



City of Miami Springs, Florida

The Miami Springs City Council held a **SPECIAL MEETING** in the Council Chambers at City Hall on Wednesday, June 4, 2008, at 7:00 p.m.

1. Call to Order/Roll Call

The meeting was called to order at 7:05 p.m.

The following were present:

- Mayor Billy Bain
- Councilman Bob Best
- Councilman Paul C. Dotson
- Councilman Rob Youngs

Absent: Vice Mayor Zavier Garcia

Also Present:

- City Manager James R. Borgmann
- Assistant City Manager Ronald K. Gorland
- City Attorney Jan K. Seiden
- Chief of Police H. Randall Dilling
- Finance Director Leacroft E. Robinson
- Former Finance Director William Alonso
- Interim Comptroller Alicia E. González
- City Clerk Magalí Valls

2. Invocation: Councilman Dotson offered the invocation.

Salute to the Flag: The audience participated.

3. Resolution – A Resolution of the City Council of the City of Miami Springs Authorizing the Proper Officers and Officials of the City to Execute the “Agreement for Transfer of City of Miami Springs Water and Sewer Systems to Miami-Dade County” by and Between the City of Miami Springs and Miami-Dade County; Reaffirming the City’s Intent to Transfer its System to the County; Providing Authorization for Appropriate Revisions to the Transfer Agreement; Effective Date

City Attorney Jan K. Seiden read the resolution by title.

Attorney Seiden stated that the “Whereas” clauses provide information on the history related to the proposed transfer up to this point and the intent of the City. The first section authorizes the proper officers and officials of the City to execute the agreement on behalf of the City. Section two provides that by the execution of the subject agreement, the City Council is affirming its desire and determination to transfer the City’s water and sewer systems.

Attorney Seiden explained that Section three states that the City Council further authorizes the proper officers and officials of the City to authorize and accept all appropriate revisions to the Transfer Agreement, not in conflict with the intent of the City, without further City Council action.

Attorney Seiden stated that there is a scheduled restraint from the County that was not anticipated until midway into the discussions. The schedule requires that the City’s signed agreements and four certified resolutions be provided to the County no later than June 6, 2008 for placement on their committee review schedule that permits them to hear it on July 8th. If the agreement passes at that level, it would then go to the Board of County Commissioners on July 15th. This schedule is important because the City is required to send notices pursuant to bond defeasement beginning on July 21st.

City Attorney Seiden emphasized that there is no need to do this unless Council agrees. The worst case scenario is that it could be postponed, although the County Officials might not be happy, but if Council does not feel comfortable, there is no requirement to do anything. The only negative is that the City would retain the system for a longer period until some time in December 2008, or January 2009 and the payments would have to be adjusted. He said that everyone had worked hard to get to this point, but he does not want Council to be put in a position where they feel they must do something.

Attorney Seiden stated that he would go over the entire agreement. He suggested that Council should make comments or notes because there could be answers to some questions in a subsequent section. Generally, the transaction that is evidenced by the documentation is a transfer of all City tangible personal property and property rights related to the tangible personal property and everything related to the sewer system to the County in order for them to assume the operation and maintenance of the water and sewer utility systems.

The City consideration, in his opinion, is that the City’s benefit is that the bonds are paid off and will suffer no further loss either by virtue of operational concerns of the systems or any future repair costs and innovations mandated by governmental agencies or regulatory authorities. The County consideration is that they will lay out and repay \$8 million, and they will insist, as part of the transaction, that they perform on behalf of the City certain one-time improvements delineated in the Malcolm Pirnie report. All costs, or approximately \$13 million, will be paid back to the County over a twenty-year period of regular rates based upon consumption and a surcharge amount.

City Attorney Seiden stated that the transaction is not simple or easy and from the City’s perspective,

there is no leverage. The City is asking the County to take the system and to pay off the bonds, which takes away a bit of negotiating power. In addition, there is a certain lack of historical documentation related to the system components, which he will address in more detail in his review of the document.

The City is using the best available information and the knowledge of the Administration and the PBS&J personnel who have been associated with the system since the early 1970's, according to Attorney Seiden. He explained that one negative factor is that there will be certain continuing liabilities that the City will maintain over a twenty-year period by way of indemnification to the County. If certain representations turn out to be incorrect or if there are objections to certain operations, it will be the City's responsibility to take care of it.

City Attorney Seiden said that any potential liabilities, if they exist, whether or not the system is transferred, will still be the City's liabilities; the agreement with the County will not create any more liabilities. It is not a creation of a liability; it is an assumption of a liability which is unknown. He continued to say that the County is looking for protection from the unknown based upon the lack of historical information and documentation, and they are being very reasonable in their demands.

City Attorney Seiden stated that the County representatives had been very cooperative and accommodating. There have been numerous joint meetings, discussions and e-mail correspondence. He said that Assistant Director Jorge Rodriguez has been exceptionally helpful. Diane Camacho is very well schooled on the finances of the Department and has also been very helpful, along with Don Allen, the personnel representative for the County. Most of his dealings have been with Assistant County Attorney Henry Gilman and Assistant County Attorney Debra Herman.

City Attorney Seiden added that the City has relied upon and received efficient help from PBS&J representatives Carlos de Valle, Doug Deans and Herman Konrad, in addition to Bill Fussel with the investment banking firm.

Attorney Seiden explained that the first "Whereas" clause deals with the acknowledgement that the City owns and operates a water and sewer collection system both in Miami Springs and Virginia Gardens. Exhibit "A" contains numerous maps that show the water and sewer service area and index maps showing what the City operates. The second "Whereas" deals with County Code Section 5.08 (B) of the County Charter and Section 2-341 permits them to operate and maintain county-wide water and sewer systems and allows this transaction. The third "Whereas" is a confirmation of previous actions as part of the process of transferring the system, including the adoption of City Resolution No. 2007-3366, which is attached as Exhibit "B". Exhibit "B" is a copy of the Resolution that the City passed in 2007 with the report attached.

Attorney Seiden stated that the nature of the transaction is different than selling a piece of property because there are very few people who could buy and operate a sewer system. One of the findings made in the Resolution was that the County is both fiscally responsible and has the expertise.

City Manager Borgmann added that there were discussions with individuals who had a passing

interest in the potential of purchasing the system on a private basis, but their analysis did not work.

Attorney Seiden explained that the transfer is being treated as a sole source transaction. He continued his review of the document explaining that the fourth “Whereas” states that the City and County mutually agreed on a closing date pursuant to Section 17 of the agreement, which is contingent upon the conditions set forth in Section 18.

As stated in Section 1. “**Transfer of City Systems**” the City agrees to transfer to the County and the County agrees to accept the City Systems on the closing date, subject to the conditions in the agreement, specifically Section 18. In consideration of the transfer, the County covenants with the City to assume and faithfully perform and discharge all the City covenants and obligations assumed in the agreement, according to Attorney Seiden. Basically, the City agrees to give the system to the County and the County agrees to take it and perform all the services necessary.

Attorney Seiden explained that Exhibit “C” is referred to in paragraph 2, which deals with the two lines of demarcation for the transaction. Number 1 is the tangible physical property of the transaction, and Number 2 is the assignment rights or the ability to use certain things like the easement dedication rights. The Bill of Sale will transfer the tangible personal property of the City to the County. Paragraph “A” refers to transmission lines, pumping stations, distribution mains and all the infrastructure items that the system is comprised of.

Attorney Seiden continued to explain that Paragraph “B” refers to all customer records, accounts, customer lists, prints, plans, meter books, surveys and maps that the City will transfer to the County. The wording “*in existence at closing*” was added because the City is unable to produce some historical perspective and documentation, which was lost when the building it was stored in was destroyed during a hurricane/tornado some years ago. Some information has been obtained through public records and PBS&J records. Certain vehicles, utility machinery and generators that the City will no longer have any use for will be attached to the Bill of Sale as part of Exhibit “C”, along with utility systems spare parts.

Councilman Dotson asked if any of the vehicles being transferred were purchased with City funds instead of the Water and Sewer funds.

City Manager Borgmann advised that everything in the transfer should be part of Water and Sewer. The generators are the ones that would keep the pumps and motors going at the lift stations, they are not the City’s hurricane back-up generators.

