

It is expected that a Quorum of the Personnel Committee, Board of Public Works, and Administration Committee will be attending this meeting: (although it is not expected that any official action of any of those bodies will be taken)

CITY OF MENASHA
Special Joint Common Council and
Menasha Electric and Water Utility Commission
Third Floor Council Chambers
140 Main Street, Menasha
December 7, 2009
4:30 PM

AGENDA

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. ROLL CALL/EXCUSED ABSENCES
- D. PUBLIC COMMENTS ON ANY MATTER LISTED ON THE AGENDA
(five (5) minutes time limit for each person)
- E. DISCUSSION/ACTION ITEMS
 - 1. Purchase/Lease of Electric Utility Distribution Assets with WPPI Energy, Inc.
(Partial Debt Workout Plan for Steam Utility)
 - 2. LaFayette Life Insurance Co. et al. vs. City of Menasha et al.
Case No. 4:09CV0064 (N.D.Ind.)
- F. Possible Motion to Adjourn into Closed Session pursuant to Wis. Stats. §19.85(1)(e)&(g):
Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session; and Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
(Negotiate WPPI Energy, Inc Agreements and Bondholders)
- G. Return into Open Session
- H. Actions if any needed as a result of the Closed Sessions Discussion
- I. Resolution of the Menasha Utilities Commission Approving a Preliminary Asset Sale Agreement with WPPI Energy Inc. for the Sale of Certain City of Menasha Electric Utility Assets
- J. ADJOURNMENT

"Menasha is committed to its diverse population. Our Non-English speaking population and those with disabilities are invited to contact the Menasha City Clerk at 967-3603 24-hours in advance of the meeting for the City to arrange special accommodations."

ASSET PURCHASE AGREEMENT

by and among

CITY OF MENASHA,

MENASHA UTILITIES COMMISSION,

and

WPPI ENERGY

Dated as of _____, 2009

DRAFT

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "*Agreement*") is made and entered into as of _____, 2009 by and among the City of Menasha, as a Wisconsin municipality ("*Seller*") and as a municipal electric utility, acting through the Menasha Utilities Commission ("*Commission*"), the Commission and WPPI Energy ("*Buyer*").

RECITALS

A. Seller, a municipal corporation organized and existing under Wisconsin law, owns and operates Menasha Electric & Water Utilities ("Menasha Utilities"). Menasha Utilities is a combined electric and water utility in the City of Menasha, Wisconsin, and is under the charge and management of the Commission pursuant to section 66.0805, Wis. Stats. Seller wishes to sell to Buyer, and Buyer wishes to purchase and acquire from Seller, those distribution assets that are used and useful for the electric distribution utility ("*Electric Utility*") subject to the terms and conditions and additional covenants and agreements set forth in this Agreement, but Seller will retain all assets related to the water utility, steam utility, telecommunications utility, energy services and all electric generation facilities.

B. Seller also desires to sell to Buyer, and Buyer desires to purchase and acquire from Seller, investments in American Transmission Company LLC.

C. Seller wishes to lease back from Buyer the electric distribution assets conveyed to Buyer, and Buyer wishes to lease back those assets to Seller, as provided in a written lease among the parties.

D. The Electric Utility and water utility of Menasha Utilities will be separated prior to or at closing. After the separation, the Electric Utility will continue to be under the charge and management of the Commission pursuant to section 66.085, Stats., and will not be combined with any other utility operations.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the parties hereby agree as follows.

1. DEFINITIONS

For purposes of this Agreement, certain capitalized terms used herein without contextual definition shall have the respective meanings ascribed to such terms as set forth on Annex A attached hereto and incorporated herein by this reference.

2. PURCHASE AND SALE OF ASSETS

2.1 Purchase and Sale of Assets. On and subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer, convey, and deliver to Buyer, all of the Acquired Assets at the Closing for the consideration specified below in this Section 2. The parties agree that the Acquired Assets do not include the Excluded Assets.

2.2 No Assumption of Liabilities. Buyer has not agreed to and does not assume any liability of Seller or the Commission.

2.3 Purchase Price. Buyer agrees to pay to Seller at the Closing the sum of \$18,156,818 (the "**Purchase Price**"), as adjusted pursuant to Section 2.4 below. The Purchase Price shall be paid to Seller and applied as follows:

(a) an amount equal to one year of lease payments under the Lease (which amount, based on the Lease and the unadjusted Purchase Price set forth above, would be \$1,195,890.22) shall be deposited and held pursuant to the terms of the Lease Reserve Escrow Agreement;

(b) an amount, which when combined with other available funds of Seller and Menasha Utilities, is sufficient to defease, redeem or satisfy all existing bonds of Seller, as provided in Section 5.9, shall be used to redeem or satisfy all obligations to the Electric Utility Note holders at Closing or deposited into a defeasance escrow with terms and conditions acceptable to Buyer in its sole discretion;

(c) an amount sufficient to reimburse Buyer for Buyer's Expenses shall be withheld from the Purchase Price and retained by Buyer;

(d) to the extent that a Capital Fund has not been established by Seller and Commission in the Electric Utility with at least \$1 million on deposit, as provided under the Lease, the difference between \$1 million and the amount actually deposited into the Capital Fund by Seller and Commission shall be deposited into the Capital Fund;

(e) to the extent that Seller and the Commission have not reserved funds of the Electric Utility for working capital (which funds are not restricted to other purposes) in an amount equal to or greater than 30 days' worth of trailing Operating and Maintenance Expenses for the Electric Utility (determined as of the last day of the month immediately preceding the Closing Date) and amounts necessary to fund annual PILOT payments, as provided in Section 3.4 of the Lease, the difference between that amount and the amount actually reserved for such Operating and Maintenance Expenses shall be deposited in the Electric Utility's general operating account, and

(f) the balance of the Purchase Price will be deemed to be income in excess of requirements of the Electric Utility under the Lease and sec. 66.0811(2), Wis. Stats., and shall be paid out pursuant to the terms of settlement agreements negotiated by Seller with holders of the Steam Utility Bonds, the Steam Customers and to resolve any environmental claims against Seller or the Commission, as provided in Sections 5.6, 5.7 and 5.8.

2.4 Adjustments. The Purchase Price shall be subject to the following adjustments:

(a) Plus or minus an amount equal to any changes to the net book value of those Electric Assets financed by Seller or acquired with funds of Menasha Utilities (or after separation of Menasha Utilities' electric and water utilities, acquired with funds of the Electric Utility) between December 31, 2008 and the Closing Date (the net book value of the Electric Assets financed by Seller or acquired with funds of Menasha Utilities was \$13,366,565 as of December 31, 2008);

(b) Plus or minus an amount equal to any changes to the book value of the ATC Assets between June 30, 2009 and the Closing Date;

(c) Minus Wisconsin sales tax, real estate transfer fees, or any other taxes or fees arising out of the sale of the Acquired Assets to Buyer;

(d) Plus or minus other adjustments as may be provided by written supplement to this Agreement, executed by Seller, Commission and Buyer; and

(e) Plus or minus any adjustments to the Purchase Price required by the PSCW under section 66.0817(2), Wis. Stats.

