory authority it regulates potential pollutants that may be introduced into the system. The City has not undertaken a major revision of the Ordinance regulating those pollutants in many years. The current updates incorporate changes recommended by the EPA in its model ordinance. The biggest changes include more specificity in the types of reporting required and more mechanisms for ensuring compliance.

Two versions are included in the packet: one clean copy and one redlined version that shows the all revisions to the ordinance and where changes were made. Also attached is the EPA Model Ordinance.

**FINANCIAL CONSIDERATION:** None at this time.

**LEGAL REVIEW:** The City Attorney assisted in drafting changes to the ordinance.

**BOARD and/or COMMITTEE ACTION:**
City Council voted on April 9, 2020 to authorize advertisement for a public hearing, which could then be held as soon as the May City Council Meeting.

The Legal Committee is scheduled to meet on Thursday, April 23, 2020.

**STAFF RECOMMENDATION:** Review and recommend to full City Council any changes to draft ordinance prior to a public hearing on Ord. 20-04 relating to Industrial Wastewater Regulation updates.
ORDINANCE 20-04

AN ORDINANCE AMENDING THE ROSWELL CITY CODE CONCERNING INDUSTRIAL WASTEWATER REGULATION

Whereas, the City of Roswell maintains a municipal sewer system and has adopted regulations pertaining to the use of the sewer system for certain industrial users pursuant to the authority granted by NMSA 1978, § 3-27-3;

Whereas, the City of Roswell now desires to update those regulations to comport with recommendations made by the U.S. Environmental Protection Agency’s model ordinance; and

Whereas, the City believes that the changes will help to protect its water facilities from pollution, serve the public, and be in the best interest of the city as a whole.

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

SECTION 1. THE ROSWELL CITY CODE SECTION 26-57 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-57. - Definitions and abbreviations.

(a) Unless otherwise indicated by specific context, the meanings of the terms in this division are as follows:

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended (33 United States Code § 1251 et seq.).

Approval authority means the regional administrator for the environmental protection agency or his authorized representative.

Authorized representative of industrial user means 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.

Batch discharge means any indirect discharge at an inconsistent rate in a quantity or quality less than a slug discharge.

Best Management Practices or BMP means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sections 26-64 and 26-65. BMP 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.

B.O.D., BOD, BOD5 (denoting biochemical oxygen demand) means 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).

Building drain means the part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two feet outside the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal.

Categorical Pretreatment Standard or Categorical Standard. 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.

C.O.D. , COD (denoting chemical oxygen demand) is 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).

Composite sample means 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.

Control authority means the approval authority and/or the director in an approved city pretreatment program under the provisions of 40 CFR., 403.11.

Cooling water means the water discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant is heat.

Direct discharge means the discharge of treated or untreated wastewater directly to the ground or surface waters of the state.

Director means the city manager or his authorized representative.
Environmental Protection Agency or EPA means 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.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storing and sale of produce.

Grab sample means 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.

Hazardous waste means substances, materials, waters or wastes which are hazardous as defined by 40 CFR Part 261 and/or any other applicable state or federal regulation.

Holding tank waste means any wastes from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Indirect discharge. 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).

Industrial liquid wastes means 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.

Industrial user means any user who discharges industrial liquid wastes into the city's POTW.

Interference means 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), the Clean Air Act, the Toxic Substances Control Act, or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

Limits means local limits and pretreatment standards.

Local limits means the limits on the discharge or regulation of pollutants to the POTW as developed by the director.
Monitoring facility means 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.

Municipal sewer system means 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.

National Categorical Pretreatment Standard or pretreatment standard means any (present or future) regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 and 307 of the Act (33 U.S.C. 1317) which applies to a specific category of industrial users.

National Prohibitive Discharge Standard or prohibitive discharge standard means any (present or future) regulation developed under the authority of 307 of the Act and 40 CFR, Section 403.5.

National Pollution Discharge Elimination System or NPDES permit means a discharge permit issued by the approval authority pursuant to Section 402 of the Act (33 U.S.C. 1342).

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

New source means:

(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 program

   (i) any placement, assembly, or installation of facilities or equipment; or

   (ii) 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.

Normal domestic wastewater means 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).

pH means the negative logarithm of the concentration of hydrogen ions in grams per liter of a solution.

Pass through means 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).

Pollutant means any dredged spoil, solid waste, incinerator residue, wastewater, garbage, wastewater sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, city and agricultural waste discharged into water.

Pollution means the man-made or man-induced alteration of the chemical, physical, biological, thermal, and radiological integrity of water.

Pretreatment or treatment means 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.

Pretreatment requirement means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

Pretreatment standard means any (present or future) regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307 and 308 of the Act, which applies to industrial users.

Publicly owned treatment works (POTW) means 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, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are users of the city's POTW.

POTW treatment plant means that portion of the POTW designed to provide treatment to wastewater.

Public sewer means a sewer in which all owners of abutting properties shall have equal rights, and is controlled by public authority.

Sanitary sewer means the public sewer portion of a POTW which transports wastewater and to which storm, surface and groundwater are not intentionally admitted.

Sewage means a combination of water-carried wastes from users together with such ground, surface and storm waters as may be present.

Significant industrial user means any user meeting the criteria as described in 40 CFR 403.3.

Significantly violating user means any user meeting the criteria as described in 40 CFR 403.8(2)(vii).

Slug discharge means 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.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the executive office of the president, office of management and budget, most recent issue.

Standard methods shall mean 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.

Stormwater means any flow occurring during or following any form of natural precipitation and resulting therefrom.

Storm sewer means a sewer which carries storm and surface waters and drainage, but excludes wastewater, sewage, and industrial liquid wastes other than unpolluted cooling water.

Suspended solids (SS) means solids that either float on the surface of, or are suspended in water, wastewater or other liquids and which are removable by laboratory filtering.

Total toxic organics means the summation of all quantifiable values greater than 0.01 mg/l for the organic compounds listed in 40 CFR 433.11.

Toxic pollutant means 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.

Trap means 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.

Unpolluted process water means 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.

User or Industrial User means any person who contributes, causes or permits the contribution of wastewater into the city's POTW.

Waste hauler means any person who collects holding tank waste.

Wastewater shall mean 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.

Wastewater discharge permit or permit means the permit issued by the director which stipulates the conditions under which the user may discharge to the POTW.

Wastewater treatment works means 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.

Waters of the state means 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.
Other terms. Unless the context of usage indicates otherwise, the meaning of terms in this
division not defined in this section shall be defined in the Glossary: Water and Wastewater
Control Engineering, prepared by the Joint Editorial Board of the American Public Health
Association, American Society of Civil Engineers, American Water Works Association and
Water Pollution Control Federation, copyright 1969.

(b) 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.
(12) RCRA – Resource Conservation and Recovery Act
(13) USC. United States Code.
(14) SIC. Standard industrial classification.

SECTION 2. THE ROSWELL CITY CODE SECTION 26-58 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-58. – Purpose and Policy.

This ordinance sets forth uniform requirements for Users of the Public Owned Treatment works
for the City of Roswell and enables the City to comply with all applicable State and Federal
Laws, including the Clean Water Act (333 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 of Roswell 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.

SECTION 3. THE ROSWELL CITY CODE SECTION 26-61 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-61. - 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.

SECTION 4. THE ROSWELL CITY CODE SECTION 26-62 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-62. - Local limits.

(a) Specific discharge limitations.

(1) Specific discharge limitations. No significant industrial user (SIU) shall discharge or cause to be discharged wastewater that exceeds the following limits:

<table>
<thead>
<tr>
<th>Pollutant (a)</th>
<th>Daily Maximum Discharge Limit</th>
<th>Units of Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>0.22</td>
<td>mg/L</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.058</td>
<td>mg/L</td>
</tr>
<tr>
<td>Chromium</td>
<td>4.26</td>
<td>mg/L</td>
</tr>
<tr>
<td>Copper</td>
<td>2.65</td>
<td>mg/L</td>
</tr>
<tr>
<td>Lead</td>
<td>1.74</td>
<td>mg/L</td>
</tr>
<tr>
<td>Pollutant</td>
<td>Concentration</td>
<td>Unit</td>
</tr>
<tr>
<td>------------------------</td>
<td>---------------</td>
<td>--------</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.104</td>
<td>mg/L</td>
</tr>
<tr>
<td>Molybdenum</td>
<td>1.96</td>
<td>mg/L</td>
</tr>
<tr>
<td>Nickel</td>
<td>4.83</td>
<td>mg/L</td>
</tr>
<tr>
<td>Selenium</td>
<td>0.122</td>
<td>mg/L</td>
</tr>
<tr>
<td>Silver</td>
<td>2.01</td>
<td>mg/L</td>
</tr>
<tr>
<td>Zinc</td>
<td>4.30</td>
<td>mg/L</td>
</tr>
<tr>
<td>5-Day Biochemical Oxygen Demand (BOD5)</td>
<td>4,833</td>
<td>lbs./day(^{(b)})</td>
</tr>
<tr>
<td>Total Suspended Solids (TSS)</td>
<td>10,070</td>
<td>lbs./day(^{(b)})</td>
</tr>
<tr>
<td>Total Nitrogen (TKN+NO(_2)+NO(_3))</td>
<td>165.7</td>
<td>lbs/day(^{(b)})</td>
</tr>
<tr>
<td>pH</td>
<td>6.0 to 11.0</td>
<td></td>
</tr>
</tbody>
</table>

(a) All pollutants as total.

(b) This limit is the total mass in pounds per day (lbs./day) that are available to allocate to all significant industrial users. Allocations are at the sole discretion of the city.

(2) The city may, at its sole discretion, implement local limits through allocation of the maximum allowable industrial load (MAIL) to significant industrial users that correspond to the uniform concentration local limits shown in the table above. The MAILs that correspond to the daily maximum discharge limits in the local limits report dated May 21, 2017 are hereby incorporated by reference.

(3) The director may establish more stringent pollutant limits, additional site-specific pollutant limits, best management practices, or additional pretreatment requirements when, in the judgment of the city, such limitations are necessary to implement the provisions of chapter 26, article III, Sewers and Sewerage Disposal.

(4) A significant industrial user or other designated industrial user who introduces wastewater into the POTW may be required to submit a salinity control plan if monitoring of the industrial user's discharge shows it exceeds 1,200 mg/L total dissolved solids (TDS). This plan shall contain a description of the chemicals and materials used that contribute to the TDS concentration and the source control measures that could be implemented to reduce the TDS concentration in the discharge to less than 1,200 mg/L.
or to a level specified by the city that prevents discharges that cause or contribute to pass through or interference.

(5) The following limits shall apply to wastewaters that are discharged from the groundwater cleanup of petroleum or gasoline underground storage tanks or other remediation wastewaters containing these pollutants or where these pollutants are appropriate surrogates. It shall be unlawful for any industrial user to discharge or cause to be discharged any waste or wastewater that exceeds the following limits, as applicable.

<table>
<thead>
<tr>
<th>Pollutant (a)(c)</th>
<th>Daily Maximum Limit (mg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzene</td>
<td>0.050</td>
</tr>
<tr>
<td>BTEX (b)</td>
<td>0.750</td>
</tr>
</tbody>
</table>

(a) All pollutants shown in the table are total.

(b) BTEX shall be measured as the sum of Benzene, Ethylbenzene, Toluene and Xylenes.

(c) These limits are based upon installation of air stripping technology as described in the EPA document: "Model NPDES Permit for Discharges Resulting from the Cleanup of Gasoline Released from Underground Storage Tanks. June 1989."

SECTION 5. THE ROSWELL CITY CODE SECTION 26-65 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-65. - 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
(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 fleshings, 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 section 26-80, cost recovery system.

(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 chlorine 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 26-67.1 of this ordinance;

(19) Any chlorinated solvents.

SECTION 6. THE ROSWELL CITY CODE SECTION 26-67 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-67. - 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.

SECTION 7. THE ROSWELL CITY CODE SECTION 26-67.1 SHALL BE ADDED TO READ AS FOLLOWS:
Sec. 26-67.1 – Hauled Wastewater.

(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 ordinance 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 ordinance.

(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.

SECTION 8. THE ROSWELL CITY CODE SECTION 26-68 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-68. - 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 the effective date of Ordinance No. 1103 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 26-68 of this ordinance; 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.

SECTION 9. THE ROSWELL CITY CODE SECTION 26-70 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-70. - 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 26-73(h) of this ordinance. 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) Sample must be performed in accordance with procedures set out in Section6.11
of this ordinance.

(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, completing final 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 in subsection (c)(9)a. 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 the following 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 4 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 ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 26-79 and 26-83 of this ordinance. 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.
SECTION 10. THE ROSWELL CITY CODE SECTION 26-73 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-73. - Reporting requirements.

(a) Baseline Reporting Requirements

(1) Within either one hundred eighty (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 paragraph 2, below. At least ninety (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 paragraph 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 Section 26-70(b)(1), Section 26-70(b)(3), Section 26-70(b)(8), and Section 26-70(b)(6).


(i) The User shall provide the information required in Section 26-70(b)(9).

(ii) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

(iii) 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;

(iv) Sampling and analysis shall be performed in accordance with Section 26-73(h);

(v) 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;

(vi) 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
c. Compliance Certification. A statement, reviewed by the User’s Authorized Representative as defined in Section 1.4 C 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 Section 26-73(b) of this ordinance.

e. Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 26-73(k) A of this ordinance and signed by an Authorized Representative as defined in Section 1.4C.

(b) Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by Section 26-73(a)(2)(d) of this ordinance:

(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 (9) months;

(3) The User shall submit a progress report to the director no later than fourteen (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 (9) months elapse between such progress reports to the director.

(c) Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (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 26-70(b)(6) and (9) and 26-73(a)(1) of this ordinance. For Users subject to
equivalent mass or concentration limits established in accordance with the procedures in
Section 26-61, 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 26-73(k) A of this ordinance. All sampling will be done in conformance with Section
26-73(i).

(d) Periodic Compliance Reports

(1) Except as specified in Section 26-73(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
five thousand (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 26-63 of this ordinance.

Reduced reporting is not available to Industrial Users that have in the last two (2) years
been in Significant Noncompliance, as defined in Section 9 of this ordinance. 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
[Superintendent], 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 Section
26-73(k) A of this ordinance.

(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 Section 26-73(i) of this ordinance, 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 Section 26-70 of this ordinance.

(2) The director may issue an individual wastewater discharge permit or modify an existing wastewater discharge permit of this ordinance 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 twenty-four (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 thirty (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 one hundred (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 wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no
later than one hundred and eighty (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 Section 26-73(e) of this ordinance. 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 Sections 26-73(a), (c), and (d) of this ordinance.

(2) Dischargers are exempt from the requirements of paragraph 1, above, during a calendar month in which they discharge no more than fifteen (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 fifteen (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 ninety (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 ordinance, 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 Section 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 Section 26-73(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 paragraphs Section 26-73(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 ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, 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 Section 26-62(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 (3) 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 Section 26-73(a)(2)(e); Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 26-73(c); Users submitting periodic compliance reports required by Section 26-73(d) (1) to (4), and Users submitting an initial request to forego sampling of a pollutant on the basis of Section 26-73(a)(2). The following certification
statement must be signed by an Authorized Representative as defined in Section 26-57:

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.

SECTION 11. THE ROSWELL CITY CODE SECTION 26-76 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-76. - 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 ordinance 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 ordinance.

(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.

SECTION 12. THE ROSWELL CITY CODE SECTION 26-79 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-79. - 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 waste-water 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 ordinance.

(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.

SECTION 13. THE ROSWELL CITY CODE SECTION 26-83 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-83. - Violations.
(a) Administrative Fines

(1) When the director finds that a User has violated, or continues to violate, any provision of this ordinance, 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. 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 10% of the unpaid balance, and interest shall accrue thereafter at a rate of 10% 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 ordinance, 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 ordinance 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 ordinance, 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 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 ordinance, 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 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, 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 ordinance, 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 ordinance shall, upon conviction, be 
punished by a fine of not more than $1,00 per violation, per day, or imprisonment for not 
more than 90 days, or both.

(e) Nonexclusive Remedies

The remedies provided for in this ordinance 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.

SECTION 14. THE ROSWELL CITY CODE SECTION 26-84 SHALL BE REPEALED AND REPLACED TO 
READ AS FOLLOWS:

Sec. 26-84 – 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 twelve (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:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six 
percent (66%) or more of all the measurements taken for the same pollutant parameter taken 
during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard 
or Requirement, including Instantaneous Limits as defined;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three 
percent (33%) or more of wastewater measurements taken for each pollutant parameter 
during a six- (6-) 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);

(c) 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;

(d) 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;
(e) Failure to meet, within ninety (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;

(f) Failure to provide within forty-five (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;

(g) 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.

SECTION 15. ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT OR INCONSISTENT HEREWTH 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 16. 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 17. THIS ORDINANCE SHALL BE EFFECTIVE AFTER FIVE (5) DAYS FOLLOWING ITS PUBLICATION AS REQUIRED BY LAW.

PASSED, ADOPTED, SIGNED and APPROVED ________________, _____.

CITY SEAL

______________________
Dennis Kintigh, Mayor

ATTEST

______________________
Sharon Coll, City Clerk
ORDINANCE 20-04

AN ORDINANCE AMENDING THE ROSWELL CITY CODE CONCERNING INDUSTRIAL WASTEWATER REGULATION

Whereas, the City of Roswell maintains a municipal sewer system and has adopted regulations pertaining to the use of the sewer system for certain industrial users pursuant to the authority granted by NMSA 1978, § 3-27-3;

Whereas, the City of Roswell now desires to update those regulations to comport with recommendations made by the U.S. Environmental Protection Agency’s model ordinance; and

Whereas, the City believes that the changes will help to protect its water facilities from pollution, serve the public, and be in the best interest of the city as a whole.

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

SECTION 1. THE ROSWELL CITY CODE SECTION 26-57 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-57. - Definitions and abbreviations.

(a) Unless otherwise indicated by specific context, the meanings of the terms in this division are as follows:

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended (33 United States Code § 1251 et seq.).

Approval authority means the regional administrator for the environmental protection agency or his authorized representative.

Authorized representative of industrial user means 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.

(2)(3) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively;
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.

Batch discharge means any indirect discharge at an inconsistent rate in a quantity or quality less than a slug discharge.

Best Management Practices or BMP means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sections 26-64 and 26-65. BMP 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.

B.O.D., BOD, BOD5 (denoting biochemical oxygen demand) means 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).

Building drain means the part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two feet outside the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal.

Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307 and 317 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.

C.O.D., COD (denoting chemical oxygen demand) is 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).

Composite sample means 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.

Control authority means the approval authority and/or the director in an approved city pretreatment program under the provisions of 40 CFR., 403.11.

Cooling water means the water discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant is heat.

Direct discharge means the discharge of treated or untreated wastewater directly to the ground or surface waters of the state.

Director means the city manager or his authorized representative.
Environmental Protection Agency or EPA means 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.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storing and sale of produce.

Grab sample means 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.

Hazardous waste means substances, materials, waters or wastes which are hazardous as defined by 40 CFR Part 261 and/or any other applicable state or federal regulation.

Holding tank waste means any wastes from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Indirect discharge. The discharge or the introduction of nondomestic pollutants from any source regulated under Section 307(b) or (c) of the Act (33 United States Code § 1277), into the POTW (including holding tank waste discharged into the public sewer).

Industrial liquid wastes means 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.

Industrial user means any user who discharges industrial liquid wastes into the city's POTW.

Interference means 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), the Clean Air Act, the Toxic Substances Control Act, or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

Limits means local limits and pretreatment standards.

Local limits means the limits on the discharge or regulation of pollutants to the POTW as developed by the director.
Monitoring facility means 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.

Municipal sewer system means 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.

National Categorical Pretreatment Standard or pretreatment standard means any (present or future) regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of industrial users.

National Prohibitive Discharge Standard or prohibitive discharge standard means any (present or future) regulation developed under the authority of 307(b) of the Act and 40 CFR, Section 403.5.

National Pollution Discharge Elimination System or NPDES permit means a discharge permit issued by the approval authority pursuant to Section 402 of the Act (33 U.S.C. 1342).

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

New source means any:

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 as described in 40 CFR 403.3 (k) 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 program

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) 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.

Normal domestic wastewater means 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).

pH means the negative logarithm of the concentration of hydrogen ions in grams per liter of a solution.

Pass through means 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).

Pollutant means any dredged spoil, solid waste, incinerator residue, wastewater, garbage, wastewater sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, city and agricultural waste discharged into water.

