

**RESOLUTION OF THE CITY OF MENASHA COMMON COUNCIL
REGARDING APPOINTMENT OF SPECIAL COUNSEL AND
CONSIDERATION OF CESSATION OF STEAM UTILITY OPERATIONS**

Introduced by Mayor Merkes

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;" hereby 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; 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 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, which notes are due to be paid in full on September 1, 2009 ("Revenue BANS"); 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 Resolution as the "Menasha Steam Utility Strategy Analysis and Recommendation," and which concludes that (i) under the existing steam supply contracts, the Steam Utility will be unable to cover operating expenses in 2009 and beyond; (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 (iii) that, as a result, the City of Menasha will not be able to access the financial markets to refinance the Revenue BANS, 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, 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 and will continue to do so in an effort to minimize the impact of the Steam Utility potentially ceasing to operate the steam plant facility on the City, its taxpayers, its steam customers, and bondholders; and

WHEREAS, upon recommendation from Stern Brothers, the City and utility staff have interviewed special municipal finance legal counsel to assist the Common Council, City and utility staff in further developing a work-out strategy for the City in dealing with its taxpayers, steam customers and bondholders; and

WHEREAS, the Common Council and the City have negotiated an engagement letter with Hunton & Williams LLP, to serve as special municipal finance counsel to the City with regard to its outstanding Steam Utility related financial obligations.

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

1 . That the City takes under advisement the recommendations in the Commission Resolution regarding the ceasing its operation of the steam plant facility.

2. That Hunton & Williams LLP be retained as special municipal finance counsel to the City to advise the City regarding its outstanding steam utility related financial obligations, and that the Mayor is hereby authorized to execute an engagement letter with Hunton & Williams LLP substantially in the form attached as Attachment B hereto.

Passed and Approved on this day of June, 2009

CITY OF MENASHA COMMON COUNCIL

By:

Donald Merkes, Mayor

Deborah A. Galeazzi, 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

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

Mad L Allwood
President

Robert H. Fabulak
Vice President

DRAFT

HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

ANDREW R. KINTZINGER
DIRECT DIAL: 202-955-1837
EMAIL: akintzinger@hunton.com

FILE NO: 99999.000309

May 22, 2009

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

Mayor Donald Merkes
City of Menasha, Wisconsin
140 Main Street
Menasha, Wisconsin 54952

Re: Representation of the City of Menasha Regarding Menasha Steam Utility

Dear Mayor Merkes:

Thank you for the opportunity for Hunton & Williams LLP to represent the City of Menasha, Wisconsin (the "City") in connection with its Steam Utility (the "Utility") and the financing for the Utility. This letter, and the accompanying Hunton & Williams Standard Terms of Engagement, will establish the terms of our representation. If we fail to address any issues about which you have questions, please let us know. Good communication is critical to the success of our relationship and we want you to be happy with our services.

THE CLIENT - WHOM WE REPRESENT

We will represent the City, including the Utility. You will be our primary contact, but you understand that we do not represent you individually. If you want us to represent any other persons or entities, please advise us and we will determine whether we can undertake that additional representation.

SCOPE OF ENGAGEMENT - WHAT WE WILL DO

You have engaged us to perform work for the City and its Utility in several areas relating to the financing and operation of the Utility and the financial status of the City. Specifically, we will provide counsel and related representation to the City and its Utility with respect to, and including:

1. Review all matters pertaining to the City's outstanding revenue bond anticipation notes, note anticipation notes and general obligation

promissory notes issued in connection with the Utility (collectively, the "Notes");

2. Review the Menasha Steam Utility Strategy Analysis and Recommendation (the "Report") prepared for the City by Stern Brothers & Co. (the "Consultant");
3. Advise and represent the City in connection with its dealings with holders of the outstanding Notes, as further described below;
4. Assist the City in connection with teleconference calls and meetings with holders of the Notes and their representatives regarding the status of the Notes, the Utility and the City;
5. Assist the City and Consultant in review of inventory of available City and Utility assets;
6. Assist the City in contacting State and Federal officials regarding financial assistance for the Utility, the City and in connection with the Notes;
7. Assist the City in connection with continuing disclosure notices to bondholders and to the bond market regarding with the Utility, the Notes and the City;
8. Advise the City on its obligations under Federal and State securities laws regarding disclosures pertaining to the Notes;
9. Advise and assist the City in creating post-closure funds and proper use of such funds with respect to the Notes;
10. Review and advise the City regarding restructuring of City debt in connection with the Utility and the Notes;
11. Advise the City and the Utility with respect to all pending or threatened claims, actions, proceedings or litigation against the City and its Utility, including from holders of Notes, steam customers/users of the Utility, and including environmental compliance issues; and

