

State of Texas

County of Brazoria

City of Freeport

BE IT REMEMBERED, that the City Council of Freeport, Texas met on Monday, October 21, 2024 at 6:00 PM at the Freeport Council Chamber located at 430 North Brazosport Blvd. , Freeport Texas for the purpose of considering the following agenda items:

|               |                                                  |
|---------------|--------------------------------------------------|
| City Council: | Mayor Jerry Cain                                 |
|               | Councilman Jeff Pena                             |
|               | Councilman Jarvis Davis                          |
|               | Councilman George Matamoros                      |
|               | Councilman Winston Rossow                        |
| Staff:        | Lance Petty, City Manager                        |
|               | David Olson, Interim City Attorney               |
|               | Clarisa Fernandez, City Secretary                |
|               | Ashlee Ferguson, Interim Finance Director        |
|               | Toby Cohen, IT Manager                           |
|               | Donna Fisher, Human Resource Director            |
|               | Crystal Ruiz, Executive Administrative Assistant |
|               | Rudy Ragle, Public Works Director                |
|               | Wade Dillon, Main Street Director                |
|               | Laura Cramer, Special Projects Supervisor        |
| Visitors:     | David McGinty                                    |
|               | John Jasso                                       |
|               | Melanie Oldham                                   |
|               | Pamela Dancy                                     |
|               | Con McCleester                                   |
|               | Diane McCleester                                 |
|               | Sam Reyna                                        |

### **Call to Order:**

Call to Order - Jerry Cain, Mayor

Mayor Cain called the meeting to order at 6:00P.M.

Invocation - Councilman

Councilman Rossow led the Invocation.

Pledges - Pledge of Allegiance to the United States; Pledge of Allegiance to the State of Texas.

Councilman Rossow led the Pledge of Allegiance to the United States and the Pledge of Allegiance to the State of Texas.

Audience Participation – Anyone who has registered to speak prior to the meeting being called to order and desires to address the City Council will be heard at this time, or during the discussion of an item listed on the agenda. These forms are located by the City Secretary. After completing the form, give it to the City Secretary. She will give it to the Mayor. The Mayor will call on you when that item is presented, once a motion has been made by Council then public participation will not be allowed. You will have four (4) minutes to make your comments regardless of the number of agenda items to be addressed.

Melanie Oldham resides at 1206 West Broad Street. She said she mentioned a year ago she took a new job working with a nonprofit, which just turned out to be a 50-hour plus a week job, and she travels a lot, but she has been watching the Council as much as she can City Council meetings and other City meetings online. She said first of all, a year ago, the City Council made her the liaison between the City Council and the MUD #1 Clinton Wong's Industrial MUD which she attended the majority of the meetings, and even though it is really hard to ask questions as the liaison at those meetings, she has asked them, and she would like to request that at the next City Council meeting the Council will put her on the agenda and she can give a full report of what she has heard last year of what actually is happening out there regarding the Industrial MUD that he is again demanding that the Council combine with a Residential MUD. Ms. Oldham said she watched online as Mr. Matamoros and Mr. Davis asked good hard questions which were not answered even by Mr. Wong or his lawyer, who she knows very well. She said it was almost like déjà vu. She said Mr. Pearson and herself and others in the room were at RiverPlace in 2014 when Mr. Clinton Wong stood up there and made his presentation about how he was going to have an industrial and a residential, and he was going to combine them over there on the urban renewal land and, of course, that never happened. She said he said that he was going to take and people do not know but the AE flood zone is a quarter of that land and somebody asked the question to Mr. Wong about how close he was to getting the VDD and the City to approve the flood management drainage plan and there was no answer. Ms. Oldham said he is no closer probably than he was 5 to 10 years ago for good reason because he will not develop the entire piece of land, and he wants to do it in little pieces the way his engineer partner and him want to. She said she hopes the Council will put her on the agenda, and she would love to talk to them about what she knows. She said Mr. Wong had told her that he had talked to each and every single one of the Council members by phone and just to hear from other people like Mr. Pearson who remembers what he said 10 years ago and here they are. Ms. Oldham said she had not been there, but down the road there will be discussion on the TIRZ money and again, just as an educated member of the public that has attended EDC and TIRZ meeting for 13 years, she thinks at some point the City Council will ask for opinions on how to use the \$600,000 whatever it is sitting in the TIRZ fund that will be coming up. She said there were a few that went to the Historical Main Street Visioning meetings, maybe around 20 but at both meetings what they recommended over and over was to get with the Charter Committee and, must divide the Historical Main Street Board into two boards and go out and get people and she had been hearing for six months that they will get with Mr. Olson and going to figure out if this can be done and get the Charter Review in changing that. She said, but because of that, things are happening downtown that should not be happening, like buildings being torn down. She said the ordinances have in there how Main Street and the separate Historical Board were operational they could stop that kind of stuff until they have time to help people get grants and other funding for their buildings downtown. She said she does not know why it seems like things are going slow and hopes Mr. Olson is looking into that because it is not only her asking those questions and would like an answer as to if the Charter allows to call a special charter review and fix it so they can divide those two committees. She said \$70,000 was paid to the company and the City needed to get the \$70,000 worth.

