

FOR BOARD ACTION

Agenda Item # 6

Meeting Date:

8/31/10

SUBJECT:

First Amendment to Agreement for Transfer of Service Territory Rights Between the City of Rochester and Peoples Cooperative Services, Inc.

PREPARED BY:

Mark Kotschevar, Director of Core Services

ITEM DESCRIPTION:

The City of Rochester and People's Cooperative Services entered into an agreement for the transfer of service territory rights in August of 2008. In that agreement, under section 4.3, the parties agreed to negotiate a ten year compensation period for annexations over 80 acres separately. Both parties have been meeting since that time and have drafted language that covers how the compensation period for annexations over 80 acres is to be handled. The proposed amendment as approved by Peoples at their August 24th board meeting is attached for your reference.

Under the existing agreement, the ten year compensation clock for annexations less than 80 acres starts with the first permanent meter installed in the annexation, and compensation ends for the entire annexation 10 years after that first meter is installed. Under this amendment, the ten year compensation clock for annexations over 80 acres will start with the first permanent meter installed in a plat within the annexation. Thus, a separate 10 year clock will start with each plat within the annexation until the annexation is fully platted. Currently there are 13 annexations included in the 2008 agreement that are over 80 acres and will be covered under this amendment. The execution of this amendment will allow us to transfer existing PCS customers that were annexed in the Marion area as part of the water quality initiative. Staff will be available at the Board meeting to answer any questions.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Not Applicable

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Utility Board approve the attached First Amendment to the Transfer of Service Territory Rights between City of Rochester and People's Cooperative Services, Inc., that the Board request City Council approval, and that the Council authorize the Mayor and City Clerk to execute the Amendment.



General Manager


Date

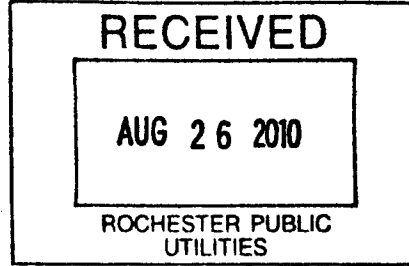
ROCHESTER PUBLIC UTILITIES



People's Cooperative Services

Your Touchstone Energy® Cooperative 

3935 Highway 14 East
P.O. Box 339
Rochester, MN 55903-0339
Phone: (507) 288-4004
Fax: (507) 288-9438
Website: www.peoplesrec.com



August 25, 2010

Mr. Larry Koshire
General Manager
Rochester Public Utilities
4000 East River Road NE
Rochester, MN 55906-2813

Dear Larry:

Enclosed please find two copies of the "over 80-acre amendment" which was signed by Anthony Ebert, PCS Board Chair, at our Board meeting on August 24, 2010. I understand that RPU's next Board meeting is scheduled for August 31, 2010. Once you have received the required signatures, please return one copy of the agreement to me. The other copy is for your records.

If you have any questions, please feel free to contact me directly at (507)424-6182.

Sincerely,


Elaine J. Garry
President & CEO

FIRST AMENDMENT TO
AGREEMENT FOR TRANSFER OF SERVICE TERRITORY RIGHTS
BETWEEN
THE CITY OF ROCHESTER AND PEOPLE'S COOPERATIVE SERVICES, INC.

WHEREAS, the City of Rochester, a Minnesota municipal corporation, acting by and through its Utility Board, ("City"), and People's Cooperative Services ("People's") (collectively the "Parties"), entered a Settlement Agreement for Transfer of Service Territory Rights dated August 4, 2008 (the "Agreement"); and

WHEREAS, Section 4.3 of the Agreement provided that the Parties would negotiate the ten-year compensation period for Annexed Areas larger than 80 acres; and

WHEREAS, the Parties desire to specify the terms of their agreement on this issue.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, the Parties hereto agree to amend the Agreement as follows:

1. Section 4.3 of the Agreement is hereby deleted in its entirety and shall instead state:

For an Annexed Area that is larger than 80 acres, the ten-year compensation period shall start with the date the first permanent meter is installed from a point of service in each plat within the Annexed Area for (a) a residential homestead or (b) a commercial building of greater than 1500 square feet. That start date will only apply to that particular platted area. As each new portion of the Annexed Area is platted, a new ten-year compensation period

unique to that plat will start. .

If the final plat for an over 80-acre Annexed Area is for a single large industrial user and the full annexed area is required for the user's purpose identified in the adopted General Development Plan (GDP) at the time of annexation, the full Annexed Area shall be handled as a single plat with one compensation period. The ten-year compensation period will start with the date the first permanent meter for the industrial user is installed within the Annexed Area and continue for ten years.

Areas within the annexation platted as outlots due to the City's requirements for developments with large public use facilities (Golf Courses, Park Land, etc.) and not to the intended purpose shown in the adopted General Development Plan, will not be a part of the plat for compensation. Compensation will only begin upon a new plat being approved for the outlots that shows the area of the outlots being used to the purpose shown in the GDP and the first permanent meter within the new plat for (a) a residential homestead or (b) a commercial building of greater than 1500 square feet.

For any customers that are served by People's on the date of transfer, the ten-year compensation period shall begin on the date of the last customer transfer in that annexed area, unless otherwise agreed to by the Parties.

2. All other provisions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to the Agreement has been signed by an officer duly authorized on behalf of the Parties hereto, all on the date first above written.

PEOPLE'S COOPERATIVE SERVICES, INC.

By Elaine J. Garrey
Its President and CEO

By Anthony J. Ebert
Its Chair, Board of Directors

THE CITY OF ROCHESTER

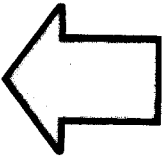
By _____
Its General Manager
Rochester Public Utilities

By _____
Its Mayor

Attest: _____
City Clerk

Approved As To Form:

Rochester City Attorney





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 First Amendment to the Agreement for Transfer of Service Territory Rights between the City of Rochester and People's Cooperative Services, Inc. per the terms stated in the Amendment, and that the Common Council authorize the Mayor and the City Clerk to execute the agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31st day of August, 2010.

President

Secretary