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12. Assist the City in connection with its options for, and its dealings related to, disposition of the utility steam plant, including potential conversion for future Utility operation, potential sale of the steam plant to a third-party purchaser for conversion or other closure alternatives.

If this does not accurately reflect your understanding about the scope of the legal services we will provide, please let me know. We will perform all services normally and reasonably associated with this type of engagement that are consistent with our ethical and professional obligations. As we proceed with this representation, if you request that we expand the scope of this engagement, and we agree to do so, this letter will cover that work as well.

LAWYERS AND OTHERS ASSIGNED - WHO WILL DO THE WORK

Douglas Lamb and Andrew Kintzinger will jointly coordinate the legal services for this representation. Mr. Kintzinger, in our Washington, DC office, will be the primary client contact. We will call upon other partners, associates, employees and paralegals whom we believe have the ability to serve you as efficiently and effectively as possible.

It is important to us that the City be satisfied with our services. We recognize that the City is facing complex financial challenges and is operating with a limited budget, and we will work closely with you to ensure that our work is performed in the most cost-effective manner possible. Please let us know promptly if you believe that we should staff the work differently or if you have any suggestions about how we can better serve the City.

FEES/EXPENSES/BILLING

[We recognize that cities ordinarily develop budgets for their legal fees. In an effort to afford the City that predictability and flexibility for a matter that is inherently unpredictable, we would like to propose a fee arrangement that allows the City to budget for our legal fees with a high degree of certainty.

To protect both of us, as we broaden this relationship, we propose an over/under form of protection. To the extent we can do the work requested for less than your budget, you would keep 50% of the unused budget. To the extent we exceed the budget we would ask that you pay 50% of the excess. In other words, we will provide a monthly

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budgeted amount. To the extent that amount is exceeded, the City pays only the budgeted amount plus 50% of the excess, and if the budgeted amount is not exceeded, the City would pay the amount billed plus 50% of the difference between the billed amount and the budgeted amount. For each ensuing month, the budgeted amount would be set at the amount billed for the prior month. Each month, we will provide the City with prompt email or written notice when our time and expenses are within \$5,000.00 of that month's budgeted amount.

For the services described above, we propose an initial monthly budget amount of \$20,000, payable upon billing after the first month. After the first month, the monthly budget amount will be adjusted as described above. We would continue to track attorney time (using an hourly rate of \$425.00) and to send you regular monthly reports. Within 15 days after the end of each month, we will provide a billing report that compares the actual attorney fees incurred to the budget amount and includes a report to adjust the monthly budgeted amount for the ensuing month.]

[Alternatively, we will bill the City for lawyer services on an hourly basis at the rate of \$425.00 per hour and for paralegal services on an hourly basis at the rate of \$115.00 per hour.]

For the services described above, we may incur, at your request and with your permission, travel costs to the City. We will bill only actual, itemized air fare (coach), hotel and reasonable meal expenses. We agree that, regardless of actual costs, such travel costs shall not exceed \$1,000.00 in any month.

We are committed to providing you with efficient, effective legal services. In return, you agree to pay us timely for our services and to reimburse us for reasonable expenses in connection with the representation, regardless of the outcome. We will bill you for fees and expenses on a monthly basis. Our statements will be due and payable upon receipt. Please see the attached Standard Terms of Engagement for additional terms applicable to our bills and your payment obligations.

CONFLICTS OF INTEREST

As we have discussed with you, we represent RBC Capital Markets Corporation ("RBC") and its related entities on matters unrelated to the City. RBC has consented to our representation of the City in connection with the scope of engagement described in this letter. However, if the City decides to pursue any

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litigation, arbitration or other adversarial legal proceeding adverse to RBC, we have advised you that we will be required to withdraw from representing the City on such matter.

