

**RESOLUTION OF THE CITY OF MENASHA COMMON  
COUNCIL REGARDING CESSATION OF STEAM UTILITY OPERATIONS**

WHEREAS, the Common Council of the City of Menasha ("Common Council") has the authority to exercise general control and supervision of the Menasha Utilities Commission ("Commission") with respect to the charge and management of the City of Menasha's municipal steam utility (the "Steam Utility") in accordance with Section 9-5-1 of the City of Menasha municipal ordinances and Wis. Stat. § 66.0805; and

WHEREAS, by Resolution dated May 27, 2009 ("Commission Resolution"), (attached to this Common Council Resolution as Attachment A), the Commission has made certain recommendations to the Common Council with respect to the Steam Utility, including a recommendation that the Common Council authorize and direct the Steam Utility to cease its operation of the steam plant facility at this time; and

WHEREAS, by letter dated July 1, 2009, Sonoco-U.S. Mills, Inc. ("Sonoco"), sought to exercise its right to self generate steam pursuant to Section 4(B) of the Steam Supply Agreement between Sonoco and Menasha Utilities, executed as of October 22, 2004, as amended ("Sonoco Agreement"); and

WHEREAS, in its July 1st letter, Sonoco estimates that its current cost of producing steam through its existing boilers is \$8.14 per 1,000 pounds of steam, which is less than the current steam sales charge of \$9.92 per 1,000 pounds of steam; and

WHEREAS, in a subsequent letter dated July 29, 2009, Sonoco withdrew its self-generation request but expressly reserved its right to re-issue the request at a later date; and

WHEREAS, pursuant to Section 4(B) of the Sonoco Agreement, Menasha Utilities may either provide steam under the Sonoco Agreement for the same price as the cost for Sonoco to self generate steam or terminate the Sonoco Agreement with a 30-day notice to Sonoco; and

WHEREAS, pursuant to a Release and Settlement Agreement dated as of June 29, 2009, between the City, Menasha Utilities, and George A. Whiting Paper Company ("Whiting"), the parties agreed to terminate the steam supply agreement between Whiting and Menasha Utilities with the result that Whiting is no longer a customer of the Steam Utility, effective June 30, 2009; and

WHEREAS, the Pechiney Plastic Packaging, Inc., ("Pechiney") is willing to enter into a Release and Settlement Agreement with the City and the Commission that resolves all present and future claims that may arise under the steam supply agreement between Pechiney and Menasha Utilities or from the decision to cease steam utility operations; and

WHEREAS, the Commission's recommendations have been necessitated by certain unforeseeable events beyond the reasonable control of the City, the Commission, and the Steam

Utility, which events are enumerated in the Commission Resolution and in this Resolution and hereby acknowledged and affirmed by the Common Council; and

WHEREAS, the City of Menasha has a number of outstanding steam utility related financial obligations, including approximately \$2.7 million in note anticipation notes and approximately \$14 million in general obligation bonds, as well as over \$24 million in principal and interest on revenue bond anticipation notes ("Revenue BANS"), which Revenue BANS were due to be paid in full on September 1, 2009; and

WHEREAS, the Common Council has reviewed the report prepared by the financial firm of Stern Brothers & Co. ("Stern Brothers"), which report is referenced in the Commission's May 27th Resolution as the "Menasha Steam Utility Strategy Analysis and Recommendation," and which concludes (i) that under the existing steam supply contracts, the Steam Utility will be unable to cover operating expenses in 2009 and beyond; and (ii) that the Steam Utility will not generate sufficient revenues to provide payment for any of the outstanding obligations issued by the City of Menasha to finance the Steam Utility; and

WHEREAS, the Common Council understands that representatives of the Steam Utility, Menasha Utilities, and the City of Menasha over the past several weeks and months have undertaken serious and substantive efforts to determine whether or not new steam supply contracts with existing and potential new customers could be developed that would enable the Steam Utility to continue operating and that such efforts have been unsuccessful; and