2.5 The Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place at a time and place mutually agreed upon by Buyer and Seller. The Closing shall take place within ninety (90) days after all Governmental Approvals have been obtained, or such other time as

may be mutually agreed to by Seller and Buyer (the "**Closing Date**").

2.6 Deliveries at Closing. At the Closing, the parties agree to take the following steps (provided, however, that upon their completion all of these steps shall be deemed to have occurred simultaneously):

(a) Buyer shall pay the Purchase Price in accordance with the terms and conditions of Sections 2.3 and 2.4;

(b) Seller shall deliver to the Buyer a bill of sale for all Electric Assets that are tangible personal property in a form acceptable to Buyer in its sole discretion and executed by Seller;

(c) Seller shall deliver to the Buyer a recordable warranty deed or assignment and assumption of easement for all real property or real property rights to be conveyed to Buyer, in a form acceptable to Buyer in its sole discretion, or such other appropriate document or instrument of transfer, as the case may require, each in form and substance satisfactory to Buyer and its counsel and executed by Seller;

(d) Seller shall deliver to Buyer the assignment documents necessary to transfer the ATC Assets to Buyer at Closing, in a form acceptable to Buyer in its sole discretion and executed by Seller;

(e) Seller shall deliver to the Buyer the collateral agreements granting Buyer a security interest in accounts used to hold funds for the Lease Reserve Fund and the Capital Fund, in a form acceptable to Buyer in its sole discretion and executed by Seller;

(f) Seller, the Commission, and Buyer shall deliver the Lease in the form attached as Exhibit A, including any attachments (e.g., the list of Electric Assets conveyed pursuant to this Agreement, which will be determined as of Closing), executed by all parties;

(g) Seller and Commission shall deliver to Buyer a Lease Reserve Escrow Agreement, in a form acceptable to Buyer in its sole discretion, and either a defeasance escrow agreement in a form acceptable to Buyer, executed by Seller, or other documentation satisfactory to Buyer to demonstrate that the Electric and Water Utility Bonds have been defeased, redeemed or otherwise satisfied pursuant to Section 5.9;

(h) Seller and the Commission shall deliver to Buyer an Indemnification Agreement in a form acceptable to Buyer in its sole discretion, executed by all Indemnifying Parties, and the Release Agreement in a form acceptable to Buyer in its sole discretion, executed by all Releasing Parties.

(i) Seller and the Commission shall deliver to Buyer a legal opinion, satisfactory to Buyer in its sole discretion, executed by counsel to Seller and the Commission, which opinion confirms: (i) Seller and the Commission are duly organized and validly existing under the Constitution and laws of the State of Wisconsin; (ii) the authority of the Seller and Commission to execute and deliver this Agreement and the Lease and to perform their obligations under this Agreement and the Lease; (iii) the Agreement and Lease have been duly authorized by, executed and delivered by duly authorized officers of Seller and the Commission; (iv) the Agreement and Lease constitute the legal, valid and binding obligations of Seller and the Commission enforceable against Seller and the Commission in accordance with their respective terms; (v) compliance by Seller and the Commission with prerequisites of transfer of Electric Assets under sec. 66.0817, Wis. Stats., and that all other required approvals or consents have been obtained; (vi) the Agreement and Lease present no conflicts with any law, judgment or order of court, or with any agreements or resolutions binding on Seller or the Commission, and will not result in a default under any other agreement or instrument; (vii) to the best of counsel's knowledge, no litigation or claims are pending or threatened against Seller or the Commission that relate to this Agreement and Lease or that would materially adversely affect Seller or the Commission or their ability to perform their obligations under this Agreement and the Lease; (viii) that all requirements for the separation by Seller of the Electric Utility and Seller's water utility under Section 5.10 have been met; (ix) that Seller has defeased, redeemed or satisfied the Electric and Water Utility Bonds, as required by Section 5.9; (x) that Seller's obligations under the indemnification provisions of this Agreement and the Lease are not limited to revenues to be derived by Seller from operation of the Electric Utility, or other funds that have been appropriated by the City of Menasha Common Council for such purpose; and (xi) such other reasonable opinions requested by Buyer .

(j) Seller and the Commission shall deliver to Buyer a certificate signed by Seller and the Commission as to the accuracy of their representations and warranties as of the date of this Agreement and as of the Closing and as to their compliance with and performance of their covenants and

obligations to be performed or complied with at or before Closing in accordance with Section 6.1(d).

(k) Buyer shall deliver to Seller and the Commission a certificate signed by Buyer as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before Closing in accordance with Section 6.2(d).

(l) The parties shall execute and deliver a closing statement.

(m) The parties shall execute and deliver any other documents or instruments as may be necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement.

3. REPRESENTATIONS AND WARRANTIES OF SELLER AND COMMISSION

Seller and Commission each represents and warrants to Buyer that its representations and warranties contained in this Section 3 (which warranties and representations shall survive the Closing) are correct and complete as of the date of this Agreement except as set forth in the disclosure schedule accompanying this Agreement (the "*Disclosure Schedule*") and will be correct and complete as of the Closing Date. The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered and numbered paragraphs contained in this Section 3.

3.1 Organization of Seller. Seller is a municipal public utility as defined in section 66.0801, Wis. Stats., duly organized and validly existing under the laws of Wisconsin, and is a municipal corporation duly organized and validly existing under the laws of the state of Wisconsin. The Commission is duly organized and validly existing under section 66.0805, Wis. Stats.

3.2 Authorization of Transaction. Seller and the Commission have full power and authority to execute and deliver this Agreement and the Lease and to perform their obligations hereunder. Without limiting the generality of the foregoing, the Seller and Commission have duly authorized the execution, delivery, and performance of this Agreement and the Lease by Seller and the Commission. This Agreement and the Lease constitutes the valid and legally binding obligation of Seller and the Commission, enforceable in accordance with its terms and conditions.

3.3 Non-contravention. Except as disclosed on Schedule 3.3 of the Disclosure Schedule, neither the execution and the delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Seller or the Commission is subject, or any resolution of Seller, Commission, or the City of Menasha Common Council, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Seller or Commission is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Lien upon any of its assets).

3.4 Brokers' Fees. Seller and Commission have no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated.

3.5 Title to Tangible Assets. Seller has good and marketable title to all Acquired Assets, free and clear of any Encumbrances.

3.6 Condition of Electric Assets. Each item of the Electric Assets is in good repair and good operating condition, ordinary wear and tear excepted, is suitable for immediate use in the Ordinary Course of Business and is free from latent and patent defects. No item of the Electric Assets is in need of repair or replacement other than as part of routine maintenance in the Ordinary Course of Business. Except as disclosed on Section 3.6 of the Disclosure Schedule, all of the Electric Assets are in the possession of Seller.

