



LEGAL COMMITTEE MEETING AGENDA
Thursday, July 25, 2019 at 4:00PM
City Hall Conference Room
425 N. Richardson, Roswell, NM 88201

Chair: Judy Stubbs, Ward 3
Vice Chair: Barry Foster, Ward 5
Members: George Peterson, Ward 4
Savino Sanchez, Ward 4
Staff Liason: Aaron Holloman

CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES

Approval of the minutes from the Legal Committee meeting on June 27, 2019. *(page 3)*

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 5)*
 - (A) Millennium Transit Services, LLC - Consider recommending approval for Millennium Transit Services, LLC, a New Mexico Limited Liability Company, to exercise the second of five ten (10) year options to renew their current lease agreement on 10 acres of land. *(page 6)*
2. RCC EDC Completion of Project Services Agreement - Consider and review Termination and Release of Project Services Agreement and Reassignment of Lease between the City and the Roswell-Chaves County Economic Development Corporation. *(page 7)*
3. Sidewalks - For Discussion: Review and consider sidewalk repair and construction. *(page 12)*

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, July 19, 2019**

**Regular Meeting of the Legal Committee
Held in the Conference Room at City Hall
June 27, 2019**

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 4:00 p.m. with Chair Stubbs presiding, Councilors Peterson, Foster, and Sanchez present.

Staff present: Aaron Holloman, Mark Bleth, Mike Mathews, and Scott Stark

Guests present: Lisa Dunlap

APPROVAL OF AGENDA

Councilor Foster moved to approve the May 23, 2019, Legal Committee meeting agenda as presented. Councilor Peterson was the second. A voice vote was 4-0, and the motion passed.

APPROVAL OF MINUTES

Councilor Foster moved to approve the June 27, 2019 Legal Committee minutes. Councilor Peterson was the second. A voice vote was 4-0, and the motion passed.

REGULAR ITEMS

1. RIAC Agreements

- A. EAN Holdings, LLC. – Mark Bleth stated that EAN Holdings, LLC leases 10 parking spots and counter space in Building No. 1 consisting of 128 square feet at the RIAC, for \$24,408 annually payable in 12 monthly installment of \$2,034. The new rent amount is 9% and monthly gross revenue increased from 7.5 to 8%. Term August 1, 2019 through July 31, 2024. Councilor Foster moved to send to full city council on the consent agenda with Councilor Sanchez as the second. A voice vote was 4-0, and the motion passed.
- B. J&S Mechanical, LLC. - Mark Bleth stated that J&S Mechanical, LLC, leases the building for the purpose of storage. 1,425 square feet. J&S Mechanical, LLC, has been a customer since August 2018. New rent amount is \$350 monthly; \$4,200 annually. Rent adjustment is 35%. Tenant has agreed to add an \$10,000 HVAC unit to the building within six months of the start of the lease. Term: August 1, 2019 through July 31, 2022. Councilor Foster moved to send to full city council on the consent agenda Peterson as the second. A voice vote was 4-0, and the motion passed.
- C. HomeTech Improvements, LLC – Mark Bleth stated that HomeTech Improvements,

LLC, leases the office space for the purpose of a business office. 100 square feet. Rent amount is \$100 monthly; \$1,200 annually. Term: August 1, 2019 through July 31, 2020. Councilor Sanchez moved to send to full city council on the consent agenda with Councilor Foster as the second. A voice vote was 4-0, and the motion passed.

2. Leprino Foods Company Industrial Revenue Bond Documentation – Mr. Holloman discussed the bond documentation available for the Leprino Foods Company Industrial Revenue Bond. Council had passed the inducement resolution on June 13 and would be voting on the final Bond Ordinance on July 11, and so the Committee was presented versions of the documents to review. Mr. Holloman stated that he did not have final numbers for what the school district was asking for a PILOT, but in speaking with Leprino’s bond counsel was assured that they were completing negotiations. No action was taken on the matter.

CHAIR COMMENTS, REPORTS, ANNOUNCEMENTS

None

PUBLIC PARTICIPATION

None

ADJOURN

The meeting adjourned at 4:41 pm.



AGENDA ITEM NO. 1– ABSTRACT
LEGAL COMMITTEE MEETING
Thursday, July 25, 2019 at 4:00PM
City Hall Conference Room
425 N. Richardson, Roswell, NM 88201

RIAC LEASES: (A) Millennium Transit Services, LLC

ACTION REQUESTED: (A) Consider recommending approval for Millennium Transit Services, LLC, a New Mexico Limited Liability Company, to exercise the second of five ten (10) year options to renew their current lease agreement on 10 acres of land.