Pamela Dancy resides at South Front Street. She said she had not seen and it is not just her speaking anything on the agenda or at the executive meetings about the \$345,000 of what is going on with that. She said also about the attorney that is working on that that has not pulled subpoenas for the contractors' bank accounts, or whatever, and she would like to have an update on that or said in an executive session at least. She asked Mr. Petty she does not recall but she thinks the City is getting funds for coming into Freeport and is the county is supposed to fix that, or is it the state coming into Freeport? City Manager Lance Petty said that it is TXDot. Ms. Dancy asked if that was in 2025? Mr. Petty said yes. Ms. Dancy asked if Mr. Petty knew when in 2025? Mr. Petty said February.

Yessenia Cardenas resides at the 1400 Block of West 10th Street. She said she had been living there since 2015, and she had worked that whole time, and so she did not have an issue with the school zone. She said,

however, now that she had a baby, she used to work around the school schedule. She said this time she wanted to get inside her house, and she needed that driveway unblocked. She said she had been having issues with cars blocking her driveway and when she tries to honk at them and tell them that she lives there, they are very rude to her, and they do not let her in, and they think that she is cutting. She said she had been calling the Freeport PD, and she had been calling the BISD and at first they were putting it between each other, and she had been calling the school, and then she finally got it worked out, and they did clear it up. She said, and then it came to her knowledge that the school zone is actually supposed to go down 11th Street versus Pecan Street and had a teacher out there redirecting traffic, and so they got it to go down 11th Street then you have a couple of bad apples that try to cut, and she has seen where there is almost an accident, and she knows that the Freeport PD has officers that are on patrol duty for traffic and then other ones take the other calls. She said she does not really expect an officer out there 24/7, but until this gets situated she would like for somebody to be out there, whether it is the school, Freeport PD, somebody out there that redirects traffic again because with the week break the school just had, they are down Pecan Street again and not only do they block her driveway she has videos where they will block the street intersection in front of the stop sign they are blocking that lane and in order for her to go around she has to go into the oncoming lane and there is a lot of traffic around that time. She said she would be back until it gets resolved, and her voice would be heard.

Sam Reyna resides at 2002 North Avenue G. He said the photos that he gave to the Council were taken on Sunday the 13th a week ago. He said Ameriwave picking up bulky and green waste and was doing the disposal manually. He said Ameriwave has grabbing trucks at their disposal to properly do the job. He said last time he saw a grabbing truck being used in Freeport was January 2022. He said Ameriwave has to provide vehicles and equipment to perform the work and render the services required by the contract, but they are not doing it and that is a breach of contract. He said bulky and green waste was being picked up from residential properties, and he would consider this a residential collection and Section 4 of the contract states no residential collection should be made on Saturdays and Sundays unless the contractor is directed to do so by the City. He said he just found out that, yes, the City did give them a permit and thanked the Council for making Ameriwave do their job. He said the first photo he pulled up behind the truck and was there approximately 12 minutes, and he did not know how long it had been there and how long they were there after he left, and he did not see no flaggers, no cones, no barricades, and it was definitely a safety violation. He said in Section 13 of the contract, it states that the contractor shall provide the work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in compliance with OSHA and other laws they apply to its employees, the contractor shall be responsible for instructing its employees concerning safe working habits and shall be responsible for complying with all OSHA regulations. He said maybe cones and barricades were not necessary, but a flagger was needed to direct traffic around the working area. He said safety is first. He said the first photo was taken in front of his front yard and that debris had been there for so long it burned his grass, and it was picked up on Sunday, but it was too late, and the damage had already been done. He said the rest of the photos show their front yard. He said Mrs. Nicole and himself have a lot of hours invested in the yard, and it stresses him out seeing the burn spots. Mr. Reyna said Ameriwave is not doing their job and citizens are burning their green waste in their backyards because of that. He said Waste Management was picking up heavy trash once a week and bulk waste twice a week. He said Waste Connections was picking up bulky waste weekly, not every month, but weekly. He said Ameriwave took them almost three years to properly pick up bulky and green waste and that was last Sunday with manual labor and the fleet of trucks. Mr. Reyna asked and they have a seven year contract? He said Ameriwave is supposed to pick up bulky waste once a month and in his area it is every third Thursday of the month, and they do send out the trucks but only pick up some and not all. Mr. Reyna said if they use grabbing trucks they have some they can always pick up, and he knows they have some. Mr. Reyna said to get rid of the company, and they are not fit for Freeport.