Pollution means the man-made or man-induced alteration of the chemical, physical, biological, thermal, and radiological integrity of water.
Pretreatment or treatment means 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(d).

Pretreatment requirement means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

Pretreatment standard means any (present or future) regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Act, which applies to industrial users.

Publicly owned treatment works (POTW) means 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, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are users of the city's POTW.

POTW treatment plant means that portion of the POTW designed to provide treatment to wastewater.

Public sewer means a sewer in which all owners of abutting properties shall have equal rights, and is controlled by public authority.

Sanitary sewer means the public sewer portion of a POTW which transports wastewater and to which storm, surface and groundwater are not intentionally admitted.

Sewage means a combination of water-carried wastes from users together with such ground, surface and storm waters as may be present.

Significant industrial user means any user meeting the criteria as described in 40 CFR 403.3(t).

Significantly violating user means any user meeting the criteria as described in 40 CFR 403.8(f)(2)(vii).

Slug discharge means 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.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the executive office of the president, office of management and budget, most recent issue.

Standard methods shall mean 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.

Stormwater means any flow occurring during or following any form of natural precipitation and resulting therefrom.

Storm sewer means a sewer which carries storm and surface waters and drainage, but excludes wastewater, sewage, and industrial liquid wastes other than unpolluted cooling water.

Suspended solids (SS) means solids that either float on the surface of, or are suspended in water, wastewater or other liquids and which are removable by laboratory filtering.

Total toxic organics means the summation of all quantifiable values greater than 0.01 mg/l for the organic compounds listed in 40 CFR 433.11(e).

Toxic pollutant means 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(a)(1) of the Act.

Trap means 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.

Unpolluted process water means 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.

User or Industrial User means any person who contributes, causes or permits the contribution of wastewater into the city's POTW.

Waste hauler means any person who collects holding tank waste.

Wastewater shall mean 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.

Wastewater discharge permit or permit means the permit issued by the director which stipulates the conditions under which the user may discharge to the POTW.

Wastewater treatment works means 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.

Waters of the state means 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.

Other terms. Unless the context of usage indicates otherwise, the meaning of terms in this division not defined in this section shall be defined in the Glossary: Water and Wastewater Control Engineering, prepared by the Joint Editorial Board of the American Public Health Association, American Society of Civil Engineers, American Water Works Association and Water Pollution Control Federation, copyright 1969.

(b) 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”).
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.
12. RCRA – Resource Conservation and Recovery Act

SECTION 2. THE ROSWELL CITY CODE SECTION 26-58 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-58. – Purpose and Policy.

This ordinance sets forth uniform requirements for Users of the Public Owned Treatment works for the City of Roswell and enables the City to comply with all applicable State and Federal Laws, including the Clean Water Act (33 US Code 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 of Roswell 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.

SECTION 3. THE ROSWELL CITY CODE SECTION 26-61 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-61. - Effect of additional state or federal requirements.

(a) —Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter 1, 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.

SECTION 4. THE ROSWELL CITY CODE SECTION 26-62 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-62. - Local limits.

(a) Specific discharge limitations.

(1) Specific discharge limitations. No significant industrial user (SIU) shall discharge or cause to be discharged wastewater that exceeds the following limits:

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Daily Maximum Discharge Limit</th>
<th>Units of Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>0.22</td>
<td>mg/L</td>
</tr>
<tr>
<td>Cadmium</td>
<td>0.058</td>
<td>mg/L</td>
</tr>
<tr>
<td>Substance</td>
<td>Value</td>
<td>Unit</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td>Chromium</td>
<td>4.26</td>
<td>mg/L</td>
</tr>
<tr>
<td>Copper</td>
<td>2.65</td>
<td>mg/L</td>
</tr>
<tr>
<td>Lead</td>
<td>1.74</td>
<td>mg/L</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.104</td>
<td>mg/L</td>
</tr>
<tr>
<td>Molybdenum</td>
<td>1.96</td>
<td>mg/L</td>
</tr>
<tr>
<td>Nickel</td>
<td>4.83</td>
<td>mg/L</td>
</tr>
<tr>
<td>Selenium</td>
<td>0.122</td>
<td>mg/L</td>
</tr>
<tr>
<td>Silver</td>
<td>2.01</td>
<td>mg/L</td>
</tr>
<tr>
<td>Zinc</td>
<td>4.30</td>
<td>mg/L</td>
</tr>
<tr>
<td>5-Day BOD5</td>
<td>4,833</td>
<td>lbs./day (b)</td>
</tr>
<tr>
<td>Total Suspended Solids (TSS)</td>
<td>10,070</td>
<td>lbs./day (b)</td>
</tr>
<tr>
<td>Total Nitrogen (TKN+NO₂+NO₃)</td>
<td>165.7</td>
<td>lbs/day (b)</td>
</tr>
<tr>
<td>pH</td>
<td>6.0 to 11.0</td>
<td>Standard Units</td>
</tr>
</tbody>
</table>

(b) All pollutants as total

(a) This limit is the total mass in pounds per day (lbs./day) that are available to allocate to all significant industrial users. Allocations are at the sole discretion of the city. All pollutants as total.

(b) This limit is the total mass in pounds per day (lbs./day) that are available to allocate to all significant industrial users. Allocations are at the sole discretion of the city.

(2) The city may, at its sole discretion, implement local limits through allocation of the maximum allowable industrial load (MAIL) to significant industrial users that correspond to the uniform concentration local limits shown in the table above. The MAILs that correspond to the daily maximum discharge limits in the local limits report dated May 21, 2017 are hereby incorporated by reference.

(3) The director may establish more stringent pollutant limits, additional site-specific
pollutant limits, best management practices, or additional pretreatment requirements when, in the judgment of the city, such limitations are necessary to implement the provisions of chapter 26, article III, Sewers and Sewerage Disposal.

(4) A significant industrial user or other designated industrial user who introduces wastewater into the POTW may be required to submit a salinity control plan if monitoring of the industrial user's discharge shows it exceeds 1,200 mg/L total dissolved solids (TDS). This plan shall contain a description of the chemicals and materials used that contribute to the TDS concentration and the source control measures that could be implemented to reduce the TDS concentration in the discharge to less than 1,200 mg/L or to a level specified by the city that prevents discharges that cause or contribute to pass through or interference.

(5) The following limits shall apply to wastewaters that are discharged from the groundwater cleanup of petroleum or gasoline underground storage tanks or other remediation wastewaters containing these pollutants or where these pollutants are appropriate surrogates. It shall be unlawful for any industrial user to discharge or cause to be discharged any waste or wastewater that exceeds the following limits, as applicable.

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Daily Maximum Limit (mg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzene</td>
<td>0.050</td>
</tr>
<tr>
<td>BTEX</td>
<td>0.750</td>
</tr>
</tbody>
</table>

(a) All pollutants shown in the table are total.

(b) BTEX shall be measured as the sum of Benzene, Ethylbenzene, Toluene and Xylenes.

(c) These limits are based upon installation of air stripping technology as described in the EPA document: "Model NPDES Permit for Discharges Resulting from the Cleanup of Gasoline Released from Underground Storage Tanks. June 1989." All pollutants shown in the table are total.

SECTION 5. THE ROSWELL CITY CODE SECTION 26-65 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-65. - 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 9.1, 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 fleshings, 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 section 26-80, cost recovery system.

(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;

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.

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.

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.

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).

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.

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.

Septic tank sludge trucked or hauled pollutants, except that such sludge may be discharged at selected locations as directed for this purpose discharge points designated by the director, in accordance with Section 26-67.1 of this ordinance;
(18)(19) Any chlorinated solvents.

SECTION 6.  THE ROSWELL CITY CODE SECTION 26-67 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-67. - 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.

SECTION 7.  THE ROSWELL CITY CODE SECTION 26-67.1 SHALL BE ADDED TO READ AS FOLLOWS:

Sec. 26-67.1 – Hauled Wastewater.

(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 ordinance 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 ordinance.

(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.

SECTION 8.  THE ROSWELL CITY CODE SECTION 26-68 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-68. - 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 the effective date of Ordinance No. 1103 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 26-68 of this ordinance; 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.

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.

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.

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.

SECTION 9. THE ROSWELL CITY CODE SECTION 26-70 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-70. - 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.

(c) Existing users required to obtain a permit under subsection (a) of this section shall apply for a wastewater discharge permit within 30 days after the effective date of Ordinance No. 1103 or by the date determined by the director and proposed new users required to obtain a permit under subsection (a) of this section shall apply at least 90 days prior to connecting to or contributing to the POTW. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

(1) The name and address and location 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)(vi);

(5) Time and duration of contribution;

(6) Average daily and maximum daily wastewater flow rates, including daily, monthly and seasonal variations, if any;

(7) 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)).
(6)(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;

(7) Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;

(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)(10) 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 26-73(h) of this ordinance. 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 in Section 6.11 of this ordinance.

(9)(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, completing final 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 in subsection (c)(9)a. 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.

(10)(12) Each product produced by type, amount, process or processes and rate of production;

(14)(13) Type and amount of raw materials processed (average and maximum per day);

(12)(14) Number and type of employees and hours of operation of plant and proposed or actual hours of operation of pretreatment system;

(12)(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.

(4)(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. Permits may contain the following:

(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 the following 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 4 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;

d-e. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;

d-f. — Compliance schedules;

d-g. — Requirements for submission of technical reports or discharge reports;

d-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;

d-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;

d-j. — Requirements for notification of slug and/or batch discharges;

d-k. — Requirements for notification of potential discharge problems;

d-l. — Statement regarding the applicable civil and criminal penalties for violations and noncompliance with the permit;

d-m. — Statement that the city will monitor and inspect the permitted premises at a
minimum frequency of once per year.

(14) Statement that the permit is nontransferable without prior approval of the director.

m.n. Other conditions as deemed appropriate by the city to ensure compliance with this division.

(e)(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.

(f)(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.

(g)(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 ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 26-79 and 26-83 of this ordinance. 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.

SECTION 10. THE ROSWELL CITY CODE SECTION 26-73 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-73. - Reporting requirements.

(a) Baseline Reporting Requirements.
(1) Within either one hundred eighty (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 paragraph 2, below. At least ninety (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 paragraph 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 Section 26-70(b)(1), Section 26-70(b)(3), Section 26-70(b)(8), and Section 26-70(b)(6).


   (i) The User shall provide the information required in Section 26-70(b)(9).

   (ii) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

   (iii) 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.

   (iv) Sampling and analysis shall be performed in accordance with Section 26-73(h);

   (v) 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;

   (vi) 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 Section 1.4 C and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if
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 Section 26-73(b) of this ordinance.

e. Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 26-73(k) A of this ordinance and signed by an Authorized Representative as defined in Section 1.4C.

(b) Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by Section 26-73(a)(2)(d) of this ordinance:

(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 (9) months;

(3) The User shall submit a progress report to the director no later than fourteen (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 (9) months elapse between such progress reports to the director.

(c) Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (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 26-70(b)(6) and (9) and 26-73(a)(1) of this ordinance. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 26-61, 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
(d) Periodic Compliance Reports

(1) Except as specified in Section 26-73(d)(3), all Users must, at a frequency determined by the director, no less than twice per year (June and December or on dates specified) submit 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 five thousand (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;

   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 26-63 of this ordinance.

Reduced reporting is not available to Industrial Users that have in the last two (2) years been in Significant Noncompliance, as defined in Section 9 of this ordinance. 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 Superintendent, 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 Section 26-73(k) A of this ordinance.

(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 Section 26-73(i) of this ordinance, the results
of this monitoring shall be included in the report.

(c) 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 Section 26-70 of this ordinance.

(2) The director may issue an individual wastewater discharge permit or modify an existing
wastewater discharge permit of this ordinance 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 twenty-four (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
thirty (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
carried out 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
Person discharges more than one hundred (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
correlation of such constituents in the wastestream discharged during that calendar
month, and an estimation of the mass of constituents in the wastestream expected to be
discharged during the following twelve (12) months. All notifications must take place no
later than one hundred and eighty (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
Section 26-73(e) of this ordinance. 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 Sections 26-73(a), (c), and (d) of this ordinance.

(2) Dischargers are exempt from the requirements of paragraph 1, above, during a calendar month in which they discharge no more than fifteen (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 fifteen (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 ninety (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 ordinance, 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 Section 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 Section 26-73(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 paragraphs Section 26-73(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 ordinance shall retain, and make available
for inspection and copying, all records of information obtained pursuant to any monitoring
activities required by this ordinance, 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 Section 26-
62(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 (3) 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 Section 26-
73(a)(2)(e); Users submitting reports on compliance with the categorical Pretreatment
Standard deadlines under Section 26-73(c); Users submitting periodic compliance reports
required by Section 26-73(d) (1) to (4), and Users submitting an initial request to forego
sampling of a pollutant on the basis of Section 26-73(a)(2). The following certification
statement must be signed by an Authorized Representative as defined in Section 26-57:

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.

SECTION 11. THE ROSWELL CITY CODE SECTION 26-76 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-76. - 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. Persons or occupants of premises where wastewater is created or discharged shall allow the city or its representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination or in the performance of any of their duties. 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 ordinance 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 ordinance.
(b) 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.

SECTION 12. THE ROSWELL CITY CODE SECTION 26-79 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-79. - 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 waste-water 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 ordinance.

(2) Nothing in this Section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this Section.

(c)(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.

(d) Any user who has violated or continues to violate any provisions of this division or permit or order issued hereunder, shall be liable to the city for a civil penalty, as allowed by law, plus actual damages incurred by the POTW per violation per day for as long as the violation continues. In addition to the above described penalty and damages, the city may recover reasonable attorney's fees, court costs and other expenses associated with enforcement activities, including sampling and monitoring costs.

SECTION 13. THE ROSWELL CITY CODE SECTION 26-83 SHALL BE AMENDED TO READ AS FOLLOWS:

Sec. 26-83. - Violations.

(a) Administrative Fines

(1) When the director finds that a User has violated, or continues to violate, any person discharges sewage, industrial liquid wastes or other wastes into the POTW contrary to the provisions of this division or any ordinance, an individual wastewater discharge permit, or order issued by the city, the city attorney hereunder, or any other Pretreatment Standard or Requirement, the director may commence an fine such User in an amount not to exceed $1,000. 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 10% of the unpaid balance, and interest shall accrue thereafter at a rate of 10% 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 for against the User.

(b) Injunction

When the director finds that a User has violated, or continues to violate, any provision of this ordinance, 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 ordinance on activities of the User. The director may also seek such other action as is appropriate for legal and/or equitable relief including damages in the municipal court, 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.

(e) Every person convicted of a violation of this division shall be guilty of a misdemeanor. The conviction and punishment of any person for a violation shall not excuse or exempt such person from the payment of any fee due or unpaid at the time of such conviction and nothing herein shall prevent a criminal prosecution of any violation of the provisions of this division. In addition to the penalties provided herein, the city may recover reasonable attorneys’ fees, court costs, court reporters’ fees and other expenses of litigation by appropriate suit at law against the person found to have violated this division or the orders, rules, regulations and permits issued hereunder.

(f) The city shall annually publish in the local newspaper a list of the industrial users which, during the previous 12 months, were determined to be significantly violating users.

(c) Civil Penalties

(1) A User who has violated, or continues to violate, any provision of this ordinance, 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 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 ordinance, 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 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, 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 ordinance, 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 ordinance shall, upon conviction, be punished by a fine of not more than $1,00 per violation, per day, or imprisonment for not more than 90 days, or both.

(e) Nonexclusive Remedies

The remedies provided for in this ordinance 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.

(4) 40 CFR 403.16, up. et provision, and 40 CFR 403.17, bypass, shall be incorporated and become part of this section.

SECTION 14. THE ROSWELL CITY CODE SECTION 26-84 SHALL BE REPEALED AND REPLACED TO READ AS FOLLOWS:

Sec. 26-84 - Penalties. 26-84 – Publication of Users in Significant Noncompliance.

Any person convicted of a violation of this division shall be subject to fines of up to $1,000.00 for each violation or such other amount as allowed by state statute and terms of imprisonment as allowed by state statute.

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 twelve (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:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) 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);

(c) 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;

(d) 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;

(e) Failure to meet, within ninety (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;

(f) Failure to provide within forty-five (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;

(g) 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.

SECTION 15. 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 16. 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 17. THIS ORDINANCE SHALL BE EFFECTIVE AFTER FIVE (5) DAYS FOLLOWING ITS PUBLICATION AS REQUIRED BY LAW.

PASSED, ADOPTED, SIGNED and APPROVED ________________, _____.

CITY SEAL

_____________________________
Dennis Kintigh, Mayor

ATTEST

_________________
Sharon Coll, City Clerk
Ordinance Key

Required Pretreatment Streamlining Rule changes are designated as a *Required Streamlining Rule Change* in 10 point font bold italics.

[Informational notes are in brackets in 10 point bold font]

Optional requirements (not-required by 40 CFR Part 403) are labeled: "{optional}" in 10 point bold font.
EPA MODEL PRETREATMENT ORDINANCE

INTRODUCTION

The United States Environmental Protection Agency (EPA), Office of Wastewater Management, Office of Wastewater Management, Water Permits Division has prepared this Model Pretreatment Ordinance. It is for use by municipalities operating Publicly Owned Treatment Works (POTWs) that are required to develop pretreatment programs to regulate industrial discharges to their systems. The model ordinance should also be useful for communities with POTWs that are not required to implement a pretreatment program in drafting local ordinances to control nondomestic dischargers within their jurisdictions.

A municipality should not adopt the model ordinance verbatim. Instead, the model ordinance should be used as a guide for adopting new or revised provisions of local law to implement and enforce a pretreatment program that fulfills requirements set out in the Code of Federal Regulations (CFR). The municipality must consider conditions at its POTW and consult State law to determine what adjustments might need to be made to the model ordinance and what provisions are authorized under State law. Many provisions in the model ordinance contain blanks or brackets; these indicate that the provision must be adapted to the POTW’s circumstances. Also, bracketed notes in bold, 10 point print are provided for certain provisions, explaining issues the municipality must consider when crafting local provisions. To remove the line numbering go to File > Page Setup > Layout. Under Preview and Apply to: select Whole document order. Then click on Line Numbers and deselect Add line numbering.

Some provisions in the model ordinance are not strictly required by the General Pretreatment Regulations (40 CFR Part 403); however, they have been included because they may be useful in ensuring that the municipality has adequate legal authority to effectively implement its local pretreatment program. In addition, the model ordinance includes additional, other provisions that, while included in the “Pretreatment Streamlining Rule (October 14, 2005, 70 FR 60134) are not required elements of a local pretreatment program. These provisions are designated as optional, and are indicated as such in the ordinance by “{optional}”. Furthermore, POTWs considering adopting the non-required provisions of the Pretreatment Streamlining Rule should verify with their Approval Authority to determine whether these optional items are available for implementation. Where a municipality either must adopt a provision similar to the one in the model ordinance or develop its own means of accomplishing that section’s objective, the section is preceded by a bracketed note explaining the municipality’s options. Other provisions, such as the model ordinance’s statement of purpose and effective date, are necessary only to the extent that they are typical of any local ordinance.

POTWs should be aware that any change to their pretreatment ordinance is considered a modification to their approved pretreatment program. All modifications to a POTW’s approved pretreatment program must be submitted to the Approval Authority in accordance with 40 CFR 403.18. It is EPA’s expectation that States will review POTW ordinances to ensure that the ordinances are consistent with State law. POTWs should request this review from their States.
EPA Regions and representatives of various States and municipalities provided valuable comments in helping to prepare this document.

This EPA Model Pretreatment Ordinance also is available on EPA’s Web site at http://www.epa.gov/npdes/pretreatment in Adobe PDF format.
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4/23/2020 - Legal Committee --105-- City of Roswell, New Mexico
EPA MODEL PRETREATMENT ORDINANCE

ORDINANCE NO. [ ]

SECTION I—GENERAL PROVISIONS

1.1 Purpose and Policy

This ordinance sets forth uniform requirements for Users of the Publicly Owned Treatment Works for the [City of ] and enables [the City] to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code [U.S.C.] section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the Code of Federal Regulations [CFR] Part 403). The objectives of this ordinance are:

A. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;

B. To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;

C. To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

D. To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;

E. [Optional] To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and

F. 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.

This ordinance shall apply to all Users of the Publicly Owned Treatment Works. The ordinance authorizes the issuance of individual wastewater discharge permits [or general permit [optional]]; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires User reporting; [and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein. [Optional] [Note: Not all programs distribute the cost of the program through fees (some come out of the general budget) so Section 15 may not be applicable to your municipality and indicates that it is optional to have pretreatment charges and fees.]
1.2 Administration

Except as otherwise provided herein, [the Superintendent] shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon [the Superintendent] may be delegated by [the Superintendent] to a duly authorized [City] employee.

