

**LINKED MINUTES OF A SPECIAL MEETING OF THE CITY COUNCIL OF THE  
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL ANNEX  
BUILDING ON DECEMBER 28, 2021 AT 4:00 P.M.**

|          |                      |                                |
|----------|----------------------|--------------------------------|
| Present: | Dale Janway          | Mayor                          |
|          | Lisa A. Anaya Flores | Councilor <i>via telephone</i> |
|          | Edward T. Rodriguez  | Councilor                      |
|          | Leo B. Estrada       | Councilor                      |
|          | Jason O. Chavez      | Councilor                      |
|          | Judith E. Waters     | Councilor                      |
|          | Wesley A. Carter     | Councilor                      |
|          | Mark C. Walterscheid | Councilor                      |

|         |               |           |
|---------|---------------|-----------|
| Absent: | Jason Shirley | Councilor |
|---------|---------------|-----------|

|               |                     |                                    |
|---------------|---------------------|------------------------------------|
| Also Present: | John Lowe           | City Administrator                 |
|               | Denise Madrid-Boyea | City Attorney <i>via telephone</i> |
|               | Nadine Mireles      | City Clerk                         |
|               | Steve McCutcheon    | Citizen                            |
|               | Maria O'Brien       | Modrall Sperling                   |

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00      **Call Meeting to Order**

0:00:05      Invocation - Pledge of Allegiance

0:00:37      **Mr. Lowe announced that City Attorney Denise Madrid-Boyea and Councilor Lisa Anaya-Flores were attending by telephone.**

0:00:54      **1. APPROVAL OF AGENDA**

0:00:57      **MOTION**

The motion was made by Councilor Carter and seconded by Councilor Waters to approve the Agenda

0:01:01      **VOTE**

The vote was as follows: Yes - Rodriguez, Estrada, Walterscheid, Anaya-Flores, Chavez, Waters, Carter; No - None; Absent -Shirley; the motion carried. ,

0:01:15      **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**

**Mayor Janway asked Mr. Lowe to discuss Item 2 Approval of Renewal and Amendment to the Agreement between the City of Carlsbad and Select Energy Services, LLC regarding the purchase of Effluent Wastewater**

**Mr. Lowe** explained this agreement is for a five year renewal amendment to the 2016 agreement for the purchase of effluent water. He said this agreement provides for non-exclusive right for Select Energy to purchase effluent water for 11 cents per barrel with re-negotiation in January 2023. He said there is a pre-payment clause of 400 acre feet and allows for a delivery point at two locations. He said the Water and Sewer Board recommends approval of this agreement. He added sale of effluent water supports the water and sewer fund.

**Mr. Lowe** introduced Maria O'Brien to review the renewal and answer any questions.

**Ms. O'Brien** said this agreement has been in place for a number of years. She said the use of effluent to allow re-use of effluent by the City for third parties whether for oil and gas or other purposes is a good policy as and it is not impacting users. She said effluent water is private water that belongs to the City, meaning the State cannot take jurisdiction over effluent water and what the City decides to do with the effluent water. She said the contract with Select Energy demonstrates legal control with giving physical custody to Select Energy. She said Select Energy had been obtaining the water prior to discharge into the Pecos River and a new delivery point after discharge, has been added, to be determined by Select Energy and adds to the flexibility in terms of where Select Energy will use the water. She said the City uses the effluent water to water the Golf Course and Parks. She said this is a non-exclusive right to the effluent water, however the City retains the right to use any amount of effluent it needs for their purposes and the right to sell to a third party. She said Select Energy has first right of refusal. She said Select Energy is responsible for any regulatory compliance relating to taking custody of the effluent water and using the water. She said there is a significant indemnification clause that is in the amendment. She said there are requirements by Select Energy to report back to the City regarding the use of the effluent water and the amount taken. She said the water will be metered and reported to the City, for tracking and payment purposes.