3.7 Financial Statements. Attached hereto as Exhibit B are the audited balance sheets and statements of income as of and for the fiscal years ended December 31, 2006 through 2008 ("**Financial Statements**") for Seller and the Electric Utility operated by Menasha Utilities. For purposes of this Agreement, the Balance Sheet Date is December 31, 2008. The Financial Statements are in accordance with the books and records of Seller and Menasha Utilities, are true, correct and complete, and present fairly the financial condition of Seller and the Electric Utility at the date or dates therein indicated and the results of operations for the period or periods therein

specified. Except as set forth in Section 3.7 of the Disclosure Schedule, Seller and Menasha Utilities have no liability except for liabilities reflected or reserved for in the Financial Statements and current liabilities incurred in the Ordinary Course of Business since the Balance Sheet Date.

3.8 Events Subsequent to Balance Sheet Date. There has not been any Material Adverse Change in the Electric Utility or the Acquired Assets since the Balance Sheet Date.

3.9 Legal Compliance. Except as disclosed on Schedule 3.9 of the Disclosure Schedule, Seller and Commission have complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof) that pertain to the Electric Utility and the Acquired Assets.

3.10 Tax Matters. Seller has timely filed all Tax Returns required by law. All Tax Returns of Seller are true and correct in all material respects. Seller has paid all Taxes due, except those, if any, currently being contested by it in good faith and which are listed in the Disclosure Schedule.

3.11 Real Property. Section 3.11 of the Disclosure Schedule sets forth a list of all easements and the address of each parcel of Real Property in which Seller has a fee interest.

3.12 Contracts. Section 3.12 of the Disclosure Schedule lists all written contracts and other written agreements relating to the Electric Utility to which Seller or Commission is a party the performance of which will involve consideration in excess of \$25,000. Seller and Commission have delivered to Buyer a correct and complete copy of each contract or other agreement (as amended to date) listed in Section 3.12 of the Disclosure Schedule.

3.13 Litigation. Except as disclosed on Section 3.13 of the Disclosure Schedule, there is no action, suit, proceeding, claim, arbitration or investigation pending material to this Agreement (or, to Seller's Knowledge and Commission's Knowledge, currently threatened) against Seller or Commission, their activities or assets before any court or governmental agency.

3.14 Environmental, Health, and Safety Matters. Except as disclosed on Section 3.14 of the Disclosure Schedule, Seller and Commission are in compliance with all Environmental,

Health, and Safety Requirements pertaining to the Electric Utility and the Acquired Assets.

3.15 No Knowledge of Buyer's Breach. Except as disclosed on Section 3.15 of the Disclosure Schedule, Seller and Commission have no Knowledge of any facts or circumstances that would serve as the basis for a claim by Seller or Commission against Buyer based upon a breach of any representation or warranty by Buyer, breach of any covenant or agreement to be performed by Buyer at or prior to the Closing, or of any other condition or circumstance that would excuse Seller or Commission from its timely performance of their obligations hereunder. Seller and Commission shall notify Buyer as promptly as practicable if any such information comes to its attention before the Closing Date.

4. BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller and Commission that the representations and warranties contained in this Section 4 (which representations and warranties shall survive the Closing) are correct and complete as of the date of this Agreement except as set forth in the Disclosure Schedule and will be correct and complete as of the Closing Date. The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered and numbered paragraphs contained in this Section 4.

4.1 Organization of Buyer. Buyer is a municipal electric company organized pursuant to sec. 66.0825, Wis. Stats., and is duly organized, validly existing, and in good standing under the laws of Wisconsin.

4.2 Authorization of Transaction. Buyer has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of Buyer, enforceable in accordance with its terms and conditions. The execution, delivery and performance of this Agreement and all other agreements contemplated hereby have been duly authorized by Buyer.

4.3 Non-contravention. Neither the execution and the delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Buyer is

subject or any provision of its organizational or governing documents, or any resolutions of its Executive Committee or Board of Directors, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Buyer is a party or by which it is bound or to which any of its assets is subject.

4.4 Brokers' Fees. Buyer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

5. PRE-CLOSING COVENANTS

The parties agree as follows with respect to the period between the execution of this Agreement and the Closing.

5.1 General. Each of the parties will use its commercially reasonable efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the Closing conditions set forth in Section 6 below).

5.2 Notices and Consents. Each Party shall give any notices to, make any filings with, and use its commercially reasonable efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies in connection with the matters referred to in Section 3.3 and Section 4.3 above and Sections 6.1(e), 6.1(h) and 6.2(e) below.

5.3 Operation of Electric Utility. Seller and Commission will not engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business. Seller and Commission shall, at their own cost and expense, keep, repair, maintain and preserve the Acquired Assets in all material respects in good condition, repair and working order, in accordance with Prudent Utility Practice.

5.4 Full Access. Seller and Commission will permit representatives of Buyer (including legal counsel, accountants, inspectors and consultants) to have full access at all

reasonable times, and in a manner so as not to interfere with the normal business operations of the Electric Utility, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to the Electric Utility.

5.5 Notice of Developments. Each Party must, within 2 business days, notify the other Parties in writing of any development causing a breach of any of its representations and warranties in Section 3 above. Unless Buyer has the right to terminate this Agreement pursuant to Section 7.1(b) below by reason of the development and exercises that right within the period of 10 days referred to in Section 7.1(b) below, the written notice pursuant to this section will be deemed to have amended the Disclosure Schedule, to have qualified the representations and warranties contained in Section 3.

5.6 Releases from Steam Customers. Seller shall use its commercially reasonable efforts to obtain written releases of all claims and termination of any and all obligations to provide steam to all Steam Customers, which are satisfactory to Buyer.

5.7 Settlement of Steam Utility Bond Claims; Plan to Satisfy Steam Utility Obligations. Seller shall use its commercially reasonable efforts to negotiate the written settlement and release of all claims related to issuance of the Steam Utility Bonds. Seller shall also develop a plan to satisfy Steam Utility Obligations, which plan is satisfactory to Buyer in Buyer's sole discretion.

5.8 Settlement of Environmental Claims. Seller shall use its commercially reasonable efforts to resolve all claims against Seller or the Commission for environmental compliance issues relating to the Steam Utility, including but not limited to those filed by the Wisconsin Department of Natural Resources, United States Environmental Protection Agency and the Sierra Club, to the satisfaction of Buyer.

5.9. Satisfaction of Electric and Water Utility Bonds and obligations. Seller shall defease, redeem or otherwise satisfy the Electric and Water Utility Bonds pursuant to the terms of any resolution or contract related to the Electric and Water Utility Bonds and any other indebtedness of Menasha Utilities, either from proceeds of sale, assumption of the obligation by Seller's separate water utility as provided in Section 5.10, or by other means before or contemporaneously with Closing, to the satisfaction of Buyer, so that as of Closing,

the Electric Utility will have no obligations (other than Operating and Maintenance Expenses incurred in the Ordinary Course of Business) which would have priority to payment equal to or greater than the Lease.

