

First National Bank - Fox Valley  
Positive Pay Agreement

This Agreement is made this 27<sup>th</sup> day of Feb, 20 09, by and between  
City of Menasha ("you" and "your") and First National Bank Fox Valley.

**RECITALS**

- 1) Company wishes to begin using the First National Bank Fox Valley Positive Pay service. You agree to abide by the rules set forth below now in effect or as they may be changed from time to time.

**AGREEMENT**

- 1) Positive Pay verifies your Positive Pay file against checks being presented to us for payment. Any paper item presented to us for payment that does not match the Positive Pay file will be an exception or violation. The following sets forth the description of an exception or violation:
  - a) Items presented for payment through our in-clearings (deposited items) not matching your issue file will be exceptions. You will have an automated option within Ecorp to work with your exceptions as they arise. It is your responsibility to resolve your Positive Pay Exceptions each business day between the hours of 7:30 am – 2:00pm (CST). For purposes of this agreement, a business day is defined as every day except Saturdays, Sundays and federal holidays.
  - b) Items presented to us for immediate payment (cashing a check at the bank) not matching your issue file will be an exception. A bank representative may contact you by phone for instruction on a Positive Pay Exception. In the event that we cannot contact an Authorized Representative for instruction on a Positive Pay Exception, we will return or refuse to pay the item. Authorized Representatives are designated below.
- 2) Uploading Files. The Positive Pay file must be uploaded to our system as soon as checks are being disbursed. Positive Pay files can be uploaded to our system on a monthly, weekly, daily and/or hourly basis.
- 3) Software. You may create your file in any desired application (i.e., Note Pad, Excel, etc.). You must provide a list of all outstanding checks at the time you begin using this service.
- 4) ACH Entries. Positive Pay will not stop the payment of checks that have been converted to ACH entries. ACH Rules prohibit the conversion of business checks as long as they meet the standards published in the ACH Rules. You are responsible for assuring that your checks meet these standards to utilize the Positive Pay service. Tell us at once if you believe a check has been improperly converted to an ACH entry.
- 5) Ordering Checks. We encourage you to use Safeguard™ for your check printing needs to assure that your business checks meet the standards in the ACH Rules. If you order or print business checks from any check printing vendor other than Safeguard™, you agree to insure the MICR encoding ink is of high quality. Not using business checks with high quality MICR ink could result in a large number of Positive Pay exceptions.
- 6) Notices, Instructions, Etc.
  - a) Except as otherwise expressly provided herein, we shall not be required to act upon any notice or instruction received from you or any other person.
  - b) We shall be entitled to rely on any written notice or other written communication believed by us in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth below. You may add or delete any Authorized Representatives by written notice to us signed by at least two (or one, if only one exists) Authorized Representatives other than that being added or deleted. Such notice shall be effective on the second business day following the day of our receipt.
  - c) Except as otherwise expressly provided herein, any written notice or communication shall be delivered, or sent to:

Attn: Deposit Operations  
First National Bank Fox Valley  
PO Box 629  
Neenah, WI 54957-0627

And, if to Company, addressed to:

Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, and Zip: \_\_\_\_\_

Unless another address is substituted by notice delivered or sent as provided herein. Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

- 7) **Periodic Statement.** The periodic statement issued by us for your account will reflect entries credited and debited to your account. You agree to notify us promptly of any discrepancy between your records and the information shown on any such periodic statement. If you fail to notify us within 30 days of receipt of a periodic statement, you agree that we shall not be liable for any other losses resulting from your failure to give such notice. In addition, you can use Business Online Cash Management to view daily transactions on your account.
- 8) **Fees.** The fees for this service are: \$75 per month. These fees are subject to change.
- 9) **Disclaimer of Warranty.** YOU ACKNOWLEDGE THAT THE INFORMATION FILE MUST BE PROVIDED IN A READABLE FORMAT TO INTERFACE WITH OUR COMPUTERS, AND ASSUME THE RISK THAT OUR COMPUTER MIGHT NOT BE OPERATIONAL AT ALL TIMES. WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROGRAM, OUR COMPUTERS OR ITS USE AND HEREBY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 10) **Liability; Limitations on Liability; Indemnity.**
  - a) We shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for our gross negligence in performing those services. We shall not be responsible for your acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or authorization of any file received from you) or those of any other person. We are authorized by you to process transactions in accordance with the information that we receive in the issued file transmission from you. You shall be solely responsible for the information contained in the file, and we shall have no responsibility for erroneous data provided by you. You will indemnify and hold us harmless from and against any loss, charge, liability, cost, fee or expense (including attorneys' fees and expenses) we suffer or incur resulting from any lawsuit, claim, arbitration or other action, actual or threatened, arising under or in connection with this Agreement, excluding those lawsuits, claims, arbitrations or other actions arising out of our gross negligence.
  - b) In no event shall we be liable for any consequential, special, punitive or indirect loss or damage that you may incur or suffer in connection with this Agreement, including losses or damages from subsequent wrongful dishonor resulting from our acts or omissions pursuant to this Agreement.
  - c) We shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, act of terror, emergency conditions or other circumstances beyond our control.
- 11) **Amendments.** From time to time, we may amend any of the terms and conditions contained in this Agreement. Such amendments shall become effective upon receipt of notice by you or such later date as may be stated in our notice to you.
- 12) **Termination.** You and we may terminate this Agreement at any time. Such termination shall be effective on the second business day following the day of receipt of written notice of such termination or such later date as is specified in that notice. We reserve the right to terminate this Agreement immediately upon providing written notice of such termination to you. Any termination of this Agreement shall not affect any of our rights and your obligations arising prior to such termination, or your payment obligations with respect to services performed by us prior to termination, or any other obligations that survive termination of this Agreement.
- 13) **Entire Agreement.** This Agreement, together with the Account Agreement, is the complete and exclusive statement of the agreement between you and us with respect to the subject matter hereof and supersedes any prior agreement(s) between you and us with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which we are subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and we shall incur no liability to you as a result of such violation or amendment. No course of dealing between you and us will constitute a modification of this Agreement or constitute an agreement between you and us, regardless of whatever practices and procedures you and us may use.
- 14) **Assignment.** You may not assign this Agreement or any of the rights or duties hereunder to any person without our prior written consent. We may assign this Agreement to an affiliate or any successor or assign.

- 15) Waiver. We may waive enforcement of any provision of this Agreement. Any such waiver shall not affect our rights with respect to any other transaction or modify the terms of this Agreement.
- 16) Binding Agreement; Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against you or us hereunder.
- 17) Severability. In the event that any provision of this Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

The following account (s) will be set up with Positive Pay:

_____	_____	_____
_____	_____	_____
_____	_____	_____

Authorized Representatives:

Name	Signature	Phone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized officers, effective as of the date first above written.

Customer: City of Menasha  
 By: Thomas Steffel  
 Title: Comptroller/Treasurer

Bank: First National Bank Fox Valley

By: Kathleen Baumgardner  
 Title: SI Vice President

Approved as to form

JSB 2.27.09  
 Jeffrey S. Brandt, City Attorney