

## FOR BOARD ACTION

Agenda Item # 8

Meeting Date:

8/26/08

**SUBJECT:**

Settlement Agreement with People's Cooperative Services

**PREPARED BY:**

Walt Lorber, Director of Core Services

**ITEM DESCRIPTION:**

The last settlement agreement for the acquisition of electric service rights was executed in 2002, and covered 2000 annexations. Numerous negotiating sessions since that time failed to produce agreement, leading to the City's decision to file for condemnation of service rights to 2001-06 annexations in January 2007. The petition was updated in November 2007 to include 2007 annexations. Commissioners were sworn in earlier this year and the parties are currently in the process of data production in response to each other's information requests.

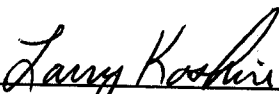
Recent discussions between MREA and MMUA produced a settlement template that the parties have been able to build on and have now reached tentative settlement. The draft settlement agreement is undergoing final review by each party's legal counsel and the Rochester City Attorney. A final agreement is expected to be available for distribution at the Board meeting.

The business components of the agreement include:

- ✓ Term: 2001-2012, with automatic one-year renewal thereafter unless terminated.
- ✓ Compensation: Millrate per kilowatt-hour, escalated annually using CPI.
- ✓ Comp Period: 10 years maximum payment, beginning with first permanent meter in annexation.
- ✓ Usage Cap: Annual energy usage by an individual customer above 15 million KWH is compensated at 50% of the effective millrate. This would generally be a customer with a demand exceeding 3000 KW (a super Walmart ~1500 KW).

**UTILITY BOARD ACTION REQUESTED:**

Staff recommends that the Board request the Common Council to approve the 2001-2012 Settlement Agreement with People's Cooperative Services and authorize the City Clerk and Mayor to execute the agreement; and to further request that the Common Council authorize the withdrawal of the condemnation petition (District Court File No. 55-CV-07-1262).

  
General Manager

  
Date

**ROCHESTER PUBLIC UTILITIES**

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

This agreement, made and entered into the 4<sup>th</sup> day of August, 2008 by and between the City of Rochester, a Minnesota municipal corporation, acting by and through its Utility Board, ("City"), and People's Cooperative Services ("People's"), individually or collectively referred to as a "Party" or "Parties."

**WHEREAS**, the City has the right under Minn. Stat. Chapter 216B to acquire service territory rights, facilities, and customers of People's after annexation of portions of People's assigned service territory and has determined that it is in the best interests of City residents and the City's electric utility that the municipal utility serve such annexed territories; and

**WHEREAS**, People's prefers not to transfer such assets, customers, or rights and is willing to continue serving within such territories even after annexation and to pay a franchise fee to the City in an amount equal to Rochester Public Utilities' payment in lieu of taxes contribution to the City's General Fund; and

**WHEREAS**, in the period January 1, 2001 through August 31, 2008, the City has annexed approximately 5645 acres located in the assigned exclusive electric service territory of People's and the Parties expect that the City will continue to annex additional areas located within the assigned exclusive electric service territory of People's (collectively the "Annexed Areas" and a particular such annexation an "Annexed Area"); and

**WHEREAS**, the City filed a Condemnation Petition with the Olmsted County District Court pursuant to Minn. Stat. § 216B.47, inter alia, captioned as *The City of Rochester v. People's Cooperative Services, Inc.*; and all other persons and parties unknown claiming any right, title, estate, interest, or lien in the electric service territory described herein, Court No. 55-CV-07-1262 (Olmsted County) ("Condemnation Action"); and

**WHEREAS**, the Parties have negotiated a mutual settlement of all of their respective claims in the Condemnation Action and wish to avoid ongoing future litigation regarding compensation for such rights, facilities, and customers through execution of this extended-term agreement that is intended to benefit the customers of both Parties, allowing the Parties to focus on areas of mutual interest and obligation that should lead to various synergies and efficiencies in the provision of utility services to the area at large; and

**WHEREAS**, People's and the City support ongoing work between Minnesota Municipal Utilities Association and Minnesota Rural Electric Association to develop draft legislation requiring compensation for acquired electric service territory and the municipal's right to acquire the cooperative's service area, and both Parties agree not to oppose the final agreement between MMUA and MREA.

**NOW, THEREFORE, THE PARTIES** desire to enter into this Agreement for Transfer of Service Territory Rights ("Agreement") establishing the terms and compensation for municipal acquisition of service rights to the Annexed Areas during the term of this Agreement.

## **1. TERM OF AGREEMENT**

1.1 This Agreement shall remain in effect through December 31, 2012, and thereafter shall automatically renew for additional one-year periods; provided, however, that this Agreement may be terminated, with such termination effective the calendar year following the year in which the notice was provided, as follows:

(a) on or after January 1, 2011, either Party may provide written notice of termination; or

(b) if Minnesota law establishes a statewide electric service territory compensation formula or regulatory scheme with specific economic terms before January 1, 2011 that is viewed by either Party as preferable to this Agreement, then either Party may provide written notice of termination at any time after the effective date of such law.