1.3 Abbreviations

The following abbreviations, when used in this ordinance, shall have the designated meanings:

BOD – Biochemical Oxygen Demand
BMP – Best Management Practice
BMR – Baseline Monitoring Report
CFR – Code of Federal Regulations
CIU – Categorical Industrial User
COD – Chemical Oxygen Demand
EPA – U.S. Environmental Protection Agency
gpd – gallons per day
IU – Industrial User
mg/l – milligrams per liter
NPDES – National Pollutant Discharge Elimination System
NSCIU – Non-Significant Categorical Industrial User
POTW – Publicly Owned Treatment Works
RCRA – Resource Conservation and Recovery Act
SIU – Significant Industrial User
SNC – Significant Noncompliance
TSS – Total Suspended Solids

1.4 Definitions

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

A. Act or “the Act.” The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. section 1251 et seq.

B. Approval Authority. [Note: Designate the State as the Approval Authority if the State has an EPA-approved pretreatment program. Alternatively, designate the appropriate Regional Administrator of EPA as the Approval Authority in a nonapproved State.]
C. Authorized or Duly Authorized Representative of the User.

(1) If the User is a corporation:

(a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(b) 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 discharge permit [or general permit (optional)] requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The individuals described in paragraphs 1 through 3, above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to [the City].

D. Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).

E. Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 2.1 A and B [40 CFR 403.5(a)(1) and (b)]. BMPs 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. [Note: BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.]
F. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) 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.

G. Categorical Industrial User. An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.

H. [City]. [The City of ] or [the City Council of ].

I. Chemical Oxygen Demand or COD. A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

J. Control Authority. The [City]

K. Daily Maximum. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

L. Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

M. Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

N. Existing Source. Any source of discharge that is not a “New Source.”

L. Grab Sample. A sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

M. Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any nondomestic source.

N. Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event. [Note: If the POTW would like the flexibility to measure compliance with either a single grab sample or sample representative of the discharge day, the POTW should establish both Daily Maximum and Instantaneous Limits.]

O. Interference. A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of [the
City’s] NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

P. Local Limit. Specific discharge limits developed and enforced by [the City] upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

Q. Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

R. Monthly Average. The sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

S. Monthly Average Limit. The highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

T. 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(c) 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)(b) or
(c) 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 program

(i) any placement, assembly, or installation of facilities or equipment; or
(ii) 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.

U. Noncontact Cooling Water. Water used for cooling that does not come into direct
contact with any raw material, intermediate product, waste product, or finished product.

V. Pass Through. A discharge which exits the POTW into waters of the United States in
quantities or 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 City's] NPDES
permit, including an increase in the magnitude or duration of a violation.

W. Person. Any individual, partnership, copartnership, firm, company, corporation,
association, joint stock company, trust, estate, governmental entity, or any other legal
entity; or their legal representatives, agents, or assigns. This definition includes all
Federal, State, and local governmental entities.

X. pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

Y. Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage,
garbage, sewage sludge, munitions, Medical Wastes, chemical wastes, biological
materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar
dirt, municipal, agricultural and industrial wastes, and certain characteristics of
wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Z. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants,
or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of,
introducing such pollutants into the POTW. This reduction or alteration can be obtained
by physical, chemical, or biological processes; by process changes; or by other means,
except by diluting the concentration of the pollutants unless allowed by an applicable Pretreatment Standard.

AA. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.

BB. Pretreatment Standards or Standards. Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

CC. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 2.1 of this ordinance.

DD. Publicly Owned Treatment Works or POTW. A treatment works, as defined by section 212 of the Act (33 U.S.C. section 1292), which is owned by [the City]. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

EE. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

FF. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).

GG. Significant Industrial User (SIU).

Except as provided in paragraphs (3) and (4) of this Section, a Significant Industrial User is:

(1) An Industrial User subject to categorical Pretreatment Standards; or

(2) An Industrial User that:

(a) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater);

(b) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(c) Is designated as such by [the City] on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standard or Requirement.

{Optional} [Note: The following provision may be included in the local ordinances only if authorized under State law. Criteria for reduced reporting must also include any criteria defined in applicable State requirements.]
(3) The [City] may determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(a) The Industrial User, prior to [City’s] finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
(b) The Industrial User annually submits the certification statement required in Section 6.14 B [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and
(c) The Industrial User never discharges any untreated concentrated wastewater.

(4) Upon a finding that a User meeting the criteria in Subsection (2) of this part has no reasonable potential for adversely affecting the POTW’s operation or for violating any Pretreatment Standard or Requirement, [the City] may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

HH. Slug Load or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 2.1 of this ordinance. A Slug Discharge is 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.

II. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

JJ. [Superintendent]. The person designated by [the City] to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this ordinance. The term also means a Duly Authorized Representative of the [Superintendent].

KK. Total Suspended Solids or Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

LL. User or Industrial User. A source of indirect discharge.

MM. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
NN. Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

SECTION 2—GENERAL SEWER USE REQUIREMENTS

2.1 Prohibited Discharge Standards

A. General Prohibitions. No User shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes Pass Through or Interference. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements.

B. Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

1. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;

2. Wastewater having a pH less than 5.0 [or more than ___], or otherwise causing corrosive structural damage to the POTW or equipment;

[Note: The municipality should be aware that the General Pretreatment Regulations at 40 CFR 403.5(b) do not set an upper pH limit, although many municipalities find such a limit necessary or useful. If the municipality wishes to set an upper pH limit, it should insert one in this Section. 40 CFR 261.22 established that wastes discharged with a pH over 12.5 are considered corrosive hazardous wastes and therefore, the POTW would need to comply with applicable requirements under the Resource Conservation and Recovery Act and implementing regulations for Treatment, Storage, and Disposal facilities if such wastes are delivered to the POTW by truck, rail, or dedicated pipe. Accordingly, if the POTW chooses to prohibit discharge of characteristic hazardous wastes, the upper pH limit must be no greater than 12.5.]

3. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference [but in no case solids greater than _____ inch(es) (___") or ______ centimeter(s) (____ cm) in any dimension];

4. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Interference with the POTW;

5. Wastewater having a temperature greater than [____ degrees F (____ degrees C)], which will inhibit biological activity in the treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C);
(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through;

(7) 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;

(8) Trucked or hauled pollutants, except at discharge points designated by [the Superintendent] in accordance with Section 3.4 of this ordinance;

[Note: Discharge prohibitions B.(1) through B.(8) are mandatory National Pretreatment Standards and must be included in the ordinance; discharge prohibitions B.(9) through B.(18) below are optional.]

(9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair; [optional]

(10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant’s effluent, thereby violating [the City’s] NPDES permit; [optional]

(11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations; [optional]

(12) Storm Water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, Noncontact Cooling Water, and unpolluted wastewater, unless specifically authorized by [the Superintendent]; [optional]

(13) Sludges, screenings, or other residues from the pretreatment of industrial wastes; [optional]

(14) Medical Wastes, except as specifically authorized by [the Superintendent] in an individual wastewater discharge permit [or a general permit {optional}]; [optional]

(15) Wastewater causing, alone or in conjunction with other sources, the treatment plant’s effluent to fail toxicity test; [optional]

(16) Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW; [optional]

(17) Fats, oils, or greases of animal or vegetable origin in concentrations greater than [ ] mg/l]; [Note: Numeric limits for these pollutants may be placed in Section 2.4] [optional]
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(18) Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than [_____ percent (____%)] or any single reading over [_____ percent (____%)] of the Lower Explosive Limit of the meter. {optional}

Pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW.

2.2 National Categorical Pretreatment Standards

Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405–471.

[Note: State procedures for incorporation by reference must be followed. EPA regulations at 40 CFR 403.13 authorize a CIU to obtain a variance from a categorical Pretreatment Standard if the CIU can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical Pretreatment Standard. The POTW might need to include a provision authorizing it to incorporate or recognize revised Standards if the User has obtained an FDF variance from EPA on the basis of 40 CFR 403.13. That CIU's Standards would be replaced by the revised FDF variance Standard.]

A. Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, [the Superintendent] may impose equivalent concentration or mass limits in accordance with Section 2.2E and 2.2F. {Optional} [Note: See 40 CFR 403.6(c)]

B. When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the [Superintendent] may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users. {Optional} [Note: See 40 CFR 403.6(c)(2)]

C. When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, [the Superintendent] shall impose an alternate limit in accordance with 40 CFR 403.6(e).

{Optional}[Note: The following provision may be included in the local ordinance at the municipality's discretion.]

D. A CIU may obtain a net/gross adjustment to a categorical Pretreatment Standard in accordance with the following paragraphs of this Section. [Note: See 40 CFR 403.15]

(1) Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User’s intake water in accordance with this Section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the [City]. Upon request of the Industrial User, the applicable Standard will be calculated on a “net” basis (i.e., adjusted to reflect credit for
pollutants in the intake water) if the requirements of paragraph (2) of this Section are met.

(2) Criteria.

a. Either (i) The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or (ii) The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User’s effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

c. Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this Section.

d. Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The [City] may waive this requirement if it finds that no environmental degradation will result.

E. When a categorical Pretreatment Standard is expressed only in terms of pollutant concentrations, an Industrial User may request that [the City] convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the [Superintendent]. [The City] may establish equivalent mass limits only if the Industrial User meets all the conditions set forth in Sections 2.2E(1)(a) through 2.2E(1)(e) below.

(1) To be eligible for equivalent mass limits, the Industrial User must:

a. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its individual wastewater discharge permit;

b. Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;

c. Provide sufficient information to establish the facility’s actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility’s long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
706  d. Not have daily flow rates, production levels, or pollutant levels that vary so
707  significantly that equivalent mass limits are not appropriate to control the
708  Discharge; and
709  
710  e. Have consistently complied with all applicable categorical Pretreatment
711  Standards during the period prior to the Industrial User’s request for
712  equivalent mass limits.
713  
714  (2) An Industrial User subject to equivalent mass limits must:
715  
716  a. Maintain and effectively operate control and treatment technologies adequate
717  to achieve compliance with the equivalent mass limits;
718  
719  b. Continue to record the facility’s flow rates through the use of a continuous
720  effluent flow monitoring device;
721  
722  c. Continue to record the facility’s production rates and notify the
723  [Superintendent] whenever production rates are expected to vary by more than
724  20 percent from its baseline production rates determined in paragraph
725  2.2F(1)(c) of this Section. Upon notification of a revised production rate, the
726  [Superintendent] will reassess the equivalent mass limit and revise the limit as
727  necessary to reflect changed conditions at the facility; and
728  
729  d. Continue to employ the same or comparable water conservation methods and
730  technologies as those implemented pursuant to paragraphs 2.2E(1)(a) of this
731  Section so long as it discharges under an equivalent mass limit.
732  
733  (3) When developing equivalent mass limits, the [Superintendent]:
734  
735  a. Will calculate the equivalent mass limit by multiplying the actual average
736  daily flow rate of the regulated process(es) of the Industrial User by the
737  concentration-based Daily Maximum and Monthly Average Standard for the
738  applicable categorical Pretreatment Standard and the appropriate unit
739  conversion factor;
740  
741  b. Upon notification of a revised production rate, will reassess the equivalent
742  mass limit and recalculate the limit as necessary to reflect changed conditions
743  at the facility; and
744  
745  c. May retain the same equivalent mass limit in subsequent individual
746  wastewater discharger permit terms if the Industrial User's actual average
747  daily flow rate was reduced solely as a result of the implementation of water
748  conservation methods and technologies, and the actual average daily flow
749  rates used in the original calculation of the equivalent mass limit were not
750  based on the use of dilution as a substitute for treatment pursuant to Section
751  2.6. The Industrial User must also be in compliance with Section 13.3
752  regarding the prohibition of bypass.]
753  
754  {Optional} [Note: The following optional provisions (F–I) may be included in the local ordinances only if
755  authorized under State law.]
756  
757  F. [The Superintendent] may convert the mass limits of the categorical Pretreatment
758  Standards of 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of
759  calculating limitations applicable to individual Industrial Users. The conversion is at the
760  discretion of the [Superintendent].
[Note: When converting such limits to concentration limits, the [Superintendent] will use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by Section 2.6 of this ordinance (see 40 CFR 403.6(d)). In addition, the [Superintendent] will document how the equivalent limits were derived for any changes from concentration to mass limits, or vice versa, and make this information publicly available (see 40 CFR 403.6(c)(7)).]

G. Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this Section (2.2) in lieu of the promulgated categorical Standards from which the equivalent limitations were derived. [Note: See 40 CFR 403.6(c)(7)]

H. Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation. [Note: See 40 CFR 403.6(c)(8)]

I. Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the [Superintendent] within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the [Superintendent] of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate. [Note: See 40 CFR 403.6(c)(9)]

2.3 State Pretreatment Standards

Users must comply with [State Pretreatment Standards] codified at [insert appropriate cite to State statute or law].

2.4 Local Limits

[Note: Municipalities need to establish limits for some or all of the pollutants listed below, and might need to set limits for pollutants not listed below. The municipality may also establish Best Management Practices (BMPs) to control certain pollutants. The municipality will provide public notice and an opportunity to respond to interested parties (40 CFR 403.5(c)(3)). This requirement applies whether Local Limits are set by ordinance or on a case-by-case basis.]

A. The [Superintendent] is authorized to establish Local Limits pursuant to 40 CFR 403.5(c).

[Note: The municipality may set limits as instantaneous maximums or for other durations (e.g., Daily Maximum or Monthly Average Limits). The municipality should define these durations in the definition Section.]
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[Note: The approach of charging only for the “excess” loading presumes the standard sewer charges already provide appropriate payment for concentrations up to domestic strength. Many POTWs establish surcharges for conventional pollutants amenable to treatment, such as BOD5 and TSS. Ordinances should clearly distinguish between surcharges and Local Limits. Surcharges are additional charges to recover the cost to treat wastewater that are typically assessed when discharge concentrations are above defined values, typically above domestic wastewater. Enforceable Local Limits for conventional pollutants are established where there is potential for these pollutants to be discharged to the POTW in quantities or concentrations that could exceed the POTW’s plant capacity. When IUs discharge in excess of a Local Limit, they are subject to enforcement actions.]

| [ ] | mg/l ammonia |
| [ ] | mg/l arsenic |
| [ ] | mg/l BOD5 |
| [ ] | mg/l cadmium |
| [ ] | mg/l chromium |
| [ ] | mg/l copper |
| [ ] | mg/l cyanide |
| [ ] | mg/l lead |
| [ ] | mg/l mercury |
| [ ] | mg/l molybdenum |
| [ ] | mg/l nitrogen (total) |
| [ ] | mg/l nickel |
| [ ] | mg/l oil and/or grease [Note: Oil and/or grease limits should be defined as a polar, nonpolar, or total oil and grease limits.] |
| [ ] | mg/l selenium |
| [ ] | mg/l silver |
| [ ] | mg/l total phenols |
| [ ] | mg/l total suspended solids |
| [ ] | mg/l zinc |

The above limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for total metal unless indicated otherwise. [The Superintendent] may impose mass limitations in addition to the concentration-based limitations above.


[Optional] [Note: The following optional provision may be included in the local ordinances only if authorized under State law.]

C. [The Superintendent] may develop Best Management Practices (BMPs), by ordinance or in individual wastewater discharge permits [or general permits (optional)], to implement Local Limits and the requirements of Section 2.1.
2.5 [City’s] Right of Revision

The [City] reserves the right to establish, by ordinance or in individual wastewater discharge permits [or in general permits] more stringent Standards or Requirements on discharges to the POTW consistent with the purpose of this ordinance.

2.6 Dilution

No User shall ever 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 a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement. [The Superintendent] 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.

SECTION 3—PRETREATMENT OF WASTEWATER

3.1 Pretreatment Facilities

Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 2.1 of this ordinance within the time limitations specified by EPA, the State, or [the Superintendent], whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User’s expense. Detailed plans describing such facilities and operating procedures shall be submitted to [the Superintendent] for review, and shall be acceptable to [the Superintendent] before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to [the City] under the provisions of this ordinance.

3.2 Additional Pretreatment Measures

[Optional][Note: The following provisions are optional. The municipality may include provisions authorizing it to do the following.]

A. Whenever deemed necessary, [the Superintendent] may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the User’s compliance with the requirements of this ordinance.

B. [The Superintendent] may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit [or a general permit] may be issued solely for flow equalization.
C. Grease, oil, and sand interceptors shall be provided when, in the opinion of [the Superintendent], they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by [the Superintendent], shall comply with [the City’s Oil and Grease Management ordinance (if applicable, cite), and] shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired [in accordance with [the City’s Oil and Grease Management ordinance (if applicable, cite)]] by the User at their expense.

D. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

3.3 Accidental Discharge/Slug Discharge Control Plans

[The Superintendent] shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control Slug Discharges. [The Superintendent] may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. Alternatively, [the Superintendent] may develop such a plan for any User. An accidental discharge/Slug discharge control plan shall address, at a minimum, the following:

A. Description of discharge practices, including nonroutine batch discharges;

B. Description of stored chemicals;

C. Procedures for immediately notifying [the Superintendent] of any accidental or Slug Discharge, as required by Section 6.6 of this ordinance; and

D. 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.

3.4 Hauled Wastewater

[Note: The municipality will ensure that hauled industrial waste is adequately regulated and should take measures to ensure that haulers of septic tank waste are not introducing industrial waste to the POTW. The following is one possible means of regulating hauled waste.]

A. Septic tank waste may be introduced into the POTW only at locations designated by [the Superintendent], and at such times as are established by [the Superintendent]. Such
waste shall not violate Section 2 of this ordinance or any other requirements established by [the City]. [The Superintendent] may require septic tank waste haulers to obtain individual wastewater discharge permits [or general permits {optional}].

B. [The Superintendent] may require haulers of industrial waste to obtain individual wastewater discharge permits [or general permits {optional}]. [The Superintendent] may require generators of hauled industrial waste to obtain individual wastewater discharge permits [or general permits {optional}]. [The Superintendent] also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this ordinance.

C. Industrial waste haulers may discharge loads only at locations designated by [the Superintendent]. No load may be discharged without prior consent of [the Superintendent]. [The Superintendent] may collect samples of each hauled load to ensure compliance with applicable Standards. [The Superintendent] 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.

SECTION 4—INDIVIDUAL WASTEWATER DISCHARGE PERMITS [and GENERAL PERMITS {optional}]

[Note: The municipality must control SIUs through individual wastewater discharge [or general {optional}] permits. Where provided by State law, the Control Authority may establish the authority to use a general permit where certain conditions listed in Section 4.6 (40 CFR 403.8(f)(1)(iii)) are met.]

4.1 Wastewater Analysis

When requested by [the Superintendent], a User must submit information on the nature and characteristics of its wastewater within [ ( )] days of the request. [The Superintendent] is authorized to prepare a form for this purpose and may periodically require Users to update this information.

4.2 Individual Wastewater Discharge Permit [and General Permit {optional}] Requirement

A. No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an individual wastewater discharge permit [or a general permit {optional}] from [the Superintendent], except that a Significant Industrial User that has filed a timely application pursuant to Section 4.3 of this ordinance may continue to discharge for the time period specified therein.
B. [The Superintendent] may require other Users to obtain individual wastewater discharge permits [or general permits {optional}] as necessary to carry out the purposes of this ordinance.

C. Any violation of the terms and conditions of an individual wastewater discharge permit [or general permits {optional}] shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections 10 through 12 of this ordinance. Obtaining an individual wastewater discharge permit [or general permits {optional}] 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.

4.3 Individual Wastewater Discharge [and General {optional}] Permitting: Existing Connections

Any User required to obtain an individual wastewater discharge permit [or general permits {optional}] who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within [_____] days after said date, apply to [the Superintendent] for an individual wastewater discharge permit [or general permits {optional}] in accordance with Section 4.5 of this ordinance, and shall not cause or allow discharges to the POTW to continue after [_____] days of the effective date of this ordinance except in accordance with an individual wastewater discharge permit [or general permits {optional}] issued by [the Superintendent].

4.4 Individual Wastewater Discharge [and General {optional}] Permitting: New Connections

Any User required to obtain an individual wastewater discharge permit [or general permits {optional}] who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this individual wastewater discharge permit [or general permits {optional}], in accordance with Section 4.5 of this ordinance, must be filed at least [_____] days prior to the date upon which any discharge will begin or recommence.