BACKGROUND: (A) Millennium Transit Services, LLC, leases the land for the purpose of housing a manufacturing company. 10 acres of land. New rent amount is \$1,250 monthly; \$15,000 annually. Rent adjustment is 50%. Millennium Transit Services, LLC, has been a customer since July 1980.

FINANCIAL CONSIDERATION: (A) Millennium Transit Services, LLC, new rent amount is \$1,250 monthly; \$15,000 annually. Rent adjustment is 50%. Term: September 1, 2019 through August 31, 2029.

LEGAL REVIEW: The City Attorney has reviewed the amendment.

BOARD and/or COMMITTEE ACTION: The Legal Committee is scheduled to meet on Thursday, July 25, 2019.

STAFF RECOMMENDATION: (A) Consider recommending approval for Millennium Transit Services, LLC, a New Mexico Limited Liability Company, to exercise the second of five ten (10) year options to renew their current lease agreement on 10 acres of land for \$15,000 annually payable in 12 monthly installments of \$1,250, to be placed on the consent agenda subject to all other terms and conditions of the lease.

FOURTH AMENDMENT TO LEASE

This FOURTH AMENDMENT TO THE LEASE, made as of the 8th day of August, 2019, by and between the CITY OF ROSWELL, NEW MEXICO, a New Mexico municipality (the "Landlord") and MILLENNIUM TRANSIT SERVICES, LLC, a New Mexico limited liability company (the "Tenant")

WHEREAS, THE Landlord executed that certain Lease Agreement dated July 22, 1980, as amended on November 29, 1994 and assigned to Tenant as of December 15, 2004 (the "Lease") for certain premises located in Roswell, New Mexico as more particularly described in the Lease.

WHEREAS, Landlord and Tenant now desire to further amend the Lease:

NOW THEREFORE, Landlord and Tenant desire to extend the Lease as set forth in the original Lease terms as outlined in section 15, Option to Re-lease. Through the exercising of the option, the lease is hereby extended to August 31, 2029.

This extension of the Lease shall include all terms as stated in the original Lease and said Second Amendment to Lease, dated February 23, 2004.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this Fourth Amendment to Lease, as of the day and year first above written.

CITY SEAL

Sharon Coll

City Clerk

LANDLORD:

CITY OF ROSWELL, NEW MEXICO

Dennis J. Kintigh, Mayor

TENANT:

MILLENNIUM TRANSIT SERVICES, LLC

James A. Ludvik, Manager



AGENDA ITEM NO. 2– ABSTRACT
LEGAL COMMITTEE MEETING
Thursday, July 25, 2019 4:00 p.m.
City Hall Conference Room
425 N. Richardson, Roswell, NM 88201

Termination and Release of EDC Project
Services Agreement and
Reassignment of Lease

ACTION REQUESTED: Consider and review Termination and Release of Project Services Agreement and Reassignment of Lease between the City and the Roswell-Chaves County Economic Development Corporation

BACKGROUND: **Initiated by: Roswell-Chaves County Economic Development Corporation/Joe Neeb**

On November 8, 2018 the City and the EDC entered into a Project Services Agreement and an Assignment of Lease Agreement, whereby the City provided the EDC \$307,000.00 to develop, improve and promote business activities at Building No. 60 at the RIAC in connection with the occupancy of Building No. 60 by Red Mountain Arsenal, LLC. The Project Services Agreement was later amended on to increase the funds for the EDC’s Project Services to \$700,000.00.

The EDC has now successfully completed all work called for under the Project Services Agreement to the satisfaction of the City and it is appropriate to terminate the Project Services Agreement, release the EDC from its obligations and reassign the lease back to the City.

FINANCIAL CONSIDERATION: None

LEGAL REVIEW: The City Attorney has reviewed the Termination and Release of Project Services Agreement and Reassignment of Lease

BOARD and/or COMMITTEE ACTION: The Legal Committee is scheduled to meet on Thursday, July 25, 2019 and 4:00 p.m.

STAFF RECOMMENDATION: Consider and review the Termination and Release of Project Services Agreement and Reassignment of Lease between the City and the Roswell-Chaves County Economic Development Corporation

**TERMINATION AND RELEASE OF PROJECT SERVICES AGREEMENT
AND REASSIGNMENT OF LEASE**

This Termination and Release of Project Services Agreement and Reassignment of Lease (“Termination”) is hereby entered into this ____ day of _____, 2019, by and between the City of Roswell, New Mexico, a New Mexico Municipality (the “City”) and the Roswell-Chaves County Economic Development Corporation (the “EDC”), a New Mexico Non-Profit Corporation, whose address is 220 N Main St, Roswell, NM 88201, collectively referred to herein as the Parties.

