



## **A G E N D A**

Carlsbad City Council Regular Meeting  
Municipal Annex  
114 S. Halagueno Street  
Carlsbad, New Mexico

December 28, 2021 at 4:00 p.m.

Invocation – Pledge of Allegiance

1. Approval of Agenda
2. Consider Approval of Renewal and Amendment to the Agreement between the City of Carlsbad and Select Energy Services, LLC regarding the purchase of Effluent Wastewater
3. Adjourn



### **FOR INFORMATION ONLY**

Agendas and City Council minutes are available on the City web site: [cityofcarlsbadnm.com](http://cityofcarlsbadnm.com) or may be viewed in the Office of the City Clerk during normal and regular business hours.

## **CARLSBAD CITY COUNCIL MEETING SCHEDULE**

- Regular Meeting - Tuesday, January 11, 2022 at 6:00 p.m.
- Regular Meeting - Tuesday, January 25, 2022 at 6:00 p.m.

If you require hearing interpreter, language interpreters or auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's office at (575) 887-1191 at least 48 hours prior to the scheduled meeting time.

**CITY OF CARLSBAD**

**AGENDA BRIEFING MEMORANDUM**

Council Meeting Date: December 28, 2021

<b>DEPARTMENT:</b> Legal	<b>BY:</b> Denise Madrid Boyea	<b>DATE:</b> 20 December 2021
<b>SUBJECT:</b> Consider approving a renewal and amendment to the agreement between the City of Carlsbad and Select Energy Services for the purchase of effluent wastewater		
<b>BACKGROUND, ANALYSIS AND IMPACT:</b> (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)		
<p>The operation of the City of Carlsbad's Wastewater Treatment Plant produces treated effluent wastewater. Some of the City's water rights require a portion of the treated effluent to be returned to the Pecos River. The City uses a portion of the remaining treated effluent for landscape watering at certain City-owned facilities including the Municipal Golf Course. The City solicited proposals from the public for the use of the excess treated effluent in its RFP No. 2015-12. Gregory Rockhouse Ranch, Inc. submitted its proposal. The City Council awarded RFP No, 2015-21 to Gregory subject to the negotiation of a satisfactory agreement. An agreement was entered into between the City and Gregory Rockhouse in 2016. Select Energy acquired all the assets, rights and obligations of Gregory Rockhouse in 2018. The City and Select desire to renew the 2016 Agreement for one additional five year term subject to amendments set forth in the Renewal and Amendment Agreement attached hereto</p> <p>The renewal agreement provides a non-exclusive right of Select to purchase effluent water for 11 cents per barrel, re-negotiation of the price effective January 1, 2023, deletes minimum billing requirement, adds a prepayment clause for 400 acre feet of effluent water, allows a delivery point at two places, indemnifies the City and makes clear there is no guarantee that the effluent water will be available at any particular time or place.</p>		
<b>DEPARTMENT RECOMMENDATION:</b>		
Approve the renewal and amended agreement.		
<b>BOARD/COMMISSION/COMMITTEE ACTION:</b> N/A		
<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> North Mesa Board	<input type="checkbox"/> Cemetery Board <input checked="" type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee
		} X APPROVED } } <input type="checkbox"/> DISAPPROVED

**Reviewed by:**  
**City Administrator** /s/John Lowe **Date:** 12/22/21

**ATTACHMENT(S):**  
 Renewal and Amendment of the Agreement Between the City of Carlsbad and Select Energy Regarding the Purchase of Effluent Wastewater

**RENEWAL AND AMENDMENT TO THE  
AGREEMENT BETWEEN THE CITY OF CARLSBAD AND  
SELECT ENERGY SERVICES, LLC  
(AS ASSIGNEE OF GREGORY ROCKHOUSE RANCH, INC.)  
REGARDING THE PURCHASE OF EFFLUENT WASTEWATER**

THIS RENEWAL AND AMENDMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 by and between the CITY OF CARLSBAD, New Mexico, a municipal corporation (hereinafter referred to as "City") and SELECT ENERGY SERVICES, LLC., a Delaware corporation, (hereinafter referred to as "Select").

