

FOR BOARD ACTION

Agenda Item # 6

Meeting Date: 8/26/08

SUBJECT: Acquisition of Meadowbrook Water System

PREPARED BY: Doug Rovang, Senior Civil Engineer

ITEM DESCRIPTION:

The Meadowbrook water system, a suburban water system with 54 customers located within the urban service area southeast of the City and south of Chester, is currently owned by Resource Management Services of S.E. Minnesota LLC (RMS, hereafter), a "spinoff" of Peoples' Cooperative Services. The Meadowbrook Well Company, previous owner of the Meadowbrook water system, has exercised an option to purchase the water system back from RMS and intends to close on the purchase on August 29, 2008. The Meadowbrook Well Company wishes to then sell the Meadowbrook water system to RPU effective the same date.

RPU staff and representatives of the Meadowbrook Well Company have agreed to terms under which the City would acquire the Meadowbrook water system. The proposed Purchase Agreement and a Letter of Understanding dated June 12, 2008 are attached for Utility Board consideration. The Agreement specifies a total purchase price of one dollar (\$1) and other valuable consideration and a closing date of August 29, 2008. The City Attorney's office participated in development of the purchase documents.

As a condition for City purchase of the water system, each property owner served by the system must sign an individual Agreement for Municipal Water Service (sample copy attached). These Agreements, prepared by the City Public Works Department and City Attorney's office, contain terms and conditions required by the City prior to extension of City water and/or sewer service to areas outside the City within the Urban Service Area, e.g., agreement to future annexation and acceptance of future water and sewer related charges. Forty-eight of the forty-nine property owners have signed the Agreements, and on August 18, 2008, the City Council approved entering into the Agreements.

Meadowbrook water system customers would pay double regular municipal water customer and commodity charges in accordance with RPU Rate Schedule WTR. Meadowbrook customers would also pay the regular Fire Hydrant Facilities Charge in accordance with RPU Rate Schedule FHFC, and the State-mandated Water Testing Fee.

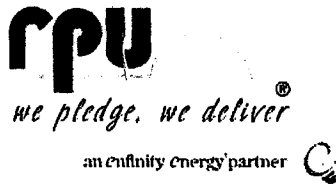
UTILITY BOARD ACTION REQUESTED:

Staff recommends the Utility Board approve the Purchase Agreement for the Meadowbrook water system and the separate Letter of Understanding dated June 12, 2008, and request the Mayor and the City Clerk to execute the Purchase Agreement with the Meadowbrook Well Company for the purchase of the Meadowbrook water system.


General Manager


Date

ROCHESTER PUBLIC UTILITIES



June 12, 2008

Meadowbrook Well Company
ATTN: Kenneth C. Allen
5168 14th St SE
Rochester, MN 55904

RE: Letter of Understanding
Meadowbrook Well Company / Rochester Public Utilities
(Conditions for Purchase of Meadowbrook Water System by Rochester Public Utilities)

TO WHOM IT MAY CONCERN:

As a followup to related discussions between representatives of Meadowbrook Well Company and Rochester Public Utilities (RPU, hereafter), the following paragraphs express our joint understanding of the above-referenced conditions:

1. System Ownership RPU understands the Meadowbrook Well Company is negotiating to regain ownership of the Meadowbrook Water System it sold to Peoples some years ago. If the Meadowbrook Well Company regains ownership of the Water System, RPU would be willing to assume ownership of the Meadowbrook Water System for one (\$1) dollar. RPU would then assume responsibility for operation and maintenance of the Meadowbrook Water System.

2. Water Rates Meadowbrook Water System customers would be billed monthly at a rate 2.0 times the customer and commodity charges in the current Rochester Public Utilities Rate Schedule WTR. If at some future date the Water System is connected to the main Rochester municipal water system, customer water rates would revert to 1.0 times the then current RPU Rate Schedule WTR. In addition, Meadowbrook Water System customers would be billed monthly for the standard Fire Hydrant Facilities Charge in accordance with RPU Rate Schedule FHFC, and for the State-mandated Water Testing Fee currently at \$0.53 per month. (A copy of current Rate Schedules WTR and FHFC are attached.) These Rate Schedules and State-mandated fees could be revised from time to time in accordance with established RPU ratemaking procedures and State legislation.