4.5 Individual Wastewater Discharge [and General {optional}] Permit Application Contents

[Note: This Section lists the information IUs must provide in their application for an individual wastewater discharge permit or general permit (control mechanism). Permits may be individual wastewater discharge permits or general permits (See Section 4.6) if allowed by the POTW (Control Authority). POTWs might want to modify the type of information required in permit applications on the basis of the size and type of IU and the type of permit (individual wastewater discharge permit vs. general permit.) The list of information to be submitted in a permit application has been expanded in this version of the model ordinance to include the new general permit application requirements (40 CFR 403.8(j)(1)(iii)(A)(2)) and to capture the baseline monitoring report (BMR) information which was previously in Section 6.1B (40 CFR 403.12(b)(1)-(7)). The BMR Section (6.1B) currently refers back to this (Section 4.5) regarding information that must be submitted in the BMR.]

A. All Users required to obtain an individual wastewater discharge permit [or general permits {optional}] must submit a permit application. Users that are eligible may request a
general permit under Section 4.6. [The Superintendent] may require Users to submit all
or some of the following information as part of a permit application:

(1) Identifying Information.
a. The name and address of the facility, including the name of the operator and
owner.
b. Contact information, description of activities, facilities, and plant production
processes on the premises;

(2) Environmental Permits. A list of any environmental control permits held by
or for the facility.

(3) Description of Operations.
a. 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.
b. Types of wastes generated, and a list of all raw materials and chemicals used
or stored at the facility which are, or could accidentally or intentionally be,
discharged to the POTW;
c. Number and type of employees, hours of operation, and proposed or actual
hours of operation;
d. Type and amount of raw materials processed (average and maximum per day);
e. Site plans, floor plans, mechanical and plumbing plans, and details to show all
sewers, floor drains, and appurtenances by size, location, and elevation, and
all points of discharge;

(4) Time and duration of discharges;

(5) The location for monitoring all wastes covered by the permit;

(6) Flow Measurement. 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) Measurement of Pollutants.
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 Superintendent], 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.
The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 6.10 of this ordinance. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the [Superintendent] or the applicable Standards to determine compliance with the Standard.

e. Sampling must be performed in accordance with procedures set out in Section 6.11 of this ordinance.

(8) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Section 6.4 B [40 CFR 403.12(e)(2)]. (Optional) [Note: This provision is required only if the municipality has incorporated Section 6.4B into its ordinance.]

(9) Any request to be covered by a general permit based on Section 4.6. (Optional) [Note: This provision is only required if the municipality has incorporated Section 4.6 into its ordinance.]

(10) Any other information as may be deemed necessary by [the Superintendent] to evaluate the permit application.

B. Incomplete or inaccurate applications will not be processed and will be returned to the User for revision.

4.6 Wastewater Discharge Permitting: General Permits (Optional)

[Note: The option to issue general permits in lieu of individual permits is available only if authorized under State law. In such cases, State law may include additional general permit requirements. See 40 CFR 403.8(f)(1)(iii)(A)]

A. At the discretion of the [Superintendent], the [Superintendent] may use general permits to control SIU discharges to the POTW if the following conditions are met. All facilities to be covered by a general permit must:

(1) Involve the same or substantially similar types of operations;
(2) Discharge the same types of wastes;
(3) Require the same effluent limitations;
(4) Require the same or similar monitoring; and
(5) In the opinion of the [Superintendent], are more appropriately controlled under a general permit than under individual wastewater discharge permits.

B. To be covered by the general permit, the SIU must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general permit, any requests in accordance with Section 6.4 B for a monitoring waiver for a pollutant neither present nor expected to be present in the Discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general permit until after the
[Superintendent] has provided written notice to the SIU that such a waiver request has been granted in accordance with Section 6.4B.

C. The [Superintendent] will retain a copy of the general permit, documentation to support the POTW’s determination that a specific SIU meets the criteria in Section 4.6A(1) to (5) and applicable State regulations, and a copy of the User’s written request for coverage for three (3) years after the expiration of the general permit. [Note: See 40 CFR 403.8(f)(1)(iii)(A)(1) through (5).]

D. The [Superintendent] may not control an SIU through a general permit where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for IUs whose limits are based on the Combined Wastestream Formula (Section 2.2C) or Net/Gross calculations (Section 2.2 D). [Note: See 40 CFR 403.6(e) and 40 CFR 403.15]

4.7 Application Signatories and Certifications

A. All wastewater discharge permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the certification statement in Section 6.14 A. [Note: Definition of Authorized Representative has been revised, see definition at Section 1.4 C]

B. If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to [the Superintendent] prior to or together with any reports to be signed by an Authorized Representative.

[Optional] [Note: The following optional provision is required if the municipality has incorporated Section 1.4GG(3) into its ordinance].

C. A facility determined to be a Non-Significant Categorical Industrial User by [the Superintendent] pursuant to 1.4 GG(3) must annually submit the signed certification statement in Section 6.14 B. [Note: See 40 CFR 403.3(v)(2)]

4.8 Individual Wastewater Discharge [and General [optional]] Permit Decisions

[The Superintendent] will evaluate the data furnished by the User and may require additional information. Within [____ (____)] days of receipt of a complete permit application, [the Superintendent] will determine whether to issue an individual wastewater discharge permit [or a general permit [optional]]. [The Superintendent] may deny any application for an individual wastewater discharge permit [or a general permit [optional]].
SECTION 5—INDIVIDUAL WASTEWATER DISCHARGE [AND GENERAL [optional]] 

PERMIT ISSUANCE

5.1 Individual Wastewater Discharge (and General [optional]) Permit Duration

An individual wastewater discharge permit [or a general permit [optional]] shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An individual wastewater discharge permit [or a general permit [optional]] may be issued for a period less than five (5) years, at the discretion of [the Superintendent]. Each individual wastewater discharge permit [or a general permit [optional]] will indicate a specific date upon which it will expire.

5.2 Individual Wastewater Discharge Permit (and General Permit [optional]) Contents

An individual wastewater discharge permit [or a general permit [optional]] shall include such conditions as are deemed reasonably necessary by [the Superintendent] to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment plant’s effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

A. Individual wastewater discharge permits [and general permits [optional]] must contain:

(1) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date; [Note: See Section 5.1.]

(2) A statement that the wastewater discharge permit is nontransferable without prior notification to [the City] in accordance with Section 5.5 of this ordinance, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(3) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards; [Note: Required Streamlining Rule Change]

(4) 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.

(5) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 6.4 B. [Optional] [Note: This provision is required only if the municipality has incorporated Section 6.4B into its ordinance. Section 4.5A (8) includes an instruction to the permittees to include requests for a new (or renewal of an existing) monitoring waiver for a pollutant neither present nor expected to be present in the discharge. See 40 CFR 403.12(e)(2).]
EPA Model Pretreatment Ordinance

(6) A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

(7) Requirements to control Slug Discharge, if determined by the [Superintendent] to be necessary.[Note: Required Streamlining Rule Change]

(8) Any grant of the monitoring waiver by the [Superintendent] (Section 6.4 B) must be included as a condition in the User's permit [or other control mechanism]. [Optional] [Note: This provision is required only if the municipality has incorporated Section 6.4B into its ordinance.]

B. Individual wastewater discharge permits [or general permits {optional}] may contain, but need not be limited to, the following conditions:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

2. 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;

3. 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;

4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

5. The unit charge or schedule of User charges and fees for the management of the wastewater discharged to the POTW;

6. Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;

7. A statement that compliance with the individual wastewater discharge permit [or the general permit {optional}] does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the individual wastewater discharge permit [or the general permit {optional}]; and

8. Other conditions as deemed appropriate by [the Superintendent] to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.
5.3 Permit Issuance Process {optional}

A. Public Notification. The [Superintendent] will publish [in an official government publication and/or newspaper(s) of general circulation that provides meaningful public notice with the jurisdiction(s) served by the POTW, or on a Web page], a notice to issue a pretreatment permit, at least [____ (___)] days prior to issuance. The notice will indicate a location where the draft permit may be reviewed and an address where written comments may be submitted.

B. Permit Appeals. [The Superintendent] shall provide public notice of the issuance of an individual wastewater discharge permit [or a general permit {optional}]. Any person, including the User, may petition [the Superintendent] to reconsider the terms of an individual wastewater discharge permit [or a general permit {optional}] within [____ (___)] days of notice of its issuance.

   (1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

   (2) In its petition, the appealing party must indicate the individual wastewater discharge permit [or a general permit {optional}] provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the individual wastewater discharge permit [or a general permit {optional}].

   (3) The effectiveness of the individual wastewater discharge permit [or a general permit {optional}] shall not be stayed pending the appeal.

   (4) If [the Superintendent] fails to act within [____ (___)] days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider an individual wastewater discharge permit [or a general permit {optional}], not to issue an individual wastewater discharge permit [or a general permit {optional}], or not to modify an individual wastewater discharge permit [or a general permit {optional}] shall be considered final administrative actions for purposes of judicial review.

   (5) Aggrieved parties seeking judicial review of the final administrative individual wastewater discharge permit [or general permit {optional}] decision must do so by filing a complaint with the [insert name of appropriate Court] for [proper jurisdiction] within [insert appropriate State Statute of Limitations].

5.4 Permit Modification

A. [The Superintendent] may modify an individual wastewater discharge permit for good cause, including, but not limited to, the following reasons:

   (1) To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;
EPA Model Pretreatment Ordinance

(2) To address significant alterations or additions to the User’s operation, processes, or wastewater volume or character since the time of the individual wastewater discharge permit issuance;

(3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(4) Information indicating that the permitted discharge poses a threat to [the City’s] POTW, [City] personnel, or the receiving waters; [Note: The Control Authority should consider threats to the POTW’s beneficial sludge use.]

(5) Violation of any terms or conditions of the individual wastewater discharge permit;

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

(7) Revision of or a grant of variance from categorical Pretreatment Standards pursuant to 40 CFR 403.13;

(8) To correct typographical or other errors in the individual wastewater discharge permit; or

(9) To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 5.5.

{Optional}[Note: The following provision is optional. The municipality may include a provision authorizing it to do the following.]

B. [The Superintendent] may modify a general permit for good cause, including, but not limited to, the following reasons:

(1) To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;

(2) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(3) To correct typographical or other errors in the individual wastewater discharge permit; or

(4) To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 5.5.
5.5 Individual Wastewater Discharge Permit [and General Permit (optional)] Transfer

Individual wastewater discharge permits [or coverage under general permits (optional)] may be transferred to a new owner or operator only if the permittee gives at least [____ (__) days advance notice to [the Superintendent] and [the Superintendent] approves the individual wastewater discharge permit [or the general permit coverage (optional)] transfer. The notice to [the Superintendent] must include a written certification by the new owner or operator which:

A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;

B. Identifies the specific date on which the transfer is to occur; and

C. Acknowledges full responsibility for complying with the existing individual wastewater discharge permit [or general permit (optional)].

Failure to provide advance notice of a transfer renders the individual wastewater discharge permit [or coverage under the general permit (optional)] void as of the date of facility transfer.

5.6 Individual Wastewater Discharge Permit [and General Permit (optional)] Revocation

[The Superintendent] may revoke an individual wastewater discharge permit [or coverage under a general permit (optional)] for good cause, including, but not limited to, the following reasons:

A. Failure to notify [the Superintendent] of significant changes to the wastewater prior to the changed discharge;

B. Failure to provide prior notification to [the Superintendent] of changed conditions pursuant to Section 6.5 of this ordinance;

C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

D. Falsifying self-monitoring reports and certification statements;

E. Tampering with monitoring equipment;

F. Refusing to allow [the Superintendent] timely access to the facility premises and records;

G. Failure to meet effluent limitations;

H. Failure to pay fines;

I. Failure to pay sewer charges;
J. Failure to meet compliance schedules;

K. Failure to complete a wastewater survey or the wastewater discharge permit application;

L. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

M. Violation of any Pretreatment Standard or Requirement, or any terms of the wastewater discharge permit [or the general permit {optional}] or this ordinance.

Individual wastewater discharge permits [or coverage under general permits {optional}] shall be voidable upon cessation of operations or transfer of business ownership. All individual wastewater discharge permits [or general permits {optional}] issued to a User are void upon the issuance of a new individual wastewater discharge permit [or a general permit {optional}] to that User.

5.7 Individual Wastewater Discharge Permit [and General Permit {optional}] Reissuance

A User with an expiring individual wastewater discharge permit [or general permit {optional}] shall apply for individual wastewater discharge permit [or general permit {optional}] reissuance by submitting a complete permit application, in accordance with Section 4.5 of this ordinance, a minimum of [____] days prior to the expiration of the User’s existing individual wastewater discharge permit [or general permit {optional}].

5.8 Regulation of Waste Received from Other Jurisdictions

[Note: The municipality must ensure that discharges received from entities outside its jurisdictional boundaries are regulated to the same extent as are discharges from within its jurisdictional boundaries. How a municipality regulates such discharges largely will be determined by what is allowed under its State law.

The municipality must determine the extent of its authority under State law to regulate Users located outside its jurisdictional boundaries. If the municipality does not have the legal authority to issue enforceable permits directly to extrajurisdictional dischargers and cannot obtain this authority under State law, it should strongly consider entering into an agreement with the municipality in which the dischargers are located. The agreement would require that the contributing municipality either regulate the dischargers within its jurisdiction directly or allow the municipality (in which the POTW is located) to regulate such dischargers.

Following is one possible means of regulating dischargers located outside the municipality’s jurisdictional boundaries.]

A. If another municipality, or User located within another municipality, contributes wastewater to the POTW, [the Superintendent] shall enter into an intermunicipal agreement with the contributing municipality.

B. Prior to entering into an agreement required by paragraph A, above, [the Superintendent] shall request the following information from the contributing municipality:
C. An intermunicipal agreement, as required by paragraph A, above, shall contain the following conditions:

1. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;

2. An inventory of all Users located within the contributing municipality that are discharging to the POTW; and

3. Such other information as [the Superintendent] may deem necessary.

C. An intermunicipal agreement, as required by paragraph A, above, shall contain the following conditions:

1. A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this ordinance and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in Section 2.4 of this ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to [the City's] ordinance or Local Limits;

2. A requirement for the contributing municipality to submit a revised User inventory on at least an annual basis;

3. A provision specifying which pretreatment implementation activities, including individual wastewater discharge permit [or general permit (optional)] issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by [the Superintendent]; and which of these activities will be conducted jointly by the contributing municipality and [the Superintendent];

4. A requirement for the contributing municipality to provide [the Superintendent] with access to all information that the contributing municipality obtains as part of its pretreatment activities;

5. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;

6. Requirements for monitoring the contributing municipality's discharge;

7. A provision ensuring [the Superintendent] access to the facilities of Users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by [the Superintendent]; and

8. A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

[Note: Where the contributing municipality has primary responsibility for permitting, compliance monitoring, or enforcement, the intermunicipal agreement should specify that the municipality (in which the]
POTW is located) has the right to take action to enforce the terms of the contributing municipality’s ordinance or to impose and enforce Pretreatment Standards and Requirements directly against dischargers in the event the contributing jurisdiction is unable or unwilling to take such action.]

SECTION 6—REPORTING REQUIREMENTS

6.1 Baseline Monitoring Reports

[Note: Users that become subject to new or revised categorical Pretreatment Standards are required to comply with the following reporting requirements even if they have been designated as Non-Significant Categorical Industrial Users]

A. Within either one hundred eighty (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 Superintendent] a report which contains the information listed in paragraph B, below. At least ninety (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 Superintendent] a report which contains the information listed in paragraph B, 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.

B. Users described above shall submit the information set forth below.

(1) All information required in Section 4.5A (1) (a), Section 4.5A (2), Section 4.5A (3) (a), and Section 4.5A (6). [Note: See 40 CFR 403.12(b)(1)-(7)]

(2) Measurement of pollutants.
   a. The User shall provide the information required in Section 4.5A (7) (a) through (d).
   b. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
   c. 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 wastewater 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;
   d. Sampling and analysis shall be performed in accordance with Section 6.10;
e. The [Superintendent] 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;

f. 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.

(3) Compliance Certification. A statement, reviewed by the User’s Authorized Representative as defined in Section 1.4 C 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.

(4) 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 Section 6.2 of this ordinance.

(5) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 6.14 A of this ordinance and signed by an Authorized Representative as defined in Section 1.4C.

6.2 Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by Section 6.1(B)(4) of this ordinance:

A. 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);

B. No increment referred to above shall exceed nine (9) months;

C. The User shall submit a progress report to [the Superintendent] no later than fourteen (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
D. In no event shall more than nine (9) months elapse between such progress reports to
[the Superintendent].

6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (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 Superintendent] a report containing the information described
in Section 4.3A(6) and (7) and 6.1(B)(2) of this ordinance. For Users subject to equivalent mass
or concentration limits established in accordance with the procedures in Section 2.2 [Note: See 40
CFR 403.6(e)], 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 6.14 A of this
ordinance. All sampling will be done in conformance with Section 6.11.

6.4 Periodic Compliance Reports

[Note: All SIUs are required to submit periodic compliance reports even if they have been
designated a Non-Significant Categorical Industrial User under the provisions of Section 6.4 C.]

A. Except as specified in Section 6.4.C, all [Significant Industrial] Users must, at a
frequency determined by [the Superintendent] 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
Superintendent] or the Pretreatment Standard necessary to determine the compliance
status of the User [Note: Required Streamlining Rule Change].

{Optional} [Note: The following optional provision may be included in the local ordinances only if
authorized under State law. Criteria for monitoring waivers must also include any criteria defined in
applicable State law requirements.]

B. The [City] may authorize an Industrial User subject to a categorical Pretreatment
Standard to forego sampling of a pollutant regulated by a categorical Pretreatment
Standard if the Industrial User has demonstrated through sampling and other technical
factors that the pollutant is neither present nor expected to be present in the Discharge, or
is present only at background levels from intake water and without any increase in the
pollutant due to activities of the Industrial User. [see 40 CFR 403.12(e)(2)] This
authorization is subject to the following conditions:
(1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

(2) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit. See Section 4.5A(8).

(3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility’s process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

(4) The request for a monitoring waiver must be signed in accordance with Section 1.4C, and include the certification statement in 6.14A (40 CFR 403.6(a)(2)(ii)).

(5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(6) Any grant of the monitoring waiver by the [Superintendent] must be included as a condition in the User’s permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the [Superintendent] for 3 years after expiration of the waiver.

(7) Upon approval of the monitoring waiver and revision of the User’s permit by the [Superintendent], the Industrial User must certify on each report with the statement in Section 6.14C below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User.

(8) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User’s operations, the User must immediately: Comply with the monitoring requirements of Section 6.4A, or other more frequent monitoring requirements imposed by the [Superintendent], and notify the [Superintendent].

(9) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

[[Optional] Note: The following optional provision may be included in the local ordinances only if authorized under State law. Criteria for reduced reporting must also include any criteria defined in applicable State law.]
C. The [City] may reduce the requirement for periodic compliance reports [see Section 6.4 A (40 CFR 403.12(e)(1))] 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:

1. Insert POTW's value for 0.01 percent of the POTW's design dry-weather hydraulic capacity of the POTW, or five thousand (5,000) gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches.

2. Insert POTW's value for 0.01 percent of the design dry-weather organic treatment capacity of the POTW; and

3. Insert POTW's value for 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 2.4 of this ordinance. [Note: For example, if the POTW's maximum allowable headworks loading for copper is 5 pounds, then 0.01 percent would be 0.0005 pounds; the POTW would need to do this calculation for each pollutant for which it has approved Local Limits.]

Reduced reporting is not available to Industrial Users that have in the last two (2) years been in Significant Noncompliance, as defined in Section 9 of this ordinance. 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 [Superintendent], decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period.

D. All periodic compliance reports must be signed and certified in accordance with Section 6.14 A of this ordinance.

E. 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. [Note: This paragraph supports the Required Streamlining Rule Changes.]

F. 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 Superintendent], using the procedures prescribed in Section 6.11 of this ordinance, the results of this monitoring shall be included in the report. [Note: See 40 CFR 403.12(g)(6)]
6.5 Reports of Changed Conditions

Each User must notify [the Superintendent] of any significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least [_____] days before the change.

A. [The Superintendent] 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 Section 4.5 of this ordinance.

B. [The Superintendent] may issue an individual wastewater discharge permit [or a general permit {optional}] under Section 5.7 of this ordinance or modify an existing wastewater discharge permit [or a general permit {optional}] under Section 5.4 of this ordinance in response to changed conditions or anticipated changed conditions.

6.6 Reports of Potential Problems

A. 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 Superintendent] 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.