## **2. TRANSFER OF SERVICE RIGHTS**

2.1 The exclusive right to provide permanent electric service to Annexed Areas annexed into the City for the period January 1, 2001 to August 31, 2008, described in greater detail on attached Exhibit A and incorporated by reference, shall transfer to the City upon Minnesota Public Utilities Commission (MPUC) and Rural Utility Services (RUS) action pursuant to Articles 7 and 8 of this Agreement. This Section 2.1 shall not affect the City providing interim or other electric service in any areas by the Parties' agreement.

2.2 For all Annexed Areas annexed into the City after August 31, 2008, the City shall have the exclusive right to provide permanent electric service on the date of annexation approval by the Minnesota Office of Administrative Hearings/Municipal Boundaries Adjustments (collectively, the transfer rights in Sections 2.1 and 2.2 "Transfer Date").

2.3 Within eight months following the Transfer Date of any Annexed Area containing customers served by People's, the City shall extend electric service to that Annexed Area unless the Parties mutually agree to an alternative written schedule. In any Annexed Area already being served by People's as of the Transfer Date, People's will provide electric service to any existing and additional third parties within that area until the City determines that the City can efficiently extend service or is prepared to transfer the area and so notifies People's.

2.4 In consideration of avoiding duplication of facilities and of the impact on affected customers, the Parties may mutually agree in writing to provide service in exception to the above transfers.

### **3. COMPENSATION**

As settlement payment and in consideration of the covenants, releases and representations made by People's herein, City agrees to make the following payments to People's, subject to Article 5:

3.1 The City shall pay People's for the depreciated cost of electric distribution facilities which will no longer be used by People's following the transfer of acquired services, excluding transformers and meters which will be returned by the City to People's designated storage yard. Facilities installed within 12 months of the Transfer Date will be valued at full original installed cost with no depreciation applied. Payment of undisputed invoices shall be made within 30 days of receipt of the invoice or as agreed to in writing by both parties.

3.2 The City shall pay People's for the reasonable cost of system improvements required to reintegrate People's distribution system when continuity, quality, and/or reliability of service to People's remaining customers is impacted by the transfer of electric service. Payment

of undisputed invoices shall be made within 30 days of receipt of the invoice or as agreed to in writing by both parties.

3.3 The City shall make monthly payment to People's based upon retail energy sales billed by the City during the previous calendar month to customers in Annexed Area(s) using a millrate per kilowatt-hour for compensable sales. For the period January 1, 2008 to December 31, 2009, the millrate is set at fifteen (15) mills (\$0.0015) per kilowatt hour for compensable sales, without adjustment according to Section 3.4. Monthly payments shall start (a) with respect to transfers under Section 4.1, on the first day of the month following the last customer transfer in that Annexed Area, or (b) with respect to transfers under Section 4.2, on the first day of the month following the installation of the applicable permanent meter.

3.4 The millrate specified in Section 3.3 will be indexed on an annual basis for the period January 1, 2001 to December 31, 2007 and the period January 1, 2010 onward. The index will be calculated as follows: using the percentage change in the first published value by the United States Government of the annual Consumer Price Index-All Urban Consumers-Midwest-All Items of the just-ended year divided by the first published value of the previous year, rounded to two decimal places. Adjustments in the millrate will be made to the rounded value and will not exceed +/-6.0 % in any one year. Indexed values for the period January 1, 2001 through December 31, 2007 are specified in Exhibit B. The appropriate indexed millrate will apply pursuant to Article 4.

3.5 Millrate payments for past years will be adjusted to present-worth using a 5.0% annual discount rate.

3.6 For annual sales in excess of 15 gigawatt-hours to a single customer, the millrate will be reduced by 50% for such sales over 15 gigawatt-hours. Aggregated loads (such as a mall) are excluded from this reduction.

3.7 Non-metered services (such as streetlights, cable amplifiers, emergency sirens, etc.) will be compensated in a lump-sum amount which will be calculated over a ten-year period applying the kilowatt-hour billing basis used by the City at the indexed millrate applicable to the year the service is added. These lump-sum payments will be made in January for the additions of such services in the previous calendar year.

3.8 The City will furnish an electronic file with each millrate payment providing the customer and sales data used in the calculations.

3.9 Any lump-sum payments to People's will, when requested by People's, be made in annual installments, over a period of years determined by People's, accruing simple interest per annum at 5.0%.

3.10 Except as provided in this Article 3, no other payments shall be due for the transfer of the Annexed Areas under the terms of this Agreement. Any payments due under previous settlements between the Parties or under prior cases involving the Parties as set by the MPUC and not listed in Exhibit A remain in force and any payables remain due to People's.