A 10 ccf (7,480 gallons) per month customer bill would be calculated as follows:

Monthly meter charge -	\$10.52	(\$5.26/month x 2)
Monthly commodity charge -	\$13.84	(10 ccf or billing units x \$0.692/unit x 2)
Monthly fire hydrant facilities charge -	\$ 1.16	(\$1.16/month x 1)
Monthly state water testing fee -	\$ 0.53	(\$0.53/month x 1)
Typical Monthly Bill -	\$26.05	

3. Water Meters RPU would replace existing Meadowbrook Water System gallon water meters with remote radio read water meters measuring water usage in cubic feet at no cost to Meadowbrook Water system customers. (1 RPU billing unit = 100 cubic feet = 748 gallons).

4. Agreement for Municipal Water Service and Charge for Future Water Tower Each property owner currently served by the Meadowbrook Water System would need to sign an individual Agreement for Municipal Water Service prior to closing on the sale of the Water System. The Agreement would commit the property owner to payment of the City Water Availability Charge for a one-half acre developed area, either at the time of closing on City purchase of the Water System or by the time the Meadowbrook Water System is connected to the main Rochester municipal water system and the Meadowbrook area has been annexed to the City. Property owners connecting to the Meadowbrook Water System in the future would be required to sign the individual Agreement



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an infinity energy partner



Letter of Understanding

Meadowbrook Well Company / Rochester Public Utilities

(Conditions for Purchase of Meadowbrook Water System by Rochester Public Utilities - Cntd)

June 12, 2008 (Page 2)

for Municipal Water Service and agree to pay the then current Water Availability Charge at the time they connect to the Water System. The Water Availability Charge is used to pay for water towers and reservoirs, and is increased each year based on a published rate of inflation. The current Water Availability Charge (effective until August 1, 2008) is \$2,139.39 per "developed" acre." The Agreement for Municipal Water Service document would be prepared by the City Public Works Department and distributed to each customer served by the Meadowbrook system.

5. Future Disposition of the Well Site Parcel When RPU would have no further use for the well site parcel (Lot 8, Meadowbrook 3rd Subdivision), RPU would seal the well, and remove the wellhouse and footings to one foot below ground level. The well parcel would be sold for one dollar (\$1) to the then owners of the adjacent Lots (Lots 5 and 9, Meadowbrook 3rd Subdivision), proportioned in accordance with their mutual wishes.

6. Right to Future Connection The following property owners, currently on private wells and not connected to the Meadowbrook Water System, would each retain the right to future connection to the water system at their own cost and in accordance with RPU Water Service Rules and Regulations, and would also be subject to the requirements of Item 4 above:

5018 15th St SE

5028 15th St SE

5118 15th St SE

5134 15th St SE

5142 15th St SE

5150 15th St SE

1510 Neill Court SE (Private well, but may also have connection to system)

7. Costs of Property Transfer RPU would process Meadowbrook Water System property transfer related documents at no cost to the Meadowbrook Well Company.

This letter of understanding is subject to and contingent on the Meadowbrook Well Company regaining ownership of the Meadowbrook Water System it sold to Peoples some years ago, and the successful execution, implementation and completion of the purchase agreement between Meadowbrook Well Company and the City of Rochester. This letter of understanding incorporates herein all terms and conditions of the purchase agreement not otherwise completed up closing. If you concur, please return a copy of this letter signed by an appropriate Meadowbrook Well Company officer, and we will take this matter to the Public Utility Board and City Council for their consideration.

Very truly yours,

Larry J. Koshire
RPU General Manager

Meadowbrook Well Company
Kenneth C. Allen, Its President

5 Aug 2008
(Date)

**ROCHESTER PUBLIC UTILITIES
(RPU)**

**RATE SCHEDULE WTR
SHEET 1 OF 1**

WATER SERVICE

AVAILABILITY: At all locations within the Rochester City limits and at locations external to the City limits that have been authorized by the Rochester Common Council.