WHEREAS, in September 2016, the City and Gregory Rockhouse Ranch, Inc. ("Gregory") entered into an agreement (the "2016 Agreement") under the terms of which the City agreed to sell and Gregory agreed to purchase Effluent as defined under the 2016 Agreement for a term of five (5) years after the 2016 Agreement's Effective Date; and

WHEREAS, Paragraph 7 of the 2016 Agreement states that the Effective Date of that agreement was thirty (30) days after the New Mexico Environment Department ("NMED") approved the modification of the City's discharge permit to allow the sale and use of the Effluent as described in the 2016 Agreement, and that the term would be five (5) years from the Effective Date; and

WHEREAS, NMED approved the modification to the discharge permit in late September 2016 setting October 27, 2016 as the Effective Date of the 2016 Agreement, and therefore making October 26, 2021 as the end of the term of the 2016 Agreement; and

WHEREAS, Select Energy Services, LLC acquired all the assets, rights and obligations of Gregory in 2018; and

WHEREAS, in an Assignment of Rights and Delegation of Duties dated June 27, 2018 ("Assignment"), the City consented to Gregory's assignment of its rights and delegating its duties under the 2016 Agreement to Select; and

WHEREAS, the City and Select desire to renew the 2016 Agreement for one (1) additional (5) year term as provided in paragraph 7 of the 2016 Agreement subject to the amendments set forth in this Renewal and Amendment; and

WHEREAS, recent world events have led to both an oversupply and a lessened demand for crude oil which in turn has led to a sharp decline in oil and gas exploration and production in the Permian Basin; and

WHEREAS, with the drop in oil and gas exploration and production, the demand for the Effluent has also dropped; and

WHEREAS, Select has requested the price per barrel of Effluent be reduced from 36.5 cents per barrel (36.5¢/bbl) to 11 cents per barrel (11¢/bbl) and that the minimum billing requirement be deleted.

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

1. **2016 Agreement.** The Agreement Between the City of Carlsbad and Gregory Rockhouse Ranch, Inc. Regarding the Purchase of Effluent Wastewater dated 28 September 2016, is attached and is incorporated herein and made a part of this Renewal and Amendment.

2. **Incorporation of Assignment.** The Assignment of Rights and Delegation of duties Pursuant to the Agreement Between the City of Carlsbad and Gregory Rockhouse Ranch, Inc. Regarding the Purchase of Effluent Wastewater dated the 27<sup>th</sup> day of June 2018, is attached and is incorporated herein and made a part of this Amendment.

3. **Amendment.** The 2016 Agreement shall be amended as follows:

A. Paragraph 2 of the 2016 Agreement shall be amended to state:

2. **Sale and Purchase of Effluent/Non-exclusive right.**

A. Upon Select's performance of the terms and covenants of the 2016 Agreement and this Renewal and Amendment, the City agrees to sell and Select agrees to buy Effluent from the City as set forth in the 2016 Agreement as amended herein.

B. For the year 2021, the City shall make available to Select and Select shall have the right to take custody of and use, any Effluent the City determines is available based on its end of year accounting after accounting for City uses, regulatory obligations and any prior Select usage. Any amounts taken by Select shall not be part of the 400 acre-feet reserved and pre-paid under paragraph 8.C. and payment shall be based on \$0.11 (11¢) per barrel.