**Consent Agenda:**

Action regarding Minutes, October 7, 2024 and October 8, 2024. - Clarisa Fernandez, City Secretary

Approval of Road Closures for Dia de Los Muertos Procession on Friday, November 1, 2024 from 6:00PM to 8:00PM.- Wade Dillon, Main Street Director

A motion was made by Councilman Matamoros to approve the Consent Agenda, seconded by Councilman Rossow with all present and voting "Aye" 5-0. The Council unanimously approved the motion.

### **Proclamations - Presentations and Updates**

Presentations – Brazoria County Veterans Parade Committee recognition of the City of Freeport's participation in the 25th Anniversary Parade- John Jasso

John Jasso chairman of the Veterans Organization of Brazoria County presented a recognition plaque to the City of Freeport and to Special Projects Supervisor Laura Cramer for entertaining the Veterans Day Parade in Freeport.

Upcoming Events - Fright Night October 24th @ FMP Riverplace 6:00P.M.-9:00P.M.

Community Clean up November 2nd 8:00A.M.- 12:00P.M.

@ OA Fleming 431 West 4th Street

City Manager Lance Petty gave an update on upcoming events.

### **Business**

Consideration and possible action approving Resolution No. 2024-2889 appointing member(s) to the Beautification/Parks and Recreation Committee.

City Manager Lance Petty said the Beautification/Parks and Recreation Committee has two vacancies due to the resignation of Mr. and Mrs. Johnson and their terms are due to expire May 31, 2025. He said the appointment would be to fill out the remainder of the term and at the time this memo was prepared, the City had received an application from Robert J. Dohle.

A motion was made by Councilman Rossow to appoint Robert J. Dohle to the Beautification/Parks and Recreation Committee, seconded by Councilman Matamoros with all present and voting "Aye" 5-0. The Council unanimously approved the motion.

Consideration and possible action approving Resolution No. 2024-2890 authorizing a revision to the City of Freeport Policy Handbook Chapter 5- Standards of Conduct revising Section 5.23 Information Resources Acceptable Use (AUP) and Security Policy Agreement.

Human Resource Director Donna Fisher said this is to add Section 5.23A to the policy manual in order to comply with Senate Bill 1893 that was passed in the 88th legislature. She said the City is to have a policy in the policy manual that bans TikTok and other technology that the governor deems to be a security risk from all City owned and lease devices. She said this policy will meet those requirements.

A motion was made by Councilman Matamoros to approve Resolution No. 2024-2890 authorizing a revision to the City of Freeport Policy Handbook Chapter 5-Standards of Conduct revising Section 5.23 Information Resources Acceptable Use (AUP) and Security Policy Agreement, seconded by Councilman Rossow with discussion that followed.

Mayor Cain said this is banning the use of TikTok and others as mentioned on City owned and City leased devices. Mayor Cain asked if someone wants to TikTok on their own time on their own is that fine? Human Resource Director Donna Fisher said that is not prohibited by this policy.

Mayor Cain called the motion to a vote with all present and voting "Aye" 5-0. The Council unanimously

approved the motion.

Consideration and possible action approving the proposal from IAD Architects for professional architectural and engineering services to design and produce construction contract documents for the renovation of the Pixie Heritage House.