We depend on you to help us identify, now and as the representation progresses, persons, or entities that may be in a position directly adverse to the City's interests in this representation. We also depend on you to help us identify those who are likely to be adversely affected by our representation of the City. Please advise us of any change in the City's or Utility's status that might affect our analysis of actual or potential conflict of interests.

You have identified no adverse, or potentially adverse persons or entities. We have checked our records for potential conflicts. We have discovered no conflicts and we know of no other interests, including our own, that will materially and adversely affect our ability to exercise independent professional judgment on your behalf.

COMMUNICATIONS

Unless you tell us otherwise, we will send you all correspondence and statements for services related to this representation. We will depend on you to let us know if you are not receiving information or responses in a timely manner. We understand unless advised otherwise that we may communicate concerning this matter by fax, telephone, cell phone, e-mail, or letter.

If the terms of this letter are satisfactory, please sign a copy in the space provided, and return it to me. If you have any questions, please feel free to contact me. We appreciate the opportunity to represent the City.

Very truly yours,

Andrew R. Kintzinger

STATEMENT TO BE SIGNED BY CLIENT

I have read this letter and the accompanying Hunton & Williams LLP Standard Terms of Engagement. I understand their content, and hereby engage Hunton & Williams LLP in accordance with their terms and conditions on behalf of the City.

Agreed:

THE CITY OF MENASHA, WISCONSIN

By: _____

Title: Mayor

Date: May, 2009 _____

Enclosures

Hunton & Williams "Standard Terms of Engagement"

HUNTON & WILLIAMS LLP
STANDARD TERMS OF ENGAGEMENT

FEES. Unless we agree in the engagement letter to alternate fee arrangements, we will bill for our services at the firm's applicable published hourly rates in effect at the time we render the services. Those rates are based on the fair value for the services we render after taking into consideration many factors, including but not limited to: the complexity or novelty of the work performed; the seniority, experience, practice area and location of the lawyers, paralegals or law clerks performing the work; the time period within which the work is required to be completed; the likelihood that the engagement will preclude our acceptance of other employment; the number of hours required to perform the work; the nature and length of our professional relationship with the client; the results obtained; and the fees charged for similar services in the relevant geographic or subject matter market. We have established hourly rates (using the foregoing factors) for lawyers, paralegals, law clerks, and other staff timekeepers. We adjust those base rates periodically, in light of the factors enumerated above, as well as cost of living and market considerations.

STATEMENTS. We do our best to render monthly statements for fees, expenses and charges. We normally render separate invoices for each legal matter we handle. The client also will receive a monthly statement that shows any past due invoice, by number and date, for each of the client's matters.

BILLING AND PAYMENT. We record time in 15-minute increments unless other arrangements are made. Our statements will be based on time recorded in those increments.

The client agrees to pay statements within 30 days. Failure to pay statements promptly may result in temporary or permanent cessation of service. Payment of statements should be made in U.S. dollars or other agreed upon foreign currency, by wire transfer or in checks or drafts payable to Hunton & Williams LLP. Please note the date and identification number of the statement being paid, and return the remittance copy of our statement with your payment.

If our invoices are not paid within 30 days of the invoice date the client agrees to pay an interest charge on outstanding balances at an interest rate of one and one-half percent (1.5%) per month, or the maximum interest rate allowed by law, whichever is less, from the date due until paid. The client agrees to pay such interest on the outstanding balance in addition to the balance of fees and expenses due.

In the event the client fails to pay when due all amounts owed us, we will have the right to retain settlement proceeds received on behalf of client or recover the outstanding balance of fees and expenses and interest, as provided above, and all attorneys' fees incurred to collect these amounts. Such attorneys' fees will include payment for the time and expenses of any firm lawyers incurred in collection effort as well as fees and expenses of any outside counsel hired to collect the amounts due.

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RESPONSES TO AUDITORS' INQUIRIES. We are frequently asked to provide information to auditing firms regarding legal matters of our clients. We respond to those inquiries with the same level of care and professionalism that we use to handle the client's other legal work and will charge for these services at the same rates. When an auditing firm requests information on the client's behalf, that request will be deemed to be the client's consent for us to disclose that information to that firm.