B. Within five (5) days following such discharge, the User shall, unless waived by [the Superintendent], submit a detailed written report describing the cause(s) 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 might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this ordinance. [Optional] [Note: This report is not required under the General Pretreatment Regulations and, therefore, is optional.]

C. A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.
D. Significant Industrial Users are required to notify the [Superintendent] immediately of any changes at its facility affecting the potential for a Slug Discharge. [Note: Required Streamlining Rule Change]

6.7 Reports from Unpermitted Users

All Users not required to obtain an individual wastewater discharge permit [or general permit [optional]] shall provide appropriate reports to [the Superintendent] as [the Superintendent] may require.

6.8 Notice of Violation/Repeat Sampling and Reporting

If sampling performed by a User indicates a violation, the User must notify [the Superintendent] within twenty-four (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 Superintendent] within thirty (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.

[Note: Required Streamlining Rule Change needed if POTW performs sampling in lieu of the Industrial Users.]

If the City performed the sampling and analysis in lieu of the Industrial User, the City will perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat sampling and analysis. See 40 CFR 403.12(g) (2).]

6.9 Notification of the Discharge of Hazardous Waste

A. 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 one hundred (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 wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (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 Section 6.5 of this ordinance. 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 Sections 6.1, 6.3, and 6.4 of this ordinance.

B. Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (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 fifteen (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.

C. 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 Superintendent, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

D. 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.

E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

6.10 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 Superintendent or other parties approved by EPA.

6.11 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. [Note: The Control Authority is required to indicate the frequency of monitoring necessary to assess and assure compliance by the User with applicable Pretreatment Standards and Requirements.]
A. Except as indicated in Section B and C 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
Superintendent]. 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. [Note: Required
Streamlining Rule Change. See 40 CFR 403.12(g)(3)]

B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and
volatile organic compounds must be obtained using grab collection techniques.

C. For sampling required in support of baseline monitoring and 90-day compliance
reports required in Section 6.1 and 6.3 [40 CFR 403.12(b) and (d)], a minimum of four
(4) 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 Superintendent] may
authorize a lower minimum. For the reports required by paragraphs Section 6.4 (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. [Note: Required Streamlining Rule Change, see 40 CFR
403.12(g)(4)].

6.12 Date of Receipt of Reports

Written reports will be deemed to have been submitted on the date postmarked. For reports,
which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal
Service, the date of receipt of the report shall govern.

6.13 Recordkeeping

Users subject to the reporting requirements of this ordinance shall retain, and make available for
inspection and copying, all records of information obtained pursuant to any monitoring activities
required by this ordinance, 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 Section 2.4 C.
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 (3) 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 Superintendent]. [Note: The
recordkeeping requirements for BMPs are a Required Streamlining Rule Change.]

6.14 Certification Statements

[Note: This Section has been modified to consolidate the certification statements previously listed elsewhere.
Section 4.7A&C—Certification of all wastewater discharge permit applications, and User reports and annual
certification of NSCIUs, Section 6.4B(4)—“initial” certification for pollutants not present, Section 6.4B (7)—
Certification of periodic reports of pollutants not present, Section 6.4D—Certification of all periodic
compliance reports.]

[Note: 40 CFR 403.12 (I) requires that the certification which follows be provided for IU Baseline Monitoring
Reports (BMRs) (403.12(b)), IU Reports on Compliance with Categorical Pretreatment Standards Deadline
(90-day compliance report) (403.12(d)), CIU Periodic Reports on Continued Compliance (403.12(e)) and the
initial request from CIUs to forego Monitoring for Pollutants Not Present. In addition to CIUs, the model
ordinance requires this certification statement for all wastewater discharge permit applications and User
reports. Furthermore, the POTW should require this certification statement for all noncategorical SIU
compliance reports.]

A. 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 in accordance with Section 4.7; Users submitting baseline
monitoring reports under Section 6.1 B (5) [Note: See 40 CFR 403.12 (I)]; Users submitting
reports on compliance with the categorical Pretreatment Standard deadlines under Section
6.3 [Note: See 40 CFR 403.12(d)]; Users submitting periodic compliance reports required by
Section 6.4 A–D [Note: See 40 CFR 403.12(e) and (h)], and Users submitting an initial request
to forego sampling of a pollutant on the basis of Section 6.4B(4)[Note: See 40 CFR
403.12(e)(2)(iii)]. The following certification statement must be signed by an Authorized
Representative as defined in Section 1.4 C:

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,
whether 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.

B. Annual Certification for Non-Significant Categorical Industrial Users—A facility
determined to be a Non-Significant Categorical Industrial User by [the Superintendent]
pursuant to 1.4 GG(3) and 4.7 C [Note: See 40 CFR 403.3(v)(2)] must annually submit the following certification statement signed in accordance with the signatory requirements in 1.4 C [Note: See 40 CFR 403.120(1)]. This certification must accompany an alternative report required by [the Superintendent]:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from ____________ to ____________:

[months, days, year]:

(a) The facility described as [facility name] met the definition of a Non-Significant Categorical Industrial User as described in 1.4 GG (3); [Note: See 40 CFR 403.3(v)(2)]

(b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the following information.

__________________________________________

__________________________________________

[Optional] [Note: The following optional provision is required if the municipality has incorporated Section 6.4 B into its ordinance].

C. Certification of Pollutants Not Present

Users that have an approved monitoring waiver based on Section 6.4 B must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the User. [Note: See 40 CFR 403.12(e)(2)(v)]

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _______ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _______ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 6.4.A.
SECTION 7—COMPLIANCE MONITORING

7.1 Right of Entry: Inspection and Sampling

[The Superintendent] shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of this ordinance and any individual wastewater discharge permit [or general permit (optional)] or order issued hereunder. Users shall allow [the Superintendent] 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.

A. 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 Superintendent] shall be permitted to enter without delay for the purposes of performing specific responsibilities.

B. [The Superintendent] 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.

C. [The Superintendent] 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 [insert desired frequency] to ensure their accuracy.

D. 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 Superintendent] and shall not be replaced. The costs of clearing such access shall be born by the User.

E. Unreasonable delays in allowing [the Superintendent] access to the User’s premises shall be a violation of this ordinance.

[Note: POTWs should consider situations when the monitoring facility is constructed in the public right-of-way or easement, in an unobstructed location. The ordinance should indicate that the location of the monitoring facility shall provide ample room in or near the monitoring facility to allow accurate sampling and preparation of samples and analysis and whether constructed on public or private property, the monitoring facilities should be provided in accordance with the [Supervisor’s] requirements and all applicable local construction standards and specifications, and such facilities shall be constructed and maintained in such manner so as to enable the [Supervisor] to perform independent monitoring activities.]
EPA Model Pretreatment Ordinance

7.2 Search Warrants

[Note: The specific process by which search warrants may be issued will vary from City to City. The
procedure will likely be a matter of State law. This provision will need to be adjusted based on the particular
procedure followed in that State and City.]

If [the Superintendent] has been refused access to a building, structure, or property, or any part
thereof, and is able to demonstrate probable cause to believe that there may be a violation of this
ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and
sampling program of [the City] designed to verify compliance with this ordinance or any permit
or order issued hereunder, or to protect the overall public health, safety and welfare of the
community, [the Superintendent] may seek issuance of a search warrant from the [insert name of
appropriate Court] of [the City or State].

SECTION 8—CONFIDENTIAL INFORMATION

Information and data on a User obtained from reports, surveys, wastewater discharge permit
applications, individual wastewater discharge permits, [general permits, {optional}] and
monitoring programs, and from [the Superintendent's] inspection and sampling activities, shall
be available to the public without restriction, unless the User specifically requests, and is able to
demonstrate to the satisfaction of [the Superintendent], that the release of such information
would divulge information, processes, or methods of production entitled to protection as trade
secrets under applicable State law. Any such request must be asserted at the time of submission
of the information or data. When requested and demonstrated by the User furnishing a report
that such information should be held confidential, 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 immediately upon request to governmental agencies for uses related to
the NPDES program or pretreatment program, and in enforcement proceedings involving the
person furnishing the report. Wastewater constituents and characteristics and other effluent data,
as defined at 40 CFR 2.302 shall not be recognized as confidential information and shall be
available to the public without restriction.

SECTION 9—PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

[Note: Unless the optional (underlined) revisions to the SNC provisions have been made by the State, the
POTW must retain the previous requirements. The optional revisions include the public notice in a
newspaper of general circulation that provides meaningful public notice within the jurisdiction, publishing
SIUs and other IUs that have adversely affected the POTW, and that IU reports submitted more than 45 days
late constitutes SNC. See 40 CFR 403.8(f)(2)(viii)(A-C).]

[The Superintendent] 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 twelve (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 (C), (D) or (H) of this Section) and shall mean:
A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six-(6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 2; [Note: Required Streamlining Rule Change, see 40 CFR 403.3(0)]

B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six-(6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 2 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH); [Note: Required Streamlining Rule Change, see 40 CFR 403.3(0)]

C. Any other violation of a Pretreatment Standard or Requirement as defined by Section 2 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that [the Superintendent] 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; [Required Streamlining Rule Change, see 40 CFR 403.3(0)]

D. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in [the Superintendent’s] exercise of its emergency authority to halt or prevent such a discharge;

E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit (or a general permit [optional]) or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide within forty-five (45) days (extended from the previous thirty (30) 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;

G. Failure to accurately report noncompliance; or

H. Any other violation(s), which may include a violation of Best Management Practices, which [the Superintendent] determines will adversely affect the operation or implementation of the local pretreatment program.

SECTION 10—ADMINISTRATIVE ENFORCEMENT REMEDIES

[Note: The municipality must refer to State law to see if the remedies listed in Sections 10, 11, and 12 are allowable. The municipality must have the authority to seek injunctive relief for noncompliance and to seek or assess penalties of at least $1,000 a day for each violation of Pretreatment Standards or Requirements by Industrial Users.]
10.1 Notification of Violation

When [the Superintendent] finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, [or a general permit (optional)] or order issued hereunder, or any other Pretreatment Standard or Requirement, [the Superintendent] may serve upon that User a written Notice of Violation. Within [____ (____)] days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the User to [the Superintendent]. Submission of such a 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 Superintendent] to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

10.2 Consent Orders

[The Superintendent] may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken by the User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 10.4 and 10.5 of this ordinance and shall be judicially enforceable.

10.3 Show Cause Hearing

[The Superintendent] may order a User which has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, [or a general permit (optional)] or order issued hereunder, or any other Pretreatment Standard or Requirement, to appear before [the Superintendent] and show cause why the proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least [____ (____)] days prior to the hearing. Such notice may be served on any Authorized Representative of the User as defined in Section 1.4 C and required by Section 4.7 A. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User.

10.4 Compliance Orders

When [the Superintendent] finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, [or a general permit (optional)] or order issued hereunder, or any other Pretreatment Standard or Requirement, [the Superintendent] may issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring.
and management practices designed to minimize the amount of pollutants discharged to the
sewer. A compliance order may not extend the deadline for compliance established for a
Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability
for any violation, including any continuing violation. Issuance of a compliance order shall not
be a bar against, or a prerequisite for, taking any other action against the User.

10.5 Cease and Desist Orders

When [the Superintendent] finds that a User has violated, or continues to violate, any provision
of this ordinance, an individual wastewater discharge permit, [or a general permit {optional}] or
order issued hereunder, or any other Pretreatment Standard or Requirement, or that the User’s
past violations are likely to recur, [the Superintendent] may issue an order to the User directing it
to cease and desist all such violations and directing the User to:

A. Immediately comply with all requirements; and
B. Take such appropriate remedial or preventive action as may be needed to properly
   address a continuing or threatened violation, including halting operations and/or
   terminating the discharge. Issuance of a cease and desist order shall not be a bar
   against, or a prerequisite for, taking any other action against the User.

10.6 Administrative Fines

[Note: The municipality should consult State law to determine whether it has the legal authority to impose
administrative penalties.]

A. When [the Superintendent] finds that a User has violated, or continues to violate, any
   provision of this ordinance, an individual wastewater discharge permit, [or a general
   permit {optional}] or order issued hereunder, or any other Pretreatment Standard or
   Requirement, [the Superintendent] may fine such User in an amount not to exceed [insert
   maximum fine allowed under State Law]. 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.
B. Unpaid charges, fines, and penalties shall, after [_____ (____)] calendar days, be
   assessed an additional penalty of [_____ percent (____%)] of the unpaid balance, and
   interest shall accrue thereafter at a rate of [_____ percent (____%)] per month. A lien
   against the User’s property shall be sought for unpaid charges, fines, and penalties.
C. Users desiring to dispute such fines must file a written request for [the
   Superintendent] to reconsider the fine along with full payment of the fine amount within
   [_____ (____)] days of being notified of the fine. Where a request has merit, [the
   Superintendent] 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 Superintendent] may add the costs of preparing administrative
   enforcement actions, such as notices and orders, to the fine.
10.7 Emergency Suspensions

[D] Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

10.8 Termination of Discharge

In addition to the provisions in Section 5.6 of this ordinance, any User who violates the following conditions is subject to discharge termination:

A. Violation of individual wastewater discharge permit [or general permit {optional}] conditions;

B. Failure to accurately report the wastewater constituents and characteristics of its discharge;

C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
D. Refusal of reasonable access to the User’s premises for the purpose of inspection, monitoring, or sampling; or

E. Violation of the Pretreatment Standards in Section 2 of this ordinance.

Such User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 10.3 of this ordinance why the proposed action should not be taken. Exercise of this option by [the Superintendent] shall not be a bar to, or a prerequisite for, taking any other action against the User.

SECTION 11—JUDICIAL ENFORCEMENT REMEDIES

11.1 Injunctive Relief

When [the Superintendent] finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, [or a general permit (optional)] or order issued hereunder, or any other Pretreatment Standard or Requirement, [the Superintendent] may petition the [insert name of appropriate Court] through [the City’s] 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, [the general permit, (optional)] order, or other requirement imposed by this ordinance on activities of the User. [The Superintendent] 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.

11.2 Civil Penalties

[Note: The municipality must have the minimum authority to seek civil or criminal penalties in the amount of at least $1,000 per day per violation.]

A. A User who has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, [or a general permit (optional)] or order issued hereunder, or any other Pretreatment Standard or Requirement shall be liable to [the City] for a maximum civil penalty of [insert maximum allowed under State law but not less than $1,000] 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.

B. [The Superintendent] 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].

C. 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.
11.3 Criminal Prosecution

[Note: To the extent State law authorizes a municipality to prosecute violations of local ordinances as a crime under State law, the municipality should include the following provision in its local ordinance.]

A. A User who willfully or negligently violates any provision of this ordinance, an individual wastewater discharge permit, [or a general permit (optional)] or order issued hereunder, or any other Pretreatment Standard or Requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than [insert maximum fine allowed under State law] per violation, per day, or imprisonment for not more than [____ (____)] years, or both.

B. 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 misdemeanor and be subject to a penalty of at least [insert maximum fine allowable under State law], or be subject to imprisonment for not more than [____ (____)] years, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

C. 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 ordinance, individual wastewater discharge permit, [or general permit (optional)] or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than [insert maximum fine allowable under State law] per violation, per day, or imprisonment for not more than [____ (____)] years, or both.

D. In the event of a second conviction, a User shall be punished by a fine of not more than [insert maximum fine allowable under State law] per violation, per day, or imprisonment for not more than [____ (____)] years, or both.

11.4 Remedies Nonexclusive

The remedies provided for in this ordinance are not exclusive. [The Superintendent] 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 Superintendent] may take other action against any User when the circumstances warrant. Further, [the Superintendent] is empowered to take more than one enforcement action against any noncompliant User.
SECTION 12—SUPPLEMENTAL ENFORCEMENT ACTION

12.1 Penalties for Late Reports {Optional}

A penalty of $[xx] shall be assessed to any User for each day that a report required by this ordinance, a permit or order issued hereunder is late, beginning five days after the date the report is due [higher penalties may also be assessed where reports are more than 30-45 days late].

Actions taken by [the Superintendent] to collect late reporting penalties shall not limit [the Superintendent's] authority to initiate other enforcement actions that may include penalties for late reporting violations.

12.2 Performance Bonds {Optional}

[The Superintendent] may decline to issue or reissue an individual wastewater discharge permit [or a general permit {optional}] to any User who has failed to comply with any provision of this ordinance, a previous individual wastewater discharge permit, [or a previous general permit {optional}] or order issued hereunder, or any other Pretreatment Standard or Requirement, unless such User first files a satisfactory bond, payable to [the City], in a sum not to exceed a value determined by [the Superintendent] to be necessary to achieve consistent compliance.

12.3 Liability Insurance {Optional}

[The Superintendent] may decline to issue or reissue an individual wastewater discharge [or a general permit {optional}] to any User who has failed to comply with any provision of this ordinance, a previous individual wastewater discharge permit, [or a previous general permit {optional}] or order issued hereunder, or any other Pretreatment Standard or Requirement, unless the User first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

12.4 Payment of Outstanding Fees and Penalties {Optional}

[The Superintendent] may decline to issue or reissue an individual wastewater discharge permit [or a general permit {optional}] to any User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous individual wastewater discharge permit, [or a previous general permit {optional}] or order issued hereunder.

12.5 Water Supply Severance {Optional}

Whenever a User has violated or continues to violate any provision of this ordinance, an individual wastewater discharge permit, [a general permit {optional}] or order issued hereunder, or any other Pretreatment Standard or Requirement, water service to the User may be severed. Service will recommence, at the User's expense, only after the User has satisfactorily demonstrated its ability to comply.
12.6 Public Nuisances {Optional}

A violation of any provision of this ordinance, an individual wastewater discharge permit, a general permit {optional} or order issued hereunder, or any other Pretreatment Standard or Requirement is hereby declared a public nuisance and shall be corrected or abated as directed by [the Superintendent]. Any person(s) creating a public nuisance shall be subject to the provisions of [the City Code] [insert proper citation] governing such nuisances, including reimbursing [the City] for any costs incurred in removing, abating, or remediating said nuisance.

12.7 Informant Rewards {Optional}

[The Superintendent] may pay up to [____ dollars ($___)] for information leading to the discovery of noncompliance by a User. In the event that the information provided results in a civil penalty [or an administrative fine] levied against the User, [the Superintendent] may disperse up to [_____ percent (___%)] of the collected fine or penalty to the informant. However, a single reward payment may not exceed [_____ dollars ($___)].

12.8 Contractor Listing {Optional}

Users which have not achieved compliance with applicable Pretreatment Standards and Requirements are not eligible to receive a contractual award for the sale of goods or services to [the City]. Existing contracts for the sale of goods or services to [the City] held by a User found to be in Significant Noncompliance with Pretreatment Standards or Requirements may be terminated at the discretion of [the Superintendent].

SECTION 13—AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

[Note: Although Federal law allows the affirmative defenses set out in this Section, some Approved States do not allow for one or more of the affirmative defenses listed below.]

13.1 Upset

A. For the purposes of this Section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (C), below, are met.

C. A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
(1) An upset occurred and the User can identify the cause(s) of the upset;

(2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(3) The User has submitted the following information to [the Superintendent] within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:

(a) A description of the indirect discharge and cause of noncompliance;

(b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

(c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

D. In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.

E. Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

13.1 Act of God defense.

A. Act of God defense. The Act of God defense constitutes a statutory affirmative defense [Texas Water Code Section 7.251] in an action brought in municipal or State court. If a person can establish that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of the ordinance or permit.

B. An industrial user who wishes to establish the Act of God affirmative defense shall demonstrate, through relevant evidence that:

(1) An event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance occurred, and the sole cause of the event was an act of God, war, strike, riot or other catastrophe; and
(2) The industrial user has submitted the following information to the POTW and the City within 24 hours of becoming aware of the event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance (if this information is provided orally, a written submission must be provided within five days):

(a) a description of the event, and the nature and cause of the event;

(b) the time period of the event, including exact dates and times or, if still continuing, the anticipated time the event is expected to continue; and

(c) steps being taken or planned to reduce, eliminate and prevent recurrence of the event.

C. Burden of proof. In any enforcement proceeding, the industrial user seeking to establish the Act of God affirmative defense shall have the burden of proving by a preponderance of the evidence that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an act of God, war, strike, riot or other catastrophe.

13.2 Prohibited Discharge Standards

A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.1(A) of this ordinance or the specific prohibitions in Sections 2.1(B)(3) through [___] of this ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause Pass Through or Interference and that either:

A. A Local Limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the Pass Through or Interference; or

B. No Local Limit exists, but the discharge did not change substantially in nature or constituents from the User’s prior discharge when [the City] was regularly in compliance with its NPDES permit, and in the case of Interference, was in compliance with applicable sludge use or disposal requirements.

