Menasha Utilities
THE POWER OF COMMUNITY
321 Milwaukee Street • P.O. Box 340 • Menasha, WI 54952-0340 • www.menashautilities.com

Date: June 24, 2009

To: Menasha City Council

From: Dick Sturm, Manager of Engineering and Operations
Melanie Krause, Manager of Business Operations

RE: Whiting Release and Settlement Agreement

At the June 24 Commission meeting the Commission recommended the Whiting Release and Settlement Agreement to the Menasha City Council. The settlement would come out of the net revenues of the Steam Utility.

RELEASE AND SETTLEMENT AGREEMENT

This AGREEMENT is made this 29th day of June, 2009, by and among the City of Menasha and the Menasha Utilities Commission (collectively "Menasha") and George A. Whiting Paper Company ("Whiting") (collectively, the "Parties").

RECITALS

A. By written agreement dated October 3, 2008, Menasha and Whiting selected an arbitrator to arbitrate a dispute regarding claims related to the provision of steam utility service to Whiting ("Arbitration Claims") under the Parties' Steam Supply Agreement, dated October 20, 2004, as amended ("Steam Supply Agreement").

B. An arbitration hearing was held on December 30, 2008, and the arbitrator issued a decision on the Parties' Arbitration Claims on March 16, 2009 ("Arbitration Decision").

C. Since the Arbitration Decision was issued, the Menasha Utilities Commission has 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"), effective July 3, 2009.

D. Whiting has given notice of its desire to self-supply steam in the second quarter of 2009, and the Parties currently dispute whether Whiting has properly exercised its self-supply right under Section 4(C) of the Steam Supply Agreement.

E. The Parties desire, through a settlement and compromise, to avoid the cost of further 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. The Menasha Steam Utility shall cease providing steam service to Whiting under the Steam Supply Agreement as of June 30, 2009, which shall be the effective termination date of the Steam Supply Agreement.

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

3. Menasha shall provide Whiting a credit in the amount of $142,203.10 ("Settlement Amount") to be applied to any and all current and future charges for steam service provided to

Whiting 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 Whiting. Menasha shall make any Remainder Payment to Whiting within twenty (20) days after the final steam bill has been credited.

4. The Parties shall seek a stay of the currently pending proceedings to confirm and vacate the Arbitration Decision for a reasonable period of time to allow the Parties to perform their obligations under this Agreement, but in no event for a period of less than two months. Once Menasha has performed all of its obligations under this Agreement, the Parties shall move to dismiss the proceedings, with prejudice. The parties acknowledge that the Arbitration Decision, therefore, shall have no legal force and effect and may not be used for res judicata or collateral estoppel purposes.

5. Whiting 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 Whiting, or the matters alleged or that could have been alleged in the arbitration, or relating in any way to the Steam Supply Facility. It is the intent of the Parties that all of Whiting'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.

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

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

8. 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.

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

George A. Whiting Paper Company

By: Thomas A. Dantz
Its Authorized Representative

City of Menasha

By: _____
Its Authorized Representative

Menasha Utilities Commission

By: Mark L. Allwardt
Its Authorized Representative