#### **4. COMPENSATION PERIOD**

4.1 For any customers that are served by People's at the Transfer Date, 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. The applicable ten-year millrate for such customers in an Annexed Area will be the indexed millrate in effect on the date the ten-year period begins.

4.2 For all customers that the City serves after the Transfer Date, the ten-year compensation period for each Annexed Area of 80 acres or less shall begin on the date 1) the first permanent meter is installed from a point of service in that Annexed Area for a residential homestead or commercial building of greater than 1500 square feet, or 2) the permanent meter is

installed for the only service that will be provided in that Annexed Area. The applicable ten-year millrate for such customers in each Annexed Area will be the indexed millrate in effect on the date the ten-year period begins.

4.3 For an Annexed Area larger than 80 acres, the ten-year compensation period will be negotiated by the Parties.

## **5. MUNICIPAL DEVELOPMENT**

5.1 Electric service to the City's own electric utility property and facilities, which are defined as property and facilities used to provide electric service at retail, i.e., power plants, substations, corporate headquarters, and other property without which a utility could not provide electricity to its customers, is excluded from compensation.

5.2 Commercial/industrial customers that locate on lots that the City fully owned, developed, and funded (100% fee title) to attract business to Rochester are excluded from any compensation.

## **6. ESCROW**

The Parties agree that any funds previously escrowed by the City pursuant to interim service waivers for areas involved in the affected Annexed Areas shall be released and returned by the escrow agent to the City, together with any interest accrued thereon. People's shall cooperate and assist in any steps necessary to authorize the return of such escrowed funds to the City. Any monies due and owing to People's under the terms of this Agreement as of August 31, 2008 will be paid contemporaneously with release of the escrow funds by the City unless otherwise agreed by the Parties.

## **7. REVISED MAP**

7.1 Upon execution of this Agreement and upon RUS action pursuant to the terms of this Agreement, the City shall immediately prepare a revised service territory map depicting the transfer of service territory for Annexed Areas completed through August 31, 2008. After People's review, approval, and execution of the revised service territory map, which shall not be unreasonably withheld or delayed, the City shall file the map with the MPUC and, together with the Parties' joint request, under Minn. Stat. § 216B.39, subd. 3, request the MPUC to modify the service territory boundary and to recognize the service territory transfer.

7.2 Following the initial territory map update as provided in section 7.1, the City shall prepare annually a revised map, unless required more often by law (including any binding Court or MPUC order), depicting the transfer of service territory for those Annexed Areas completed in each subsequent calendar year through the term of this Agreement and extensions thereof. After People's review, approval, and execution of each such revised map, the City shall file the map with the MPUC and, together with the Parties' joint request under Minn. Stat. §216B.39, subd. 3, request the MPUC to modify the service territory boundary and to recognize the service territory transfer.

7.3 The City shall reimburse People's for all reasonable staff and consulting expenses incurred in the map revision and filing process, and shall provide People's with an electronic file of each map revision using the City's then-current drafting/mapping software.

7.4 In the event a change in Minnesota law establishes a process for the transfer of service rights that materially differs from the above process, the Parties will follow the process as provided by law.



## **8. FILINGS**

8.1 Simultaneous with or shortly after the execution of this Agreement, the parties shall execute, through their counsel, a joint stipulation and order for dismissal without prejudice attached hereto as Exhibit C.

8.2 If the MPUC or the Office of Energy Security raises any question or challenges any provision of the service territory transfer in this Agreement, or the due performance thereof, the Parties shall each, at their own expense, exercise any and all lawful efforts reasonable and necessary to respond to said questions and to assure the transfer of service territory. If for any reason the MPUC refuses to recognize any service territory change described in Article 2, any settlement payments made by City pursuant to Article 3 shall be repaid by People's to City, upon demand by City.

8.3 To the degree that the approval of RUS or any other lender or party may be necessary for completion of the service rights transfer contemplated and governed by this Agreement, People's shall seek and affirmatively advocate such approval. People's shall, within 30 days of the date of the signing of this Agreement: (A) make application to RUS or any other necessary party for approval of this Agreement; (B) make application to RUS or any other necessary party for the release of liens on any customers and service rights addressed herein; and (C) provide any information to RUS or any other necessary party as may be required to obtain said approval and release of liens as soon as practicable.

## **9. CITY POLICY**

The City shall within 30 days of the date of the City's execution of this Agreement, direct its departments that municipal decisions and actions which affect the nature or schedule of development in areas dealt with in this Agreement shall not be influenced by considerations of

the City's compensation obligations under this Agreement to People's. People's shall be permitted opportunity to monitor that such a directive is being complied with by the City's departments during the term of the Agreement by the City's departments.