[Note: The references in Section 13.2 should refer only to specific prohibitions actually listed in the ordinance. Also note that, pursuant to 40 CFR 403.5(a)(2), the affirmative defense outlined in Section 13.2 cannot apply to the specific prohibitions in Sections 2.1B(1) and (2), and (8).]

13.3 Bypass

A. For the purposes of this Section,
EPA Model Pretreatment Ordinance

(1) Bypass means the intentional diversion of wastestreams from any portion of a User’s treatment facility.
(2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. A User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this Section.

C. Bypass Notifications

(1) If a User knows in advance of the need for a bypass, it shall submit prior notice to [the Superintendent], at least ten (10) days before the date of the bypass, if possible.
(2) A User shall submit oral notice to [the Superintendent] of an unanticipated bypass that exceeds applicable Pretreatment Standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. [The Superintendent] may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

D. Bypass

(1) Bypass is prohibited, and [the Superintendent] may take an enforcement action against a User for a bypass, unless
(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
(c) The User submitted notices as required under paragraph (C) of this section.
(2) [The Superintendent] may approve an anticipated bypass, after considering its adverse effects, if [the Superintendent] determines that it will meet the three conditions listed in paragraph (D)(1) of this Section.

SECTION 14—WASTEWATER TREATMENT RATES - [RESERVED]

SECTION 15—MISCELLANEOUS PROVISIONS {Optional}

15.1 Pretreatment Charges and Fees {Optional}

[The City] may adopt reasonable fees for reimbursement of costs of setting up and operating [the City's] Pretreatment Program, which may include:

A. Fees for wastewater discharge permit applications including the cost of processing such applications;

B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a User's discharge, and reviewing monitoring reports and certification statements submitted by Users;

C. Fees for reviewing and responding to accidental discharge procedures and construction;

D. Fees for filing appeals;

E. Fees to recover administrative and legal costs (not included in Section 15.1 B) associated with the enforcement activity taken by the [Superintendent] to address IU noncompliance; and

F. Other fees as [the City] may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by [the City].

15.2 Severability {Optional}

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

SECTION 16—EFFECTIVE DATE

This ordinance shall be in full force and effect immediately following its passage, approval, and publication, as provided by law.
**ACTION REQUESTED:**
Consider recommending to full City Council authorizing advertisement for a public hearing and vote on proposed Ordinance 20-xx Lodger’s Tax Update.

**BACKGROUND:**
Initiated by: Juanita Jennings

The City is permitted to impose a tax on lodgers within the city limits pursuant to state statute, NMSA 1978, §§ 3-38-13 to -24. The extent of the tax is defined by state statute. In the 2020 legislative session, the statute was amended to remove from the exemptions any premises that does not have at least three rooms or three other units of accommodation. This revision to the ordinance follows state statute in removing that exemption from the tax. The state statute does not go into effect until July 2020, so the ordinance has a delayed enactment to coincide with that date.

**FINANCIAL CONSIDERATION:**
It is anticipated that the City would see an increase in Lodger’s Tax revenue as a result of eliminating exemptions, but it is not certain at this time how much.

**LEGAL REVIEW:**
The City Attorney assisted in drafting the proposed ordinance.

As an Ordinance, Council must hold a public hearing after having provided public notice of the hearing. The Ordinance would normally become effective five days after publication of its adoption.

**BOARD and/or COMMITTEE ACTION:**
The Legal Committee is scheduled to meet on Thursday, April 23, 2020.

**STAFF RECOMMENDATION:**
Consider recommending to full City Council authorizing advertisement for a public hearing and vote on proposed Ordinance 20-xx Lodger’s Tax Update.
ORDINANCE 20-xx

AN ORDINANCE OF THE CITY OF ROSWELL AMENDING CHAPTER 23 OF THE
ROSWELL CITY CODE RELATING TO LODGER’S TAX

WHEREAS, the City of Roswell is permitted to impose a tax on persons using commercial
lodging accommodations pursuant to NMSA 1978, §§ 3-38-13 to -34;

WHEREAS, the New Mexico Legislature recently amended that state statute in the 2020
legislative session; and

WHEREAS, the City of Roswell desires to update its ordinance to conform to the new
provisions of the state statute.

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

SECTION 1. Roswell City Code Section 23-4 shall be amended to read:

Sec. 23-4. - Exemptions.
The occupancy tax shall not apply:

(1) If a vendee:
    a. Has been a permanent resident of the taxable premises for a period of at
       least 30 consecutive days; or
    b. Enters into or has entered into a written agreement for lodgings at the
taxable premises for a period of at least 30 consecutive days.

(2) If the rent paid by a vendee is less than $2.00 a day;

(3) To lodging accommodations at institutions of the federal government, the state or any
    political subdivision thereof;

(4) To lodging accommodations at religious, charitable, educational or philanthropic
    institutions, including without limitation such accommodations at summer or
    camps operated by such institutions;

(5) To clinics, hospitals or other medical facilities; or

(6) To privately-owned and operated convalescent homes or homes for the aged, infirm,
    indigent or chronically ill.; or

(7) If the taxable premises does not have at least three rooms or three other units of
    accommodations for lodging.

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 4. In accordance with state statute, this ordinance shall be effective on July 1, 2020 and after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED and APPROVED ________________, ______.

CITY SEAL

_____________________________
Dennis Kintigh, Mayor

ATTEST

_____________________
Sharon Coll, City Clerk

Underscoring indicates addition to existing Code section.
Strike through indicates delete of an existing Code section.
Resolution 20-XX: A Resolution Approving the Creation of a Keep Roswell Beautiful Community Board

**ACTION REQUESTED:**
Consider recommending to full City Council approval of Resolution 20-XX: A Resolution Approving the Creation of the Keep Roswell Beautiful Community Board

**BACKGROUND:**
Initiated by: Thalia Pantoja

In order for Keep Roswell Beautiful to be considered an affiliate of Keep America Beautiful, a leadership board must run it. This board will recommend the development and improvement of programs, initiatives and events of Keep Roswell Beautiful. They will work alongside a designee from the city to host grant-funded events and programs. They will also work with city designee to complete all required programming and reports to maintain affiliate status with Keep America Beautiful. The goal of this board will be to lead programs, events and projects that lead to beautification, increased education that lead to a cleaner and less wasteful Roswell.

**FINANCIAL CONSIDERATION:**
The board itself has no cost. All events, programs and initiatives hosted by Keep Roswell Beautiful shall be paid through funding received from the New Mexico Clean and Beautiful Grant or outside sponsors. NM Clean and Beautiful Grant requires a 25% match on award amount.

**LEGAL REVIEW:**
The proposed resolution has been review by Deputy City Attorney. Resolutions must be approved by a majority of the Governing Body.

**BOARD and/or COMMITTEE ACTION:**
The Legal Committee is scheduled to meet on Thursday, April 23, 2020 at 4:00 pm.

**STAFF RECOMMENDATION:**
Recommend to full City Council approval of Resolution 20-XX: A Resolution Approving the Creation of the Keep Roswell Beautiful Community Board.
RESOLUTION 20-XX

A RESOLUTION FOR THE CREATION OF THE KEEP ROSWELL BEAUTIFUL COMMUNITY BOARD

Whereas, the City Council as the local governing body of the City of Roswell (“City Council”) recognizes that Keep Roswell Beautiful is an important change maker for the City of Roswell (“City”); and

Whereas; and the City Council believes the creation of a board for Keep Roswell Beautiful to make to help lead programs, events, and projects that lead to beautification, information, and a cleaner and less wasteful Roswell.

Whereas, the City Council desires to create a Keep Roswell Beautiful board.

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

1. Creation of the Keep Roswell Beautiful Board. The Keep Roswell Beautiful board for the City of Roswell is hereby created pursuant to provisions of this Resolution.

2. Purpose and authority.
   (a) The Board is established and authorized to make recommendations to the City Council and the City Manager. These recommendations shall concern the development and improvement of programs, initiatives, and events of Keep Roswell Beautiful.
   (b) The Board shall also make recommendations concerning the Keep Roswell Beautiful program. It shall consider and make recommendations concerning the events, programs, and grant projects.

3. Limitations. The Board shall not have any supervisory or management authority over any City employee or any party who contracts with the City nor shall the represent or have authority to act on behalf of the City in those dealings. The Board shall abide by Roswell City Code Sections 2-96–2-105, the Open Meetings Act, and Resolution 17-49 and as adopted by the City Council except as noted in this Resolution.

4. Term of office; initial appointment; compensation. The Board shall be made up of five persons. Board members shall serve for a two-year term except that the initial terms of two members shall be appointed for a one-year term to provide for staggered terms. Thereafter the terms shall be fixed at two years, and the terms for each member shall expire either in even numbered years or in odd numbered years to begin on April 1. No member shall be appointed by the City to serve more than two consecutive two-year terms. All five initial Board Members shall be acted upon as a whole.

5. Staff participation in Keep Roswell Beautiful meetings. Board meetings shall be held at a date, time, and location designated by staff in consultation with the members of the Board. The City Manager or Designee shall attend and participate in all meetings, as an ex officio member, and shall forward any Board recommendations to the appropriate City Council Committee for consideration. Upon request, staff shall provide non-
confidential information to the Board to aid in their deliberations. A Board member shall keep minutes of the meeting and shall present those minutes for review and approval by the Board on a regular and timely basis.

6. Appointment considerations.

   a. While membership on the Board may be appropriately extended to any qualified person with an interest in Keep Roswell Beautiful, it is the express policy of the City Council not to appoint persons who have a significant financial interest in the anticipated considerations of the Board. Nominees for the Board shall be persons interested in the betterment of Roswell through litter control, recycling, and beautification projects.

   b. At least one position, but not more than two, shall be filled by members of the governing body.

7. Procedures. The approved minutes of proceedings shall be kept on file in the office of the City Clerk. The Board’s meetings shall be held within the corporate limits of the City of Roswell subject to customary State and City requirements for public access and notice. The Board shall meet at least quarterly and at such other times as the Board shall determine useful to the conduct of its business.

8. Board members as volunteers. Board members serve strictly as volunteers and serve at the will of the governing body with no compensation, reimbursement or authority other than advisement to the Mayor and City Council.

PASSED, ADOPTED, SIGNED and APPROVED the ___ day of May, 2018.

CITY SEAL

_______________________________
Dennis Kintigh, Mayor

ATTEST:______________________
Sharon Coll, City Clerk
ACTION REQUESTED: Consider recommending approval to full City Council of Resolution 20-xx implementing the Business Revolving Loan Program

BACKGROUND: Initiated by: Joe Neeb

The goal of the Roswell Opportunity for Advancement Revolving Fund is to provide a financial resource that will compliment sources of financial assistance in the private and public arena which will result in an enhanced and more fully developed economy in the City. ROAR is intended to participate in conjunction with commercial and public lenders, in projects that present expanded employment opportunities within the City of Roswell, improves the economic vibrancy of any commercial business district of Roswell, or allows for the efficient operation of the Roswell-Chaves County Economic Development Corporation (RCCEDC) which meet the criteria, standards and policies set forth in this resolution.

FINANCIAL CONSIDERATION: The City will provide seed money to the RCCEDC in the sum of $150,000.00. The funds provided shall be from funds approved for use in creating and maintaining Economic Development within the City. RCCEDC may request additional assistance from the City Council for any project that does not meet the thresholds established by the R.O.A.R. policy guidelines.

LEGAL REVIEW: Resolution allows for the City to assist local businesses.

BOARD and/or COMMITTEE ACTION: The Legal Committee is scheduled to meet on Thursday, April 23, 2020.

STAFF RECOMMENDATION: Consider recommending approval to full City Council of Resolution 20-xx implementing the Business Revolving Loan Program
R.O.A.R. PROGRAM

CRITERIA, STANDARDS AND POLICIES OF THE ROSWELL OPPORTUNITY FOR ADVANCEMENT REVOLVING FUND (ROAR) AND THE BUSINESS FAÇADE RHAHABILITATION (BFR) LOAN PROGRAMS

1. STATEMENT OF PURPOSE
   The purpose of this resolution is to set forth the criteria, standards and policies to be addressed and followed prior to commitment of city gross receipts tax revenue for purposes of promotion of the City of Roswell. The purpose of the establishment of these criteria, standards and policies is to assist in insuring that public gross receipts tax monies are committed to eligible economic development projects through the Roswell Opportunity for Advancement Revolving Fund.

2. GOAL OF ROAR
   The goal of the Roswell Opportunity for Advancement Revolving Fund is to provide a financial resource that will compliment sources of financial assistance in the private and public arena which will result in an enhanced and more fully developed economy in the City. ROAR is intended to participate in conjunction with commercial and public lenders, in projects that present expanded employment opportunities within the City of Roswell, improves the economic vibrancy of any commercial business district of Roswell, or allows for the efficient operation of the Roswell-Chaves County Economic Development Corporation (RCCEDC) which meet the criteria, standards and policies set forth in this resolution.

3. ELIGIBILITY REQUIREMENTS
   Any for profit and non-profit business that is a commercial or industrial business creating new and additional primary jobs or results in a saving of jobs, which will result in more employment opportunities inside Roswell (or in the Roswell area if the project is deemed site specific requiring a location outside of the Roswell city limits which is based upon natural resources or other unique circumstances), and improves a building to meet the Roswell, New Mexico and International Building Codes, will be eligible to apply for a loan from the Roswell Opportunity for Advancement Revolving Fund. The term “primary jobs” is defined as “jobs which provide goods and services that shall be primarily exported from the area, gain market share from imports to the area, or meet an unmet need in the area resulting in the businesses which bring new income into the area, stimulate other businesses, or assist the Roswell community in the diversification and stabilization of its own economy.
4. USE OF LOAN FUNDS

Proceeds from a Roswell Opportunity for Advancement Revolving Fund loan may be used for any of the following purposes:

(a) Land acquisition and related development.
(b) Building construction, acquisition or related remodeling projects.
(c) Acquisition of equipment (excluding rolling stock) for use in the commercial or light industrial business of the applicant).
(d) Promotion and enhancement of Roswell Industrial Parks and properties.
(e) Operating capital for the RCCEDC for a minimum period of 5 years from current year through 2025 provided as a grant.

Requests for refinancing of existing debt will not be considered and are ineligible purposes for a ROAR loan.

5. TARGETING CRITERIA.

The Finance Committee of the RCCEDC will review, evaluate, and make decisions on each ROAR application and provide a recommendation to the RCCEDC Executive Committee, Board of Directors. The Finance Committee shall consider the following targeting criteria along with other factors deemed by the Committee appropriate with each ROAR application:

(a) First priority shall be given to eligible applicants who are existing commercial or light industrial businesses located in the City of Roswell, which propose to either improve or expand and relocate to a more appropriate location in the City of Roswell.
(b) Second priority shall be given to eligible applicants that propose to relocate an existing commercial or light industrial business to the City of Roswell, from an area outside of the City of Roswell.
(c) Third priority shall be given to: (i) eligible applicants who propose a startup commercial or light industrial business in the City of Roswell, and (ii) to eligible BFR Loan applicants. The initial allocation of funds to the ROAR Loan Fund Program shall be $200,000, and the BFR Loan Program shall be $50,000.00, which allocation may be reviewed, renewed, increased or decreased by the Roswell City Council from time to time as determined by the Council.
(d) Added priority shall be given to a business located in, or in the process of relocation to any Roswell Industrial Parks city properties, it being the policy of the City of Roswell to give the highest possible priority, in addition to the above criteria, to business development in any Roswell Industrial Park or city properties.

6. THE ROAR BUSINESS FACADE REHABILITATION LOAN PROGRAM (the “ROAR BFR Loan”).

The goal of the ROAR BFR Loan Program is to stimulate private investment into projects which enhance or preserve the exterior appearance of building facades or interior structure of a building located within any commercial district of Roswell.
To accomplish program goals, low-interest ROAR BFR Loans will be made available to eligible property owners and/or tenants. Joint financing (the “Joint Loan”) with commercial banks (the “Primary Lender”) is encouraged under the ROAR BFR Loan Program.

(a) ELIGIBILITY REQUIREMENTS: Owners and tenants of existing commercial property (excluding rental property used primarily for dwelling units (i.e. apartments, located within the boundaries of any commercial district) are eligible to apply for ROAR BFR Loans. Tenants of commercial property must provide documentation of the real property owner’s consent to the improvements at the time of written application. Written consent may either be in the form of a valid written lease indicating the lessee’s responsibility for property renovations and repair or documentation of the real property owner’s agreement to the proposed rehabilitation. If the security for the ROAR BFR Loan will be real property, the property owner must sign a mortgage or other necessary documents. Applicants must have a Primary Lender in place prior to application (if a Joint Loan) and/or must demonstrate adequate borrower’s matching funds.

(b) MEMBERSHIP IN THE RCCEDC: Recipients of the ROAR Fund or BFR loan programs are required at a minimum to become members of the RCCEDC for the duration of the loan.

(c) USE OF LOAN FUNDS: Proceeds from the ROAR BFR Loan may be expended for any of the following purposes:

1. Facade Painting;
2. Exterior Wall Cleaning and Restoration;
3. Repair, Add or Replace Awnings;
4. Repair, Add or Replace Windows and/or Window Treatments;
5. Repair, Add or Replace Doors;
6. Repair, Add or Replace Signage (must not be the exclusive reason for the loan);
7. Facade and Display Window Lighting;
8. Architectural and Engineering Design Services;
9. Removal of old signs, awnings, and other exterior clutter;
10. Installation of permanent Landscaping;
11. Handicapped Accessibility;
12. Fire Suppression Systems
13. Public Access Improvements;
14. Building permits and Fees;
15. Any other conditions to meet current standards of the Roswell Building Codes.
FINANCING POLICIES: The following financing policies shall apply to ROAR BFR Loans:

1. The maximum ROAR BFR Loan for a single store front rehabilitation project is $10,000 or 50% of the project cost, whichever is less, per tenant or property owner per year. There is no maximum project cost, and the loan by the Primary Lender may exceed $10,000.
2. The Primary Lender and/or borrower (or a combination of each) may not fund less than 50% of total project cost.
3. The minimum ROAR BFR Loan is $2,500.
4. The Primary Lender will determine the equity injection requirement by the borrower in a Joint Loan.
5. ROAR BFR Loan interest rates will be a maximum of US Treasury rate plus 3% per annum.
6. The term of the ROAR BFR Loan will not exceed five years.
7. The ROAR BFR Loan will be secured by a real estate mortgage.
8. All borrowers will be required to maintain adequate fire, liability and hazard insurance, naming the Primary Lender (if any) and the RCCEDC as creditor loss payees.
9. ROAR BFR Loans will be offered on a first come, first served basis.

APPLICATION AND REVIEW PROCESS: Application forms for a ROAR BFR Loan can be obtained from Roswell area commercial banks or from the City of Roswell.

1. Applicants will submit a completed ROAR BFR Loan application and all supporting documents to the Primary Lender (for a Joint Loan), or directly to the RCCEDC (non-Joint Loan).
2. Preliminary plans, color samples, awning, sign designs, preliminary contractor bids and budget should be submitted with completed application.
3. The Primary Lender (Joint Loan) and RCCEDC Finance Committee shall review the application for completeness and shall notify the applicant what further or additional information is required from the applicant, if any, before the Primary Lender and Finance Committee will declare the application complete.
4. In a Joint Loan, the Primary Lender will complete the financial analysis of the applicant, and the RCCEDC Finance Committee and Executive Committee may: (i) rely upon the Primary Lender’s financial records and documentation; (ii) adopt the Primary Lender’s loan approval requirements, in whole or in part, and add further loan approval conditions; and (iii) declare the ROAR BFR Loan application complete upon the basis of reference to the financial or other analysis contained in the Primary Lender’s documentation without inclusion of financial or other information.
5. Upon the Primary Lender (Joint Loan) and RCCEDC Finance Committee declaring the application complete, the RCCEDC Finance Committee shall review the application and make a recommendation to the RCCEDC Executive Committee for approval or denial within 30 days.

The RCCEDC Executive Committee shall, within 30 days of the date of the joint Committee recommendation, either approve or deny the application.

