

FOR BOARD ACTION

Agenda Item # 7

Meeting Date:

3/25/08

SUBJECT: Acquisition of Osjor Estates Water System

PREPARED BY: Doug Rovang, Senior Civil Engineer *DR*

ITEM DESCRIPTION:

RPU staff and representatives of the Osjor Well Corporation have agreed to terms under which the City would acquire the Osjor Estates water system, a suburban water system with 40 customers located within the urban service area just northeast of the City east of Century High School. (The water system customers are not currently RPU electric customers.) The proposed Purchase Agreement and a separate Letter of Understanding are attached for Utility Board review. The Agreement specifies a total purchase price of one dollar (\$1) and other considerations and a closing date of May 16, 2008. If approved by the Utility Board, the City Administrator will be asked to present the Board's resolution for concurrence by the City Council at its first meeting in April, 2008.

If acquisition of the water system is completed, RPU will assume operation of the Osjor Estates water system at 12:00 noon on May 19, 2008. Because the Osjor Estates water system will be connected directly to the municipal water system when Viola Road is widened this fall, staff proposes that the Osjor Estates customers pay regular municipal water customer and commodity charges in accordance with RPU Rate Schedule WTR. Osjor Estates customers will also pay the regular Fire Hydrant Facilities Charge in accordance with RPU Rate Schedule FHFC and the State-mandated Water Testing Fee.

Customers of the Osjor Estates water system are all members of the Osjor Well Corporation and own the water system. Therefore, one of the conditions for City purchase of the water system is that each property owner signs an individual Agreement for Municipal Water Service. This Agreement (copy attached), prepared by the City Public Works Department and City Attorney's office, contains terms and conditions required by the City Council prior to extension of City water and/or sewer service to areas outside the City within the Urban Service Area, e.g., agreement for future annexation and acceptance of future water and sewer related charges.

UTILITY BOARD ACTION REQUESTED:

Staff recommends the Utility Board approve the Purchase Agreement for the Osjor Estates water system and the separate Letter of Understanding dated March 19, 2008, and request the Common Council to authorize the Mayor and the City Clerk to execute the Purchase Agreement with the Osjor Well Corporation for the purchase of the Osjor Estates water system and the individual Agreements for Municipal Water Service with each of the forty (40) Osjor Estates Water System owners.

Reviewed 3-20-08 WNP

Tammy Koshir

General Manager

3/20/08

Date



REVISED

March 18, 2008

Osjor Well Corporation
C/O Well Corporation Officers
3516 Ogden Court NE
Rochester, MN 55906

RE: Letter of Understanding
Osjor Well Corporation / Rochester Public Utilities (RPU)
(Conditions for Purchase of Osjor Estates Water System by Rochester Public Utilities)

TO WHOM IT MAY CONCERN:

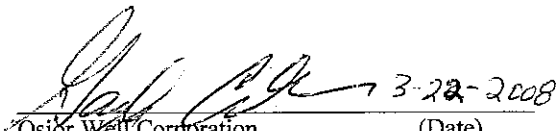
As a followup to related discussions between representatives of Osjor Well Corporation, owner of the Osjor Estates water system, and Rochester Public Utilities (RPU, hereafter), the following paragraphs express our joint understanding of the above-referenced conditions:

- Water Rates The Osjor Well Corporation water system is scheduled to be connected to the municipal water system in the fall of 2008. For that reason, Osjor Well Corporation water system customers (Osjor customers, hereafter) will be billed monthly at Rochester Public Utilities Rate Schedule WTR (the same as municipal water customers). In addition, Osjor customers will 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 the current Rate Schedules WTR and FHFC are attached.) These rate Schedules and State-mandated fees may be revised from time to time in accordance with established RPU ratemaking procedures and State legislation.
- Water Meters New remote radio read water meters will be furnished at no cost to Osjor customers. Osjor customers will pay the cost of plumbing-in the meter.
- Agreement for Municipal Water Service Each Osjor Well Corporation member will sign the Agreement for Municipal Water Service prior to closing on the sale of the water system.
- Water Tower Fee The Osjor Estates water system is scheduled to be connected to the municipal water system during the fall of 2008. Osjor Well Corporation will pay the City the Viola water tower fee of \$1,416.97 per lot prior to closing on the sale of the water system.
- Future Disposition of the Three Well Site Parcels When RPU has no further use for the well site parcels, RPU will seal the well, and remove the wellhouse and footings to one foot below ground level. The main well lot will be sold to the owner of Lot 12, Osjor Estates Subdivision for one dollar (\$1). The other two small well site parcels will also be sold to their respective adjacent property owners for one dollar (\$1).
- Costs of Property Transfer The City will process water system property transfer related documents at no cost to the Osjor Well Corporation.