Attorney Seiden noted that the final paragraph is a disclaimer to protect the City and states that “*All the aforesaid transferred tangible personal property shall be free and clear of all liens, encumbrances, bonds and indebtedness whatsoever, except for any “permitted exceptions” as may be hereinafter set forth herein.*”

Attorney Seiden stated that the permitted exceptions are listed on page 10. Items 7A and 7B refer to

the following:

1. All items being transferred in an “as is” condition and without any representation or warranty.
2. The documentation being transferred is believed to be accurate, though no representation or warranty is provided in regard hereto.
3. Due to continued operation and use, the tangible personal property identified (Exhibit “C”) in the Utility Equipment Inventory and Spare Parts Valuation Analysis, may not be working or in existence at the time of closing.

Attorney Seiden continued to explain that lists of the utility equipment inventory and spare parts are attached to the Bill of Sale. The City will continue to use the equipment until the closing, so there is a possibility that the inventory may change between now and then; the City will not guarantee the condition of any equipment.

The County asked for a listing of all the pump and lift stations, and those addresses and locations are listed in a document for easy reference. The utility equipment and spare parts inventories will have to be updated at the time of closing and attached to the Bill of Sale.

Attorney Seiden noted that some difficulties arose because the City was limited in the amount of records that were available for the individual stations. He said that he and the City Manager, along with various officials made numerous tours around the City to locate the stations and determine the best way to transfer them for use. He outlined some of the problems, using pump station # 1 as an example. This station is located in a fenced in utility area adjacent to Stafford Park and the property was deeded to the City by the School Board.

City Attorney Seiden explained that information had not been located in the records, but the City has a copy of the Deed. Post, Buckley, Schuh and Jernigan (PBS&J) had been asked to develop a legal description. An easement will be granted to the County using the legal, along with rights of access and usage. Pump station # 2 is in the middle of Curtiss Parkway; the City does not own it but has a platted easement to it by virtue of it being in the middle of a City parkway area.

Attorney Seiden continued to say that the City will have to prepare a separate assignment for each station. The stations located in public rights-of- way will be fairly easy; the City will assign them on a non-exclusive basis which will allow the City use of the areas for its own purposes. In the case of Station # 10, located between Bennigan’s and the Red Roof Inn, the City was granted an easement; those rights will be re-assigned to the County on a non-exclusive basis. The process of locating and researching each station was time consuming but necessary.

Attorney Seiden continued to review Item 3. “Assignment *of City Rights and Interests*”, explaining

that Section (A) deals with all rights to licenses, privileges and authorities, and basically allows the City to assign the authorities to operate the system to the County. Section (B) gives the County access to all dedicated rights-of-way, recorded or unrecorded plats or deeds lying within the City on a non-exclusive basis. This refers to the pipes underground that connect the stations and the City cannot give specifics because most of them are in the easement areas. Section (C) states essentially the same thing, but is another way for the City to acquire rights to use the areas by way of prescription, necessity or otherwise. Section (D) refers to easements mentioned in the Exhibits after the Assignment Documents. These documents were gathered from Public Records by County staff and refer to grants of easement that the City has been given over the years. The books and page numbers are the recording information for those instruments.

Attorney Seiden stated that Section (E) refers to franchises, permits and licenses and whatever may come into play that allows the operation of the system. It is written in general terms so nothing is omitted in error. Section (F) refers to all rights, title and interest of the City in and to any contracts or agreements with individual water and sewer customers. For other jurisdictional clients, including Virginia Gardens and the annex area, the City has required the various companies to sign sewer agreements over the years. These agreements will be assigned to the County.

Attorney Seiden noted that the next paragraph is similar to the one in the Bill of Sale section. It states that all of the aforesaid transferred rights and interests shall be free and clear except for any “permitted exceptions”.

Attorney Seiden stated that the “permitted exceptions” in this case are referenced on page 10 in Section **7B “Assignment of City Rights and Interests:**

1. *The City acknowledges its records are incomplete and makes no representation of warranty as to the items herein as they were provided or granted to the City by other parties at various times. However, the City is unaware of any claims, disputes, or threats that would undermine the effectiveness of the aforesaid instruments of the rights or interests they confer upon the City.*

In essence this says that the City has operated the sewer system for almost 37 years and no one has raised an issue regarding any of this. He felt that that the County should be comfortable with this.

Councilman Dotson asked if the lateral extensions from the main line through the swales to the sidewalk were all part of the interests the City was conveying to the County.

Attorney Seiden said they were, but he thought that the laterals were owned by the residents.

City Manager Borgmann advised that the laterals that go from the inside edge of the sidewalk through the swale belong to the City. The residents own the portion that is hooked up to that lateral.

Attorney Seiden continued to read item B 2, which states:

2. *“All assigned rights and interests are subject to City planning, building and zoning regulations ordinances and other restrictions, and all other present and future laws, ordinances, resolutions, regulations and orders of any other governmental authority having jurisdiction over the specified rights and interests.”*

He explained that if a situation should arise, the City has the right to discuss the issue with the County.

Attorney Seiden said that the Assignment of City Rights and Interests section basically mirrors what he had just reviewed. All the bullet points are the same and the only addition, at the request of the County, is a provision on page two that reads as follows:

“In addition to the foregoing, and despite the fact that the provisions contained herein may in some instances be sufficient, it is the intent of the City to provide the County with any and all appropriate legal instruments to grant, assign or convey the rights to control, operate and maintain all sewage pump stations and City lift stations. Some or all of the additional legal instruments may be on a non-exclusive basis.”

Attorney Seiden explained that the City has not produced at this time any of the documents that will in effect individually transfer the lift or the pump stations. The previous statement is a confirmation of that fact.

Attorney Seiden said that the last paragraph in this section of the agreement reads:

“The City further agrees to assign, on a non-exclusive basis, any additional right or interest, within its ownership or control, including easements and other property interests that may be discovered in the future to be reasonably required by the County for the operation of the City systems being transferred herein. This provision shall survive the closing.”

He explained that this clause benefits the City and its citizens; if there is something that the County needs to operate the system, it is to everyone’s advantage for the City to assist. The last sentence says that the City will continue to cooperate with the County even after the transaction is complete.

City Manager Borgmann advised that some of the easements that the City was transferring dealt with private individuals and on private property. Every one that the City has been able to locate is attached to the exhibits.

City Attorney Seiden noted that those were the “third party” easements that he had referred to earlier, and virtually all of them were acquired from the late 1960’s to early 1970’s when the system was installed.

Attorney Seiden said that paragraph four deals with the financial discussion of the transaction and

read the text. *“Financial Obligations upon Transfer: Upon the transfer of the City Systems to the County, the County shall not assume any payment obligation or liability for any City account payable, debt, bond indebtedness, contract for service or supply of products, contingent liability, or for any other financial obligation of the City.”* This means that the City is still responsible for its financial obligations with the exception of the bonds, which will be discussed later.

“In addition, the City shall continue to retain all payroll responsibilities until closing, and shall remain liable on any interest obligation or other accrued expenses that may exist.” Attorney Seiden explained that this refers to operational agreement between the City and County staff.

“Meters of all water and sewer customers shall be read simultaneously by personnel of the County and the City as soon as it is practicable after the date of closing. The County shall use this agreed upon reading as a start of service reading and billings thereafter will be performed quarterly as the County’s customers are included in the existing meter reading route schedules.” Attorney Seiden pointed out that another section of the agreements reads “monthly/quarterly” which is in reference to the volume customers that the County bills on a monthly basis. *“The City shall be responsible for billing service to the final meter reading amount, refunding deposits as necessary and continue to bill for its storm water utility fees.”*

Attorney Seiden explained that the City should still be receiving money from the last readings after the closing takes place, and will also be responsible for refunding all deposits to the residents. Stormwater utilities are not part of this transaction.

To answer City Manager Borgmann’s question, Attorney Seiden replied that sanitation was not part of the agreement and therefore there was no need to include a reference to sanitation billing. He continued to read the following provision:

“The County does not assume any responsibility for existing receivables and retail customer deposits, the County will establish deposit needs in accordance with the County’s Rules and Regulations on a prospective basis. Finally, any customer advances held by the City for prospective construction which have not been exhausted, shall be accounted for and transferred to the County for the purposes for which the advances were intended. In addition, all sums deposited with the City by third parties for the extensions of the City Systems shall likewise be accounted for and transferred to the County for completion of the work contemplated.”

Attorney Seiden reiterated that the City would be responsible for its accounts receivables and deposits. Any monies that had been set aside for a system project would be accounted for and transferred to the County, as well as any monies held for customer water and sewer extension requests.

Councilman Youngs asked how the deposit refunds would be handled for the City residents, and how the County would go about establishing deposit requirements.

Attorney Seiden replied that he did not have any information regarding the County’s rules and

regulations, and that the deposit fees would be covered in an upcoming section of the agreement.