5.10 Separation of Water Utility from Commission. Commission and Seller shall take the following actions: (i) Seller shall establish a water utility separate from the Electric Utility; (ii) Seller shall transfer all water utility assets of Seller to such separate water utility, so that after such transfer, the Electric Utility retains only those assets used for electric distribution; (iii) if the separate water utility assumes any Electric and Water Utility Bonds, holders of such Electric and Water Utility Bonds will have no claim to the revenues and assets of the Electric Utility; (iv) ensure that no creditors of the water utility operated by Menasha Utilities have any claims to the revenues of the Electric Utility; and (iv) any other actions necessary so that at Closing, the Electric Utility will have no other obligations (other than Operating and Maintenance Expenses incurred in the Ordinary Course of Business) which have priority to payment equal to or greater than the Lease.

5.11 Indemnification Agreement and Release Agreement. Seller shall use its commercially reasonable efforts to obtain an executed Indemnification Agreement from the Indemnifying Parties and an executed Release Agreement from the Releasing Parties.

5.12 Amendment of Long Term Power Supply Agreement. Commission and Seller shall execute and deliver an amendment to Exhibit D of the Long Term Power Supply Agreement with Lessor dated July 18, 1989, as amended by Amendment No. 1 to Long Term Supply Agreement dated October 7, 2002 (as amended, "Long Term Power Supply Agreement"); provided, however, that the amendment shall not restrict Seller or any subsequent purchaser of Seller's steam utility generating units from selling power from the steam utility generating units in the wholesale market, nor shall Commission or Seller be restricted from providing distribution service to accomplish such wholesale sales at distribution service rates approved by the PSCW or other jurisdictional regulatory body.

5.13. Financial Statements. No later than five (5) business days prior to the Closing Date, Seller and Commission shall provide Buyer with Financial Statements for Seller and the Electric Utility as of and for the fiscal year ending on December 31 of the year immediately prior to the

Closing Date, and either an audited or unaudited draft balance sheet and statement of income dated as of a date no more than 60 days prior to the Closing Date ("Closing Financial Statements"). If the Closing Financial Statements are unaudited, they will be certified by the appropriate officials of Seller and Commission.

5.14 No Liability for Failure to Obtain Agreements. Seller and Commission shall not be liable to Buyer for any Adverse Consequences of Buyer arising solely out of the failure of Seller to obtain the settlements, releases or indemnification agreements, or authorizations, consents, or approvals, contemplated in Sections 5.2, 5.6, 5.7, 5.8 and 5.11 despite Seller's commercially reasonable efforts to do so, if Seller notifies Buyer prior to Closing of its inability to do so.

6. CONDITIONS TO OBLIGATION TO CLOSE

6.1 Conditions to Buyer's Obligation. Buyer's obligation to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

(a) the representations and warranties set forth in Section 3 above shall be true and correct in all material respects at and as of the Closing Date (except that if any such representations and warranties are qualified by terms such as "material" and "Material Adverse Effect," such representations and warranties shall be true and correct in all respects at and as of the Closing Date), and Seller and Commission additionally represent and warrant that (i) as of the Closing Date, the financial condition of Seller and the Electric Utility permit Seller to meet its obligations under this Agreement and the Lease and (ii) the Closing Financial Statements are true, correct and complete, and present fairly the financial condition of Seller and the Electric Utility at the date or dates therein indicated and the results of operations for the period or periods therein specified;

(b) Seller and Commission each shall have performed and complied with all of its covenants hereunder in all material respects through the Closing Date and at Closing;

(c) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement;

12/3/09

(d) Seller and Commission shall have delivered to Buyer a certificate to the effect that each of the conditions specified above in Section 6.1(a)-(c) is satisfied in all respects;

(e) Seller and Buyer shall have received the following authorizations, consents, and approvals of governments and governmental agencies ("Governmental Approvals"):

(i) approval of the terms and conditions of the Lease by the PSCW, subject only to conditions that the Buyer finds are satisfactory in its sole discretion;

(ii) approval of the terms and conditions of this Agreement by the PSCW, subject only to conditions that the Buyer finds satisfactory in its sole discretion;

(iii) declaratory ruling by the PSCW under section 227.41, Stats., that the consummation of the transactions contemplated by this Agreement and the Lease shall not alter the PSCW's jurisdiction over Buyer;

(iv) approval of the PSCW under section 196.20, Stats., of revised rates for Seller to update costs and to provide an adjustment to take effect upon consummation of the transactions contemplated by this Agreement and the Lease, including funding through rates of a Capital Fund that provides Electric Utility with cash flow sufficient to acquire additional assets as necessary after Closing, and to provide that the payments by Seller to Buyer under the Lease will be treated as an operating expense of Electric Utility for ratemaking purposes, and the payments, including WPPI's return on investment under the Lease, are reasonable for ratemaking purposes;

(v) referendum approval of Seller's sale of the Acquired Assets, by voters of the City of Menasha, as required by section 66.0817, Stats.;

(vi) Seller and Buyer receiving a written opinion from the Wisconsin Department of Revenue satisfactory to Buyer, holding that if Buyer, Seller and Commission consummate the transactions contemplated hereby, and enter the Lease, Seller will be treated as owner of the Electric Assets; Electric Utility will make payments of local and school tax equivalents pursuant to sec. 66.0811(2), Stats., out of Electric Utility accounts to Seller; and that Buyer will not be treated as owner of the Electric Assets and will not be subject to any taxes on the Electric Assets during the term of the Lease;

(f) Seller shall have obtained releases of all obligations under contracts to provide steam to the Steam Customers satisfactory to Buyer;

(g) Seller shall have obtained releases of claims from all holders of the Steam Utility Bonds satisfactory to Buyer, which must include releases of any claims that such note holders may have against Buyer as a result of the transactions contemplated by this Agreement and the Lease;

(h) Seller shall have obtained any approvals necessary from American Transmission Company, LLC, and its manager, ATC Management Inc., to transfer the ATC Assets to Buyer;

(i) the Indemnifying Parties shall have executed and delivered the Indemnification Agreement and the Releasing Parties shall have executed and delivered the Release Agreement;

(j) Seller or Commission shall have defeased, redeemed or otherwise satisfied all Electric and Water Utility Bonds and other indebtedness of Menasha Utilities, either from proceeds of sale or by other means contemporaneously with closing, as required by Section 5.9, to satisfaction of Buyer;

(k) Seller or Commission shall have provided Buyer with documentation satisfactory to Buyer that Seller and Commission have satisfied their obligations under Section 5.10 regarding the separation of the Electric Utility from Seller's water utility;

(l) Seller and Commission shall have executed and delivered the Lease attached as Exhibit A;

(m) any claims against Seller or the Commission for environmental compliance issues relating to the Steam Utility, including but not limited to those filed by the Wisconsin Department of Natural Resources, United States Environmental Protection Agency and the Sierra Club, shall have been resolved to the satisfaction of Buyer;

(n) Seller shall not be in default of any of its obligations under its Long Term Power Supply Agreement, and Seller and Commission shall execute and deliver an amendment to Exhibit D of the Long Term Power Supply Agreement to provide that Seller will take all-requirements service from Buyer;

(o) any existing agreements between Seller and Buyer for the purchase and sale of capacity or energy other than

the Long Term Power Supply Agreement shall be terminated at or before Closing;