This letter of understanding is subject to and contingent upon the successful execution, implementation and completion of the purchase agreement between Osjor Well Corporation and the City of Rochester. This letter of understanding incorporates herein all terms and conditions of the purchase agreement not otherwise completed upon closing. If you concur, please return a copy of this letter signed by an appropriate Osjor Well Corporation 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

 3-22-2008
Osjor Well Corporation (Date)
Gayle Cowden, Its President

**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

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

REVISED

PURCHASE AGREEMENT

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

WITNESSETH:

WHEREAS, Seller owns and operates a water supply and distribution system and is engaged in the retail sale of water from a well located within Osjor Estates Subdivision, Olmsted County, Minnesota (the "Water System") to customers in the Osjor Estates Water System; and,

WHEREAS, Seller desires to sell said Water System; and,

WHEREAS, Rochester desires to purchase the Water System of Seller and provide those services previously provided by Seller.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the receipt and sufficiency of which is hereby acknowledged, 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 Rochester and Rochester agrees to purchase, on the closing date, the following assets:
 - a. The real property located within Osjor Estates Subdivision, Olmsted County, Minnesota (the well site parcels) 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);

(the real property referenced above in 1a. and the personal property referenced above in 1b. collectively the "Assets")

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- 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 Assets shall be One Dollar (\$1) and other valuable consideration, including those obligations set forth separately by contract or agreement between the parties.
3. Terms of Payment. The total purchase price shall be paid by Rochester to Seller in cash on the purchase closing date, as defined herein paragraph 6, (the "Closing Date").
4. Warranties of Seller. Rochester has been afforded an opportunity to inspect the Assets 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 Closing Date and will convey to Rochester all the Assets 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 Rochester hereunder
 - c. Seller 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 Rochester 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. "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.
6. Indemnification. Seller agrees to indemnify Rochester with respect to loss or damages (including reasonable attorneys' fees and court costs) incurred by Rochester as the

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direct result of the breach by Seller of the representations, warranties, or covenants contained above in paragraph 4 a – f.

7. Representation and Warranties by Rochester. Rochester represents and warrants that it will have the requisite power and authority to enter into this Agreement and Rochester's closing documents signed by it; such documents will be duly authorized by all necessary corporate action on part of Rochester and have been duly executed and delivered; that the execution, the delivery and performance by Rochester of such documents do not conflict with or result in violation of Rochester's charter of any judgment, order, or decree of obligations of Rochester, and are enforceable in accordance with their terms. Rochester will indemnify Seller, its successors and assigns, against, and will hold Seller, its successors and assigns, harmless from any expense or damage, including attorney's fees, the Seller incurs because of the breach of the above representations and warranties, whether such breach is discovered before or after closing.
8. Closing. The Closing Date shall be May 16, 2008 at 9:00 a.m. and shall be held at the office of Rochester Public Utilities, 4000 East River Road NE, or at such other time and place as may be mutually agreed upon by the parties.
9. Contingency. Seller shall provide a condition of title prepared by the Olmsted County Recorder's Office for the real property to be exchanged pursuant to this Agreement.
10. Binding on Successors. This Agreement shall inure to the benefit of and be binding on the successors and assigns of each of the parties.
11. Interpretation. This Agreement shall be interpreted under the laws of the State of Minnesota.
12. 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 Rochester 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 Assets to Rochester;
 - iii. Quit Claim Deed for the property described on Exhibit "A" attached hereto, and
 - iv. Assignments or other documents necessary to convey any easements, permits, or licenses held by Seller for the operation of the Water System.

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- c. Items to be Delivered to Seller at Purchase Closing. [Rochester 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. A cash payment of One Dollar (\$1) made payable to Seller for the purchase price.
13. 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.
14. 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
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 Seller: | In case of notice to Rochester: |
| Ms Kathleen Tarara | General Manager |
| Osjor Well Corporation | Rochester Public Utility Department |
| 3516 Ogden Court NE | 4000 East River Road, NE |
| Rochester, M N 55906 | 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.

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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: _____
Its: Mayor

[MUNICIPAL SEAL]

Attest: _____
Its: City Clerk

Approved as to Form: _____
Its: City Attorney

By: *Tammy J. Koschic*
Its: General Manager, Rochester Public Utilities

Osjor Well Corporation, a
Minnesota corporation

By: *Gayle A. Cowden*
Gayle A. Cowden, Board Member

By: *Henry J. Hiddinga*
Henry J. Hiddinga, Board Member

By: *Bruce A. Rolde*
Bruce A. Rolde, Board Member

By: *Kathleen M. Tarara*
Kathleen M. Tarara, Board Member

Federal Tax ID No : 51-0141756

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STATE OF _____)
)SS
COUNTY OF _____)


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, for and on behalf of the corporation.

[seal]

Notary Public
My commission expires _____

STATE OF MINNESOTA)
)SS
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me on the 22 day of March, 2008, by Gayle A. Cowden, Henry J. Hiddinga, Bruce A. Rohde, and Kathleen M. Tarara, Board Members of Osjor Well Corporation, for and on behalf of the corporation.