City Manager Borgmann noted that any deposit on record with the City would be refunded to the resident, and they vary in size according to the longevity of each deposit.

Attorney Seiden continued to read from page 5, section 5: ***Defeasment of Existing City Bonded Indebtedness:*** “*It is mutually acknowledged and agreed that the transfer of the City Systems to the County is conditioned upon the legal defeasance of the City Utilities Systems Revenue Refunding and improvement Bonds, Series 1998 (the “Bonds”) on or prior to the Closing Date. The City shall receive certain funds necessary for defeasance of the Bonds from the County. In advance of the Closing Date, the County shall make available to the City, \$8,000,000.00, as verified by the Registrar and Paying Agent to be necessary along with a transfer of \$644,312.50 from the City to retire the Bonds, in exchange for the City’s execution and delivery of the Promissory Note in the form attached as Exhibit “E”. At the required time, the County shall transfer the funds directly to the Bond Registrar and Paying Agent to be used to retire the Bonds. In connection with the defeasance, the City shall provide the County, a confirmation from the Bond Registrar and Paying Agent that all Bonds were paid off by September 2, 2008.*”

Attorney Seiden said that the call date for the bonds is September 1st, which is Labor Day, so the date has been adjusted to September 2, 2008. The closing is scheduled for September 3, 2008.

“In order for the proper defeasment of the City’s bonded indebtedness, the City is required by its bond documentation to provide advance notice of the call/redemption date to the Bond Registrar and Paying Agent no later than July 21, 2008, in order to provide bondholder notification and adequate processing time for the transaction.”

Attorney Seiden stated that most of the payment schedule was provided by the investment bankers. This schedule presupposes the fact that the resolution is passed tonight and the agreement is sent on to the County to approve it on July 15, 2008. If all those things happen, the following schedules would apply:

On July 21, 2008 the City notifies the Bond Registrar of its intent to pay off the Bond. Notices of redemption will be sent to securities depositaries, nationally recognized municipal bond information services, and Municipal Bond Insurance Agency by July 25, 2008. An additional notice of redemption will be sent to the Bondholders by July 31, 2008.

On August 26, 2008 it is anticipated that the City will wire transfer currently due the 2008 Bond, Principal and Interest payment in the amount of \$632,312.50 plus \$12,100.00 for a total transfer of \$644,312.50. This amount added to the \$8,000,000.00 mentioned earlier represents the total sum of \$8,644,312.50. Attorney Seiden explained that these monies are already contained in the Water and Sewer Fund. The wire transfers are to be made by 10 a.m. so that they are received by the Bank of New York no later than 2:00 p.m. Once the transfer is verified, the City will then sign a Promissory Note, which is exhibit “E”.

Attorney Seiden stated that the Promissory Note is a standard Note for \$8,000,000.00. The interest

rate was eventually agreed upon at 6%, subject to the approval of Council. He explained that since the County is advancing \$8,000,000.00 to the City, it needs a guarantee that the loan is secure because the closing is not for some time afterwards.

Attorney Seiden continued to say that on August 27, 2008, the City expects to receive confirmation that the payment was received. The bonds should be officially defeased on September 2, 2008, which is the actual call date. The County wants verification before the actual Closing date, which would be September 3, 2008. Authorization and agreement by both parties must be secured by July 17, 2008, and the bond notices should start to go out by July 21, 2008, as previously stated.

Since he considered the schedule fairly complicated, Attorney Seiden asked if there were any questions. No questions were asked, so he continued to paragraph 6 on page 7.

Capital Improvements to City Systems: Funding for Improvements; Repayment for Defeasement and Improvement Funding: *The parties acknowledge that the County would not accept the transfer of the City Systems unless certain “one-time” capital improvements were agreed to be made and be paid by City customers in order to bring the various components of the existing City Systems up to the minimum standards of the County’s Water and Sewer Department. Exhibit “F”, attached hereto, contains a list of the various Water and Sewer improvements recommended in the City of Miami Springs Utility Valuation Analysis prepared by Malcolm Pirnie, Inc. dated February 2007 which estimates the cost to be \$13, 249,000.00.*

City Manager Borgmann said that a two page document entitled “Malcolm Pirnie Summary 6” was handed out to the Council members. It detailed the waste water system and the financial aspects of repairs that had been estimated to be required.

To show Council how the \$13,249,000.00 dollar amount had been arrived at, Attorney Seiden continued reading from the second paragraph on page 8.

“Based upon the foregoing analysis, it is projected that the required capital improvements to the existing City water and distribution and sewer systems will require net funding from the County in the amount of \$10,809,000. This amount reflects the one-time capital improvements for the water distribution system (net amount \$3,940,000) and the initial improvements for the sewer system (net amount \$6,869,000). The projected amounts are inclusive of the replenishment of \$890,000 from the County fire hydrant fees and the County receiving the City’s current allotment from the Building Better Communities General Obligation Bond (“GOB”) of \$1,550.00. The City, therefore, agrees to assign, transfer, or otherwise authorize payment of the City’s “GOB” funding to the County to be used to construct main, pipeline and other enhancements to the water delivery and sewer collection systems to increase efficiency, capacity, quality of service, and protect public health”.

Attorney Seiden noted that the sum of the amounts listed in this paragraph total \$13,249,000.

In response to Councilman Young’s question, Attorney Seiden said that the \$890,000 is included in

the replenishment costs, and would be further explained in the next paragraph.

“The City, however, will retain the balances currently contained within the City’s Water and Sewer Budgetary Funds from which it will refund customer deposits (approximately \$470,000), repay the debt owed to Florida Department of Transportation for System Relocation Costs advanced on behalf of the City (approximately \$429,000) pay the current principal and interest due on the City’s Water and Sewer Bonds (\$644,312,50), and reimburse itself for the Fiscal Year 2007 – 2008 Administrative Costs of operating the City Systems (approximately \$440,000).”

Attorney Seiden noted that City Records indicate that approximately \$470,000 will be refunded to the residents.

City Manager Borgmann said that he thought that the refund would be in the form of a credit on the final bill, and a check would be issued if there was a positive balance.

Attorney Seiden advised that this paragraph was very important to the County. The County wanted to be assured that the City has a certain amount of money in its Water and Sewer fund, and the money had to be justified for certain expenses. He continued to explain that the Florida Department of Transportation advanced money to the City for the relocation of Station 12 on the corner of LeJeune and N. W. 36th Street. That debt of \$429,000 will be repaid and come off the books. The City is also going to pay what it owes in principal and interest, plus the \$12,000 that makes up the bond defeasement differential of \$644,312.50. In addition, the City will be reimbursed for Administrative Systems costs for the Fiscal Year 2007-2008 of approximately \$440,000. If there were any additional monies left over in this account that were not included for items that the City can still pay for, they can be used for those items and be reimbursed back into the general fund.

City Manager Borgmann said that the City was required to do an SSES report with DERM, so that payment could also be taken out of these funds.

Councilman Dotson stated that his numbers come up to about \$1,983,000.

Finance Director Robinson informed Council that the balance of the Water and Sewer fund was \$2.6 million.

Councilman Dotson noted a surplus of about \$700,000, some of which could be used to cover expenses such as attorney fees, etc. He asked where the excess would be directed in the event there was money left over.

Assistant City Manager Gorland said that any money left over after all the settlements are taken care of is intended to be used to reduce the debt that the residents will owe for the next 20 years.

Attorney Seiden said the City did not have exact figures for the amount; some of it may be money that comes in from billings after the system is shut down.

Attorney Seiden continued reading. *“In consideration of the transfer for the funds advanced by the*

county to legally defease the Bonds and for repayment of the \$10,809,000 advanced for system improvements recommended in the Miami Springs Utility Valuation Analysis by Malcolm Pirnie, Inc., the City acknowledges that the water and sewer customers in the City will be billed after the Closing Date at the County's then current Fiscal Year rates for the one-time improvements, plus an additional pro-rated surcharge for the debt repayment and debt service, in their monthly/quarterly County water and sewer billings. At the time of the completion of the transfer of the City System to the County on the Closing Date, it is contemplated that \$1.451 million will be due annually for a period of twenty (20) years. The aforesaid "surcharge" is based upon an allocation of the annual repayment amount of \$1.451 million as a percentage of the revenues anticipated to be billed to the customers within the City each year. This "surcharge" will be calculated annually as part of the normal budget process and will be based upon the revenues received by the County from each prior year adjusted for any budgeted rate increases. A detailed explanation of the aforesaid annual repayment amount due from customers within the City and a further explanation of the "surcharge" calculation process is attached hereto as Exhibit "G".