MONTHLY RATE:

<u>Customer Charge: Size of Meter</u>	<u>Rate</u>
5/8"	\$ 5.26
3/4"	\$ 7.48
1"	\$ 12.02
1-1/2"	\$ 23.21
2"	\$ 36.63
3"	\$ 68.15
4"	\$ 113.06
6"	\$ 225.36
8"	\$ 405.03

Commodity Charge: 69.2¢ per CCF

NOTE: Customers whose service is taken outside the Rochester city limits with individual water systems not connected to the City water system shall have a rate of 2.0 times the customer and commodity charges.

MINIMUM BILL: Applicable monthly customer charge according to size of meter provided.

PAYMENT: Payments are due on or before the due date.

CONDITIONS OF DELIVERY:

1. Service furnished under this rate schedule is subject to connection policies of the Rochester City Council.
2. Service furnished under this rate schedule is subject to provisions of RPU's Water Service Rules and Regulations.
3. RPU shall not be liable for damage or loss sustained by customer in conjunction with taking service under this rate.
4. Water furnished under this rate shall not be resold.

Approved by Rochester Public Utility Board:
Effective Date:

December 14, 2006
January 1, 2007

**ROCHESTER PUBLIC UTILITIES
(RPU)**

**RATE SCHEDULE FHFC
SHEET 1 OF 1**

FIRE HYDRANT FACILITIES CHARGE

APPLICABILITY:

To all residential and commercial and industrial water utility customers.

MONTHLY RATE:

<u>Customer Class</u>	<u>Rate</u>
Residential	\$1.16
Commercial/Industrial	\$2.32

BILLINGS:

Billings will be on a monthly basis.

PAYMENT:

Payments are due on or before the due date.

CONDITIONS OF DELIVERY:

1. RPU shall not be liable for any damage or loss sustained by customer resulting from interruptions, deficiencies, or imperfections of service provided under this rate.
2. The rate will not be applied to water service meters that are used exclusively for irrigation purposes.
3. The rate will not be applied to water service meters that are not connected to the City's central water system.
4. The rate will be applied regardless of the property's water service status (active or non-active).

Approved by Rochester Public Utility Board:
Effective Date:

December 14, 2006
January 1, 2007

PURCHASE AGREEMENT

This AGREEMENT, entered into this _____ day of _____, 2008, by and among **Meadowbrook Well Company**, a Minnesota corporation (hereinafter "Seller") and the **City of Rochester**, a Minnesota municipal corporation, acting by and through its Utility Board, (hereinafter "City").

WITNESSETH:

WHEREAS, Seller intends to own, as of the date of closing, the Meadowbrook water system, a water supply and distribution system serving customers within Meadowbrook and Country Meadows Subdivisions, Olmsted County, Minnesota; and,

WHEREAS, Seller desires to sell said water system, including both real and personal property, to City; and,

WHEREAS, City desires to purchase the water system and provide those services referenced above.

NOW, THEREFORE, the parties hereby agree as follows:

1. Description of Property to be Sold. On the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell and convey to City, and City agrees to purchase, on the closing date, the following property:
 - a. The real property located within Meadowbrook Third Subdivision, Olmsted County, Minnesota (the well site) and described in Attachment A;
 - b. All wells, pumps, tanks, mains, pipes, lines, valves, and other property owned by Seller, and presently used in the distribution of water located within the water system and attached to it (with the exception of individual water service lines extending from the water mains to individual customer property, said service lines to remain the property of individual customers);