DISBURSEMENTS AND CHARGES. In addition to payment of our fees, the client agrees to pay expenses incurred by us in connection with the representation. Such expenses may include long distance telephone calls, photocopying charges, travel expenses, couriers, filing fees, costs of subpoenas and depositions, and other costs and expenses advanced on our client's behalf. We manage our own telephone network, printing and document duplication services. We generally use our in-house printing and document duplicating services rather than third party services, due to timing and confidentiality concerns, unless the client requests otherwise. We set our charges for these services based upon our fully burdened cost of providing them to the client.

Before proceeding to incur expenses from an outside vendor in excess of \$1,500 we will seek your approval. We do not intend to make any profit on such expenses and we will pass them on to you based as closely on our costs as possible. We may, however, receive certain benefits from having incurred certain costs, such as benefits accorded in connection with travel expenditures (i.e., frequent flyer points). Those benefits will be retained by the firm or the individual to whom they were awarded without credit to the client.

In certain instances, we make a profit from services rendered through the firm or its affiliated entities, when such services or technology involve the use of personnel not directly employed by Hunton & Williams LLP. In particular, certain services rendered by Hunton & Williams Litigation Support Center involve the use of personnel not directly employed by Hunton & Williams LLP, but for whom the firm accepts responsibility in connection with client's services. We will bill those services at a rate that may not be billed at our cost. Similarly, work performed at the Litigation Support Center may involve the use of technology that the firm will bill at competitive rates. The same applies to services rendered by TurnStone Investigative Services LLC and other entities affiliated with Hunton & Williams LLP.

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TRAVEL. We generally record the time spent traveling while performing work in furtherance of the client's engagement. Time spent in travel on behalf of one client while working on a matter for another client, will be billed to the other client; we do not double-bill time. We book air travel at coach rates unless otherwise previously approved by the client or unless the air travel is transoceanic or overnight, in which case we generally book business or comparable class. Bookings for travel arrangements are generally made through an in-house travel service and the expenses charged to the client for travel include a transaction fee for each booking. Discounts applicable to particular travel purchases may be available through use of this in-house travel service and we pass them on to the client in our charges.

TERMS OF ENGAGEMENT. The client or Hunton & Williams may terminate the representation for any reason by written notice, subject on our part to applicable rules of professional conduct. In the event we terminate the engagement, we will take such steps as are reasonably practicable to protect the client's interests in this matter and, if the client so requests, we will suggest possible successor counsel and provide such counsel with material the client has provided us.

Upon the termination of our engagement, the client will pay within 30 days for all services rendered and disbursements and other charges paid or incurred in connection with our engagement. If the client terminates our engagement or if Hunton & Williams terminates the engagement in accordance with the following paragraph, the client will also pay our fees and expenses in connection with any transition of the client's work to successor counsel.

If the client fails to honor the terms of the engagement, to cooperate, or to follow our advice on a material matter that would or could, in our view, render our continued representation unlawful or unethical, Hunton & Williams may withdraw from the representation. If we elect to withdraw, the client will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents or pleadings necessary to complete our withdrawal.

Unless previously terminated or other arrangements are made, Hunton & Williams' representation will terminate upon our sending the client our final statement for services rendered. Unless we agree otherwise, we will have no continuing obligation to advise the client with respect to future legal developments once this matter concludes.

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RECORD RETENTION. We will maintain necessary documents relating to this matter in our client files. If we receive no guidance from the client, we will employ the following procedure when a matter concludes:

1. Upon closure of the matter, any original documents that the client has provided to us will be returned.
2. Upon expiration of our normal retention period for this kind of matter, we will notify the client by mail at the client's last known address that the retention period has run, and seek the client's guidance on disposition of the file.
3. If we receive a response from the client within 2 months, we will follow the client's instructions for disposition of the file. If those instructions require substantial handling of the file, or continued retention of it, we will charge our normal fees for such procedures.
4. If we do not receive a response from the client within 2 months, the file will be destroyed pursuant to our normal procedure.

At the conclusion of a matter, it is the client's obligation to tell us which, if any, documents in our files that it wishes to receive. Electronic records relating to this matter will be made available to the client, if requested, and to the extent they are still easily accessible.