WHEREAS, a public hearing on the recommended closure of the Steam Utility was held on Tuesday, May 12, 2009; and

WHEREAS, after exhaustive consideration of all other options, and because continued operation of the steam plant facility is not financially feasible at this time, especially now in light of Sonoco's recent request to self supply steam, the Common Council agrees with the Commission's recommendation that the Steam Utility cease operating the steam plant facility and finds that such actions are in the best interests of the City and its taxpayers; and

WHEREAS, the Common Council understands that City and utility staff, together with Stern Brothers and a team of expert consultants and legal advisors have been actively working to develop a work-out strategy with respect to the outstanding steam utility related financial obligations ("the Work-out Process") and will continue to do so in an effort to minimize the impact of the Steam Utility ceasing to operate the steam plant facility on the City, its taxpayers, its steam customers, and bondholders.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MENASHA:

1. That the Steam Utility be hereby authorized and directed to cease its operation of the steam plant facility, effective October 9, 2009.

2. That the Commission President, utility managers, staff and employees of Menasha Utilities, and, as may be appropriate, their designees, be hereby authorized and directed (i) to issue a notice to Sonoco and Pechiney that the Steam Utility will no longer operate the steam plant facility, such notice to be issued no later than September 9, 2009; (ii) to take all steps necessary to terminate any and all Steam Utility agreements with customers, vendors, or others, the termination of which is necessary due to the cessation of steam plant operations by the Steam Utility; (iii) to timely inform all other necessary parties of the Steam Utility ceasing to operate the steam plant facility; and (iv) to undertake all steps necessary to ensure that such directives be undertaken in accordance with prudent utility and business practices, and in a manner designed to preserve as much value of the steam plant facility as may be practicable.

3. That, in order to preserve the value of the steam plant facility for possible sale, the Commission President, staff, and employees of Menasha Utilities, and, as may be appropriate, their designees, be hereby authorized and directed to further evaluate alternatives for the facility to continue operating in a combined heat/power configuration (in accordance with appropriately obtained permits) and to maintain the operational readiness of the facility so it can be reactivated in the future.

4. That the City of Menasha, the Commission, and, as may be appropriate, their designees, be hereby authorized and directed to take all steps necessary to develop and implement the Work-out Process for the purpose of minimizing the impact of the Steam Utility ceasing to operate the steam plant facility on the City, its taxpayers, its steam customers, and bondholders.

5. That the Mayor is hereby authorized and directed to execute on behalf of the City of Menasha the Settlement and Release Agreement among the City of Menasha, the Commission, and Pechiney as attached to this Common Council Resolution as Attachment B.

Approved on September 8, 2009.

CITY OF MENASHA COMMON COUNCIL  
By

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Mayor

Acknowledged

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Clerk

**RESOLUTION OF THE MENASHA UTILITIES COMMISSION  
REGARDING CESSATION OF STEAM UTILITY OPERATIONS**

WHEREAS, the Menasha Utilities Commission ("Commission") has entire charge and management of the City of Menasha's municipal steam utility (the "Steam Utility"), subject to the general control and supervision of the City of Menasha ("City") pursuant to Section 9-5-1 of the City of Menasha municipal ordinances and Wis. Stat. § 66.0805; and

WHEREAS, unforeseeable events beyond the reasonable control of the City, the Commission, and the Steam Utility have made it impossible for the Steam Utility to generate sufficient revenues to recover its current and projected operation and maintenance costs, to meet debt coverage requirements, and to perform its obligations, including (i) unforeseeable increases in the cost of converting plant operations to better facilitate the burning of Powder River Basin coal; (ii) unforeseeable increases in the cost of fuel supply and transport; (iii) unforeseeable decreases in customer demand for steam supply; (iv) unprecedented decreases in spot market prices for electricity; and (v) pending actions by the Wisconsin Department of Natural Resources, the federal Environmental Protection Agency and the Sierra Club to require the installation of pollution control equipment, and in the case of the latter, to no longer burn coal at all, actions which pose additional financial and litigation risks at present and in the foreseeable future at an as yet unknown additional cost that cannot be borne by the Steam Utility or the City; and