- c. Any interest in real property in the nature of an easement, permit, or license presently held by Seller for the purpose of maintaining and operating said water system;
 - d. Any contracts held by Seller to serve customers of the water system in the system's service area;
- 2. Purchase Price. The purchase price for the property shall be One Dollar (\$1) and other valuable consideration, including the acceptance of those obligations set forth separately by contract or agreement between the parties.
- 3. Terms of Payment. The total purchase price shall be paid by City in cash on the purchase closing date.
- 4. Warranties of Seller. City has been afforded an opportunity to inspect the property to be purchased by it hereunder, and Seller makes no representation or warranties whatsoever with respect thereto except that:
 - a. Seller will have at the date of closing and will convey to City good and marketable title to all property agreed to be sold to City hereunder, free and clear of any lien, encumbrance, claim, or damage whatsoever.
 - b. Seller has identified and will not be in default on the closing date with respect to the performance of its obligations under any contract or agreement assigned to City hereunder.
 - c. Meadowbrook Well Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Minnesota and has full power and authority to carry on its business as it is presently conducted and all corporate action necessary by Seller to execute, deliver, and perform this Agreement has been taken.
 - d. Seller is not a party to or bound by any written or oral contract to convey to any other person any of the assets to be purchased by City hereunder.
 - e. The execution, delivery, and performance of this Agreement by Seller will not violate the Articles of Incorporation or By-Laws of Seller, or any indenture, agreement, commitment, or order of any tribunal or administrative agency to which Seller is a party or by which it is bound.
 - f. Seller is not a party to any pending, and has no knowledge of any threatened litigation or government action, with regard to the property being sold hereunder.
- 5. Indemnification. Seller agrees to indemnify City with respect to loss or damages (including reasonable attorneys' fees and court costs) incurred by City as the direct result of the breach by Seller of the representations, warranties, or covenants contained in this Agreement, provided,

however, that Seller's obligation to indemnify is subject to the following conditions:

- a. Limitations and Liability. Seller shall be obligated to indemnify City only if the aggregate amount of any claim exceeds the sum of One Hundred Dollars (\$100). If this occurs, Seller shall reimburse City for the entire amount of damages.
 - b. Damages. In the event any claims are made against City as a result of the actions or obligations of Seller, Seller agrees to indemnify City and defend and hold it harmless. It is specifically understood that City is assuming no liabilities of Seller as a result of this purchase and that any liabilities against City as a result of Seller's obligations or liabilities shall be included in this indemnification agreement.
6. "As-Is, Where-Is". Seller is selling the Assets in its present condition and state of repair, "As-Is, Where-Is" with all faults and conditions thereon, with all defects and liabilities, latent or apparent.
7. Closing. The closing date shall be August 29, 2008 at 11:00 a.m. and shall be held at the office of Rochester Public Utilities, 4000 East River Road NE, or at such time and place as may be mutually agreed upon by the parties.
8. Contingency. Performance of the obligations contained in this Agreement by all parties is contingent upon Seller providing marketable title of the real property to City. In the event Seller is unable to do so, at the election of City, the closing may be delayed in order to give Seller an opportunity to make said title marketable.
9. Binding on Successors. This Agreement shall inure to the benefit of and be binding on the successors and assigns of each of the parties.
10. Interpretation. This Agreement shall be interpreted under the laws of the State of Minnesota.
11. Steps to be taken at the Closing.
 - a. General Procedure. At the closing, each party shall deliver or execute such documents, instruments, and materials as may be reasonably required in order to effectuate the intent and provisions of this Agreement, and all such documents, instruments, and materials shall be satisfactory in form and substance in all material respects to counsel for the other party. The listing of specific deliveries or executions to be made in the following Subsections of this Section shall not be deemed to limit the provisions of this subsection.