City Manager Lance Petty said staff had previously on two occasions brought to the Council for approval of architectural and design for the renovation of the Pixie Heritage House. He said the City Council requested on both occasions requested to get additional quotes. He said staff had reached out to other firms and did not receive any additional quotes. He said staff elected to advertise the project through an RFP in an effort to allow other firms to bid on the project. Mr. Petty said the City advertised the project on September 26, 2024 and again on October 3, 2024, with a bid opening on October 10, 2024. He said the City received a proposal from Integrated Architecture & Design, LLC (IAD) for the amount of \$43,917.00. He said the proposal included: architectural design and construction contract documents, structural engineering, and windstorm engineering and inspections. Mr. Petty said the Pixie House has been inoperable for a number of years. He said the City in the past had a renovation project completed and shortly after that time, the building started having issues regarding water infiltration in the building which has caused damage to the windows, walls, ceiling, and flooring. He said the City had budgeted \$375,000.00 to make the necessary repairs. He said this building in the past was heavily used as a rental venue and an additional source of revenue for the City. He said this building is in the downtown district, and it is important not only to have an additional rental space for the public, but to preserve the building for revitalization of the downtown. Mr. Petty said, once approved, IAD Architect and Design will be tasked to provide the required documents for the advertisements for construction. He said staff would bring proposals back to the Council at a later date for selection of a contractor to perform the work.

A motion was made by Councilman Matamoros to approve the proposal from IAD Architects for professional architectural and engineering services to design and produce construction contract documents for the renovation of the Pixie Heritage House, seconded by Mayor Cain with discussion that followed.

Councilman Davis asked if this was to do no work? City Manager Lance Petty said correct they have to do the architectural design, and they have to bid the specifications to be able to bid the project out, but it includes the windstorm engineering and everything else for the project.

Mayor Cain asked City Manager Lance Petty if he recalled the last time this was discussed with IAD what their fee was? City Manager Lance Petty said \$39,000. Mayor Cain said it has gone up to \$4,000.

Councilman Pena said he had two questions and they were why and who? He said he was asking why they are doing this, and it was \$39,000 before it was brought to the Council before, and said to take it back out to get other bids but the real push at the time was to make sure to not waste \$39,000, and now they are on the verge of wasting \$44,000. He said he wants to be crystal clear, and he wants Pixie House redeveloped, reemployed, and reutilized. He said there had been restaurant businesses that have gone through the downtown who have asked to occupy and lease it, and it was his understanding that they would be willing to do the renovation or that there would be some agreement on their part to help absorb those costs in exchange for a generous lease. He said that is something that the EDC he would hope would be trying to facilitate. He said he had a problem with the Council, as he mentioned, six months ago when this came up and prior that they are looking to spend \$30,000, tens of thousands of dollars, \$39,000 last time, and \$44,000 this time, and he can not image what cost increased to get it from 39 to 44 but simply put you can get an engineer to get all the windstorm and all the other structural information for \$2,500. Councilman Pena asked who were the guys that just demolished the Whites Cafe or the building that the EDC owns? Councilman Pena said it was the construction company that is actually in the downtown district over off of Second Street. He said they did the demolition for the EDC building. Councilman Pena asked Mr. Ronnie Martin if he remembers what that construction company was? Councilman Pena said he would hope that the City Manager would know or anybody in permitting since they had to get a permit to demo it and was wondering who that was?