 **SUSAN E. PRENDERGAST**
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2012

Susan E. Prendergast
Notary Public
My commission expires 1-31-2012

This document drafted by
Rochester Public Utilities 4000
East River Road NE Rochester,
MN 55906-2813

REVISED

E X H I B I T " A "

DESCRIPTION OF OSJOR WELL CORPORATION WELL SITE PARCELS

"A part of the Southeast Quarter of the Southwest Quarter (SE1/4 of SW1/4) of Section Twenty (20), Township One Hundred Seven (107) North, Range Thirteen (13) West, described as follows:

That part of Lot Twelve (12), Osjor Estates Subdivision, Olmsted County, Minnesota, described as follows to-wit:

Commencing at the Southeast corner of said Lot Twelve (12), Osjor Estates Subdivision for a place of beginning; thence North along the East Boundary of said Lot Twelve (12) a distance of 100 feet; thence West at a right angle parallel with the North boundary of said Lot Twelve (12) a distance of 100 feet; thence South at a right angle parallel with the West boundary of said Lot Twelve (12) a distance of 100 feet; thence East along the South boundary of said Lot Twelve (12) a distance of 100 feet to the point of beginning, according to the Plat thereof on file and of record in the office of the Register of Deeds in and for said County.

Also:

That part of Lot Three (3) of Osjor Estates Second (2nd) Subdivision described as follows:

Beginning at the North corner of said Lot Three (3); thence South along the East boundary of said Lot Three (3) a distance of 75.0 feet; thence West at right angles a distance of 30.0 feet; thence North parallel with the east line of said Lot Three (3) a distance of 44.2 feet to a point in the Northwesterly boundary of said Lot Three (3); thence northeasterly a distance of 41.9 feet to the point of beginning.

Also:

That part of Lot Four (4) of Osjor Estates Second (2nd) Subdivision described as follows:

Beginning at the East corner of said Lot Four (4); thence West along the North boundary of said Lot Four (4) a distance of 30.0 feet; thence South at right angles a distance of 30.8 feet to a point in the Southeasterly boundary of said Lot Four (4); thence Northeasterly a distance 41.9 feet to the beginning.

REVISED

AGREEMENT FOR MUNICIPAL WATER SERVICE

This Agreement made this _____ day of _____, 2008 by and between WILLIAM D TARARA and KATHLEEN TARARA, 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 Haverhill Township, Olmsted County Minnesota described as follows:

3516 OGDEN CT NE, OSJOR ESTATES LOT 8
(hereinafter referred to as the "Property"); and,

WHEREAS: City is intending to purchase and operate as part of its municipal water system the Osjor Well Corporation 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:

REVISED

1. Service Connection and Use: 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. Installation of Water Meter: Owners shall install a City furnished remote radio read water meter at the Owners' sole expense
3. Service Charge: Owners agree for Owners and any other persons who may from time to time occupy the Property, 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. Water Availability Charge: Owners acknowledge that the Water System will be connected to the municipal water system in the fall of 2008. As such, the Owners agree to pay a "one time" Water Availability Charge in the amount of \$1,416.97 to the Osjor Well Corporation. Osjor Well Corporation will provide payment to the City prior to closing on the sale of the Water System.
5. Annexation: Owners, for Owners, Owners' heirs, executors, administrators, and assigns 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 Haverhill Township, annexation shall be made consistent with the provisions of that Agreement. In absence of an Orderly Annexation Agreement the City may initiate annexation if the City undertakes a sanitary sewer extension project to serve the Property regardless of whether the Minnesota Statutory Requirements are met, in which case annexation would occur prior to the City extending sanitary sewer to serve the Property.
6. Future Charges: Owners, for Owners, Owners' heirs, executors, administrators, and assigns, also hereby agrees to not object to or appeal any charges made against the Property for local improvements for the extension of sanitary sewer and watermain replacement when and if the watermain requires replacement in the future due to installation of sanitary sewer to serve the area. Any charges made against the Property will be made consistent with the connection charge policies in effect at the time the charges are made
7. Covenant Running With the Property: The terms of this agreement shall constitute a covenant running with the Property and shall be binding on Owners and Owners' heirs, executors, administrators and assigns

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CITY OF ROCHESTER

OWNERS

ITS MAYOR

WILLIAM D TARARA

ITS CITY CLERK

KATHLEEN TARARA

STATE OF MINNESOTA)
)
COUNTY OF OLMSTED)

On this _____ day of _____, 2008, WILLIAM D TARARA and KATHLEEN TARARA, 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, that the Common Council of the said City is requested to approve a Purchase Agreement and supplemental Letter of Understanding with the Osjor Well Corporation for

Osjor Estates 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 25th day of March, 2008.

President

Secretary