RECITALS

WHEREAS, the Parties entered into that certain Project Services Agreement Between the City of Roswell and the Roswell-Chaves County Economic Development Corporation for Economic Development Services (the “Project Services Agreement”) on November 8, 2018; and

WHEREAS, pursuant to the Project Services Agreement, the City provided funds to the EDC for Project Services, as that term is defined in the Project Services Agreement, for the purpose of preparing Building No. 60, a property located at the Roswell International Air Center, for operations by Red Mountain Arsenal, LLC (“Red Mountain”) under a Lease Agreement by and between Red Mountain and the City dated _____ (the “Red Mountain Lease”); and

WHEREAS, the Project Services Agreement was subsequently amended in the First Amendment to Project Services Agreement on _____, in which the City agreed to increase the amount of funding for the Project Services; and

WHEREAS, the Parties further entered into that certain Assignment Agreement Between the City of Roswell and the Roswell-Chaves County Economic Development Corporation (the “Assignment Agreement”) dated November 8, 2018, pursuant to which the City assigned certain of its rights and obligations under the Red Mountain Lease, in order to facilitate the Project Services; and

WHEREAS, the EDC has now completed the Project Services to the satisfaction of the City and the Parties hereby wish to terminate the Project Services Agreement, as amended, release the EDC’s obligations thereunder, and to reassign the rights and obligations in the Red Mountain Lease from the EDC back to the City, according to the terms and conditions provided for herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

1. **Termination and Release.** The Project Services Agreement, as amended, is hereby terminated and the EDC is released from all further obligations thereunder, except as provided for herein.

2. **Accounting.** The EDC shall provide an accounting of the Operating Funds, as that term is defined in the Project Services Agreement, as amended, and a verification that all Operating Funds were expended in furtherance of Project Services, all as provided for in Paragraph 6 of the Project Services Agreement, within 30 days hereof. As further stated in Paragraph 6 of the Project Services Agreement, the EDC shall also remit to the City all unexpended Project Funds within 30 days hereof.

3. **Reassignment.** All of the rights, duties and obligations under the Red Mountain Lease assigned by the City to EDC under the Assignment Agreement are hereby reassigned in their entirety back to the City. The Assignment Agreement, and all rights and obligations of the EDC in or to Building No. 60, are terminated, nullified and released, with the exception of Paragraph 8 of the Assignment Agreement relating to liability.

4. **Warranties.** The EDC hereby assigns to the City, or to Red Mountain, as appropriate, any and all warranties, guarantees or other rights regarding any work or improvements on or to Building No. 60 by independent contractors as part of the Project Services and shall execute any and all additional documents to secure and confirm the assignment of such warranties, guarantees and rights, as the City may deem appropriate.

5. **Effective Date.** This Termination is effective as of the date provided first herein above.

6. **Entire Agreement.** This Termination embodies the entire agreement of the Parties with respect to the subject matters contained herein. This Termination may be modified or amended or the provisions hereof waived only by a written instrument signed by the duly authorized representatives of the Parties.

7. **Savings Clause.** In case any provision in this Termination shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

8. **Choice of Law and Venue.** This Termination shall be governed by the laws of the State of New Mexico, exclusive of choice of law provisions, and venue for any judicial proceeding resulting herefrom shall lie in the Fifth Judicial District, Chaves County, New Mexico.

[SIGNATURES FOLLOW ON NEXT PAGE]

DRAFT

IN WITNESS WHEREOF, the EDC and City of Roswell have caused this Termination to be executed by their duly authorized officers on the date first indicated herein above.

“City”

“EDC”

CITY OF ROSWELL

ROSWELL-CHAVES COUNTY
ECONOMIC DEVELOPMENT
CORPORATION

By: Joseph Neeb, City Manager

By:

ATTEST:

Approved and consented to:

Sharon Coll, City Clerk

By:
Red Mountain Arsenal, LLC

Approved as to Form:

City Attorney



**AGENDA ITEM NO. 3 – ABSTRACT
LEGAL COMMITTEE MEETING
Thursday, July 25, 2019 at 4:00PM
City Hall Conference Room
425 N. Richardson, Roswell, NM 88201**

Sidewalk Repairs

ACTION REQUESTED: For Discussion: Review and consider sidewalk repair and construction

BACKGROUND: Initiated by: Councilor Stubbs/Mayor


The City has had some issue with deteriorating or damaged sidewalks, especially in the historic or old neighborhoods. After a review of the applicable laws, the Committee is asked to discuss the possible directives moving forward including shifting responsibility for repairs, adjusting enforcement models, and/or cooperative construction programs.

FINANCIAL CONSIDERATION: n/a

LEGAL REVIEW: n/a

BOARD and/or COMMITTEE ACTION: The Legal Committee is scheduled to meet on Thursday, July 25, 2019.