- b. Items to be Delivered by Seller at the Purchase Closing. [Seller shall have no obligations to deliver these items until City supplies the items required under the terms of Subsection (c)]:
 - i. bill of sale for all personal property being purchased hereunder;
 - ii. evidence that the appropriate corporate officers of Seller have authorized the sale of the water system and property to Rochester;
 - iii. a Quit Claim deed for the property described in Exhibit "A" attached hereto;
 - iv. Assignments or other documents necessary to convey any easements, permits, or licenses held by Seller for the operation of the water system.
- c. Items to be Delivered to Seller at Purchase Closing. [City shall not be required to deliver the following items until such time as Seller has available for delivery the documents set out in Subsection (b)]:
 - i. Cash or a check made payable to Seller for the purchase price.
- 12. Cooperation. At the closing and at anytime or from time to time thereafter, each of the parties agrees to cooperate in carrying out the terms of this Agreement and the agreements and documents executed in connection herewith, including the execution and delivery of such further instruments and documents as may reasonably be requested in order to more effectively carry out the terms and conditions hereof. Those items not completed by date of closing shall be deemed to survive closing and shall be a continuing obligation of the respective party.
- 13. Expenses. City shall pay the state deed tax and recording fees relative to this transaction. As to any other expenses, each party hereto shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby whether or not the transactions contemplated hereby are consummated. In the event of any controversy, claim, or dispute among the parties to this Agreement, arising out of or relating to this Agreement or breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses and attorney's fees.
- 14. Failure to Provide Marketable Title. Except as otherwise provided, in the event that Seller cannot provide marketable title to the real property to be conveyed hereunder, this Agreement shall be deemed null and void and neither party shall have any obligation hereunder. Provided, that in the event City elects to delay closing as provided in Section 7, this Agreement shall not be deemed null and void unless Seller is unable to subsequently provide marketable title to said real estate.
- 15. Entire Agreement. This Agreement, and the exhibits, including the schedules and letter of understanding attached hereto, contain the entire agreement among the parties superseding in all respects any and all prior oral or written agreements or understandings pertaining to the subject matter hereof and transactions contemplated hereby, and shall be amended or modified only by written instruments signed by all of the parties hereto.

16. Notices. Any notice or other communication required or permitted to be given or served upon any of the parties under this Agreement shall be sufficiently delivered, given, or served if delivered personally to such party or sent to such party by registered or certified mail, postage prepaid, addressed to such party as set forth below or such other address as such party shall designate by giving written notice to the other parties as follows:

In case of notice to Sellers:
Kenneth C. Allen
Meadowbrook Well Company
5168 14th St SE
Rochester, MN 55904

In case of notice to Rochester:
General Manager
Rochester Public Utility Department
4000 East River Road, NE
Rochester, MN 55906-2813

17. General. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The paragraph headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The invalidity or unenforceability of any provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

City of Rochester, a Minnesota municipal corporation

By: _____

Print Name: _____

Its: Mayor

[MUNICIPAL SEAL]

Attest: _____

Print Name: _____

Its: City Clerk

Approved as to Form: _____

Print Name: _____

Its: City Attorney

By: _____

Print Name: _____

Its: General Manager, Rochester Public Utilities

Address: City of Rochester
c/o Rochester Public Utilities
4000 East River Road NE
Rochester, MN 55905

Phone: (507) 280-1510

Meadowbrook Well Company

By: Kenneth C. Allen
Kenneth C. Allen, Vice President

By: Verdale S. Gaustad
Verdale S. Gaustad, Secretary

Federal Tax ID No.: _____

STATE OF MINNESOTA)
SS)
COUNTY OF OLMSTED)

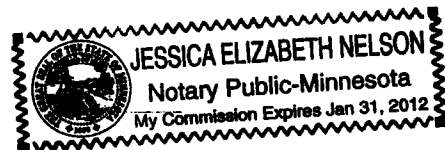
The foregoing instrument was acknowledged before me this _____ day of _____, 2008,
by _____ and _____, the Mayor and City Clerk
respectively of the City of Rochester, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

STATE OF MINNESOTA)
SS)
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me on the 20 day of August, 2008, by
Kenneth C. Allen, and Verdale S. Gaustad, the Vice President and Secretary of Meadowbrook Well
Company, a Minnesota corporation, for and on behalf of the corporation.

Jessica Nelson
Notary Public



This document drafted by:
Rochester City Attorney's Office
201 4th Street SE, Room 247
Rochester, MN 55904

EXHIBIT "A"

DESCRIPTION OF MEADOWBROOK WELL COMPANY WELL SITE

Lot eight (8), Meadowbrook Third Subdivision, Olmsted County, Minnesota

AGREEMENT FOR MUNICIPAL WATER SERVICE

This Agreement made this _____ day of _____, 2008 by and between _____ and _____, husband and wife (hereinafter referred to as "Owners") and the City of Rochester, MN a Minnesota municipal corporation (hereinafter referred to as "City").