Councilman Dotson said that \$1.451 million over 20 years comes out to \$29,020,000. He asked how that figure was arrived at when they were previously talking about \$21,000,000.

Former Finance Director William Alonso explained that the County was putting in \$10.8 million into repairs to the system plus another \$8 million for the bond, for a total of \$19 million. Over the 20 years of the loan, the City would pay close to \$9 million dollars in interest. At the time he did the analysis last year the annual debt payment was \$1.55 million; more than it is now. He did not know what the assumed rate was for the current analysis, but the information could be obtained.

Councilman Dotson thought that the numbers were important and that \$9 million dollars in interest sounded quite high. He would like to know the details of how this was calculated.

Discussion ensued regarding the rates and what they were based upon, as the amortization schedule was not included in the exhibits. Mr. Alonso noted that a calculation from an amortization table showed the interest rate to be 3.92% on a \$19 million dollar loan over 20 years, with an annual payment of \$1.451 million dollars.

"Finally, the \$13, 249,000 of capital improvement funding from the County will include certain fire flow improvements in the amount of \$890,000 within the City. Instead of inclusion within the aforesaid water and sewer customer monthly "surcharge" amount, funds paid for the fire flow improvements will be replenished by the County's monthly fire hydrant fees as part of the County's normal customer quarterly billings which include fire flow protection charges for all customers living within 660 feet of a fire hydrant".

Attorney Seiden explained that the charge for the fire flow improvements is a separate item and not included in the repayment total.

Councilman Youngs asked for clarification on how they arrived at the final numbers. His

understanding was that the County was going to make \$13 million in repairs and allocate \$890,000 for the fire flow. The \$890,000 dollars was not going to be included in the surcharge but spread out over the 20 years as part of the normal fire fees.

Attorney Seiden said that Councilman Youngs was correct, and noted that the document was not clearly written. He continued reading from the document, page 10, section 8: ***Warranties of the City:***

“The City hereby agrees, represents and warrants as follows:

A. *“That there are no actions, suits, or proceedings pending, or to the City’s knowledge, threatened against or affecting this transaction or any individual component thereof, at law or in equity, before or by any federal, state, county, municipal or governmental court, department, commission, board, bureau, agency or instrumentality which involve the possibility of and judgment, assessment or liability which would affect the ownership, right or interest of the City, or would constitute a lien against the City or its assets.”*

Attorney Seiden said that the above statement confirms that the City has received no notification of intent to challenge the transfer, and that any such challenge would constitute a lien against any of the City’s assets.

B. *“It will warrant and defend the County’s title to, and possession of, ant tangible property transferred from the City against all claims and persons and should a suit be filed”...*

This states that the transfer of the system is free and clear.

C. *“In the event that the City is unable, for whatever reason, to obtain any easement required by the County pursuant to the terms stated above, then the City further warrants and agrees to pay any and all costs, including reasonable attorney’s fees, incurred by the County in acquiring any easement by whatever means necessary including condemnation proceedings”.*

Attorney Seiden explained that if the City owned the system, they would have the same problems that the County would have.

D. *“In the interim between execution of this Agreement and closing hereunder, the City will maintain and operate the said systems in a normal, proper and efficient manner to the end that the value of the same shall in no way be diminished other than by normal wear and tear”.*

E. *“The city shall complete the certification of sewer extension improvements approved under*

number SE2003-26 and the improvements to City Pump Station No. 12 as required by Miami-Dade County Department of Environmental Resource Management (DERM). Copies of the certification documents and clearance for use of the station by DERM shall be submitted to the County by the Closing Date. Failure to comply will result in the cancellation of the Agreement.”

Attorney Seiden noted that the last sentence was very important to both the City and the County; he indicated that the County insisted upon this language.

City Manager Borgmann said that the improvements have been completed and the pump station has been tested and is functional. The City is in the process of acquiring the paperwork from the State to present to DERM.

- F. “Upon execution of the Agreement, the City will not enter into any Developer Agreements which obligate it to extend either its City Systems or to furnish water and sewer service, in addition to the services now being provided, without written approval from the County.”*
- G. “The City is a duly organized and existing municipal corporation, incorporated and authorized under the laws of the State of Florida.*
- H. “The execution of this Agreement has been duly authorized pursuant to Resolution No. 2008-3397 approved by the City Council of the City of Miami Springs on June 4, 2008”.*
- I. “To use its best efforts to obtain the necessary consents for the assignment or transfer of any contract, lease, license or permit to be assigned or transferred hereunder, and to perform its duties under such contracts, leases, licenses and permits without default until the Closing Date”.*

Attorney Seiden noted that the City still has some documents to obtain before the closing date, and the paperwork for Station No. 12 is one of them. Attorneys from both parties are working with the Department of Transportation to resolve the issue, and he did not anticipate a problem.

- J. “Until the Closing Date of this Agreement, the City shall not, without the written consent of the County, dispose of or encumber anything being transferring hereunder with the exception of any transactions occurring in the ordinary course of the City’s business. In addition, the City agrees that it shall confer with the County in all matters of policy or change thereof, which may be required until subject Closing Date.”*

Attorney Seiden said that the above paragraph ensures that benefits of the bargain does not change between now and the closing date. The next part of the document explains the obligations that the County has agreed to.

8. County to Fulfill Obligations to Retail Customers – Current and New Agreements: *“The*

County agrees to fulfill the City's obligations to individual retail customers presently connected to the City Systems insofar as the obligations relate to the furnishing of water and sewer service in accordance with the County's Rules and Regulations following the transfer of the City Systems to the County on the Closing Date. The City shall proceed with any expansion or improvement of the City Systems as would be proper and usual in the normal course of business, provided that the terms of all agreements made before the Closing Date, but following the execution hereof, which involve the undertaking of the City to extend the City Systems, to install new facilities or to agree to accept new facilities installed by others, or to furnish water and sewer service, must first be approved by the County. The County shall assume the responsibilities of those developer agreements which have been approved by the City prior to the Closing Date".

Attorney Seiden explained that any expansion would need the approval of the County before the project could continue.

"In addition to the foregoing, and in the spirit of cooperation and the providing of all current information and documentation available, the City has three (3) pending development projects in the City, which are more specifically described on Exhibit "H" attached hereto. It is anticipated that all the projects described herein shall be completed and operational by the Closing Date".

Attorney Seiden said that Exhibit "H" included the mixed-use development project at 357 North Royal Poinciana Drive, the 657 South Drive commercial building, and 4801 N. W. 36th Street, which is the gas station that recently received site plan approval. In addition, he has also notified the County that Springview Elementary School will be replacing portable classrooms with a new media center on the same property. The new building is not anticipated to create any greater water or sewage usage for the site.

"Finally, the City will assign any and all of its previous currently performing water and sewer service customer agreements, for properties and buildings within the City's service area including within Virginia Gardens. As previously agreed, all such Agreements shall be assigned to the County on the Closing Date".

As discussed earlier, the City will assign all its customers to the County.

10. "Assumption of Miami-Dade Department of Environmental Resource Management (DERM) Consent Agreement by the County: *The County shall complete all repairs and improvements to the City sewer system as mandated by any federal, state or local consent decrees, more specifically, the DERM Consent Agreement, attached hereto as Exhibit "I", or as same may be modified to extend time requirements for associated work by mutual agreement between the Department and DERM upon the transfer of system ownership. The costs for said one-time improvements are described in Paragraph 6".*

Attorney Seiden noted that the consent decree is a standard document attached as Exhibit "I". The

improvements that are described in sections 5 and 6 will resolve these issues.

11. “Improvements of City Systems: *Except as provided in Section 6 herein, it is the County’s intent to improve the water and sewer systems at the County’s sole discretion, depending on such factors as construction scheduling, material delivery and financing. The County shall determine, in its sole discretion, whether there is a need for the installation of additional water and sewer facilities in the City. The County agrees to secure the City’s written approval for the location of all additional facilities, and such approval shall not be unreasonably withheld.”*

Attorney Seiden pointed out that the work mentioned in section 6 must be completed. There are more improvements to the system that will need to be done. The County is agreeing to make those improvements but is required to ask the City’s permission before installing any additional facilities on City property.

Councilman Youngs asked if there was a time limit on the capital improvements. He knew the meters would be replaced right away so that the systems would be compatible, and wondered if there was a schedule for the rest of the improvements.

Attorney Seiden explained that it would be difficult for the County to provide a schedule. The City system does not meet the minimum standards of the County, so the improvements will have to be made. The money has been allocated and labeled for those improvements, but there is no schedule.