City Manager Lance Petty said he knows who it is but can just not remember the name. Councilman Pena said he googled it, and he could not see it, but that company there could have easily demolished it or at least assessed it because they do remodeling and there are a handful of other construction companies in town. He said there were a handful of other companies in town, and he was just thinking why not just pick up the phone and asked them "hey can you give a bid on what it would take to fix it". He said, because about three and a half years ago he did just that while he was on the EDC board, and he got an estimate of about \$250,000, and he knew it was in the budget 375, but at no time was there ever any discussion about hiring somebody at \$40,000 or even \$20,000 or \$10,000 to say what a general contractor will say for free. He said he is hoping that they think about why they are doing this. He said he thinks they should basically look for a local contractor that would do it for probably less than \$5,000 and give that same information in the hope that they actually get that job. He said the second thing he wanted to ask was who was doing this and who we are asking to do this is IAD architects? He said this was a very important question because they have been down this road because a year and three days ago it was brought up that the Covarrubias fiasco had been revealed. He said he just wanted to let everybody know that a year ago, when this Covarrubias \$345,000 misuse of City funds, illegal wires or however you want to frame it, which he believed Ms. Oldham had actually asked about or was it Ms. Dancy? Mayor Cain said to Councilman Pena Covarrubias does not have anything to do with Pixie House. Councilman Pena said correct, but IAD does and wants to mention the role in that whole transaction was in March of that year of last year they were tasked with this very responsibility to go out and get general contractors to present to the City to give bids and give all the parameters and all the scope of work for the City and the problem was in that whole endeavor of theirs it was later found out in November, he said mind you this was March and this was voted on in June. He said they voted on June and the vote was 4 to 1 and he was the one to dissenter, but more importantly, at the time of November last year or October last year, it was discovered that IAD had included a letter of recommendation for one of the contractors, and he thought well that kind of really kind of messes up the whole sense of objectivity of the process. He said he does not think they asked for who they recommended but was sure they could have given a recommendation the way that staff always does but that the fact that they included a letter really pushing Covarrubias was really suspect to him back in November when this all came out. He said what is even crazier is that in July when that wire went out, the month of August was spent with IAD architects being a part of trying to get Covarrubias back on track and some people say maybe part of the cover up, but what stands there today is when Ms. Dancy asked where they are with that investigation and, well the truth of the matter was it has been his position that IAD is still part of that investigation, and he can not in good faith include them in any City business going forward until that is resolved and making sure that in fact their name is cleared of any malfeasance. He said that is all he wanted to ask why they are doing it, it is a waste of money and who they are doing it with, and said they have to ask are those good actors.

Councilman Davis said one of the statements that was just made the IAD group and asked if they were involved in the placing of getting bids for the other company that was lost out on that company? He asked if they were involved in the letter of recommendation and then used that company and then got burnt? City Manager Lance Petty said he personally had not seen the letter of recommendation. Councilman Davis asked if they were involved on like they are doing now going out and looking for bids and contractors for the job? Mr. Petty said that is typical for all engineers and architects, and they build the scope of work, and then they put the RFP, and then the City advertises to get the contractors in. Councilman Davis said he was asking if this was the company that did the same thing and did the City pay them to do that? Mr. Petty said yes.

Mayor Cain said the City has used IAD in several projects in the past and this, to his knowledge or at least for the time he has been on the Council, was the first incident they had with them. He said, as far as them doing their job yes they are going to look at it and they are going to create a scope of work, and they are going to put it out for bid the contractors are going to come in, and they vet the contractors, and then it goes to the Council and the Council takes it from there. City Manager Lance Petty said they would do the same thing they did with City Hall they are there to design the contract documentation and specifications, and they

receive pay applications from contractors and review all their submittals for review they do all the inspections. Mr. Petty said outside that they are not involved with the contractor itself. Mayor Cain said this is money that has been sitting in this particular fund for several years as the Pixie House is just sitting there and going to waste.

Councilman Pena said what gives him the most heartburn about the who is the letter or recommendation, but then in the month of November of last year, when IAD was asked by him if they thought Covarrubias could actually be worked with to get the work done, and they said no. He said which runs counter to their recommendation six months earlier but then he asked another question if they even thought they could do the job and the answer was a no, which again flies in the face of that recommendation six months earlier. He said he would say the \$345,000 still has not been accounted for and still has a piling of legal fees but the last part yes, that money is set aside and thank goodness, it had not been wasted or for that matter wired to another contractor that is going to run off with it while the City does not have their ducks in a row. He said he just wants to make sure that they are working with good contractors that they can trust that have been vetted, and then legal can make sure that the contractors are written correctly so that the City is not in a lurch out of \$345,000 or in this case, \$375,000.

Mayor Cain called the motion to a vote with all present and voting "Aye" 4-1. The Council approved the motion. Councilman Pena voted "Nay".

Consideration and possible action approving Resolution No. 2024-2891 accepting the financing proposal from Government Capital to fund the Ameresco Water Meter Project.