## **10. INDEMNIFICATION**

10.1 People's does hereby agree to indemnify and hold the City, its employees, officials, board members and employees, harmless from all costs and damages arising from each and every claim made by any third party against the City, including the reasonable costs and fees of legal counsel incurred in the defense thereof, arising from or related to the transactions described or contemplated by this Agreement, including, but not limited to, causes of action, actions, or demands relating to People's customer deposits, prepayments, patronage dividends, or contracts. As to claims of RUS or other lenders of People's, People's is not liable to the City, and the balance of this section 10.1 does not apply, if the claim concerns RUS or People's other lender(s) refusal to release their liens on the territory to be transferred to the City. If that eventuality occurs, the City may institute condemnation proceedings and any payments related to that territory made by the City shall be returned to the City upon the City's written demand (with the condemnation proceedings to determine any damages), notwithstanding any other terms of this Agreement. People's will cooperate with City to attempt to obtain releases from its lenders.

10.2 City does hereby agree to indemnify and hold harmless People's, its employees, officials, and board members, harmless from all costs and damages arising from each and every claim made by any third party against People's, including the reasonable costs and fees of legal counsel incurred in the defense thereof, arising from or related to the transactions described or contemplated by this Agreement.

**11. MUTUAL RELEASE**

The Parties do hereby each unconditionally release and waive any and all claims, known or unknown, which they may now have or have in the future arising from any action or omission of the Parties or any fact or circumstance first occurring prior to the date hereof, whether or not continuing in nature, which relate to or arise from the right of either Party to provide electric service to the Annexed Areas or related to the Condemnation Action by reason of the electric service territory laws of the State of Minnesota, now or hereafter in effect.. Provided, however, the foregoing provisions of this Article 11 do not waive or release any claim either Party may have for any breach of any covenants contained in this Agreement.

**12. NEGOTIATED RESOLUTION AND NO PRECEDENT**

The Parties acknowledge that this Agreement and its terms are the result of negotiation between the Parties, each taking into consideration the costs and risks of litigation otherwise required to resolve the matters addressed in this Agreement. Consequently, this Agreement's terms do not necessarily reflect the position of either Party as to the appropriate application of the law determining rights and obligations of the Parties concerning compensation and service territory matters, and shall not be offered by any Party in any other proceeding related to service territory matters.

**13. ALTERNATIVE DISPUTE RESOLUTION**

Whenever the Parties disagree on the interpretation of this Agreement, upon calculations or payments, or upon the compensation period for any Annexed Area larger than 80 acres, then upon written request of either Party, representatives with settlement authority for each Party shall meet in person and confer in good faith to resolve the dispute. If the Parties are unable to resolve

the dispute, they shall submit their dispute to mediation pursuant to the Minnesota Civil Mediation Act. If the dispute is not resolved by mediation, the parties may invoke their legal remedies available at law.

**14. ENTIRE AGREEMENT**

As to the subject matter of this Agreement, this Agreement supersedes any and all proposals and/or understandings, oral and in writing, between the Parties hereto and constitutes their sole and only Agreement. There are no understandings, representations or agreements, oral or written, regarding this Agreement that are not otherwise specified herein. Title and paragraph headings are for convenient reference and are not a part of this agreement.

**15. MISCELLANEOUS**

15.1 Any notice permitted or required by this Agreement shall be made in writing by letter, electronic mail, facsimile, or other documentary form and shall be deemed given upon actual receipt by the Party to which such notice is given.

15.2 This Agreement will inure to the benefit of the Parties hereto and shall be binding on them and their respective legal representatives, successors and assigns. Provided, however, neither Party hereto may assign any of its rights herein to any person without the prior written consent of the other Party.

15.3 This Agreement may be amended only in writing.

**16. EXECUTION OF THE AGREEMENT**

By executing this Agreement, the Parties acknowledge that they: (a) enter into and execute this Agreement knowingly, voluntarily and freely of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had an opportunity to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms and appreciate the significance of those terms; and (d) have not relied upon any representation or statement not set forth herein.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed as of the date first above written.

THE CITY OF ROCHESTER

PEOPLE'S COOPERATIVE SERVICES,  
INC.

By \_\_\_\_\_  
Its General Manager  
Rochester Public Utilities

By \_\_\_\_\_  
Its President and CEO

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its Chair, Board of Directors

Attest: \_\_\_\_\_  
City Clerk

Approved As To Form:

\_\_\_\_\_  
Rochester City Attorney

# Exhibit A

1 of 4

## Annexed Areas January 1, 2001 through August 31, 2008 (Article 2)

ORD Number	Date Annexed	Location	Acres	
			Annexed	To be Acq
OA-662-1	3/1/2001	Part of Lot 27, Lots 28-32 in Blk 2, Sunnydale	3.12	3.12
OA-122-75	3/30/2001	ROW 2800 Blk W Cr Dr	0.49	0.49
3372	3/30/2001	Century Hills 5	13.66	13.66
OA-660-1	4/26/2001	Misc. Lots in Rose Harbor Area	12.84	12.84
3379	5/24/2001	N of E Cr Dr, NW of Century HS (Plateau Estates)	53.90	53.90
3387	5/24/2001	SE Corner of 50 Ave & 65 St NW	53.39	53.39
3391	6/21/2001	N of Emerald Hills and S of 48 St NE	58.98	58.98
OA-660-2	6/28/2001	Lots 1-3 in Blk 1, Rose Harbor 2	0.99	0.99
3397	6/28/2001	W side St. Bridgets Rd SE, S of 48 St	39.72	39.72
3399	6/28/2001	E of Douglas Trail, S of 65 St NW	59.97	59.97
3401	8/17/2001	E of Plateau Estates on East Circle Dr NE	11.79	11.79
3407/3402	8/17/2001	Sect 16&21, High Forest Twnshp SW, adj to Airport	165.00	165.00
OA-660-4	9/14/2001	Lots 4-7, Blk 8, and Lot 4, Blk 10, Rose Harbor 4	2.73	2.73
3411	9/14/2001	E of East River Rd NE, W of TH63	40.00	40.00
3412	9/14/2001	NE corner of East Circle Dr and 16 Ave NE	2.00	2.00
3413	9/14/2001	N of Emerald Hills and S of 48 St NE	19.05	19.05
3414	9/27/2001	W of 18 Ave SW, N of 36 St	7.87	7.87
3419	9/27/2001	S of 7 St NW, W of Manor Ridge Dr NW	9.91	9.91
3422	11/9/2001	W side of W Cr Dr, S of Meadow Lakes Golf Course	54.63	26.82
3427	12/14/2001	S of Viola Rd NE, between Century Hills & Haverhill	58.05	58.05
3429	12/14/2001	E & W sides of TH52N, N of 65 St NW	198.21	198.21
3374/3354	12/14/2001	55 St Estates, exc. Lot 2, Blk 5 & areas in Manorwor	103.39	103.39
OA-660-6	1/18/2002	S side of Eastwood Rd SE	238.63	238.63
OA-122-76	2/22/2002	W side of 18 Ave NW, N of Hunter Hills	78.72	78.72
3441	2/22/2002	N of E Circle Dr, E of 16 Ave NE	59.71	59.71
3446	2/22/2002	S side of TH 14, E of 40 Ave SE	41.93	41.93
OA-662-2	3/15/2002	E of Sunnydale Subd	66.10	66.10
3450	3/15/2002	S of Pinewood Rd SE, E of S Park 1st and 2nd	24.30	24.30
3451	3/15/2002	N of TH14E, E of E Ridge Subd	36.93	36.93
3452	3/15/2002	S of 21 St NE, E of Century Hills Dr	59.99	59.99
3460	4/12/2002	S side of 65 St NW, E of 50 Ave	36.77	36.77
3463	5/13/2002	N side of 55 St NW, E of 60 Ave, SW of Douglas Tr	55.54	55.54
3475	6/14/2002	E side of E Circle Dr, S of Century Hills 3	22.50	22.50
3478	6/14/2002	S of 55 St NW, E of 60 Ave	52.10	52.10
3476	7/15/2002	S of Viola Rd NE, E of Century Hills, W of Havehills	36.65	36.65
3481	7/15/2002	W side of 50 Ave NW, S of Wedgewood Hills 4	57.74	57.74
3490	7/15/2002	N side of E Circle Dr NE, W of Christ Our Rock	9.57	9.57
3494	7/15/2002	N of 55 St NW, E of 60 Ave NW	35.71	35.71
3499	8/13/2002	S of Pinewood Rd SE, W of 22 Ave	1.50	1.50
3501	8/13/2002	W of TH 63N, N of 37 St NE	33.39	33.39
3504	9/13/2002	N of Valleyhigh Rd, betw W Circle Dr and 50 Ave N	39.74	39.74