Councilman Youngs thought that the improvements, in good faith, would have to be made within the first few years. He would like some kind of schedule from the County so that the City could inform the residents when some of these improvements were taking place. He noted that there is an obligation implied in any contract under Florida Law, but they could ask for an outline of a schedule and add it to the document.

Councilman Dotson said he would like to see stronger wording in the document. If the City is going to be paying \$29 million dollars over a 20 year period for improvements he would like to see it treated as an obligation and not as a “in good faith” issue.

12. “Transfer of City Records Prior to Closing” states that the City agrees to transfer all records to the County at time of closing.

13. “Opinion of City Attorney” states that the Attorney Seiden has to provide an opinion of counsel that the City has complied with all requirements of law and its charter at the closing date.

14. “Access to City Records” Attorney Seiden noted that the City has agreed to provide the County with access to its records between the time the contract is signed and the closing date, to allow the County to plan and design improvements to the system.

15. “Other Documents and Further Assurances” stipulates that if either party has omitted or

forgotten any documents, they will be provided to carry out the intent and spirit of the agreement.

16. “Notices” lists the addresses of John W. Renfrow, Director of Miami-Dade Water and Sewer Department, and James Borgmann, City Manager of the City of Miami Springs.

17. “Closing Date: *“The closing shall take place on September 3, 2008 and at a place mutually agreed to by both parties. The parties shall be responsible to deliver the following documents:*

- A. *“Bill of Sale” from the City in the form provided in Exhibit “C” attached hereto”.*
- B. *“Assignment of Right and Interest” from the City in the form provided in Exhibit “D” attached hereto”.*
- C. *“Legal opinion of the City Attorney from the City”.*
- D. *“The City shall provide confirmation from the Bond Registrar and Paying Agent that the Bonds have been defeased”.*
- E. *“The cancelled Promissory Note from the County.”*

Attorney Seiden noted that at the closing the County has to cancel the Promissory Note, and return it to the City.

- F. *“Certified copies of all the City's and the County's resolutions authorizing this Agreement”.*
- G. *“Such other documents and certificates that may be necessary to finalize the transfer of the City Systems”.*
- H. *“The City shall deliver to the County appropriate legal instruments granting, assigning, or conveying the City's property interests to the County in a form approved by the County and the County shall accept such conveyances.*

Attorney Seiden advised that he has written a letter confirming the City's understanding with the Department Director and the County Attorney concerning the rights of use and rights of access to the pumps and lift stations. This letter is not in the agreement, and there has been no objection to it.

18. “Conditions for Closing: *In order for this transaction to satisfactorily closed, the following must occur:*

- A. *“Each governing body shall have authorized the execution of this Agreement by appropriate official action”.*
- B. *“The City shall provide to the County verification from the Paying Agent of the amount*

of funds necessary to retire the Bonds”.

- C. *“The Bonds shall be legally defeased pursuant to Section 5 of this Agreement and the City shall have executed and delivered the Promissory Note to the County”.*
- D. *“The County shall tender the City’s Promissory Note marked cancelled in exchange for the confirmation by the Bond Registrar and Paying Agent that the Bonds have been defeased”.*
- E. *“The City shall tender its Bill of Sale” and “Assignment of Rights and Interests” to the County”.*
- F. *“The County shall accept the “Bill of Sale” and “Assignment of Rights and Interests”.*
- G. *“Each party shall have performed all of its duties, responsibilities and obligations required to be performed as a condition of the transfer of the City System under this Agreement”.*
- H. *“No issues regarding the transfer of the City System shall remain unresolved.”*
- I. *“The County shall declare that it is prepared to provide water and sewer services to all customers located in the City of Miami Springs Water and Sewer Service Area”.*
- J. *“The City will deliver to the County, copies of certification document and DERM clearance for use of Pump Station NO. 12 and gravity sewer extension permitted under approval number SE-2003-26”.*
- K. *“The City shall deliver to the county appropriate legal instruments granting, assigning, or conveying the City’s property interests to the County in a form approved by the County and County shall accept such conveyances”.*

Councilman Dotson asked who would be responsible from the City to see that all these steps in sections 17 and 18 are complied with.

Attorney Seiden replied that he and the City Manager would be responsible for making sure all the documents are in place. If the agreement is approved, he will begin to prepare the documents for the stations as soon as he gets the information from PBS&J. He continued to explain that the County has requested a set of “as built” plans for the Systems, which the City has not been able to locate. The County is aware of this and has accepted Atlases of the City Systems, which are similar. Assistant City Manager Gorland may help on the financial side.

Attorney Seiden stated that the next section of the contract deals with what the County wanted for indemnity purposes.

19. Indemnification: *“The City shall indemnify and save the County harmless from and against*

all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including reasonable counsel fees, by or on behalf of any person, party or government authority whatsoever arising out of; (a) any failure by the City to pay any obligation not the obligation of the County under this Agreement, which failure results in lien, encumbrance or claim against the Bill of Sale or Assignment items;(b) the breach of any covenant, agreement, representation or warranty made under the terms and conditions of this Agreement;(c) the failure to perform any of the City's obligation under developer agreements, which are not assumed by the County by virtue of this Agreement; (d) any mechanic's lien, financing statement, security agreement, conditional bill of sale, or chattel mortgage or other title retention device filed against the City of any of the properties transferred under this Agreement; (e) any adverse condition of title to the property warranted against in Bill of Sale deliver at closing; (f) the failure to have a valid and proper easement, license or other right permitting any of the utility facilities and equipment to remain in there present location or which could prevent reasonable access to any of the Transferred Assets; (g) any claim against the City that affects the Bill of Sale or Assignment Items; or (h) any litigation of cause of action arising out of the City's actions, performance or ownership of the City Systems prior to the Closing Date; (i) inadequate or incomplete records of the City's property interests; and (j) the removal of pavers and other decorative materials placed over water and sewer facilities; (k) facts or circumstances occurring prior to the Closing Date within the control of the City. The City shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. This paragraph shall survive the Closing Date and remain in force and effect for twenty (20) years from the Closing Date”.

Attorney Seiden pointed out that the City would be responsible and liable for most of these items if it continued ownership of the System. He explained that articles (a) and (b) ensure that the System will be transferred over free and clear; the City will pay off all of its bills. Article (c) refers to current projects, which should be completed before the transfer. Any new projects would require authorization from the County, who would then assume responsibility. Articles (d) and (e) refer to vehicles, machinery and property, which will be transferred free and clear. Article (f) refers to documents and paperwork for easements, etc., and it may take some time to gather all that information.

There are no known cases of litigation mentioned in article (h), and none are anticipated. Article (i) refers to documentation similar to what is mentioned in (f), and the City is doing its best to obtain it. Article (j) is an unusual reference to pavers. The City allows residents to improve the swale area but before they are issued a permit, they must sign a declaration acknowledging that the City has the right to access its system and is not responsible for any damage. The County does not want to be responsible for removal or replacement.

Discussion ensued concerning the meaning of removal as opposed to replacement of pavers or other

materials. The City will replace grass, gravel and asphalt in the event a pipe has to be dug up, but it will not replace a decorative paver driveway. The implications are that the County will assume the same responsibilities.

Attorney Seiden noted that if an emergency situation should arise, the City should have documents on file for every resident that could be affected that would assign the rights to the City. Those rights would have to be reassigned to the County so that the City will not be responsible.

Attorney Seiden continued to explain that the last article (k) in the indemnification section holds the City responsible for its own conduct and to protect the interests of the County for the next 20 years.

Councilman Youngs said that he would like to see a clause added that would require the County to give the City advance notice of a claim so it would have the opportunity to defend itself before having to pay a claim. He thought that the indemnity wording from the County was very generous and a good clause for the City.

Attorney Seiden read the article again, and said that in his opinion, it states that the County will notify the City of any claims. He agreed that the County has shown good faith during the process, and had been extreme cooperative in the portions he has been involved in.

Attorney Seiden noted that **Section 20. "Taxes and Fees"** states that the City will not be allowed to tax or impose any other fees on any equipment transferred to or installed by the County. He continued to say that **Section 21. "Personnel"** deals with the transfer of employees referred to in exhibit "J", and the City Manager will cover that item later.

Attorney Seiden briefly summarized articles (A) through (I) in **Section 22. "General Covenants and Conditions"** advising it was general contract language.

Mayor Bain asked if anyone had any questions before the City Manager covered the personnel issues.