C. Subject to subsection 2.B. and Select's right under this Renewal and Amendment to 400 acre-feet of Effluent in 2022, Select has no exclusive right to the Effluent. Subject to such limitations, in its sole discretion, the City may use the Effluent for its own purposes, or sell, or deliver it to other persons or entities. The City may solicit and receive offers to sell Effluent to other persons or entities. If the City receives a bona fide offer from another party to purchase Effluent, the City shall inform Select in writing of the terms of the offer. Select shall have seven (7) days after the City informs Select in which Select may provide the City with written notice that Select is willing to meet or exceed the offer of the other party to purchase Effluent both as to price and quantity ("Notice to Purchase"). If Select elects to meet or exceed the offer, the City shall sell the Effluent to Select and Select shall buy at the price and in the quantity agreed to within six (6) months, subject to the availability of Effluent discharged in sufficient amounts. If Select fails to purchase the quantity of agreed upon Effluent within 6 months of Select's Notice to Purchase, and such Effluent was available, Select shall make payment to the City in the full amount of the Effluent subject to the Notice to Purchase. If Select elects

to not meet or exceed the offer or fails to give notice of its intention within the seven (7) day period, the City shall be free to sell Effluent to the other party at the terms described to Select.

B. Paragraph 3 of the 2016 Agreement shall be amended to state:

**3. Delivery Point/Accounting.**

A. **Delivery and Custody.** The City shall deliver and Select shall take custody of the Effluent at either: (1) 22 Tell Tale Lane ("Tell Tale Lane Delivery Point") as more particularly shown on Exhibit A to the 2016 Agreement; and/or (2) at the City's point of discharge from its Wastewater Treatment Plant ("City's Outfall Delivery Point"). Custody and title to the Effluent shall pass from the City to Select at the Tell Tale Lane or the City's Outfall whichever Delivery Point is utilized by Select. Select shall be responsible for all regulatory compliance relating to custody and use of the Effluent at either Delivery Point. The City shall bear no responsibility for the Effluent or its use, including any regulatory compliance, following Select's taking custody. Both Delivery Points shall be subject to the metering requirements of Paragraph 10. In the event Select intends to take delivery and custody of the Effluent at the City's Outfall, Select shall notify the City, in writing, at least thirty (30) days in advance as to the location of use and the means for metering the amount of Effluent taken by Select.

B. **Accounting.** The City shall provide to Select, on a monthly basis, the amount of Effluent available to Select for extraction at the City's Outfall Delivery Point or the Tell Tale Delivery Point. The report from the City shall be an accounting of available Effluent year to date and does not warrant or guarantee the physical availability of the Effluent in a particular time frame. The monthly report from the City shall be provided to Select on the 10<sup>th</sup> day of each month. Select shall provide the City a monthly accounting of all Effluent taken by Select whether from the Tell Tale Delivery Point or the City's Outfall Delivery Point by the 1<sup>st</sup> of each month for amounts taken in the preceding month.

C. Paragraph 8 of the 2016 Agreement shall be amended to state:

**8. Compensation.**

A. **Price per Barrel.** Effective October 27, 2021, Select agrees to pay to the City sum of \$0.11 (11¢) per barrel of Effluent delivered to Select pursuant to this Agreement. Select and City agree to meet and negotiate a price per barrel escalation regularly. Select and City shall renegotiate the price per barrel to be effective on January 1, 2023 based on changes to the then-current market pricing for West Texas Intermediate Crude Oil. Select and City agree to each negotiate in good faith to determine reasonable adjustments to the price per barrel Select shall pay to City, provided however, in no event shall such price rise above \$0.365 (36.5¢) per barrel, the price agreed to in the 2016 Agreement, or go below \$0.11 (11¢) per barrel, the price agreed to in this amendment.

B. No change to 8.B.

C. Paragraph 8.C., entitled Minimum Billing is deleted and amended to state: **Prepayment.** Select shall pre-pay the City for four hundred (400) acre-feet of Effluent for a total pre-payment of \$341,370.04 due from Select to the City upon execution of this Renewal and Amendment. The City does not guarantee 400 acre-feet of Effluent will be available within any particular period, provided that subject only to the City's right of use, Select have first right of use of up to 400 acre-feet of Effluent during the term of this Agreement.