(p) Seller shall have provided Buyer with a plan for satisfying its current Steam Utility-related general obligation debt, which plan is satisfactory to Buyer in its sole discretion;

(q) all actions to be taken by Seller and Commission in connection with consummation of the transactions contemplated hereby and all certificates, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Buyer;

(r) Seller shall have deposited \$1,000,000 to the Capital Fund created under the Lease, to be administered as provided in the Lease;

(s) Seller shall have delivered all bills of sale, deeds, assignments, collateral documents and other documents necessary to transfer ownership of the Acquired Assets to Buyer, as provided in Section 2.6;

(t) Seller and Commission shall have delivered the written legal opinion required from its legal counsel in accordance with Section 2.6(f);

(u) Buyer's due diligence confirming the net book value of the Electric Assets, that the Electric Assets are in the condition required by Section 3.6, and that Seller has merchantable title to any Real Property being conveyed to Buyer and that such Real Property rights are sufficient to operate the Electric Utility, that the Closing Financial Statements provided by Seller and Commission do not indicate that a Material Adverse Change or Material Adverse Effect has occurred and that the financial condition of Seller and the Electric Utility permit Seller to meet its obligations under this Agreement and the Lease;

(v) Buyer is satisfied that any disclosures added to the Commission's and Seller's Disclosure Schedule that are provided to Buyer after execution and delivery of this Agreement in accordance with Section 5.5 do not (individually or in the aggregate) constitute a Material Adverse Change or Material Adverse Effect, including but not limited to any disclosures that Seller and Commission provide pursuant to Schedules 3.11 and 3.12; and

(x) There has been no increase to the Purchase Price pursuant to Section 2.4 (e).

Buyer may waive any condition specified in this Section 6.1 if it executes a writing so stating at or prior to the Closing.

6.2 Conditions to Seller's and Commission's Obligations. Seller's and Commission's obligation to consummate

the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

(a) the representations and warranties set forth in Section 4 above shall be true and correct in all material respects at and as of the Closing Date (except that if any such representations and warranties are qualified by terms such as "material" and "Material Adverse Effect," such representations and warranties shall be true and correct in all respects at and as of the Closing Date);

(b) Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing Date and at Closing;

(c) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement;

(d) Buyer shall have delivered to Seller and Commission a certificate to the effect that each of the conditions specified above in Section 6.2(a)-(c) is satisfied in all respects;

(e) Seller, Commission and Buyer shall have received all authorizations, consents, and approvals of governments and governmental agencies ("Governmental Approvals"):

(i) approval of the terms and conditions of the Lease by the PSCW, subject only to conditions that the Buyer finds are satisfactory in its sole discretion;

(ii) approval of the terms and conditions of this Agreement by the PSCW, subject only to conditions that the Buyer finds satisfactory in its sole discretion;

(iii) declaratory ruling by the PSCW under section 227.41, Stats., that the consummation of the transactions contemplated by this Agreement and the Lease shall not alter the PSCW's jurisdiction over Buyer;

(iv) approval of the PSCW under section 196.20, Stats., of revised rates for City to update costs and to provide an adjustment to take effect upon consummation of the transactions contemplated by this Agreement and the Lease, including funding through rates of a Capital Fund that provides the Electric Utility with cash flow sufficient to acquire additional assets as necessary after Closing, and to provide

that the payments by Seller to Buyer under the Lease will be treated as an operating expense of Electric Utility for ratemaking purposes, and the payments, including WPPI's return on investment under the Lease, are reasonable for ratemaking purposes;

(v) referendum approval of Seller's sale of the Acquired Assets, by voters of City of Menasha, as required by section 66.0817, Stats.;

(vi) Seller and Buyer receiving a written opinion from the Wisconsin Department of Revenue satisfactory to Buyer, holding that if Buyer, Seller and Commission consummate the transactions contemplated hereby, and enter the Lease, Seller will be treated as owner of the Electric Assets; Electric Utility will make payments of local and school tax equivalents pursuant to sec. 66.0811(2), Stats., out of Electric Utility accounts to Seller; and that Buyer will not be treated as owner of the Electric Assets and will not be subject to any taxes on the Electric Assets during the term of the Lease;

(f) Seller, Commission and Buyer have executed and delivered the Lease;

(g) all actions to be taken by Buyer in connection with consummation of the transactions contemplated hereby and all certificates, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Seller.

Seller may waive any condition specified in this Section 6.2 if it executes a writing so stating at or prior to the Closing.

7. TERMINATION

7.1 Termination of Agreement. The parties may terminate this Agreement only as provided below:

(a) Buyer and Seller may terminate this Agreement by mutual written consent at any time prior to the Closing;

(b) Buyer may terminate this Agreement by giving written notice to Seller at any time prior to the Closing in the event (i) Seller or Commission has within the then previous 10 days given Buyer any notice pursuant to Section 5.5 above and (ii) the development that is the subject of the notice has had a Material Adverse Effect (or, if considered along with any other

notices previously given to Buyer pursuant to Section 5.5 above, the cumulative effect of such disclosed developments would have a Material Adverse Effect).

(c) Buyer may terminate this Agreement by giving written notice to Seller at any time prior to the Closing (i) in the event Commission or Seller has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Buyer has notified Seller of the breach, and the breach has continued without cure for a period of 30 days after the notice of breach, or (ii) by reason of the failure of any condition precedent under Section 6.1 hereof (unless the failure results primarily from Buyer itself breaching any representation, warranty, or covenant contained in this Agreement); and

(d) Seller may terminate this Agreement by giving written notice to Buyer at any time prior to the Closing (i) in the event Buyer has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Seller has notified Buyer of the breach, and the breach has continued without cure for a period of 30 days after the notice of breach, or (ii) by reason of the failure of any condition precedent under Section 6.2 hereof (unless the failure results primarily from Seller or Commission breaching any representation, warranty, or covenant contained in this Agreement).

(e) Either Seller or Buyer may terminate this Agreement if the transactions contemplated under this Agreement between Buyer, Seller and the Commission have not been consummated within one (1) year after approval of this Agreement by referendum (as provided in Sections 6.1(e)(vii) and 6.2(e)(vii)), and the parties have not obtained authority of the PSCW to extend the one-year period to close under section 66.0817, Wis. Stats.

7.2 Effect of Termination. If any party terminates this Agreement pursuant to Section 7.1 above, all rights and obligations of the parties hereunder shall terminate without any liability of any party to any other party (except for any liability of any party then in breach); provided, however, that the indemnification provisions of Section 8 shall survive termination.

8. INDEMNIFICATION

8.1 Survival of Representations, Warranties and Indemnification Covenants; Joint and Several Obligations. All of the representations and warranties of the parties contained in this Agreement, and the indemnification covenants contained in this Section 8, shall survive the Closing. The rights and remedies conferred on Buyer under this Section 8 are not exclusive.

8.2 Indemnification Provisions.

(a) In the event Seller or Commission breaches any of its representations, warranties, or covenants contained in this Agreement, Seller hereby indemnifies Buyer from and against any Adverse Consequences Buyer shall suffer caused proximately by the breach.