STAFF RECOMMENDATION: For Discussion: Review and consider sidewalk repair and construction




Sidewalk Regulation

A Review of Applicable Statutes
and Municipal Approaches




Local Examples


State Statutes

- NMSA 1978, § 3-49-1: Streets; sidewalks; curbs and gutters; public grounds
 - "A municipality may lay out, establish, open, vacate, alter, repair, widen, extend, grade, pave or otherwise improve ... sidewalks"
- A municipality may further:
 - regulate their use and repair
 - prohibit and remove encroachments or obstructions
 - provide for lighting, cleaning, beautification, landscaping and maintenance
 - require the owner or occupant of any premise to keep the sidewalk, along the premise, free from any snow or other obstruction
 - prohibit injury to them




State Statutes

- NMSA 1978, § 3-49-4: Sidewalks; repairing; improving; constructing
 - Governing body adopts a resolution requiring sidewalk be repaired, improved or constructed
 - Resolution served on the owner of contiguous property, or posted at the property
 - Owner shall commence repair, improvement or construction or file a written objection within 15 days
 - Written objection entitles owner to hearing before governing body and appeal to district court if aggrieved
 - If owner fails to repair, improve or construct, City may do so and put a lien on the property
 - Failure to repair, improve or construct after notice makes owner liable for injuries



Roswell's Current Ordinance

- Roswell City Code Section 22-15
 - Sec. 22-15 puts responsibility for repairs, maintenance and reconstruction on adjacent property owner
 - Owner must reconstruct removed sidewalk within 30 days
 - Exception for repairs and reconstruction caused by governmental action
 - No explicit requirement that property owner construct a sidewalk where none previously exists
 - City could enforce Sec. 22-15 with procedures of NMSA 1978, § 3-49-4
 - Sec. 22-15 does not currently explicitly adopt such procedures, however
 - Roswell's approach generally reflects the majority practice among municipalities in the state



Municipal Approaches

- Albuquerque
 - Sec. 6-5-5-3: all properties required to have sidewalks or obtain a variance
 - Cost of installing sidewalk borne by abutting property
 - Sec. 6-5-5-18: sidewalks kept free of obstructions and in good repair by owner
 - Owner also responsible for maintaining sidewalk landscape/buffer area
 - Owner liable to city for claims against city from failure to maintain sidewalk
 - Lien placed if owner fails to repair or install sidewalk after notice from Mayor

Municipal Approaches

- Santa Fe
 - Sec. 23-1.6: property owner shall not permit contiguous sidewalk to be out-of-repair, loose, broken, unsafe
 - Property owner required to notify public works director of out-of-repair sidewalk and when owner will complete repairs
 - Sec. 23-1.7: public works dept. to issue notice requiring repair, improvement or construction of sidewalk
 - Public works dept. also hears written objections and places lien if owner fails to comply

Municipal Approaches

- Las Cruces
 - Sec. 26-73: city engineer to conduct annual field review of sidewalks
 - Sec. 26-74: city staff to submit cost proposal to city council for annual sidewalk repairs as part of budgeting
 - City is responsible for cost of repairing sidewalks, but adjacent property owner is required to reimburse city if damage is fault of owner
 - Sec. 26-103: property owner is responsible for installing sidewalks
 - Vacant land – owner must build sidewalks prior to issuance of certificate of occupancy
 - Developed land – properties without sidewalks subject to procedures under 3-49-4
 - Sec. 26-106: city may install or contribute to cost of installing sidewalks on case-by-case basis

Municipal Approaches

- Alamogordo
 - Sec. 08-07-020: Duty of property owner to construct, repair, improve or reconstruct sidewalks
 - City Commission issues notice under 3-49-4 when city engineer recommends based on public health, safety or welfare
 - Sec. 08-07-040: Owner responsible for keeping sidewalks free of obstructions
 - Owner responsible for maintaining entire area from back of curb to property line

Municipal Approaches

- Clovis
 - Sec. 12.08.040: Repair and maintenance of sidewalks sole responsibility of contiguous parcel
 - No explicit requirement owner construct sidewalks
- Hobbs
 - Sec. 12.08.040: all new constructions to include a sidewalk adjacent to the street
 - No explicit requirement of repair by owner, but any sidewalk not constructed correctly may be deemed nuisance by city engineer, abated and lien placed
- Farmington
 - No requirement that owner build, repair or maintain sidewalks

Take-Aways

- State statute places the primary burden of constructing, maintaining and repairing municipal sidewalks on contiguous property owner
- Every municipality reviewed, except Farmington, require contiguous property owner to construct, maintain, and/or repair sidewalks
- Las Cruces was the only city reviewed that explicitly takes on responsibility for general repair of sidewalks
- Roswell currently requires repair/reconstruction by owner, but not original construction
- Roswell does not have an explicit provision adopting 3-49-4 procedures, unlike other municipalities