# Exhibit A

2 of 4

## Annexed Areas January 1, 2001 through August 31, 2008 (Article 2)

ORD Number	Date Annexed	Location	Acres	
			Annexed	To be Acq
3506	9/13/2002	E side of TH 52N, N of 65 St NW	59.93	59.93
3514	10/11/2002	S of 65 St NW and W of 50 Ave NW	19.65	19.65
3522	12/13/2002	S of 55 St NW, E of 60 Ave NW	48.01	48.01
3525	12/13/2002	N of E Circle Dr NE, E of 16 Ave NE and 35 St NE	57.22	57.22
3529	1/17/2003	N of 55 St. NW, W of 50 Ave, S of Douglas Trail	49.45	49.45
3539	2/25/2003	NW quadrant of TH52S & Co Rd 1 SE (11 Ave SE)	54.98	54.98
3540	3/24/2003	SE quadrant of TH52N & 75 St NW (Scott property)	35.44	35.44
3551	5/9/2003	E of E Cr Dr NE, S of Viola Rd, N of Silver Crk Rd	1.07	1.07
3552	5/9/2003	W of 18 Ave SW, W of Hart Farms Sub, N of 40 St	19.35	19.35
OA-122-77	6/16/2003	NE 1/4 of NE 1/4 Sect 9, T107N, R14W, E of Bande	32.82	32.82
3545	6/16/2003	N of Viola Rd NE, W of Osjor Estates, E of Schaeffe	12.00	12.00
3547	6/16/2003	N of Shannon Oaks Sub, along Viola Rd NE	6.00	6.00
3555	6/16/2003	N of 40 St SW, W of 18 Ave	59.99	59.99
3559	6/16/2003	W of 18 Ave SW, N of Hart Farms Sub	44.99	44.99
3560	6/16/2003	N of E Cr Dr NE, E of Northwood Hills 2 Ssub	25.61	25.61
OA-122-78	8/18/2003	Part of W Cr Dr ROW at 28 St NW	0.09	0.09
OA-660-7	8/18/2003	S of Eastwood Rd SE, W of Knollwood Dr SE	90.00	90.00
3568	8/18/2003	S of 55 St NW, W of Wedgewood Hills 3 & 5	13.63	13.63
3573	8/18/2003	N of Nothern Heights E8 (Baihly Estates Park)	4.43	4.43
OA-660-8	9/12/2003	S of Harbor Dr, E of Sunrise Ave SE	10.19	10.19
3437	9/12/2003	E and W of 50 Ave NW, N of 19 St	137.66	124.63
3576	9/12/2003	N of 19 St, E of 50 Ave NW	59.92	59.92
3577	9/12/2003	N of Northway Ln NE, E of Northland Pl, E of TH63N	26.40	26.40
3578	9/12/2003	Lot 1, Blk 1, 41 St Business Park	39.70	39.70
OA-966-1	10/13/2003	W of 60 Ave NW at 55 St	56.70	56.70
3596	10/13/2003	S of TH14E, E of 40 Ave SE	2.15	2.15
3598	11/12/2003	N of 55 St, E of 60 Ave NW	35.97	35.97
3601	12/11/2003	N of TH52, S of Pinewood Rd SE, W of 34 Ave SE	42.09	42.09
3608	1/15/2004	S of TH14W, E of 40 Ave SW	7.94	7.94
OA-122-79	3/18/2004	E side of W Cr Dr NW, S of 41 St NW	14.00	14.00
OA-661-2	3/18/2004	NE of Marion Rd, N of 25 St SE	26.10	26.10
OA-122-81	5/13/2004	Various parcels and ROW S 1/2 Sect 7-T107N-R14'	45.73	45.73
OA-122-82	5/13/2004	Various parcels and ROW NW 1/4 Sect 9-T107N-R	8.05	8.05
OA-661-1	5/13/2004	W of 2900 Blk Marion Rd SE	2.97	2.97
OA-661-3	5/13/2004	W of 2800 Blk Marion Rd SE	39.54	39.54
OA-966-2	5/13/2004	55 St NW ROW W of 60 Ave NW	5.45	5.45
3633	5/13/2004	N of 19 St NW, S of Badger Ridge, W of Superior R	19.44	19.44
3641	6/10/2004	E of E Cr Dr NE, W of Century Hills Dr	15.99	15.99
3642	6/10/2004	E of Century Pt Subd	43.34	43.34
OA-1050-1	7/8/2004	Misc Parcels N of Valleyhigh Dr NW betwn 50-60 A	450.60	450.60
3653	8/12/2004	E of TH63N, S of 48 St NE, N of Northland Pl	34.90	34.90