(b) Seller hereby indemnifies Buyer from and against any Adverse Consequences Buyer shall suffer as a result of any Third Party Claim.

(c) For purposes of this Section 8, "Buyer" includes the officers, directors, employees, representatives and agents of Buyer.

8.3 Defense of Buyer. In connection with any claim giving rise to indemnity of Buyer hereunder resulting from or arising out of any Third Party Claim, the Seller, at its sole cost and expense, shall assume the defense of any such claim or proceeding. The Seller shall select counsel reasonably acceptable to Buyer to conduct the defense of such claims or legal proceedings and, at the Seller's sole cost and expense, take all steps necessary in the defense or settlement thereof. The Seller shall not consent to a settlement of, or entry of any judgment arising from, any such claim or legal proceeding without the prior written consent of Buyer, unless such settlement or judgment can be satisfied solely by the payment of money and the Seller admits in writing its liability to hold Buyer harmless from and against any losses, damages, expenses and liabilities arising out of such settlement, and concurrently with such settlement Seller pays into court (or into a mutually acceptable third party escrow) the full amount of all losses, damages, expenses and liabilities to be paid by the city in connection with such settlement. Buyer is entitled to participate in (but not to control) the defense of any such action, with its own counsel and at its own expense. If the Seller does not assume the defense of any such claim or litigation resulting therefrom in accordance with the terms hereof, or having assumed such defense, fails, in the reasonable judgment of Buyer, to competently and adequately defend the

same, or if Buyer reasonably believes that Seller will be unable to fully indemnify and defend Buyer, Buyer may, at the sole cost and expense of Seller, defend against such claim or litigation in such manner as they deem appropriate, after giving notice to Seller. The parties agree to cooperate in the defense of any such claim by providing necessary and appropriate information, documents and witnesses, to the extent available.

8.4 Application of §893.80 Notice Requirements. Seller and the Commission hereby waive the provisions of §893.80, Wis. Stats., as to Buyer's rights to claim indemnification under this Section 8 or upon a breach of this Agreement. However, nothing in this Lease is intended, or is to be construed, as the waiver by any Party of the provisions of §893.80, Wis. Stats., as to claims of persons or entities that are not parties to this Agreement, it being intended that the City may avail itself of any of the defenses of §893.80, Wis. Stats., in defending any third-party claim pursuant to this Section 8.

8.5 Application of Insurance Proceeds. All indemnification payments due to Buyer under this Section 8 shall be reduced by the amount of any insurance proceeds that are received by Buyer relating to such Third Party Claim.

9. MISCELLANEOUS

9.1 No Third-party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the parties and their respective successors and permitted assigns.

9.2 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

9.3 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party.

9.4 Counterparts. This Agreement may be executed in one or more counterparts (including by means of facsimile), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

9.5 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

9.6 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient, (ii) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) one business day after being sent to the recipient by facsimile transmission or electronic mail, or (iv) five business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

<p>If to Commission or Seller:</p>	<p>City Attorney City of Menasha 140 Main Street Menasha, WI 54952- 2704</p>	<p>Copy to:</p>	<p>General Manager Menasha Utilities P.O. Box 340 Menasha WI 54932- 0340</p>
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<p>If Buyer:</p>	<p>to General Counsel WPPI Energy 1425 Corporate Center Drive Sun Prairie, WI 53590</p>	<p>Copy to:</p>	<p>Richard K. Nordeng Stafford Rosenbaum LLP P.O. Box 1784 Madison, WI 53701- 1784</p>
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Any party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

9.11 Governing Law. This Agreement shall be governed by, enforced and construed in accordance with the domestic laws of the State of Wisconsin.

9.12 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer, Seller and Commission. No waiver by any party of any provision of this Agreement or any

default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the parties making such a waiver, nor such waiver shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

9.13 Expenses. Seller and Commission will bear their own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby. Seller agrees to reimburse Buyer's Expenses to Buyer as provided in Section 2.3(c). All transfer, documentary, sales, use, stamp, registration and other such taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement shall be paid by Seller when due, and Seller shall, at its own expense, file all necessary Tax Returns and other documentation with respect to all such taxes, fees and charges, and, if required by applicable law, the parties will join in the execution of any such Tax Returns and other documentation.

9.14 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

9.15 Relationship between Seller and Commission. The Parties acknowledge that Buyer has required both Seller and Commission to execute and deliver this Agreement in order to avoid any ambiguity regarding legal authority as to control and management of the Electric Utility as of Closing and after Closing, so that any party with authority over the assets and operations of the Electric Utility is bound by this Agreement. Nothing in this Agreement is intended to change or modify the relationship between Seller and the Commission pursuant to sec. 66.0805, Wis. Stats., in which Seller acts through the Commission in operating Menasha Utilities and the Electric Utility.

12/3/09

9.16 Incorporation of Exhibits, Schedules and Annex.
The Exhibits, Schedules and Annex A identified in this Agreement
are incorporated herein by reference and made a part hereof.

[Remainder of this page intentionally left blank]

DRAFT

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

Seller:

CITY OF MENASHA

By: _____
Name: _____
Title: Mayor

By: _____
Name: _____
Title: City Clerk

Commission, on its own behalf
and acting on behalf of City:

MENASHA UTILITIES COMMISSION

By: _____
Name: _____
Title: Commission President

Buyer:

WPPI ENERGY

By: _____
Name: _____
Title: _____

ATTACHMENTS:

- ANNEX A – DEFINED TERMS
- EXHIBIT A – LEASE
- EXHIBIT B – FINANCIAL STATEMENTS

- COMMISSION'S DISCLOSURE SCHEDULES
- BUYER'S DISCLOSURE SCHEDULES

ANNEX A

DEFINED TERMS

For purposes of this Agreement, the following terms shall have the following meanings:

"Acquired Assets" means all of Seller's right, title, and interest in and to (a) the Electric Assets; and (b) the ATC Assets.

"Adverse Consequences" means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, reasonable amounts paid in settlement, liabilities, obligations, taxes, liens, losses, expenses, and fees, including court costs and reasonable attorneys' fees and expenses, whether such are known or unknown, contingent or otherwise as of Closing.

"ATC Assets" means all Member Units of American Transmission Company, LLC and all shares of ATC Management, Inc., owned by Seller as of Closing.

"Balance Sheet Date" has the meaning set forth in Section 3.7.

"Buyer" has the meaning set forth in the introductory paragraph of this Agreement.

"Buyer's Expenses" means all of Buyer's reasonable external expenses related to the transactions contemplated by this Agreement and the Lease, including but not limited to attorneys' fees, consultant fees, title insurance fees and real estate transfer fees, and including all expenses incurred in obtaining Governmental Approvals.

"Capital Fund" means funds to be held in a segregated Electric Utility account by the Commission, pursuant to terms and conditions set forth in the Lease, which account will initially be funded with at least \$1 million at Closing, which is to be used for the purpose of funding acquisitions of capital assets, as may be necessary or advisable, by the Commission after Closing.

"Closing" has the meaning set forth in Section 2.5.