D. Paragraph 8.D., entitled Reduction of Minimum Billing, is deleted.

E. Paragraph 8.E., entitled Early Termination, is deleted.

D. Paragraph 10 of the 2016 Agreement is amended to state:

10. **Metering and Accounting.**

A. **Tell Tale Lane Delivery Point.** The City shall maintain the totalizing meter installed pursuant to the 2016 Agreement at the Wastewater Treatment Plant to measure the Effluent delivered to the Tell Tale Lane Delivery Point. Select may, at its option and expense, install and maintain a check meter at the Tell Tale Delivery Point.

B. **City's Outfall Delivery Point.** If Select utilizes the City's Outfall Delivery Point, Select shall install a totalizing meter at the point of extraction of Effluent from the Pecos River. Select shall report metered Effluent taken every thirty (30) days commencing on the Effective Date. Select shall be required to report meter readings even when no Effluent is taken from the City's Outfall Delivery Point during any 30 day period.

C. **Meters.** Select and the City may inspect the City meter and the Select meter(s) respectively in the presence and with the permission of Select or the City. If the accuracy of Select's or the City's meter is questioned, the metering instruments shall be tested and properly adjusted at the request of Select or the City, but the measurements shall not be considered inaccurate unless it is in error by more than five percent (5%). Should any test show an error in excess of 5%, a correction shall be made for volumes delivered for one-half of the period elapsed since the last test; but in no event shall the correction be applied for a period in excess of thirty (30) days. In the event any test demanded by Select or the City shows an error of more than 5% the cost of such test shall be borne by Select if it is the Select meter at the River Delivery Point or the City's if it is the City's meter at the Tell Tale Delivery Point.

E. Paragraph 15 of the Agreement is amended to add the following at the end of the paragraph:

15. **Indemnification of the City.**

In the event the City is required by the OSE as a result of the actions of Select under this Agreement to discharge Effluent it would otherwise not have had to discharge but for the actions of Select, Select shall reimburse the City for all costs and expenses associated with such

additional required discharge.

4. **Term/Effective Date.** This Renewal and Amendment shall be effective on October 27, 2021 ("Effective Date") and shall have a term of five (5) years commencing on the Effective Date.

5. **2016 Agreement and Assignment in full force and effect.** Other than the amendments specifically set forth in this Renewal and Amendment there are no changes to the 2016 Agreement or the Assignment, and the parties shall have the same rights and responsibilities as stated therein.

6. **Entirety of Agreement.** This Amendment incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Amendment. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Amendment. The parties expressly waive any other or further representations, warranties, or agreements not set forth in this document. This Amendment cannot be changed except by a written instrument subsequently executed with the same formalities as with this Amendment.

7. **Captions.** The captions of any articles, paragraphs or sections hereof are made for convenience only and shall not control or affect the meaning or construction of any of the provisions thereof.

8. **Exhibits.** Any instrument or document made and attached to this Amendment shall constitute a part hereof as though set forth in full in the body of this Amendment, whether made a part hereof by reference or whether made a part hereof by attachment.

**CITY OF CARLSBAD, NEW MEXICO:**

\_\_\_\_\_  
DALE JANWAY, MAYOR

CITY CLERK

\_\_\_\_\_  
CITY CLERK

**SELECT ENERGY SERVICES, LLC:**

Kristen Deal  
KRISTEN DEAL, VICE PRESIDENT  
BUSINESS DEVELOPMENT

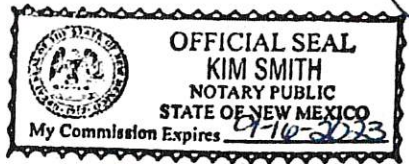
STATE OF NEW MEXICO )  
  ) ss.

COUNTY OF Eddy )

The forgoing instrument was signed and acknowledged before me this 10 day of Nov., 2021, by KRISTEN DEAL, Vice President Business Development, Select Energy Services, LLC.

My Commission Expires:  
9-10-2023  
NOTARY PUBLIC

Kim Smith





# Adjourn