**Councilor Walterscheid** asked what the excess effluent water is per year? **Mr. Lowe** said it varies year to year. **Councilor Walterscheid** asked if there is 400 acre feet or more per year. **Mr. Lowe** and **Ms. O'Brien** said yes there is 400 acre feet or more per year, **Mr. Lowe** added there has been less than 400 acre feet at times. **Mr. Lowe** said 400 acre feet is an average per year.

**Councilor Walterscheid** asked if this has been going on for five years, the agreement started in 2016 and is being re-negotiated now. **Mr. Lowe** explained what is before Council today is an amendment for the price per barrel. **Councilor Walterscheid** asked

if this has been going on for five years, the agreement started in 2016 and it is being re-negotiated now. **Mr. Lowe** explained what is before Council today is an amendment for the price per barrel. **Councilor Walterscheid** asked if this is the second year of the contract. **Mr. Lowe** said five years has been completed and the original agreement is in the first year of the second renewal.

**Councilor Walterscheid** asked why a bid was not done for this agreement, and if Select Energy is the only company interested. **Mr. Lowe** said in 2016 when the original contract was negotiated the governing body approved a five year agreement with the potential for a five year renewal.

**Ms. O'Brien** said if she is correct a (request for proposal) RFP was done in 2016 and Select Energy was the only respondent. **Councilor Walterscheid** asked about a third party being able to bid on the price for water. **Ms. O'Brien** explained Select Energy is pre-paying for 400 acre feet when the City has excess. She said any effluent water in excess of 400 acre feet could be bid on by the third party. She said at that point the City would need to notify Select Energy that a third party has bid on the excess water and Select Energy could bid higher than the third party, if not the City could sell to the third party. **Ms. O'Brien** added there has been more than 400 acre feet in excess on average over the years. She said after golf use and Select Energy use, there is usually 400-600 acre feet in excess. She said even if you take Select Energy out of the equation there is well over 400 acre feet in excess.

**Councilor Rodriguez** asked that once the water is released in to the Pecos River, at that time Select Energy can draw water after notifying the State of New Mexico. **Ms. O'Brien** clarified Councilor Rodriguez, stating once the City has discharged the effluent water to Select Energy, the City no longer has any responsibility where Select Energy takes the water. She said Select Energy is responsible for where it takes it and if any regulatory compliance is required. **Councilor Rodriguez** clarified it would not be a burden on the City of Carlsbad. She said that is correct, not a burden and the City is fully indemnified if Select Energy doesn't do their part.

**Mr. Steve McCutcheon** verified that Ms. O'Brien is correct, a RFP was done for this agreement in 2016. He said there was an outreach to OCD, Environment Department, and the State Engineer and all the agencies agree this was a great use of excess water.

0:16:00        **Mayor asked if there were any more questions from the Council. There were none.**

0:16:04        **MOTION**

The motion was made by Councilor Rodriguez and seconded by Councilor Estrada to approve the Renewal and Amendment to the Agreement between the City of Carlsbad and Select Energy Services, LLC regarding the purchase of Effluent Wastewater

0:16:11        **VOTE**

The vote was as follows: Yes - Rodriguez, Estrada, Walterscheid, Anaya-Flores, Chavez, Waters, Carter; No - None; Absent -Shirley; the motion carried. ,

0:16:29        **3. ADJOURN**

0:16:33        **MOTION**

The motion was made by Councilor Waters and seconded by Councilor Estrada to Adjourn

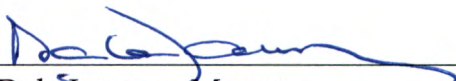
0:16:40        **VOTE**

The vote was as follows: Yes - Rodriguez, Estrada, Walterscheid, Anaya-Flores, Chavez, Carter; No - Waters; Absent -Shirley; the motion carried.

0:17:11        **Adjourn**

There being no further business, the meeting was adjourned at 4:17 p.m.



  
Dale Janway, Mayor

  
Nadine Mireles, City Clerk