WHEREAS, the financial firm of Stern Brothers & Co. ("Stern Brothers") has analyzed the current and prospective financial performance of the Steam Utility with a view toward determining whether and under what conditions the City would be able to structure a refinancing of its existing steam utility related financial obligations, which include \$24 million in principal and interest on revenue bond anticipation notes, which are due to be paid in full on September 1, 2009 ("Revenue BANS"); and

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WHEREAS, the result of this analysis is contained in a report designated "Menasha Steam Utility Strategy Analysis and Recommendation," which the Commission has reviewed; and

WHEREAS, Stern Brothers concludes that, under the existing steam supply contracts, the Steam Utility will be unable to cover operating expenses in 2009 and beyond and will not generate sufficient revenues to provide payment for any of the revenue or general obligation notes issued to finance the Steam Utility and therefore cannot access the financial markets to refinance the Revenue BANS, and

WHEREAS, as a result of this conclusion, Stern Brothers recommends that the Steam Utility cease operating the steam plant facilities, which recommendation the Commission hereby adopts on the grounds that it is in the best interests of the City and its taxpayers; and

WHEREAS, City and utility staff, together with Stern Brothers and a team of expert consultants and legal advisors have been actively working to develop a work-out strategy and will continue to do so in an effort to minimize the impact of the Steam Utility ceasing to operate the steam plant facility on the City, its taxpayers, its steam customers, and bondholders.

NOW, THEREFORE, BE IT RESOLVED BY THE MENASHA UTILITIES COMMISSION:

1. That the Commission recommends to the Common Council of the City of Menasha that the Common Council authorize and direct the Steam Utility to cease its operation of the steam plant facility, effective July 3, 2009.

2. That the Commission recommends to the Common Council of the City of Menasha that the Common Council authorize and direct the Commission President, the Interim General Manager, staff and employees of Menasha Utilities, and, as may be appropriate, their designees (i) to issue a notice to all existing Steam Utility customers that the Steam Utility will no longer operate the steam plant facility, such notice to be issued no later than June 3, 2009, or such date as may be designated by the Common Council; (ii) to take all steps necessary to terminate any and all Steam Utility agreements with customers, vendors, or others, the termination of which is necessary due to the cessation of steam plant operations by the Steam Utility; (iii) to timely inform all other necessary parties of the Steam Utility ceasing to operate the steam plant facility; and (iv) to undertake all steps necessary to ensure that such directives be undertaken in accordance with prudent utility and business practices, and in a manner designed to preserve as much value of the steam plant facility as may be practicable.

3. That the Commission recommends to the Common Council of the City of Menasha that, in order to preserve the value of the steam plant facility for possible sale, the Common Council authorize and direct the Commission President, the Interim General Manager, staff and employees of Menasha Utilities, and, as may be appropriate, their designees, to further evaluate alternatives for the facility to continue operating in a combined heat/power configuration and to maintain the operational readiness of the facility so it can be reactivated in the future.

4. That the Commission recommends to the Common Council of the City of Menasha that the Common Council authorize and direct the Commission President, the Interim General Manager, staff and employees of Menasha Utilities, and, as may be appropriate, their designees, to take all steps necessary to develop and implement a work-out plan for the purpose of minimizing the impact of the Steam Utility ceasing to operate the steam plant facility on the City, its taxpayers, its steam customers, and bondholders, such plan to be subject to approval by the Common Council.

Approved on May 27, 2009.

MENASHA UTILITIES COMMISSION

By

Maria L. Allworth  
President  
Robert H. Fabulach  
Vice President

## 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.

*A* Pechiney Plastic Packaging, Inc.

By: Mart D... Date: 8/10/09  
Its Authorized Representative

City of Menasha

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

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