# Exhibit A

3 of 4

## Annexed Areas January 1, 2001 through August 31, 2008 (Article 2)

ORD Number	Date Annexed	Location	Acres	
			Annexed	To be Acq
3654	8/12/2004	N of Valleyhigh Dr NW, E of 50 Ave	39.67	39.67
3658	9/9/2004	N of 19 St NW, E of 50 Ave	16.74	16.74
3663	10/7/2004	S of Marion Rd SE, N of 30 St	17.47	17.47
3664	10/7/2004	N of 40 St NW, W of 18 Ave	19.19	19.19
3665	10/7/2004	W of 18 Ave SW, N of Hart Farms, S of Merrihills	52.25	52.25
OA-661-4	12/14/2004	20 St SE, W of 38 Ave	20.02	20.02
3681	12/14/2004	Lot 3, Osjor Estates 3rd Subd (2605 Oslo Ct NE)	0.89	0.89
OA-622-1	1/11/2005	S of Pinewood Rd, W of 34 Ave SE (Lots 54,58, Pla	10.01	10.01
3684	1/11/2005	E of 60 Ave NW, SE of Kingbury Hills 3	21.81	21.81
3685	1/11/2005	E of 8 St SW, W of W Cr Dr, S of Meadow Lakes Gr	3.98	3.98
3597	2/11/2005	N of TH30, W of TH63 (Part of Airport)	189.00	189.00
3689	2/11/2005	S of E Cr Dr, W of Rocky Creek Dr NE	6.42	6.42
3695	4/7/2005	N of 7 St NW, Sect 30 & Sect 31-107-14	15.00	15.00
OA-663-1	4/8/2005	W 48 Ft Front Lot 8, W 42 Ft Lot 9, Crystal Sprgs St	0.68	0.68
OA-660-10	4/19/2005	Lot 5, Blk 3 Rose Harbor 4th Subd.	0.37	0.37
3696	5/16/2005	W of TH63, S of 48 St NE, SE 1/4 Sect 13-107-14	58.29	58.29
3702	6/9/2005	SW Corner of 50 Ave NW and Valleyhigh Road	40.00	40.00
3704	6/9/2005	N of 60 St SW, W of WC Reservoir, S of Scenic Oal	51.94	51.94
3718	7/6/2005	S of 48 St NE, W of 22 Ave, N of Cassidy Hills	57.51	57.51
3716	7/7/2005	E of 18 Ave SW, S of Greystone Ln	40.00	40.00
3709	7/13/2005	S 33 Ft of Overland Dr NW, Sect 9-107-14	0.16	0.16
OA-122-83	7/19/2005	19 St NW ROW, Begin SE COR NE 1/4 Sect 29-107	11.00	11.00
3719	8/10/2005	E of TH63, S of 48 St NE, N of Viking Hills and Morr	34.98	34.98
OA-1048-1	9/15/2005	Sect 4-107-14, both sides of TH52, N of 65 St NW	7.04	7.04
3710	9/15/2005	SE 1/4 Sect SW 1/4 Sect 34-106-14, S of DAM WRI	20.29	20.29
OA-661-5	10/18/2005	Lot 25 and Part of Lot 26, Auditor's Plat E	2.02	2.02
3731	10/18/2005	E of 60 Ave NW, SE of Kingbury Hills 3	8.65	8.65
OA-1048-2	11/10/2005	Part of N 560 Ft of Lot 2 Westgards 1st Subd.	2.01	2.01
3737	12/8/2005	W of 50 Ave NW, S of 65 St, NE 1/4 Sect 7-107-14	9.62	9.62
OA-622-2	1/11/2006	Pinewood Rd SE	291.00	291.00
OA-660-11	2/9/2006	Lots 2&3, Blk 9, Rose Harbor 4 Subd	0.75	0.75
3755	4/6/2006	S of 8th St SW, SW of Meadow Lake Estates	2.25	2.25
OA-660-12	5/11/2006	N of Marion Rd, S of 20th St SE (RPU well site)	0.41	0.41
3756	5/11/2006	S of 19th St, W of W Cr Dr NW, N of DME RR	14.28	14.28
3765	6/19/2006	SW Corner of Intersection CSAH22 & CSAH2 (Thinl	9.95	9.95
OA-1170-1	11/16/2006	N of 48 St NE, Sect 18-107-13W	117.51	117.51
OA-661-6	11/16/2006	Lot 7 Vandals 1st Subd	3.80	3.80
OA-1048-3	11/29/2006	16 Parcels in Various Locations	455.13	262.66
OA-661-7	12/15/2006	Part Lot 64 Autitor's Plat "E" SW 1/4 Sec 17-106-13	24.95	24.95
3794	12/15/2006	Part W 1/2 NE 1/4 Sec 19-106-13, N of TH 52	42.09	42.09



**Exhibit A**

4 of 4

**Annexed Areas January 1, 2001 through August 31, 2008 (Article 2)**

ORD Number	Date Annexed	Location	Acres	
			Annexed	To be Acq
3795	1/16/2007	Portion of Hawthorn Hills Golf Course	17.90	17.90
3805	3/15/2007	Portion of Hawthorn Hills Golf Learning Center	72.04	72.04
OA-661-8	5/17/2007	S of 25 St, E of 40 Ave SE	2.18	2.18
OA-661-9	7/18/2007	Lot 2, Blk 2, Cedar Park 1st, N of Marion Rd SE	0.22	0.22
3820	7/18/2007	4 parcels near Hawthorne Hills Golf Course NE	26.50	26.50
OA-1048-4	10/16/2007	Parcel E of Bandel Rd NW, at 62nd St	2.71	2.71
OA-660-13	1/24/2008	Marion Water Quality area	416.86	280.78
3858	3/20/2008	Badger II S of Valleyhigh, W of 50 Ave NW	40.01	40.01
<b>Total:</b>	<b>130 Annexations</b>		<b>6014.25</b>	<b>5644.86</b>

**Notes:**

**Acres Annexed** is the total area of within the annexation ordinance.

**Acres to be Acquired** is the portion of the annexation that lies within People's assigned service territory at the time of annexation.