In response to Councilman Best's question, Attorney Seiden replied that the County was satisfied with the Pirnie report; the County chose the company and paid for the report.

City Manager Borgmann said that he was very concerned that the City employees involved in this transfer get the best possible deal, since they would be forced to leave the employ of the City and join the County. There are six individuals who have indicated that they wish to make the transfer.

City Manager Borgmann gave a synopsis of the items listed in Exhibit "J".

1. The City agrees that, subsequent to the execution of this transfer agreement by the City and

the County, except for normal merit and longevity increases, there will be no wage adjustments, reclassifications, promotions, etc. This means that the City agrees not to make any wage adjustments other than those normally scheduled for the employees before the transfer.

2. The transfer of the City employees is contingent upon satisfactory results of a physical examination, including a drug and alcohol screening, and a review of the results of a pre-employment fingerprint based on national criminal background checks. The County shall complete all reviews, examinations and screenings no later than 30 days prior to the closing date.
3. The rate of pay to be paid to each City employee upon transfer to the County will be determined as follows:
 - (a) A base hourly pay rate according to the City pay plan in existence on the closing date shall be determined for each employee excluding overtime, pay supplements and allowances, but including longevity.
 - (b) The County will allocate each employee to an appropriate County classification. If the pay rate calculated in (a) above is not equal to a pay step within the County's pay range then the employees pay rate will be adjusted to next highest step in the County's pay range.
 - (c) The salary anniversary date for each City employee shall be the date of the most recent merit pay increase, longevity pay or promotion received from the City, whichever occurred last.
 - (d) If the salary anniversary date established in (c) above was 26 pay periods or earlier and if the employee was placed below the maximum step in the County's range on a non-longevity pay step, a one-step in range increase shall be granted, no sooner than 90 days after the closing date retroactive to the closing date of this agreement and provided the employee's performance during the 90 days is rated satisfactory or better.
 - (e) The time-in-grade longevity step shall be awarded only if the employee's rate in (b) above is either the maximum pay step in the County range or the first time-in-grade longevity step and the employee has received no increase described in (c) above for five years or more. Such increase shall be granted no sooner than 90 days after the closing date.
 - (f) If the pay rate calculated in (b) above is greater than the maximum pay step in the

County's pay range and the employee does not meet the criteria for a time-in-grade longevity pay step described in (e) above, then the employee's pay rate shall be frozen until such time as their salary and pay ranges falls within the County's pay range.

5. The County agrees that all prior full-time paid continuous service with the City shall be credited towards the County's fifteen (15) year longevity bonus award as authorized in the County's pay plan.
6. The County agrees that the amount of longevity annual leave earned (if eligible) will be based on the number of years of continuous service with the City. Upon separation from County service, the sick leave pay out will be calculated based upon the years of County service from the closing date of this agreement, in accordance with the County's leave manual.
7. On the closing date of this agreement the County will credit to each employee's sick leave account with the County at the employee's pay rate as a City employee on the day immediately preceding the closing date, the lesser of either: (i) the dollar value of 80 hours of unused sick leave, or (ii) the dollar value of the employee's remaining unused sick leave hours as a City employee. On the closing date of this agreement, the County will credit to each employee's annual leave account with the County, at the employee's pay rate as a City employee on the day immediately preceding the closing date, the lesser of either: (i) the dollar value of 80 hours of unused annual (vacation) leave or (ii) the dollar value of the employee's remaining unused annual (vacation) leave hours as a City employee. . . .

City Manager Borgmann explained that there is a pending issue related to sick leave that the County needs to verify with their Union. The County originally asked to send over all the employees' sick leave and the dollar value, which would total \$32,000 plus or minus. If they were to leave before the County's policy kicked in they would not get any money and the County would keep the funds. The Attorney felt that it would be an unfair windfall to the County.

City Manager Borgmann said that he suggested that the City would treat each employee as if they were retiring from the City, whereupon they would be titled to any unused vacation leave and one-half of their accrued sick leave up to a maximum of 720 hours, which comes out to \$11,700 that would be sent to the County, with the balance going to the individual employees.

City Manager Borgmann stated that in regard to pension, the County is a member of the Florida Retirement System (FRS) and the employees that transfer over must be given an option to either join the FRS or remaining in the City's plan. The employees currently contribute 5% of their pay to the City plan and if they join the FRS they no longer have to pay that 5%. The overall benefits are different as far as the multipliers for the years of service, etc. The County is saying that any employee staying in the City's plan, whatever amount the County would be giving to the FRS, they would be giving to the City, which could be a liability.

City Manager Borgmann expressed his concern for protecting the employees and he conveyed to the County that he wants the absolute best for them and the County came through with his request. He explained that the six individuals are excellent employees and they will have far more opportunities for promotions or advancement that could result in a better salary.

Former Finance Director William Alonso presented an analysis showing what the current customer pays in the City compared to what the County bill would be. The average City customer utilizes 15,000 gallons per quarter, which is 5,000 gallons per month, and they pay \$158.85 on a quarterly basis. When he prepared the report last year, the County rates were different and subsequently within the last few days, he learned that the County Water and Sewer Department (WASA) is currently trying to increase their rates, which will be considered by the County Commission. In the interest of full disclosure the County has provided an estimated cost for comparison. A County customer using 15,000 gallons per quarter would pay \$121.91, a savings of \$36.95 a quarter or almost \$148.00 per year.

As shown on the graph, as consumption goes up so does the savings, up to a certain point, Mr. Alonso explained. After 40,000 gallons, the savings decreases. Part of the County's new rate structure will give higher savings to the lower volume customers, and reduce the savings for higher volume customers. A new rate structure is also proposed for the multi-unit structures, so they will be paying higher water bills than they are now.

The Water and Sewer Fund contributed certain monies to the General Fund. At that time, it was calculated that the City would have to come up with \$112.00 in additional revenues per household to make up that shortfall. Deducting that amount would give the residents an annual savings of \$35.00, based on the assumption that the additional shortfall in the General Fund would have to be made up in either additional taxes or other fees. Additional cost savings can also contribute; Public Works may be able to reduce administrative staff with the loss of positions.

Former Finance Director William Alonso brought out a graph depicting the impact on the General Fund with the loss of revenue from the Water and Sewer operations, and explained how the figures were calculated:

Losses:

1. Annual administrative fee - \$310,000
2. Reduction in utility taxes - \$95,000
3. Loss of investment earnings from cash flow generated by the system - \$125,000

Cost Savings:

1. Reduction of 2 positions in Finance (cashiers) – \$80,000

The net loss of \$450,000 divided by 4,000 households in the City resulted in the \$112.50 figure.

There may be other areas besides Finance where costs can be reduced to make up some of the difference.

Councilman Dotson asked how the City could recover that \$112.50 per household.

Mr. Alonso replied that the City could increase the millage rate or increase fees in other areas. The bottom line is that the General Fund is going to see a \$450,000 decrease in funds; if money can be saved in other areas, it will lower the amount. The City can either increase its revenue or decrease its expenses.

Councilman Dotson thought that the City should concentrate on reducing its expenses before increasing any taxes to compensate for the loss of revenue. The two positions in Finance would be part of that.

Mr. Alonso stated that the City will lose about 22% of its annual budget by giving up the Water and Sewer systems. This year's budget is \$28,000,000 and the Water and Sewer revenue contributes almost \$7,000,000 of that amount. The residents, even with the surcharge added, will be saving money. From a long term standpoint, the system is over 50 years old. The County is going to put in \$13,000,000 right away, and their study projects another \$30,000,000 will be required over the next five to ten years. Splitting those costs among 4,000 households becomes difficult; they cannot support the amount of infrastructure repairs that the system will need over the five or ten years. He understood the concern over the high water bills and loss of service, but reminded the Council that it will get worse before it gets better.

Councilman Dotson agreed, saying that the Council is trying to look ahead. Water is a precious resource and is getting scarce. A small town with limited resources is at a disadvantage, and noted that the City or North Miami is facing a \$100,000,000 project to upgrade its system and water treatment plant.

City Manager Borgmann said that the rates in North Miami have doubled and tripled in some cases. He pointed out that the last paragraph of the Malcolm Pirnie report says "The value of acquiring the system is based on several components, such as the one-time cost of repairs and replacement, and debt associated with the acquisition of the utility. The assessment showed that the value of the utility to WASA would be a cost of approximately \$36.2 million dollars, as summarized in Table 5-1. This cost could be recovered by the Department using several methods which include one-time assessments, special assessments paid over 10 years and rate surcharges". The County is expecting to put \$36.2 into the system.