(f) CREDIT CRITERIA: The RCCEDC Finance Committee will base its recommendation to the RCCEDC Executive Committee on the following criteria:

1. The applicant must meet the eligibility and design requirements of the ROAR BFR Loan program.
2. The applicant must show the ability to service the debt.
3. The applicant must have the ability to manage and show commitment to the ROAR BFR Loan project.
4. The payment history of the applicant with other lenders and creditors must be satisfactory.
5. The review of the proposed collateral must be satisfactory.
6. The credit history of the borrowers and any guarantors of the loan must be satisfactory.
7. The applicant and the ROAR BFR Loan application must meet such other ROAR loan criteria as the RCCEDC Finance Committee may from time to time deem applicable on a case by case basis.

(g) APPROVAL OF THE BFR LOAN APPLICATION:
If a ROAR BFR Loan application is approved by the RCCEDC the usual ROAR post-approval procedures stated in Paragraph 9, APPROVAL OF APPLICATIONS, below will apply, except as follows: (i) the ROAR BFR Loan project must be started within 60 days after loan approval, unless a special schedule is approved; and (ii) if the loan is a Joint Loan, a joint loan agreement between the primary lender, RCCEDC, and the borrower must be executed as part of the loan documents.

(h) PROGRAM CONDITIONS:

1. Loan proceeds will be disbursed after all improvements are complete. Applicant must present proof showing that all project costs have been paid in full and that all contractors have executed waivers of mechanic’s liens.
2. Qualified and insured contractors with appropriate contractor’s license and certification must perform all structural work.
3. All improvements must conform with the City and International Building Codes, and the proposed project may be subject to design review by the City of Roswell.

4. Participants will be asked to display a sign provided by the RCCEDC. The sign shall be placed on the premise and be viewable by the general public. The sign shall be posted from the date of the Loan Agreement until the final disbursement of loan funds or until 30 days after the completion of the project. The sign shall read: “A Successful Participant of the Roswell-Chaves County Economic Development Corporation and the City of Roswell Business Facade Rehabilitation Loan Program.”

7. FINANCING POLICIES FOR NON-BFR ROAR LOANS.

The following financing policies shall direct the RCCEDC in its review, evaluation, and decision making process on ROAR applications other than ROAR BFR Loans:

(a) To the extent practical, loan amounts will be based upon the formula of $5,000 per new, full-time equivalent job created or existing job retained. This standard may be waived by the RCCEDC at the time of application approval, if the project presents an unusual opportunity or set of unique circumstances for promotion of the City of Roswell.

(b) Applicants shall demonstrate through appropriate documentation that a ROAR loan is justified on the basis of either a financing gap that precludes the project from moving forward to completion without such a loan, or that there exists an unacceptable rate of return on investment based upon market investment interest rates.

(c) The maximum amount of ROAR funds loaned to a single applicant shall be the minimum amount needed to move the project forward to completion in light of other public and private financing sources available as determined by the RCCEDC Executive Committee.

(d) Terms for repayment of ROAR loans will be based on the minimum needs of the applicant, the recapitalization needs of the Roswell Opportunity for Advancement Revolving Fund, and the collateral requirements of the loan. Loan terms shall not exceed the depreciable life of the asset(s) pledged as collateral, but in no event shall a loan term exceed ten (10) years.

(e) The interest rate of a ROAR loan shall be structured on a case by case basis and will be determined by the RCCEDC based upon the minimum needs of the applicant and the recapitalization needs of the ROAR Fund. The factors for consideration, among others, are set forth in the ROAR Interest Rate Matrix attached hereto and made part hereof.

(f) Applicant equity shall be based upon a combination of the total financial position of the applicant and the equity in the funded project.
(g) ROAR loans shall be collateralized by fixed assets of the applicant as determined by RCCEDC Finance Committee based upon the value of such assets as determined by a qualified appraiser. The minimum security position for a ROAR loan shall be a second mortgage or security interest, as the case may be, upon the loan collateral.

(h) A ROAR loan origination fee may be levied in an amount equal to one percent of the loan amount plus the actual cost of any and all settlement costs and fees incurred by the Roswell Opportunity for Advancement Revolving Fund for the processing, approval, and closing of the loan. The RCCEDC may waive, in whole or in part, the loan origination fee or costs in its discretion.

(i) Restructuring or modification of the terms of a ROAR loan shall be considered on a case by case basis by the RCCEDC as needed.

(j) The interest rate of ROAR loans may be adjustable after the first two years of the loan upon the basis of such factors as the borrowers performance in accordance with the business plan which is a part of application upon which the loan was originally approved, the creation or non-creation of jobs, and the financial position and progress of the borrower. If the interest rate is adjustable, the specific basis for interest rate adjustment shall be set forth in the loan documents and agreements between the RCCEDC and the borrower.

8. APPLICATION AND REVIEW PROCESS FOR NON-BFR ROAR LOANS.

Application for a ROAR loan other than a ROAR BFR Loan shall be made on forms available from the RCCEDC. Applicants will submit a completed application and all supporting financial documentation to the RCCEDC, who shall review the application for completeness and shall notify the applicant what further or additional information is required from the applicant, if any, before the committee will declare the application complete. Upon the committee declaring the application complete, the RCCEDC Finance Committee shall review the application and shall, within 45 days thereafter, make a recommendation to the RCCEDC Executive Committee for approval or denial of the application. The Executive committee shall, within 15 days of the date of the committee recommendation to the RCCEDC Board of Directors, either approve or deny the application. No application shall be declared complete unless it includes the following information:

(a) Applicant’s name and address;

(b) Names, addresses, resumes, and references of owners, investors, and management of the business;

(c) Articles of incorporation and bylaws or other agreements that describe the legal operation or structure of the business;

(d) Name and address of the owner or operator of the business during the term of the loan;
(e) A business plan which contains information regarding the products or services to be offered by the applicant; job descriptions with attendant salary or wage information by job category; educational requirements by job category; methods of accounting, financing, marketing, sales merchandising and other disciplines proposed to be used for business growth and expansion;

(f) Letters of commitment from all participating commercial and/or public funding sources;

(g) Up to three years of historical balance sheets, cash flow statements, income statements, and federal income tax returns as are applicable to the individual loan application;

(h) Pro forma balance sheets, cash flow statements, and income statements for the term of the loan, or for a period of three years, whichever is less;

(i) A statement of licensing requirements and proof of compliance;

(j) Assurance of compliance with local zoning laws and building codes, and that the necessary public utilities are available or will be available when needed by the project;

(k) Approximate date construction will commence, construction completion date, and the date by which the project will be fully operational;

(l) Documentation that the preliminary design stage has been completed; and,

(m) Any other information as required by the RCCEDC Finance committee in order to make a sound loan decision.

9. APPROVAL OF APPLICATIONS FOR ALL ROAR LOANS (INCLUDING ROAR BFR LOANS).

In the event an application is approved by the RCCEDC, the RCCEDC and the applicant shall execute such agreements and documents as necessary which shall provide the rights and responsibilities of all parties and the terms and conditions of the loan. The agreements and documents shall be prepared by a licensed local Attorney, and the cost of preparation and the review of further documents necessary to the closing of the loan shall be paid by the applicant as part of the costs of the loan. There shall be no commitment of a ROAR loan without the specific resolution of the RCCEDC Board of Directors, notwithstanding any assurance, guarantee, communication or representation to the contrary.

10. CONFIDENTIALITY

The application and supporting documents submitted to the RCCEDC shall be the property of the RCCEDC. To the extent permitted by law, said documents shall be handled by in a confidential manner.
11. Recapitalization of ROAR

The Roswell Opportunity for Advancement Revolving Fund shall initially be capitalized with gross receipts tax revenues appropriated by the City of Roswell. Recapitalization of the fund may be realized by the following:

(a) Additional appropriations by the City.
(b) Any grants, bequests or private contributions.
(c) Loan origination fees.
(d) Loan repayment proceeds of principal and interest.

Public grants which generate program income as defined by the grantor (e.g. CDBG), to which federal or state requirements are attached which restrict their expenditure and/or cause burdensome reporting requirements shall not be co-mingled with ROAR funds. Instead, such funds shall be deposited and administered under a separate account by the RCCEDC.

12. Servicing for All ROAR Loans (Including ROAR BFR Loans)

ROAR loans shall be repaid in accordance with an escrow agreement, or in the case of ROAR BFR Joint Loan, a Joint Loan agreement, prepared as part of the loan documents by a local Attorney naming an independent escrow agent which shall be chosen by the borrower and approved by the RCCEDC. The escrow agent shall, in accordance with the escrow agreement, receive loan payments and account for all proceeds, interest and principal, to the RCCEDC and the borrower. The escrow agent shall remit all proceeds received to the RCCEDC. The Primary Lender may act as escrow agent for ROAR BFR Joint Loan, and loan payments may be submitted directly to the RCCEDC by the Primary Lender as designated in the Joint Loan agreement.

In the event that the borrower requests any modification or change of any loan term or condition, including without limitation variations in security position, insurance requirements, payment dates or amounts, or the like, or if there arises a need for management of insurance proceeds in the event of damage or loss or such other insurable event, the borrower shall notify the then RCCEDC Board Chairman and the loan servicing request shall be handled on an as-needed, case by case basis by the RCCEDC. Any and all changes in loan terms or conditions of any kind whatsoever, and any disbursement of insurance proceeds requiring RCCEDC approval by the terms of the loan or the insurance policy, shall be considered by the RCCEDC Finance Committee and submitted to the RCCEDC Executive Committee for action upon committee recommendation. Under a ROAR BFR Joint Loan, the consent of the Primary Lender may also be required.
PROPOSED RESOLUTION 20-XX

A RESOLUTION OF THE ROSWELL CITY COUNCIL ESTABLISHING THE ROSWELL OPPORTUNITY ADVANCEMENT REVOLVING FUND

Whereas, the City had established a Revolving Loan Fund using Community Development Block Grant Economic Development set-aside funds in 1988 under Resolution No. 2070;

Whereas, the funds received for that program are subject to limitations on use and may not be freely distributed within the City financial system and remain unused;

Whereas, the City now desires to re-employ these funds to fulfill the original purpose by creating the Roswell Opportunity for Advancement Revolving Loan (“ROAR”) project fund to provide ancillary sources of loans to expand employment opportunities within the City of Roswell and improve the economic vibrancy of any commercial business district of Roswell;

Whereas, the ROAR project will be a joint venture between the City and the Roswell-Chaves County Economic Development Corporation (“EDC”); and

Whereas, the City believes implementing the ROAR project will be beneficial to commercial enterprise within the City of Roswell.

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

1. The City Council wishes to re-establish the revolving loan program and hereby establishes the Roswell Opportunity Advancement Revolving Loan (“ROAR”) project fund.

2. The City Council hereby directs that the funds received and designated in Resolution 2070 be employed for the purpose of this project, which is consistent with the original grant, disbursement, and allocation.

3. The City Manager is to work with the EDC to coordinate on the implementation and execution of this program.

4. In implementing this program, the City Council hereby adopts the policies and procedures set out in Exhibit A, which may be modified to the extent that they do not alter the underlying purpose. Any changes should be reviewed by City Council annually.
5. The City Manager is hereby directed to take what steps necessary to enact this program in conjunction with the Roswell-Chaves County Economic Development Corporation.

PASSED, ADOPTED, SIGNED and APPROVED________________. _____.

CITY SEAL

___________________________  
Dennis Kintigh, Mayor

ATTEST:

___________________________ 
Sharon Coll, City Clerk
AGENDA ITEM NO. 6 – ABSTRACT
LEGAL COMMITTEE MEETING
Thursday, April 23, 2020 at 4:00 PM
Roswell Convention & Civic Center
912 N. Main St. Meeting Room A, Roswell, NM 88201
Ord. 20-xx Revising Airport Ord.

ACTION REQUESTED: Consider review and possible recommendation of authorization to advertise for a public hearing Ord. 20-xx Revising the Airport Ord., Chapter 5 of the Roswell City Code.

BACKGROUND: Initiated by: Airport Advisory Committee

The Airport Advisory Commission has undertaken a comprehensive review and revision of the Aviation Chapter of the Roswell City Code. The ultimate goal would be to pare down the Ordinance of unnecessary and outdated provisions to allow more efficiency in the operations of the Air Center.

This revision represents a smaller ordinance that could be adopted moving much of the duplicate language to policies that would later come in front of Council for ratification. This is still one of several pieces that constitute the complete plan for reworking the laws governing the Air Center. As such, action may be delayed to await action on the full matter.

FINANCIAL CONSIDERATION: There is no additional financial consideration of this matter.

LEGAL REVIEW: The city attorney assisted in drafting the revisions.

As an Ordinance, Council must hold a public hearing after having provided public notice of the hearing. The Ordinance would become effective five days after publication of its adoption.

BOARD and/or COMMITTEE ACTION: The Airport Advisory Committee is scheduled to meet on April 23, 2020. The Legal Committee was first introduced to this at its February meeting. The Legal Committee is scheduled to meet on Thursday, April 23, 2020.

STAFF RECOMMENDATION: Consider review and possible recommendation of authorization to advertise for a public hearing Ord. 20-xx Revising the Airport Ord., Chapter 5 of the Roswell City Code.
ORDINANCE 20-XX

AN ORDINANCE AMENDING CHAPTER 5 OF THE ROSWELL CITY CODE
RELATING TO AVIATION

Whereas, the City of Roswell operates an airport known as the Roswell Air Center
(“Airport”) for commercial and general aviation services; and

Whereas, the City Council as the governing body of the City of Roswell desires to update
and streamline the laws and regulations governing the Roswell Air Center;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE
GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that Chapter 5 of the
Roswell City Code is hereby repealed in its entirety, except as provided for below and shall be
amended to read as follows:

SECTION 1. Roswell City Code Sec. 5-17 shall be renumbered Sec. 5-1 and shall read as follows:

Sec. 5-171. - Scope.

This article shall apply to all persons while on or over the airport regardless of the status or
character of their use or occupancy of the airport.

As used in this article “airport” means the area of land owned by the city whether inside or
outside the city limits that is used or intended to be used for the landing and takeoff of aircraft,
including all property owned by the city contiguous thereto which is held or used for airport
purposes and any purposes incidental thereto, and further includes all areas, facilities and
improvements on or within said property regardless of the fact that they may be owned,
controlled, leased or occupied by persons or governmental agencies other than the city.

SECTION 2. Roswell City Code Sec. 5-18 shall be renumbered Sec. 5-2 and shall read as follows:

Sec. 5-2. - Application of planning and zoning laws.

All municipal airport facilities are subject to planning and zoning laws, ordinances and
regulations applicable to the area in which the airport facility is located.

SECTION 3. Roswell City Code Sec. 5-19 shall be renumbered Sec. 5-3 and shall read as follows:

Sec. 5-19. - Director.

There is hereby created the office of managerdirector of the municipal airport, and the
managerdirector shall be appointed by the city manager. The municipal airport managerdirector
shall administer and supervise the operation of the municipal airport under the general
supervision of the governing body and city manager. The airport managerdirector is hereby
authorized to enforce the provisions of this article by filing complaints in the municipal court.

SECTION 4. Roswell City Code Sec. 5-20 shall be renumbered Sec. 5-4 and shall read as follows:

Sec. 5-204. - Rules and regulations.

(a) The airport director shall have authority, to prepare and present to the governing body
may adopt such for approval and adoption the following:

(1) rules, standards and regulations as it deems necessary for the proper management, use and operation of the municipal airport, and

(2) rules and regulations for the use and occupancy, management, control, operation, care, repair and maintenance of all structures and facilities thereon, and all land on which the airport is located and operated.

(b) The city reserves the right to enforce these rules and regulations through an enforcement and civil administrative process or pursue criminal penalties as provided by law.

SECTION 5. A new section numbered Sec. 5-5 shall read as follows:

Sec. 5-5. – Minimum Standards and Requirements

(a) The Airport Minimum Standards shall be developed consistent with FAA Advisory Circular 150/5190-7, and all applicable Federal Aviation Regulations, and shall be adopted by the city and be kept on file at the airport director's office and the city clerk's office.

(b) Minimum standards and requirements for commercial aeronautical operations shall be administered by the airport director.

(c) The standards and requirements shall apply to a person or persons, firm or corporation based upon and engaging in one (1) or more commercial aeronautical operations at the airport.

SECTION 6. Roswell City Code Sec. 5-23 shall be renumbered Sec. 5-6 and shall read as follows:

Sec. 5-32. - City's right to concessions and sales.

No person shall sell or offer to sell oil, gas, aviation fuel, food, or operate any concession in or upon the Roswell Municipal Airport without having prior written approval from the governing body. The governing body may withdraw such privilege to operate concessions and make sales upon good cause shown. As used in this section good cause means default in, or violation of, the terms or conditions of any lease agreement or contract, or violation of any provision or term of any applicable federal or state law or regulation, or city ordinance, regulation or standard.

Withdrawal of the privilege to operate concessions or sell oil or gas shall be accomplished only after 30 days' written notice to the holder of the privilege, unless contractual terms provide otherwise, or unless conditions present a threat to the health or welfare of the community.

Any person operating a concession within ten miles of the Roswell Municipal Airport if the concessionaire picks up customers from any part of the airport, to include premises leased by the airport to a third party doing business at the airport.

SECTION 7. Roswell City Code Sec. 5-31 shall be renumbered Sec. 5-7 and shall read as follows:
Sec. 5-31. - Tampering with, disturbing, etc., airport property.

No person shall tamper with, disturb, mar, deface or carry away any property or thing on the municipal airport.

SECTION 8. Roswell City Code Sec. 5-36 shall be renumbered Sec. 5-8 and shall read as follows:

Sec. 5-36. - Violations generally.

It shall be unlawful to violate the terms of this article, and the city reserves the right to impose any fines or penalties provided for by law.

SECTION 9. 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 10. 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 11. This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED and APPROVED __________________________, ______.

CITY SEAL

_____________________________
Dennis Kintigh, Mayor

ATTEST

_______________________
Sharon Coll, City Clerk
ORDINANCE 20-XX

AN ORDINANCE AMENDING CHAPTER 5 OF THE ROSWELL CITY CODE RELATING TO AVIATION

Whereas, the City of Roswell operates an airport known as the Roswell Air Center ("Airport") for commercial and general aviation services; and

Whereas, the City Council as the governing body of the City of Roswell desires to update and streamline the laws and regulations governing the Roswell Air Center;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that Chapter 5 of the Roswell City Code is hereby repealed in its entirety, except as provided for below and shall be amended to read as follows:

SECTION 1. Roswell City Code Sec. 5-17 shall be renumbered Sec. 5-1 and shall read as follows:

Sec. 5-1. - Scope.
This article shall apply to all persons while on or over the airport regardless of the status or character of their use or occupancy of the airport.

As used in this article “airport” means the area of land owned by the city whether inside or outside the city limits that is used or intended to be used for the landing and takeoff of aircraft, including all property owned by the city contiguous thereto which is held or used for airport purposes and any purposes incidental thereto, and further includes all areas, facilities and improvements on or within said property regardless of the fact that they may be owned, controlled, leased or occupied by persons or governmental agencies other than the city.

SECTION 2. Roswell City Code Sec. 5-18 shall be renumbered Sec. 5-2 and shall read as follows:

Sec. 5-2. - Application of planning and zoning laws.
All municipal airport facilities are subject to planning and zoning laws, ordinances and regulations applicable to the area in which the airport facility is located.

SECTION 3. Roswell City Code Sec. 5-19 shall be renumbered Sec. 5-3 and shall read as follows:

Sec. 5-3. - Director.
There is hereby created the office of director of the municipal airport, and the director shall be appointed by the city manager. The municipal airport director shall administer and supervise the operation of the municipal airport under the general supervision of the governing body and city manager. The airport director is hereby authorized to enforce the provisions of this article by filing complaints in the municipal court.

SECTION 4. Roswell City Code Sec. 5-20 shall be renumbered Sec. 5-4 and shall read as follows:

Sec. 5-4. - Rules and regulations.
(a) The airport director shall have authority, to prepare and present to the governing body for
approval and adoption the following:

(1) rules and regulations for the management, operation and control of the \textit{Airport}, and

(2) rules and regulations for the use and occupancy, management, control, operation, care, repair and maintenance of all structures and facilities thereon, and all land on which the \textit{Airport} is located and operated.

(b) The city reserves the right to enforce these rules and regulations through an enforcement and civil administrative process or pursue criminal penalties as provided by law.

SECTION 5. A new section numbered Sec. 5-5 shall read as follows:

Sec. 5-5. – Minimum Standards and Requirements

(a) The Airport Minimum Standards shall be developed consistent with FAA Advisory Circular 150/5190-7, and all applicable Federal Aviation Regulations, and shall be adopted by the city and be kept on file at the airport director's office and the city clerk's office.

(b) Minimum standards and requirements for commercial aeronautical operations shall be administered by the airport director.