Interim Finance Director Ashlee Ferguson said the City of Freeport has been gathering financing proposals to find the most desirable rates and repayment options. She said the Council approved the contract with Ameresco on October 7th to begin implementation of an advanced metering infrastructure system and meter replacement project. She said the project is guaranteed to offset the implementation costs through operational savings and revenue increases from inaccurate meters. She said if the guarantees are not met, Ameresco will write a check for the shortfalls or replace failed equipment. She said staff has been seeking financing proposals to cover the initial cost of installation with payment terms that would allow the increased revenue to cover the payment. She said Governmental Capital submitted two proposals and Webster Bank submitted one proposal. Ms. Ferguson said Governmental Capital presented the most desirable option of a 15-year financing proposal for \$3,500,000.00 with an interest rate of 4.45% and annual payments of \$337,856.32 beginning eighteen months from funding. She said the Turnkey Project cost is \$3,480,210.00, O&M Cost Savings of \$93,000.00 a year and the capture of lost water and unaccounted for revenues due to inaccurate meters are projected to be over \$305,000.00 in year one. She said the increased revenues between O&M savings and unaccounted for revenues will cover the 15 payments as proposed by Governmental Capital with repayment terms beginning eighteen months from funding and staff felt most comfortable with the fact that the City will see the increased revenues before a payment is due with this financing proposal option. She said the recommendation is to accept the financing terms from Governmental Capital with payments beginning 18 months from funding.

A motion was made by Councilman Matamoros to accept the payment amount for the 15 payments of \$337,856.32 beginning 18 months from funding as it has been presented in the packet, seconded by Councilman Rossow with discussion that followed.

Councilman Pena said he had in his hand and asked if they remembered that scene in that movie Dumb and Dumber when they spent all the money, but they had a whole bunch of post-it notes saying I owe you? He said he has the I owe you that Ameresco is going to give the City when they fall short and the reason he says that is not to be funny but to really make the Council think of what a blind promise sounds good and throw in the undercoating, throw in the spare tire, and throw in the free oil changes to. He said he asks why they are doing this and who they are doing this with? He said he was asking himself where they are going to get this money? He said he keeps thinking of the fact that two months ago the previous CFO stood up there and

said there was not enough money and had to tighten our belts. He said the budget was passed 4 to 1, and he was against it because he did not trust the numbers, and he did not trust the message, and here they are still with more information and more surprises, just adding on \$40,000 here, \$44,000 there, and \$375 here, and another \$3,480,210.00 here and there with a blind promise that this is going to be paid back if there is any shortage. He said might as well hold on to the I owe you's that he has. City Manager Lance Petty said it was not a blind promise, and they were paid to do a study of the meters and also had a third party to review those numbers and guarantee those numbers, and so it was not a blind promise. Councilman Pena said his contention at the last meeting, and he knows there was a workshop six months ago that he was at and another workshop that was basically reiterating the same thing, but at the last Council meeting when they talked about moving this chess piece forward or checkerboard piece forward because it is not complicated and this thing got moved forward and no questions asked and just keep spending the money. He said he thought about Ameresco and the thing he brought up at the last Council meeting was and asked Mr. Mayor, Mr. Petty was, why are they doing this when they do not have the money in place and the staffing is discombobulated. Councilman Pena said he knows the comment at the meeting was no it is not. He said he was glad that he has some kind of verification of what he was saying because he could say that and asked Mr. Petty if we are whole in the water department, do we have our staff, supervising staff or do we have job postings out for that job position currently? City Manager Lance Petty said currently yes. Councilman Pena said this just makes his point that they are not ready and the water department is still disorganized, we still need the proper leadership in that department before they move forward. He said he was just a messenger, and it would go 4 to 1 but he just wanted to make sure he always did his job as an elected official to inform the public and go on the record so that nobody could say nobody said anything. He said he has the I owe you's and it was a dumb and dumber agreement.

Mayor Cain said he would like to answer one of the questions and the reason they are doing this is to make sure the City gets paid for the water that is being distributed plain and simple. He said the City pays for it and the end user needs to as well.

Councilman Rossow asked if Ameresco had said they were saving the City money? Interim Finance Director Ashlee Ferguson said yes. Councilman Rossow said four of the Council believe that this will be saving money by putting these meters in and asked if this was correct? Councilman Rossow said he was just trying to figure out where the problem is. Councilman Rossow said dumb and dumber. He asked who is dumb? Councilman Rossow said four of the Council members are dumb and only have one smart guy up there. Councilman Rossow said he knows this sounds crazy.