"Closing Date" has the meaning set forth in Section 2.5.

"Closing Financial Statements" has the meaning set forth in Section 5.13.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" has the meaning set forth in the introductory paragraph of this Agreement.

"Disclosure Schedule" has the meaning set forth in Section 3.

"Electric Utility" has the meaning set forth in Recital A of this Agreement.

"Electric and Water Utility Bonds" means all bonds, notes and obligations of Menasha Utilities that encumber the Electric Assets.

"Electric Assets" means the all poles, transformers, meters, conductors, substations and all real property used for the distribution of electricity, including all easements and rights-of-way, fee title to any property, and all other assets that are used and useful in the distribution of electricity to customers of Electric Utility, and the administration building and associated real property, regardless of whether such assets were acquired with utility financing or contributions in aid of construction, which are included in the following PSCW Accounts of the Electric Utility:

Distribution Assets -- 360 (Land and land rights); 361 (Structures and Improvements); 362 (Station equipment); 364 (Poles, towers and fixtures); 365 (Overhead conductors and devices); 366 (Underground conduit); 367 (Underground conductors and devices); 368 (Line transformers); 369 (Services); 370 (Meters); 371 (Installations on customers' premises); and 373 (Street lighting and signal systems).

General Plant Assets - 389 (Land and Land Rights) and 390 (Structures and Improvements), to the extent that accounts 389 and 390 include the administration building used by Electric Utility and real property associated with the administration building, but which does not include land located at 307-309 Milwaukee Street (Land Centennial Plaza) or Lot 17 in W ½ of NE ¼ of SE ¼ of Section 15, Township 20 North, Range 17 East in First Ward.

"Encumbrances" means any charge, claim, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any attribute of ownership.

"Environmental, Health, and Safety Requirements" shall mean all federal, state, local, and foreign statutes, regulations, and ordinances concerning public health and safety, worker health and safety, and pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances, or wastes, as such requirements are enacted and in effect on or prior to the Closing Date. These include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, codified at 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, the Solid Waste Disposal Act, codified at 42 U.S.C. 6901 et seq., as amended by the RCRA, the Toxic Substances Control Act of 1976, codified at 15 U.S.C. 2601 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, codified at 33 U.S.C. 1251 et seq., the Clean Air Act of 1966, codified at 42 U.S.C. 741 et seq., the Hazardous Materials Transportation Act, codified at 49, U.S.C. 651 et seq., the Oil Pollution Act of 1990, codified at 33 U.S.C. 2701 et seq., the Emergency Planning and Community Right-To-Know Act of 1986, codified at 42 U.S.C. 11001, et seq., the National Environmental Policy Act of 1969, codified at 42 U.S.C. 4321, et seq., the Occupational Safety and Health Act of 1970, the Safe Drinking Water Act of 1974, codified at 42 U.S.C. 300(f), et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, codified at 7 U.S.C. 136, et seq.; the Surface Mining Control and Reclamation Act, codified at 30 U.S.C. 1201, et seq., and Chapters 30, 31, 160, 254, 280, 281, 283, 285, 287, 289, 291, 292, 293, 295, 299 and 823 of the Wisconsin Statutes.

"Excluded Assets" means (a) any assets of Seller used solely for the generation of electric power and energy; (b) any steam utility assets of Seller; (c) any assets of Seller used solely to provide water, fiber or energy services to customers; (d) general plant assets of Seller, except for the administration building and associated real property included in PSCW Accounts 389 and 390; and (e) at Buyer's election, any Electric Assets that are used in part for non-electric distribution purposes.

"Financial Statements" has the meaning set forth in Section 3.7.

"Governmental Approvals" means those approvals required under Section 6.1(e) and Section 6.2(e).

"Indemnification Agreement" means an agreement in favor of Buyer and in a form satisfactory to Buyer in its sole discretion, executed and delivered by each of the Indemnifying Parties, in which the Indemnifying Party agrees to indemnify and hold Buyer harmless from an claims relating to the Steam Utility Bonds, the claims of any holders of Seller's general obligation debt related to Seller's steam utility, and any and all claims of third parties related to all aspects of the transaction contemplated by this Asset Purchase Agreement and the Lease, including but not limited to claims in bankruptcy.

"Indemnifying Parties" means Seller, Commission, and one or more of other Releasing Parties, whose credit is satisfactory to Buyer, in Buyer's sole discretion.

"Knowledge" means actual knowledge without independent investigation.

"Lease" means the Lease among Seller, Commission and Buyer attached as Exhibit A.

"Lease Reserve Escrow Agreement" means the agreement to be entered by Seller, Commission and WPPI as provided in Section 2.6(g), under which one year's payments under the Lease will be held in escrow to secure Seller's obligations to make lease payments under the Lease, which agreement shall contain terms and conditions reasonably acceptable to WPPI.

"Lien" means any mortgage, pledge, lien, encumbrance, charge, or other security interest other than (a) construction, materialmen's, and similar liens, (b) liens for Taxes not yet due and payable or for Taxes that the taxpayer is contesting in good faith through appropriate proceedings, (c) purchase money liens and liens securing rental payments under Lease arrangements, and (d) other liens arising in the Ordinary Course of Business and not incurred in connection with the borrowing of money.

"Material Adverse Effect" or **"Material Adverse Change"** means any effect or change that would be materially adverse to the Business, taken as a whole, or on the ability of any party

to consummate timely the transactions contemplated hereby; provided that none of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect or Material Adverse Change: any adverse change, event, development, or effect arising from or relating to (i) general business or economic conditions, including such conditions related to the Electric Utility, (ii) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, (iii) changes in United States generally accepted accounting principles, or (iv) the taking of any action contemplated by this Agreement and the other agreements contemplated hereby.

"Operating and Maintenance Expenses" means all expenses of the Electric Utility that are reflected in the Electric Utility's income statement exclusive of interest expense, depreciation and amortization, but which shall also include a monthly accrual for payments in lieu of taxes.

"Ordinary Course of Business" means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a governmental entity (or any department, agency, or political subdivision thereof).

"Purchase Price" has the meaning set forth in Section 2.3.

"Prudent Utility Practice" shall mean, at a particular time: (a) any of the practices, methods and acts engaged in or approved by a significant portion of the United States electric distribution industry prior to such time and by constructors, owners, operators or maintainers of facilities similar in size and operational characteristics to the Acquired Assets; or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with

applicable law, environmental considerations, good business practices, reliability, safety, expedition and the manufacturers' maintenance requirements; provided that "**Prudent Utility Practice**" is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of the acceptable practices, methods or acts generally accepted in such industry having due regard for, among other things, manufacturers' maintenance requirements, the requirements of governmental authorities and any applicable agreements.

"**PSCW**" means the Public Service Commission of Wisconsin.

"**Real Property**" means all fee interests, easements, rights of way and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property which is used in the Electric Utility and which is included in the Acquired Assets.