Mayor Bain asked if there were any further questions for Mr. Alonso.

Councilman Youngs asked Attorney Seiden if he would cover Exhibit "G", the total of the funds that constitute both the debt and the surcharge. That section got skipped over in the discussion, and he was having trouble reconciling that with the numbers in the contract.

Mr. Alonso explained that this was the first time he had seen this chart. When he did the

amortization calculation he based it on \$19,185 million over 20 years to get the 3.9% rate. This chart lists the value of the bonds as \$19,865 million. He had advised Assistant City Manager Gorland to ask the county to clarify the two amounts, as he was not sure which amount the surcharge was based upon.

Councilman Youngs said that he did not understand how the numbers mentioned in paragraph 6 on page 8 related to Exhibit "G".

Mr. Alonso asked Councilman Youngs if he was adding the total repair costs plus the \$8 million for the debt. The totals would equal \$18,809,000 as listed in the exhibit. The County is adding \$376,000 in closing costs, bringing the total to \$19,185,000. He thought the closing costs might be related to the bond issuance. That needs to be clarified, along with the difference between the \$19,185,000 and \$19,865,000, which is \$680,000. It could be a typo, but he has no way to tell.

Councilman Youngs asked that the issue be clarified before the contract is signed.

Mayor Bain asked if there were any more questions for Mr. Alonso. He reiterated that the following items need to be addressed: 1. the schedule for repairs (capital improvements) and 2. The discrepancies in the totals (Exhibit "G" detail).

Attorney Seiden stated that Exhibit "J" also needed to be finalized, which deals with the pension options for accrued sick leave and vacation. He assumed that once the numbers in Exhibit "G" were clarified, the City would obtain an effective interest rate.

Mr. Alonso said the interest rate would be either 3.9% or 4.3% depending on which number was used.

Mayor Bain asked if there were any more items that needed to be amended. He stated that Attorney Seiden did a fantastic job with the negotiations.

Councilman Dotson agreed that Attorney Seiden had done a great job. He said that people were concerned about the quality of service. It has not been discussed much, though the County has promised to maintain the same level of service. He thought it would be much easier for a small city to call someone locally, and did not believe the service would be as good as it has been.

Mayor Bain thought they should give the County the benefit of the doubt, especially since one of the employees is a resident of the City and has promised to be available when called.

Councilman Dotson said it would be hard to maintain the level of service that the City has now, and he hoped the residents understood how expensive it would be for the City to continue to provide the service.

Councilman Dotson stated that millions of dollars are necessary to upgrade the system since it has

not been properly maintained for a number of years. The huge costs are part of what is driving the issue of the transfer. The transfer has been discussed for at least three years and the Council has given the matter a lot of thought and discussion.

City Manager Borgmann said that he had provided copies of an article from AOL'S Money and Finance Division. The article suggested that huge increases in water and sewer bills were on the way in many places as cities and towns try to repair aging pipes and correct artificially low prices. Many large and small cities around the country were listed. The Environmental Protection Agency estimates that the nation's water and waste water systems need an investment of up to 1.2 trillion dollars over the next 20 years. To paraphrase, many municipal owned systems have treated rate hikes like tax increases, and avoided them for years. During the eight years that he sat on the City Council, the City of Miami Springs followed the same pattern.

City Manager Borgmann continued to read from the article, saying that the government accountability office estimates that 29% of water systems and 41% of sewer systems charge customers less than the cost of the service. He said that the City of Miami Springs was in the same boat for years; the system was out of sight and out of mind.

Councilman Best noted that the statistics showed the national median residential bill was \$278 for water and \$276 for sewer service on an annual basis.

Mayor Bain invited anyone wishing to speak on the issue to come up to the podium. He would monitor the time.

Mr. Norman Andresen of 960 Nightingale Avenue said he had been a resident since 1953. Back in the late 50's or early 60's the County voted to create Metro Dade. The City of Miami Springs voted not to have Metro, and anything that Metro was going to take over required a vote by the residents. The City voted on the fire department, and maybe the library. He was concerned that the City could transfer the water and sewer system without a vote by the residents.

Attorney Seiden noted that he was not around in that time period, but said that Florida Statutes Chapter 180 outlines certain requirements that allow a City to make a value judgment on a system. The City can divest itself of a system if there is a purchaser or transferor that meets certain criteria. Within the City Charter, the system could be considered a surplus asset, even though it is a unique situation. He believed that if the City complies with the provisions in Chapter 180.301, and the County has the inherent authority as stated under its Charter and Code to operate these systems, there is no other place to go. He continued to say that there was a short window of time in which privatization was starting to take over city systems. No private company would come within miles of this transaction.

Mr. Andresen reiterated his concern; they had voted against Metro and now they are giving Metro some of the City's facilities. He did not think that anyone else in the room remembered or was around for that vote.

Attorney Seiden said he could not comment on the vote since he was not part of it.

Mr. Andresen said he would like the matter researched to make sure the transfer was legal. In his opinion, the City should keep the system. He worked for Metro for many years, and knows many reasons why the City should not give the system to Metro.

Attorney Seiden advised Mr. Andresen that a vote taken 40 years ago may not be valid now; this was the first time he had heard of it. He and the Administration have been dealing with the statutes that are in existence now, and those statutes allow the transfer to happen.

Councilman Youngs pointed out that the County is required by law to be satisfied that the City of Miami Springs can transfer the Water and Sewer System to the County without a vote by the residents. He thought that would answer Mr. Andresen's question.

Mr. Andresen replied that he had no doubt that Metro could take over the system; bigger is supposed to be better.

Councilman Youngs said that whether Mr. Andresen believed the transfer is a good idea or not, he could rest assured that it was proper under the law and the Charter of Miami Springs.

Mr. Andresen said he would like the City Attorney to research that law. He still did not believe the City could give some functions over to the County because the City has been neglecting them for years. He voted against the sewer system from the very beginning, so he has had a negative attitude about it for years.

Mr. Mel Johnson of 109 South Royal Poinciana Blvd. said that he also was impressed with the City resident who offered to be on call if the City transferred the system to the County. His question and concern was for what happened after this person retired, became ill or changed jobs. He wondered if the person who followed him five to twenty years from now would be another resident who would take care of the City as well as it has been taken care of in the past.

Mr. Johnson said that there has been a lot of legal and technical terminology presented tonight. He asked if someone could tell him if the water bills would go up, down or remain the same. There is a significant surcharge, and it looks like another \$30 million will be added on in the next 10 years. He asked if there were any projections as to what that would cost the residents.

Councilman Youngs noted that the surcharges and the differentials were included in the chart, and the residents would still realize a savings.

Mayor Bain said that the water costs were going to go up whether the City kept the system or not; the whole County would be affected, not just Miami Springs.

Mr. Johnson said he thought it was a great idea to participate in water conservation programs, and would like to see the City take a leadership position.

City Manager Borgmann pointed out that the last two pages of the document show that the rates are

going down based on current knowledge of the present City and County rates, including the surcharge. The average customer in the 5,000 – 7,000 gallon category might save anywhere from \$44.00 to \$54.00 a quarter.

Mr. Johnson said he believed there was no question that the water bills would go up. The question was how much, and if the City needed a water conservation program.

City Manager Borgmann said that the transfer of the system was part of a long term plan to reduce future water bills. The City has no idea what the rates would have to go up to if it kept the system. The \$30 million in improvements is included in the transfer, the County will be responsible and will pass the costs on to the entire system, not just the City. The surcharge exists because the County is requiring specific repairs to the system be made to meet its minimum standards.

Attorney Seiden advised Mr. Andresen that he had found the section of the statute that would answer his concern: State of Florida Statute, Chapter 180-301 ***Purchase, Sale and Privatization of Water Sewer, Waste Water and Refuse Utility by Municipality.***

No municipality may purchase or sell a water, sewer, waste water reuse utility that provides service to the public for compensation, or enter in to a waste water facility privatization contract for waste water facility until the governing body, municipality has held a public hearing on the purchase, sale of waste water facility privatization contract, and made a determination that the purchase, sale or waste water facility privatization contract is in the public interest. In determining if the purchase, sale of waste water facility privatization contract is in the public interest, the municipality shall consider, at a minimum the following:

Attorney Seiden said the statute goes on to list a number of categories, which were considered in the report attached to the prior resolution. It continues to say that *“the municipalities shall prepare a statement showing that the purchase, sale or waste water facility privatization contract is in the public interest, including a summary of the purchasers or private firms experienced in water, sewer, waste water reuse utility operation and a showing of 1. The financial ability to provide the service and whether the purchaser is the municipality or an entity purchasing from a municipality has the ability to do it.*

Attorney Seiden stated that the City has complied with Statute 180-301. There is nothing in the Charter that deals with this; the closest is the purchasing procedures in the Ordinances. Furthermore, the second “Whereas” in the County’s charter states:

“in furtherance of the purposes of Section 5.08 (B) of the Charter of Miami-Dade County and pursuant to the authority of Section 2-341 of the Code of Miami-Dade County, the Miami-Dade Water and Sewer Department operates and maintains a county-wide water and sewer system with the power to acquire, construct and operate water and sewer systems within the incorporated and unincorporated areas of Miami-Dade County”;

Attorney Seiden stated that if a vote was required, it might be the County’s responsibility. The

County is acquiring the system, not selling it. The County is also advancing \$8,000,000 and paying another \$10,000,000 to upgrade the system.