(c) The standards and requirements shall apply to a person or persons, firm or corporation based upon and engaging in one (1) or more commercial aeronautical operations at the Airport.

SECTION 6. Roswell City Code Sec. 5-23 shall be renumbered Sec. 5-6 and shall read as follows:

Sec. 5-32. - City's right to concessions and sales.

No person shall sell or offer to sell oil, gas, aviation fuel, food, or operate any concession in or upon the Airport without having prior written approval from the governing body. The governing body may withdraw such privilege to operate concessions and make sales upon good cause shown. As used in this section good cause means default in, or violation of, the terms or conditions of any lease agreement or contract, or violation of any provision or term of any applicable federal or state law or regulation, or city ordinance, regulation or standard.

Withdrawal of the privilege to operate concessions or sell oil or gas shall be accomplished only after 30 days' written notice to the holder of the privilege, unless contractual terms provide otherwise, or unless conditions present a threat to the health or welfare of the community. Any person operating a concession within ten miles of the Airport if the concessionaire picks up customers from any part of the airport, to include premises leased by the airport to a third party doing business at the airport.

SECTION 7. Roswell City Code Sec. 5-31 shall be renumbered Sec. 5-7 and shall read as follows:

Sec. 5-31. - Tampering with, disturbing, etc., airport property.

No person shall tamper with, disturb, mar, deface or carry away any property or thing on the airport.
SECTION 8.  Roswell City Code Sec. 5-36 shall be renumbered Sec. 5-8 and shall read as follows:

Sec. 5-36. - Violations generally.

It shall be unlawful to violate the terms of this article, and the city reserves the right to impose any fines or penalties provided for by law.

SECTION 9.  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 10.  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 11.  This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED and APPROVED ______________________, ______.

CITY SEAL

_____________________________  
Dennis Kintigh, Mayor

ATTEST

______________________  
Sharon Coll, City Clerk
AGENDA ITEM NO. 7 – ABSTRACT
LEGAL COMMITTEE MEETING
Thursday, April 23, 2020 at 4:00 PM
Roswell Convention & Civic Center
912 N. Main St. Meeting Room A, Roswell, NM 88201

Ord. 20-xx Revising Zoning Code on Airport Hazards

**ACTION REQUESTED:**
Consider review and possible recommendation of authorization to advertise for a public hearing Ord. 20-xx Revising Zoning Code on Airport Hazards.

**BACKGROUND:**
Initiated by: Airport Advisory Committee

The Airport Advisory Commission has undertaken a comprehensive review and revision of the Aviation Chapter of the Roswell City Code. The ultimate goal would be to pare down the Ordinance of unnecessary and out dated provisions to allow more efficiency in the operations of the Air Center.

This revision represents additions to the zoning code of matters that were previously listed in Chapter 5, but are concerned with construction standards on City property. This is still one of several pieces that constitute the complete plan for reworking the laws governing the Air Center. As such, action may be delayed to await action on the full mater.

**FINANCIAL CONSIDERATION:**
There is no additional financial consideration of this matter.

**LEGAL REVIEW:**
The city attorney assisted in drafting the revisions.

As an Ordinance, Council must hold a public hearing after having provided public notice of the hearing. The Ordinance would become effective five days after publication of its adoption.

**BOARD and/or COMMITTEE ACTION:**
The Airport Advisory Committee is scheduled to meet on April 23, 2020. The Legal Committee was first introduced to this at its February meeting. The Legal Committee is scheduled to meet on Thursday, April 23, 2020.

**STAFF RECOMMENDATION:**
Consider review and possible recommendation of authorization to advertise for a public hearing Ord. 20-xx Revising Zoning Code on Airport Hazards.
ORDINANCE 20-XX

AN ORDINANCE AMENDING THE ROSWELL CITY ZONING CODE
RELATING AIRPORT HAZARDS AND AIRPORT OBSTRUCTIONS BY
MODIFYING ARTICLE 4 (DEFINITIONS), AND ADDING A NEW
ARTICLE 52, SECTION 18 (AIRPORT HAZARDS AND OBSTRUCTIONS),
AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, the City of Roswell operates the Roswell Air Center (“RAC”);

WHEREAS, operations of the RAC need to be protected from activities or structures which
may pose a safety hazard to these operations;

WHEREAS, the City of Roswell Zoning Code should incorporate criteria for land
development standards that help ensure the safe operations at the RAC.

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

SECTION 1. The City of Roswell Zoning Code Article 4, Definitions, shall have these terms added
in the appropriate alphabetical sequence as follows:

Aircraft means any contrivance now known or hereafter invented, used or designed for
navigation of or flight in the air.

Airport hazard means any overhead power line which interferes with radio communication
between a publicly owned airport and aircraft approaching or leaving same; or any structure
or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to
its use for landing or taking off.

Airport means the area of land owned by the city whether inside or outside the city limits
that is used or intended to be used for the landing and takeoff of aircraft, including all
property owned by the city contiguous thereto which is held or used for airport purposes and
any purposes incidental thereto, and further includes all areas, facilities and improvements
on or within said property regardless of the fact that they may be owned, controlled, leased
or occupied by persons or governmental agencies other than the city.

Structure means any object constructed or installed by man, including, but without limitation,
buildings, towers, smokestacks and overhead transmission lines.

Tree means any object of natural growth.

SECTION 2. The City of Roswell Zoning Code Article 52, Building and Performance Standards,
shall have an additional Section 18 added that reads as follows:

Sec. 18 – Airport Hazards and Obstructions

A. Airport Hazards Generally:

(1) Airport hazards not in public interest. It is hereby found and declared that an airport
hazard endangers the lives and property of users of the airport and of occupants of land
in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area
available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety or general welfare.

(2) Airport hazards include not only physical obstructions, but also include light features that may pose a hazard to aircraft by potentially blinding aircraft operators, including, but not limited to, searchlights, lasers, or ground-mounted lighting that may mimic landing areas. In addition, hazards may include any non-official activities that generates any types of non-physical hazards that may interfere with the operations of aircraft.

B. Preparation of airport approach plans. The governing body is hereby empowered to formulate and adopt, and from time to time as may be necessary, revise an airport approach plan for any publicly-owned airport within its corporate or political limits. Each such plan shall indicate the hazards, the area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measure should be. In adopting or revising any such plan, the governing body shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions, and the governing body may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics as to the aerial approaches necessary to safe flying operations at the airport.

C. Removal of airport obstructions. The governing body hereby is authorized and empowered whenever, in its judgment, any structure or object located adjacent to the airport or landing field constitutes a hazard to the efficient and safe use of the airport, or whenever notified of the existence of any such hazard, to require the removal and elimination or relocation of such structure or such object, and to acquire all necessary lands or rights-of-way and easements over lands incidental to such removal, elimination or relocation of any such structure or object upon payment to the owner of any land that may be affected by such relocation and the damages occasioned by such removal, elimination or relocation.

SECTION 1. 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 2. 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 3. This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED and APPROVED ________________, _____.

CITY SEAL

_____________________________  
Dennis Kintigh, Mayor

ATTEST

_____________________  
Sharon Coll, City Clerk

Underscoring indicates addition to existing Code section.
Strike through indicates delete of an existing Code section.
AGENDA ITEM NO. 8 – ABSTRACT
LEGAL COMMITTEE MEETING
Thursday, April 23, 2020 at 4:00 PM
Roswell Convention & Civic Center
912 N. Main St. Meeting Room A, Roswell, NM 88201

Meeting Time and Dates for Legal Committee

ACTION REQUESTED: Consider deciding the meeting time and dates for the Legal Committee.

BACKGROUND: Initiated by: Chair

With the election, the composition of the committees have changed. The committee is asked whether to keep the Legal Committee as currently scheduled. The current regular meeting time is the fourth Thursday of each month at 4:00 PM.

FINANCIAL CONSIDERATION: There is no financial consideration applicable to this decision.

LEGAL REVIEW: Under the Open Meetings Act, the City is encouraged to post its regular meetings in advance of the minimum 72 hour requirement. Establishing a regular meeting date and publishing it ahead of time helps the City to maintain good practices with the Open Meetings Act.

BOARD and/or COMMITTEE ACTION: The Legal Committee is scheduled to meet on Thursday, April 23, 2020.

STAFF RECOMMENDATION: Click here to enter text [BKMK fr ACTION REQUESTED].
AGENDA ITEM NO. 9 – ABSTRACT
LEGAL COMMITTEE MEETING
Thursday, April 23, 2020 at 4:00 PM
Roswell Convention & Civic Center
912 N. Main St. Meeting Room A, Roswell, NM 88201

Department Reports

City departments that provide reports to the Legal Committee are as follows:
- Air Center
- City Clerk
- Human Resources
- Legal
- Planning and Zoning
- Safety
Air Center Departmental Report
April 16, 2020

The Air Center experienced a year over year drop in Passenger boardings and aircraft operations for March due to the COVID-19 pandemic and the US Navy having shortened their detachment time and scope this year. Airline load factors began dropping drastically in the second half of March due to the Governor’s health orders concerning the COVID-19 pandemic. As of the writing of this report the Phoenix route and two of the three Dallas flights have been canceled through May, 2020. Load factors on the remaining Dallas flight are around 5%. This is average for the nation at this time. February and March operational statistics are attached to this report.

COVID-19 Airline Overflow Aircraft Parking

The Air Center has become one of the main destinations in the nation for airliners that have been removed from service due to the COVID-19 pandemic. Since these excess airliners began arriving at the end of March the Air Center has received 248 airliners. These aircraft have come from American Airlines, United Airlines and Frontier Airlines. We are expecting that they will continue to arrive until we have no more space available. The arrival of these aircraft for storage is fueling a large increase in revenue for the Air Center. Landing fee revenue is up 2784% for March. Parking revenues have experienced an increase beginning in March as well. April will show a more drastic increase. The 248 aircraft that have already arrived represent an increase of approximately $81,840 monthly in new revenue, a 182% increase over last year’s average.

Projects

Aircraft Parking Area Clearing

Roughly 300 acres have been cleared of grass and dirt by city personnel and aircraft have been moved to these areas for long term storage.

Terminal roof replacement is still in progress.

Our consultants are designing our new vehicle parking area that will be funded by our first FAA Military Airport Program grant of $2 M and our taxiway A & J rehabilitation project that will be funded by a $1.2 M supplemental FAA grant. Both of these projects should get underway this summer or fall.

Personnel

As the city has discontinued certain services during the COVID-19 pandemic State Health Orders, the Air Center is now home to two displaced Recreation Dept. employees. They are a welcome addition and we are happy we can provide work for them.
## ROSWELL AIR CENTER
### REPORT FOR FEBRUARY 2020 CALENDAR YEAR

<table>
<thead>
<tr>
<th></th>
<th>This Month</th>
<th>This Month</th>
<th>This Year</th>
<th>Last Year</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Last Year</td>
<td>To Date</td>
<td></td>
<td>To Date</td>
</tr>
<tr>
<td><strong>AIRPORT OPERATIONS:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Aircraft Operations:</td>
<td>4,052</td>
<td>10,956</td>
<td>6,887</td>
<td>14,561</td>
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<tr>
<td>Passenger Boardings:</td>
<td>4,511</td>
<td>4,080</td>
<td>8,838</td>
<td>8,264</td>
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</table>

| **REVENUES:**            |            |            |           |           |
| Flow Fee                | $3,861     | $10,790    | $8,519    | $15,895   |
| Landing Fees            | $1,002     | $1,119     | $2,062    | $2,228    |
| Parking Fees            | $43,993    | $39,133    | $91,265   | $83,304   |
| **Totals:**             | $48,856    | $51,042    | $101,846  | $101,427  |

Scott A. Stark, Director
Roswell Air Center

Prepared by: Walt Ramirez
April 6, 2020
## ROSWELL AIR CENTER

**REPORT FOR MARCH 2020 CALENDAR YEAR**

<table>
<thead>
<tr>
<th></th>
<th>This Month</th>
<th>This Month Last Year</th>
<th>This Year To Date</th>
<th>Last Year To Date</th>
</tr>
</thead>
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<td><strong>AIRPORT OPERATIONS:</strong></td>
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<tr>
<td>Number of Aircraft Operations:</td>
<td>2,245</td>
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<td>Passenger Boardings:</td>
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<td>11,725</td>
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<tr>
<td><strong>REVENUES:</strong></td>
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<tr>
<td>Flow Fee</td>
<td>$3,591</td>
<td>$6,055</td>
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<td>Landing Fees</td>
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<td>$1,122</td>
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<td>Parking Fees</td>
<td>$55,923</td>
<td>$51,768</td>
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<td>Totals</td>
<td>$91,867</td>
<td>$58,945</td>
<td>$193,713</td>
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</table>

Scott A. Stark, Director
Roswell Air Center

Prepared by: Walt Ramirez
April 16, 2020
February 2020 Monthly Report – City Clerk’s Office

Monthly activities:

- Inspection of Public Record Act requests total – 42
- Assign six (6) resolution and 0 proposed ordinance numbers to staff
- Answer numerous telephone calls
- Prepare and assign contract numbers to numerous new contracts/MOU’s/ROW leases etc. and file digitally
- Review five (5) standing committee meeting agendas and draft minutes
- Post five (5) standing committee agendas to the website and distribute to staff, Council, and media
- Post five (5) standing committee approved minutes to the website
- Track five (5) standing committee recordings
- Review ten (10) other committees, commission, or board meeting agendas and draft minutes
- Post ten (10) other committees, commission, or board meeting agenda to the website and distribute to staff, Council, and media
- Post ten (10) other committees, commission, or board meetings approved minutes to the website
- Track ten (10) other committees, commission, or board meetings recordings
- Gather data from the five (5) standing committees to prepare the City Council agenda
- Proof and amend abstracts and attachments for the City Council agenda
- Post City Council agenda and distribute to staff, Council, and media
- Review and amend PowerPoints for City Council meeting
- Prepare the order of voting for the City Council meeting using the randomizer
- Prepare the voting sheet for the City Council meeting
- Create minutes for the City Council meeting
- Prepare and execute documents that were approved at City Council meeting then distribute them appropriately
- Update the City Council voting log
- File original resolutions and ordinances in the vault
- Contracted seven (7) Early Voting workers – Commenced with Early Voting
- Conducted three training classes for the Election Workers
- Collect Finance Contribution forms as per City Ordinance
- Attest and notarize numerous contracts/MOU’s/leases etc.
- Test Council equipment with IT
- Test panic buttons at City Hall
- Numerous other daily activities

Sharon Coll
City Clerk
February 2020 Monthly Report – City Clerk’s Office

Monthly activities:

- Field and answer calls/questions from the public
- Inspection of Public Records Act requests total – 25
- Early Voting at City Hall – 22 days – Three full-time Election Workers
- Early Voting at Area D – 11 days – Four full-time Election Workers
- Absentee Voting – 26 days – City Clerk and Deputy Clerk
- Election Day voting from 7:00 a.m. to 7:00 p.m. – 1 day
- Election Day voting 30 full-day workers
- Election Day Absentee Board – Three Election workers – 1 day
- The canvass of the Election Day results
- Swearing-in Ceremony
- Set-up schedule for pick-up of early voting equipment from Chaves County at City Hall
- Set-up a schedule for pick-up of early voting equipment at Chaves County Administration Area D.
- Set-up a schedule for pick-up of early voting equipment and SDR (same-day registration) equipment from the vendor for the MOE
- Set-up pick-up for six VCC’s (Voting Convenience Centers)
- Collect Finance Contribution forms as per City Ordinance
- Set up Judge for Swearing-in
- Review five (5) standing committee meeting agendas and draft minutes
- Review ten (10) other committees, commission, or board meeting agendas and draft minutes
- Gather data from the five (5) standing committees to prepare the City Council agenda.
- Proof and amend abstracts and attachments for the City Council agenda
- Post City Council agenda
- Review and amend PowerPoints for City Council meeting

Sharon Coll
City Clerk
Department Monthly Activities:

Family First Coronavirus Response Act
- HR took different webinars to prepare for the FFCR Act that became effective April 1, 2020.
- Currently, HR is working, with department heads to educate them on the new FFCR Act to ensure the City of Roswell is in compliance with the requirements.

Tyler HCM Implementation
- Payroll is working with Tyler on running parallels for HCM/Payroll module. The parallels will ensure that the system is working correctly before going live in July 2020.
- HR will start the Risk/Recruiting Module with Tyler starting May 4, 2020. Go live for the module will be July 2020.

Personnel Changes:
- Payroll started reporting to HR this month.
- Human Resources would like to welcome Arianna Miramontes to the HR department. Arianna is the HR Administrative Assistant Senior. She will handle all new hires, orientation, I-9 reporting and will cross-train to be a backup to the HR Generalists and Insurance.

City Wide
- For the month of March, the City hired 15 new employees and had 8 promotions.
Litigation
Criminal
The Legal Department currently has 92 open criminal cases.

Civil
The Legal Department currently has 6 open civil or administrative matters.

Projects
The Legal Department is currently working on or just completing major revisions to the following:

- Aviation Ordinance
- Industrial Pretreatment Ordinance
- Nuisance Ordinance
- Solid Waste Ordinance

Other projects may be of a sensitive legal matter or not yet ready for publication.

Other
The Legal Department is currently in the process of transitioning as the current City Attorney is ending his time with the City. The Deputy City Attorney will be the Interim City Attorney for the foreseeable future while the City has entered into an agreement for outside counsel to assist with prosecutions in Municipal Court.
City of Roswell Planning & Zoning Commission Agenda
Tuesday, March 24, 2020 at 6:00 PM
Meeting Room A, Roswell Convention & Civic Center
912 N Main Street, Roswell, NM

Members Present:
Chair: Riley Armstrong; Vice Chair: David Storey
Members: Saul Aguilar, James MacCornack

Community Development Director: William Morris, AICP, CZO;
Planning & Zoning Administrator: Merideth Hildreth, AICP;

A. Call to Order
B. Roll-Call
C. Swearing In
D. Approval of the Agenda
E. Approval of the February 25, 2020 P&Z Regular Meeting Minutes
F. Public Hearing Items
   CASE 20-007 VAR: A request for a Yard Setback Variance and Building Height Variance in the R-1 Residential Zoning District. Subd: RIVERSIDE HEIGHTS Block: 35 Lot: 4 E 105' S 100.50' / W 10' E 105' N 60' Quarter: SE S: 31 T: 10S R: 24E BK 674 PG 29 WD. ADDRESS: 63 Riverside Drive (OWNER: SHEILA B. CROSSLEY). (Approved 4-0)
G. Other Business (No Planning & Zoning Commission meeting on April 28)
H. Public Comments
I. Reports/Announcements
J. 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 19-37.

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, 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 if a summary or other type of accessible format is needed.

Printed and posted: March 20, 2020
### CITY OF ROSWELL

**WORKERS COMPENSATION CLAIMS**

As of March 31, 2020

#### WORKERS COMPENSATION CLAIMS

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<td>12</td>
<td>76</td>
<td>51</td>
<td>48</td>
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**Spikes in 2019 numbers for June/July due to:**

- Jun-19: Fireworks Explosion=12
- Jul-19: Fire & Police Recruits=5

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### WORKERS COMPENSATION CLAIMS 2020

- FAC MTNC
- FIRE
- GOVT
- POLICE
- TRANSIT
- WWTP

### WORKERS COMPENSATION CLAIMS 2019

- ANIMAL CONTROL
- FAC MTNC
- FINANCE
- FIRE
- LIBRARY
- PARKS
- POLICE
- SANITATION
- STREETS
- TRANSIT
- WATER MTNC
- WWTP

### WORKERS COMPENSATION CLAIMS 2018

- ANIMAL CONTROL
- CEMETARY
- FAC MTNC
- FINANCE
- FIRE
- PARKS
- POLICE
- SANITATION
- STREETS
- TRANSIT
- WATER MTNC
- WWTP

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City of Roswell, New Mexico
MONTHLY REPORT
Safety Department Activity
FEBRUARY/MARCH 2020

- 15 Tort/Insurance claims received in February
  - 2 legal claims direct to NMSIF
  - 13 to be determined in house – tort/insurance claims
  - As of 3/17/20 – 5 tort claims paid – 2 denied
    - Pursuing payments from 3rd party insurers for City property damaged
    - Coordinate vehicle repairs after insurance claims completed
- Pursuing insurance payments from Hail 17 & Wind Event 19 for accumulated depreciation/code upgrades. Update McLaren as to repairs completed.
- Coordinate training classes and update departments about status of completed hours.
- Beginning 3rd year of protective footwear for employees – track purchases
- Organized and completed required MSHA training for streets department.