## Exhibit B

### Indexed Values (Article 3)

(Applicable to All Compensation Periods Beginning in Calendar Year)

Reference: Consumer Price Index-All Urban Consumers-Midwest-All Items-Annual

Base Millrate 2008: 15  
 Base CPI (2007 Annual): 198.1

Calendar Year	Annual Index Reference		Escalator	Applicable Millrate
	Year - 1	Year - 2		
2012	(2011)	(2010)	2011/2010	TBD
2011	(2010)	(2009)	2010/2009	TBD
2010	(2009)	(2008)	2009/2008	TBD
2009	+++++Fixed+++++			15.00
2008	<b>198.1</b>	193.0	1.026544	<b>15.00</b>
2007	193.0	188.4	1.024416	14.61
2006	188.4	182.6	1.031763	14.26
2005	182.6	178.3	1.024117	13.82
2004	178.3	174.9	1.019440	13.49
2003	174.9	172.8	1.012153	13.23
2002	172.8	168.3	1.026738	13.07
2001	168.3	162.7	1.034419	12.73

Escalator Reference URL:

[http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data\\_tool=dropmap&series\\_id=CUUR0200SA0,CUUS0200SA0](http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0200SA0,CUUS0200SA0)

**Exhibit C**  
**Joint Stipulation, Order for Dismissal Without Prejudice**  
**(Article 8)**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF OLMSTED

HIRD JUDICIAL DISTRICT

\_\_\_\_\_  
The City of Rochester, a Minnesota  
municipal corporation

Type of Case: Condemnation  
Court File No: 55-CV-07-1262

Petitioner,

vs.

**JOINT STIPULATION, ORDER FOR  
DISMISSAL WITHOUT PREJUDICE**

People's Cooperative Services, Inc.;  
and all other persons and parties  
unknown claiming any right, title, estate,  
interest, or lien in the electric service  
territory described herein,

Respondents.  
\_\_\_\_\_.

IN THE MATTER OF THE CONDEMNATION OF CERTAIN ELECTRIC SERVICE  
TERRITORY IN THE CITY OF ROCHESTER:

THIS STIPULATION, is made and entered into the \_\_\_\_th day of \_\_\_\_\_ ,  
2008, on behalf of Petitioner City of Rochester (the "City") and Respondent People's  
Cooperative Services, Inc ("People's"), the only parties (collectively, "the Parties") to appear  
of record in this matter.

WHEREAS, the City filed a Condemnation Petition with the Olmsted County District  
Court pursuant to Minn. Stat. § 216B.47, inter alia, captioned as *The City of Rochester v.*  
*People's Cooperative Services, Inc.; and all other persons and parties unknown claiming any*  
*right, title, estate, interest, or lien in the electric service territory described herein*, Court No.  
55-CV-07-1262 (Olmsted County) ("Condemnation Action"); and

WHEREAS, the Parties desire to terminate this litigation and pursue their peace and, in  
consideration of the mutual release and dismissal of claims, and the Settlement Agreement

**Exhibit C**  
**Joint Stipulation, Order for Dismissal Without Prejudice**  
**(Article 8)**

dated as of August 4th, 2008, and other good and valuable consideration, the sufficiency of which is hereby acknowledged,

NOW, THEREFORE, the Parties hereto stipulate and agree as follows:

1. The Parties release and discharge each other from any and all claims in the above-named lawsuit, according to the terms of the Parties' Settlement Agreement dated as of August 4, 2008.
2. The Parties agree to a transfer of electric service territory rights involved in the Condemnation Action pursuant to Minn. Stat. § 216B.39, subd. 3 from People's to the City.
3. It is stipulated and agreed that this matter may be dismissed without prejudice by the Court in accordance with the terms hereof, with each party bearing its own costs and attorneys' fees.

**MCGRANN SHEA ANDERSON CARNIVAL  
STRAUGHN & LAMB, CHARTERED**

---

Kathleen M. Brennan, #256870  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402-7035  
Phone: 612/338-2525; Fax: 612/339-2386

Attorneys for Petitioner City of Rochester

DUNLAP & SEEGER, P.A.

---

Dan Berndt, Esq., # 7729  
206 South Broadway, Suite 505  
PO Box 549  
Rochester MN 55903-0549  
Phone 507-288-9111; Fax 507-288-9342

Attorneys for Respondent People's Cooperative Services, Inc.

**Exhibit C**  
**Joint Stipulation, Order for Dismissal Without Prejudice**  
**(Article 8)**

**ORDER FOR DISMISSAL WITHOUT PREJUDICE**

Based upon the Stipulation of Dismissal without Prejudice submitted by counsel for the Parties hereto, the Court orders as follows:

1. The Parties have resolved this matter according to the terms of the Parties' Settlement Agreement dated as of August 4, 2008.
2. This matter, and all related claims for compensation, is hereby dismissed without prejudice, with each Party bearing its own costs and disbursements.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2008.

\_\_\_\_\_  
Olmsted County District Court



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Board requests the Common Council to approve the 2001 – 2012 Settlement Agreement with People's Cooperative Services, and authorize the Mayor and the City Clerk to execute the Agreement.

BE IT FURTHER RESOLVED that the Council authorize the withdrawal of the condemnation petition (District Court File No. 55-CV-07-1262).

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

---

President

---

Secretary