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**MEMORANDUM**

TO: City of Menasha Common Council

FROM: Melanie Krause, Manager of Business Operations *MK*  
Dick Sturm, Manager of Engineering & Operations *RS*

DATE: September 3, 2009

SUBJECT: Release and Settlement Agreement - Alcan

At the Regular Meeting of the Water and Light Commission held on August 26, the Commission unanimously approved a motion requesting the Common Council approve the Release and Settlement Agreement with Alcan with the definition of reasonable notice to be defined as not less than 15 days.

## RELEASE AND SETTLEMENT AGREEMENT

This AGREEMENT is by and among the City of Menasha and the Menasha Utilities Commission (collectively "Menasha") and Pechiney Plastic Packaging, Inc. ("Pechiney") (collectively, the "Parties").

### RECITALS

A. Pechiney has questioned the level of rates it has been charged under its Steam Supply Agreement with Menasha, dated June 21, 2006 ("Steam Supply Agreement").

C. On May 27, 2009, the Menasha Utilities Commission adopted a resolution recommending to the City of Menasha Common Council that the Menasha Steam Utility cease operating the Menasha steam supply facility ("Steam Supply Facility"). The Common Council has not yet acted on the Commission's recommendation.

D. The Parties desire, through a settlement and compromise, to avoid possible litigation related to the Steam Supply Agreement and/or any future decision by the Menasha Common Council directing the Menasha Steam Utility to cease operating the Steam Supply Facility.

### AGREEMENT

THE PARTIES AGREE as follows:

1. Pechiney acknowledges and agrees that the Menasha Steam Utility may cease providing steam to Pechiney upon giving reasonable advance written notice to Pechiney without any penalty or liability to Menasha. The effective termination date of the Steam Supply Agreement shall be the date on which the Menasha Steam Utility ceases to provide steam pursuant to such notice.

2. Once Menasha has ceased providing steam to Pechiney, Menasha shall work with Pechiney to establish a physical separation between Pechiney's facility and the Steam Supply Facility. Such physical separation shall be at the vault located on Menasha property. Pechiney shall own and be responsible for the operation and maintenance of all steam-related equipment that is located on Pechiney's property. Menasha shall not remove any equipment located on Pechiney's property.

3. Menasha shall provide Pechiney a credit in the amount of \$100,000 ("Settlement Amount") to be applied to any and all current and future charges for steam service provided to Pechiney by the Menasha Steam Utility. If and when all charges for steam service are paid in full by such crediting, Menasha shall then pay any remaining Settlement Amount ("Remainder Payment") directly to Pechiney. Menasha shall make any Remainder Payment to Pechiney within twenty (20) days after the final steam bill has been credited.

4. Pechiney releases Menasha from any claim, demand, obligation or liability arising out of or relating to the Steam Supply Agreement, the cessation of steam service to Pechiney, or any matters relating in any way to the Steam Supply Facility. It is the intent of the Parties that all of Pechiney's claims against Menasha, known or unknown, relating in any way to the Steam Supply

Agreement or the Steam Supply Facility are settled and released. This release extends to the City of Menasha, its departments, its presently elected or formerly elected or appointed officials, including without limitation the members of the Common Council, the members of the Menasha Utilities Commission, the Mayor, the former Mayor, and all employees, former employees or agents of the City or its departments.

5. Menasha releases Pechiney from any claim, demand, obligation or liability arising out of or relating to the Steam Supply Agreement or relating in any way to the Steam Supply Facility. It is the intent of the Parties that all of Menasha's claims against Pechiney, known or unknown, relating in any way to the Steam Supply Agreement, the Steam Supply Facility, or the cessation of steam purchases by Pechiney are settled and released. This release extends to Pechiney, its officers, directors, agents and all employees, including former employees.

6. Nothing herein shall be deemed an admission of any liability or wrongdoing on the part of Menasha with respect to any possible claims of Pechiney, known or unknown, relating to the Steam Supply Agreement, the Steam Supply Facility, or the cessation of steam supply service to Pechiney. The Parties expressly understand and agree that this is a settlement and compromise intended in part to avoid the cost and expense of any litigation or court action.

7. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement. The recitals stated above are incorporated into and form part of this Agreement.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

9. The execution of this Agreement by Menasha is subject to the prior approval of the Menasha Utilities Commission and the Menasha Common Council.

10. The effective date of this Agreement is the date of execution by the last party to sign (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Pechiney Plastic Packaging, Inc.

By: Manti Daj  
Its Authorized Representative

Date: 8/10/09

City of Menasha

By: \_\_\_\_\_  
Its Authorized Representative

Date: \_\_\_\_\_

Menasha Utilities Commission

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Its Authorized Representative

**Addendum to  
Release and Settlement Agreement**

This Addendum shall be integrated into and form part of the foregoing Release and Settlement Agreement by and among the City of Menasha, the Menasha Utilities Commission and Pechiney Plastic Packaging, Inc. (collectively, the "Parties").

The Parties agree that for the purposes of Section 1 of the Release and Settlement Agreement, the phrase "reasonable advance written notice" shall mean a notice period of not less than 15 days.

Pechiney Plastic Packaging, Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Its Authorized Representative

City of Menasha

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Its Authorized Representative

Menasha Utilities Commission

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Its Authorized Representative