Councilman Matamoros said they had two workshops on this, and he attended both of them. He said he asked questions and those answers were satisfied with data which they were given. He said he likes to look at data and looking at this he reads his packet on Friday when he receives it Saturday and Sunday. He said he makes sure he was going over everything, and it looks like in the packet it states the first year the City would recover \$305,000 and asked if this was correct? Interim Finance Director Ashlee Ferguson said yes, that is correct. Councilman Matamoros said for lost water and unaccounted revenues due to inaccurate meters. He said then, annually, in addition to the capture of those that amount they are going to save is another \$93,000 and asked if this was correct? Ms. Ferguson said yes. Councilman Matamoros said to push it over the top, Ameresco said the meters are not correct, and they were going to cut the City a check and asked if that was correct? City Manager Lance Petty said yes. Councilman Matamoros said upon hearing all these things it made it a no-brainer decision. Councilman Pena said yes, no brains for sure. Councilman Matamoros said if more income needed to be obtained maybe the City could get taxes that are not paid.

Councilman Pena said he had one last comment on this, and he would like to have it answered by staff. He said, as he mentioned at the last meeting, the problem was not all of the meters but 25% and maybe 25% was probably closer to 10% and the question he has tonight is on that same point. He asked who is enforcing these contracts, and who is watching what the left hand is doing? He said when the staff is not in place that

they know that they have not even hired so they do not even know how competent they are going to be until they get into the seats, and they sit in the halls of the City Hall, but now they are just going to trust this third party contractor because they put it in their contract. He said there were a lot of things in the Covarrubias contract too and the fact is that nobody was keeping track of stuff. He said he was wondering and asked who is going to keep track of this, and who is going to be doing that? He said he hopes everybody asks the same questions.

Mayor Cain called the motion to a vote with all present and voting "Aye" 4-1. The Council approved the motion. Councilman Pena voted "Nay".

A motion was made by Councilman Pena to pull the discussion on the EDC/Board of Adjustments discussion out into open session because he is curious as to why an open meetings discussion would be put in executive session when that is illegal and is curious why Olson and Olson approved that. He said if he could get an answer why Olson and Olson were advising that they put what is legally supposed to be an open session in executive session. Interim City Attorney David Olson said he could give Councilman Pena legal advice in executive session. Councilman Pena said all he knows is he does not want the Council to be discussing in an executive session like they did in the past about this very topic that was actually illegal when they were talking about somebody who is both handicap and a minority in executive session and it was not even on the executive session agenda and that is what he is concern that they are hiding potential legal liability in executive session trying to hide how they are treating the residents and that is why he is very concerned. Councilman Pena said if it turns out that some malfeasance is going on about it he will be reporting it.

A motion was made by Councilman Pena to pull the discussion on the EDC/Board of Adjustments discussion out into open session. The motion died for a lack of a second.

Mayor Cain said legal advice was it needs to be in executive session. Interim City Attorney David Olson said he is going to give the Council legal advice about this issue in executive session and will come back out if they want to discuss it they can.

Councilman Pena said to just remember they got burned on that legal advice when they were discussing it in executive session, and they should not have been because it was not on the agenda so tempered the enthusiasm for legal advice leaning on that sentence.

Mayor Cain said this is on the agenda. Councilman Pena said it is tonight, but he is asking why it is in executive session when it legally is an open meetings discussion. Mayor Cain said they would get that answer in just a few minutes.

### **Executive Session**

Executive Session regarding a.) (Consultation with Attorney) 1.) Consider Appointment or Removal of EDC/BOA Board member. 2.) Water Rates pursuant to Section 551.071.

The regular session closed at 6:54P.M. and the Council entered into the Executive Session.

### **Reconvene into Open Session:**

Take any action resulting from Executive Session.

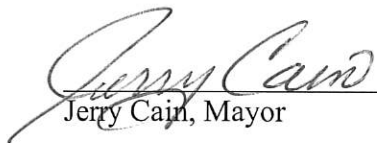
Executive Session ended at 7:31P.M. and the Council entered back into regular session.

There was no action from Executive Session.

## Adjournment

### Adjournment – Jerry Cain, Mayor

A motion was made by Councilman Pena to adjourn the meeting, seconded by Councilman Davis with all present and voting "Aye" 3-2. Mayor Cain and Councilman Matamoros voted "Nay". Mayor Cain adjourned the meeting at 7:32P.M.

  
Jerry Cain, Mayor  
Clarisa Fernandez, City Secretary