Ms. Elnora Riecken of 222 Rosedale Drive said that she was concerned about the level of service; the City has always responded quickly to calls, even on weekends, holidays and at odd hours. She wondered if the County had given any indication of what its response times and hours of operation would be. Many older residents with one-bathroom homes would have a hard time finding a hotel late at night. She also wanted to know when the last City bill would arrive and when the County would start billing.

Mayor Bain replied that it had been some time since the City met with the County. He would like to see some provision for a plumbing company or person to be on call to take care of these instances and emergencies. He thought that the County promised a 2-3 hour response time.

City Manager Borgmann said that the City's response time is not as great as it used to be, as it no longer has people on call for 24 hours. There are times that late night calls do not get taken care of until the next morning, but the City still has a very good response time. He recommended that the County be allowed to show they can provide an adequate response time if the transfer takes place. If it cannot, then other options can be explored.

Discussion ensued regarding different options to provide service if needed. Attorney Seiden suggested that an RFP could be put out for local plumbing services to bid on.

Attorney Seiden advised Ms. Riecken that the agreement states that as soon as practical after the closing on September 3, the City and the County staff will jointly read all the City meters. The City will send out its final billing based upon those readings, and the County bill should come three months later.

City Manager Borgmann said that the process may be confusing to some residents because they may receive two billings very close together; it will depend on when the final meter readings are taken. He thought that the final City bill should be in the mail in September, and the first County bill should come around the end of the year. The County may also have different payment options, and the Administration will help the residents with their questions when it has more information.

Mr. Alberto Gomez of 1985 Westward Drive said that he has lived in Miami Springs since 1980, and has been working for the County for 27 years. Several members of his family have also moved to Miami Springs. He would like to bring some issues concerning handicapped people to the attention of the Council, but would limit his questions to the water and sewer transfer for now. He was concerned that the costs for upgrading the system will keep escalating as time goes on, and wondered who would be paying for those upgrades. He also wondered how often the residents would be billed for the water and sewer usage.

City Attorney Seiden replied that the County bills on a quarterly basis.

Mr. Gomez said that he was happy to hear that. He also wanted to urge the City and the entire world to conserve water and electricity to save the planet, and offered his expertise to the City.

Mr. Bob Schubert of 432 Palmetto Drive said that he wanted to thank the Council for the information presented, and thought they were making good decisions for the City. He still had some concerns about the level of service when trying to contact the County by phone. A problem with a bill is easy to resolve here in the City; with the County it can take months to be heard. The financial aspects that he had concerns about have been answered through the presentation, and he felt that the decisions that had to be made were made well by the Council.

Mr. Dan Espino 308 Rosedale Drive said that it had been mentioned that the City was going to return the water and sewer deposits. He asked if the County was going to require a deposit, and if it was known how and when that would be handled.

Attorney Seiden replied that the agreement states that the County will establish their deposits requirement in accordance with their standard rules and regulations. He did not know what those rules were, but said they could probably be found on-line.

City Manager Borgmann said that there might not even be a deposit unless the account becomes a problem. At that point the County might insist on some advance charges in lieu of a deposit.

Mr. Mauricio Abello of 930 Plover Avenue said that he heard the words “tax increase” or “change in millage rate” during the presentation. He understood that there would be a deficit in the budget with the loss of the system, and questioned how that money would be made up. Services would have to be reduced or taxes increased.

City Manager Borgmann noted that there would be about \$450,000 less revenue.

Councilman Youngs said that there are other ways to reduce the deficit. There will be fewer employees in the Finance Department, and there may be other adjustments made, so it is not a simple “yes” or “no” question.

Mr. Abello said that the residents would also be paying the surcharge of \$1.4 million dollars divided by 4,000 households.

City Manager Borgmann replied that the surcharge will be applied based on consumption; a low consumer will pay a lower percentage of the surcharge.

Mr. Abello agreed with that assessment. He noted that the State is trying to eliminate services to reduce taxes, and the City may also have to look at reducing services due to budget constraints. He was concerned that the elderly residents in the City would not be able to afford higher bills. He felt that the City should take a hard look at its budget in the coming year.

Councilman Youngs moved to adopt the resolution with three caveats: 1) Clarify the time

frame for the completion of the Capital Improvements that are listed in paragraph 6 of the agreement; 2) Clarify the numbers details for Exhibit “G” and 3) Finalize Exhibit “J” concerning accrued vacation and sick leave. Councilman Dotson seconded the motion.

Councilman Youngs wanted to summarize some of the items so that the public can understand it. He said that he was reluctant as many as 6 or 7 years ago to do what they are doing now. One of the things they were talking about before was asking the County to pay the City’s debt and the County refused. That seems fair to him now, and by creating the 20 year surcharge the County is helping the City to pay off that debt with a fixed interest rate over 20 years, which is very generous.

City Manager Borgmann stated that the second point of concern is that there are estimates of anywhere between \$20 million to \$35 million in improvements and repairs that need to be done to keep the system operating over the next 20 years. To avoid having the residents of Miami Springs having to pay that amount of money over the next 20 years, transferring the system to the County will allow the County to make the repairs and spread the cost among all its customers. The City of Miami Springs will be solely responsible for the costs incurred to bring the system up to the County’s minimum requirements. The City is paying the County to take over the system, but based upon the numbers and the independent studies of what needs to be done, it will be a very good deal for the residents.

Councilman Youngs thanked the Administration and the City Attorney for all the work they have put in to accomplish the transfer. He is in favor of the agreement and hoped that it comes to fruition without any hitches.

Councilman Dotson thanked Councilman Youngs for his summary. He believed Mr. Andresen brought up some good points to consider. He also had some concerns about the service level; they will have to see how the County performs. The amounts of money involved could have a huge impact in the future; even with the surcharge spread out over 20 years the residents can expect lower fees. There may be additional increases imposed by the South Florida Water Management District, but those increases would come whether the system was transferred or not. In his opinion, the City is fortunate to be able to transfer the system. He was concerned that the system would absorb so much of the City’s resources in the future that it would not be able to provide other services that were needed to the residents. He was also pleased that the employees that were being transferred had opportunities for advancement.

Councilman Dotson also thanked the residents for their contributions and comments. He thought that this was a step forward for the City, and would permit it to operate better in other areas.

Mayor Bain said that he wanted to thank the Council for their efforts to pursue this matter and move forward. He also wanted to compliment the City Manager, the Assistant City Manager, the Finance Manager and the City Attorney for all their hard work. He believed that one of the biggest threats to the City was to keep the system; people would not be able to afford to live here in the next 10 to 15 years.

Attorney Seiden said that before the final vote, he wanted the record to be clear that the Council was aware that the third section of the resolution allows for minor changes within the intent of the agreement to be approved. He would like the vote to be based upon his comments: #1 that the City is to include some assurance language as to when the one-time improvements will be scheduled; #2 The City is able to finalize the personnel language from paragraph 21; #3 The City can get an answer and explanation of Exhibit "G" which will yield information to Council as to the actual interest rate. These items would not require any further action by the Council and the vote tonight will not only approve and authorize the action of execution, and allow that these items be taken care of without further comment or discussion.

Attorney Seiden said he expected one of the first calls in the morning would be from George Rodriguez because of all the time that he has put into this agreement. He could not stress the number of times this agreement has been changed.

The vote carried 4-0 on roll call vote (Resolution No. 2008-3397).

4. Adjourn.

There being no further business to be discussed the meeting was adjourned at 10:08 p.m.

Billy Bain
Mayor

ATTEST:

Magalí Valls, CMC
City Clerk

Approved as written during meeting of: 8/11/2008.

Transcription assistance provided by S. Hitaffer