WITNESSETH:

WHEREAS: Owners own certain real property located in Marion Township, Olmsted County Minnesota described as follows:

PIN: 63.10.23.061808
Address: 5087 MEADOW DR SE
Legal Description: COUNTRY MEADOWS, LOT 1, BLOCK 1
(Hereinafter referred to as the "Property"); and,

WHEREAS: City is intending to purchase and operate as part of its municipal water system the Meadowbrook private water system (hereinafter referred as the "Water System"); and,

WHEREAS; Property is connected to the Water System; and,

WHEREAS; City policy requires that property located outside the corporate limits of the City will not receive municipal water service unless there is an agreement that the property to be served will be annexed to the City without objection, and that the property owners agree to pay the costs of improvements currently provided and those to be provided in the future; and,

WHEREAS; City is authorized by Minnesota Statutes Section 444.075 to provide municipal water service to property outside the City and, in connection therewith, to enter into an agreement imposing charges thereof and providing for collection of such charges in the same manner as other taxes are collected; and,

WHEREAS; City is willing to purchase and operate the Water System subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above premises and mutual covenants herein, the parties agree as follows:

1. City hereby authorizes Owners, at Owners' sole expense, to maintain a service connection connecting the Property to the Water System and to use this service connection to the rules and regulations of the City and terms of this Agreement.
2. City will furnish and install a remote radio read water meter.
3. Owners acknowledge that the City may impose a monthly service charge for the continued availability and use of the Water System. Such charge will be imposed by the City for property similarly situated. It is expressly understood that failure to pay such service charges according to the terms thereof shall be grounds for termination of the service.
4. Owners acknowledge that the Water System will be connected to the municipal water system at some future date. As such, the Owners agree to pay a "one time" Water Availability Charge (WAC) based on 0.5 acres at the prevailing WAC rate at the time the Water System is connected to the municipal water system. Owners shall make payment to the City for the Water Availability Charge when invoiced by the City and agree not to contest the certification of unpaid charges to the county auditor for collection with other taxes if such charges are not paid.
5. Owners hereby consent to the annexation of the Property to the City at any such future time as Minnesota Statutory Requirements have been met and the City desires. Owners hereby appoint the City as agent for the purpose with full authority to petition for annexation of the Property and to take other such action as may be necessary to accomplish such annexation, said authority to continue until such annexation is completed. In the event annexation occurs through an Orderly Annexation Agreement between the City and Marion Township, annexation shall be made consistent with the provisions of that Agreement. In absence of an Orderly Annexation Agreement the City may initiate annexation of the Property prior to connecting the Water System to the municipal water system regardless of whether the Minnesota Statutory Requirements are met.
6. The obligations of the parties hereunder shall bind their heirs, successors and assigns, and shall be a covenant running with the Property.

CITY OF ROCHESTER

OWNERS

ITS MAYOR

ITS CITY CLERK

STATE OF MINNESOTA)

)

COUNTY OF OLMSTED)

On this _____ day of _____, 2008, _____ and _____, husband and wife, personally appeared before me and acknowledged they executed the foregoing as their own free act and deed.

Notary Public

STATE OF MINNESOTA)

)

COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by Ardell F. Brede and Judy K. Scherr, the Mayor and City Clerk, respectively, of the City of Rochester, a Minnesota municipal corporation, for and on behalf of the corporation.

Notary Public



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a Purchase Agreement and supplemental Letter of Understanding with the Meadowbrook Well Company, and request that the Mayor and City Clerk execute the Purchase Agreement for

Purchase of Meadowbrook Water System

The amount of the Purchase Agreement to be ONE DOLLAR (\$1) and other valuable consideration, including those obligations set forth separately by contract or agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26th day of August, 2008.

President

Secretary