"**Release Agreement**" means an agreement in favor of Buyer and in a form satisfactory to Buyer in its sole discretion, for Buyer's benefit, obtained by Seller from each of the Releasing Parties, in which the Releasing Party releases any and all claims relating to claims of holders of the Steam Utility Bonds, the claims of any holders of the Seller's general obligation debt related to its steam utility, and any and all claims of third parties related to all aspects of the transaction contemplated by this Asset Purchase Agreement and Lease, including but not limited to claims in bankruptcy.

"**Releasing Parties**" means Seller, Commission, and such other persons or entities that Buyer may require, as a condition to Closing, to provide Buyer with signed and executed Release Agreements in order for Buyer to eliminate or reduce its exposure to risk upon Closing.

"**Seller**" has the meaning set forth in the introductory paragraph of this Agreement.

"**Steam Customers**" means George A. Whiting Paper Company, Sonoco-U.S. Mills, Inc., Alcan Packaging Corp. and any other creditors of Seller's steam utility.

"**Steam Utility Bonds**" means the \$11,500,000 Taxable Steam Utility Revenue Bond Anticipation Notes Dated December 1, 2006 issued by Seller and the \$12,660,000 Taxable Steam Utility Revenue Bond Anticipation Notes Dated February 1, 2005 issued by Seller.

"Steam Utility Obligations" means the \$13,930,000 Taxable General Obligation Promissory Notes (Steam Utility Project) Dated August 22, 2007 issued by Seller, the \$2,675,000 Taxable Note Anticipation Notes (Steam Utility) Dated December 1, 2006 issued by Seller, Seller's steam utility equipment lease with General Electric and any other debt or obligations of Seller related to Seller's steam utility.

"Tax" or **"Taxes"** means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, or addition thereto, whether disputed or not.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Third Party Claim" means any third-party claims, causes of action, lawsuits or other proceedings brought against Buyer that result in Adverse Consequences to the Buyer, and which Adverse Consequences arise out of or are related to Electric Utility operations or arise out of or are related to the acts, omissions or liability of Seller or Commission (including any liability of Seller or the Commission to a third party that becomes a liability of Buyer under any common law doctrine of de facto merger or successor liability, or otherwise by operation of law, claims of creditors of Seller or the Commission, or which result from Buyer taking title to the Electric Assets).

LEASE AGREEMENT

between

WPPI ENERGY, INC.

as WPPI,

CITY OF MENASHA,

as City, and

MENASHA UTILITIES COMMISSION

as Commission

Dated as of _____, 2009

Menasha Electric Utility
Menasha, Wisconsin

LEASE AGREEMENT

This LEASE AGREEMENT, dated as of _____, 2009 (this "Lease"), is between WPPI ENERGY, a Wisconsin municipal electric company, as lessor ("WPPI"), and CITY OF MENASHA, as a Wisconsin municipality ("City") and as a municipal electric utility, acting through the Menasha Utilities Commission ("Commission"), as lessee, and the COMMISSION.

RECITALS

WPPI has acquired from the City, certain assets used and useful in the operation of the City's municipal electric utility ("MEU") which is under the charge and management of the Commission under sec. 66.0805, Wis. Stats., ("Leased Facility") and which assets are more fully described in Exhibit A, pursuant to the Parties' Asset Purchase Agreement;

WPPI wishes to lease the Leased Facility to the City, and the City wishes to lease the Leased Facility from WPPI, such that at all times during the term of this Lease, the City will remain in possession and control, and will continue to operate its electric distribution utility using the Leased Facility, in accordance with the terms hereof, and the Commission, as operator and manager of MEU, wishes to facilitate the Lease of the Leased Facility from WPPI to the City;

The Parties intend that this Lease will preserve the in-lieu-of tax payments made by MEU to the City pursuant to § 66.0811, Wis. Stats.;

The Parties wish that ownership of the Leased Facility revert back to the City at the end of this Lease for payment of one dollar (\$1) to WPPI, or before the end of the Lease if possible, so that full ownership of the City's electric utility assets may return to the City;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS; RULES OF INTERPRETATION

Capitalized terms used but not defined herein shall have the meanings set forth in Schedule 1.1, and the rules of interpretation set forth in Schedule 1.1 shall apply to this Lease.

ARTICLE 2
LEASE; TERM; NATURE OF TRANSACTION

2.1 Leased Facility. WPPI hereby leases to the City, and the City hereby leases from WPPI, the Leased Facility and any Additional Assets.

2.2 Term. The term of this Lease shall be for twenty (20) years, commencing _____ and ending midnight, _____ ("Lease Term").

ARTICLE 3
RENT; PAYMENT COVENANTS

3.1 Rent Payments.

(a) Base Rent. City shall pay to WPPI on each Rent Payment Date during the Lease Term, in the manner and place set forth in Section 3.2, rent for the current calendar month for the Leased Facility, calculated in accordance with Schedule 3.1(a) ("Base Rent").

(b) Additional Rent. If WPPI acquires Additional Assets on behalf of the City pursuant to Section 5.3 below, City shall pay to WPPI on each Rent Payment Date during the Lease Term, in the manner and place set forth in Section 3.2, additional rent for the current calendar month calculated in accordance with Schedule 3.1(b) ("Additional Rent").

3.2 Place and Manner of Payment; Late Payments. All payments of Rent, the Termination Payment and the Option Payment payable by City to WPPI under this Lease shall be made by City to or for the account of WPPI by paying to WPPI in immediately available funds the amount of such payments on the date when such payments are due. No endorsements or statements on any check or any letter accompanying any check or payment shall be deemed an accord and satisfaction of WPPI. If the City does not make timely payments of Rent, the City shall pay WPPI interest at the rate of 6.5 percent per annum for any Rent not paid on the Rent Payment Date. If the City does not make timely payment of the Termination Payment or the Option Payment, the City shall pay WPPI interest at the rate of 6.5 percent per annum on such payment from the date such payment is due until payment is made in full.

3.3 Net Lease; No Setoff; City Obligations Unaffected.

(a) It is the intention of the parties that this Lease is a "triple net lease" and WPPI shall receive all Rent and the Termination Payment or the Option Payment under the Lease, undiminished from all costs, expenses and obligations of any kind

relating to the Leased Facility and Additional Assets and which arise or become due during the Lease Term, all of which shall be paid by City.

(b) Except as otherwise expressly provided herein and by performance of the obligations in connection herewith, this Lease shall not terminate, nor shall the obligations of any Party, be otherwise affected by:

(i) reason of the condition, merchantability, design, quality, fitness for use, any defect in or damage to, loss of possession or use, obsolescence or destruction of any or all of the Leased Facility and the Additional Assets, however caused, or any inability to use the Leased Facility and the Additional Assets or any part thereof by reason of any such defect, or the replacement of any Obsolete Components by the City or Commission;

(ii) the lack of due authorization by any Person to any Lease Document or other infirmity of this Lease or any other Lease Document;

(iii) the attachment of any Lien of any third party to any or all of the Leased Facility or any Additional Assets;

(iv) any prohibition or restriction of or interference with the City's use of any or all of the Leased Facility or the Additional Assets by any Person (other than WPPI or Person claiming through WPPI);

(v) the insolvency of or the commencement by or against MEU or the City of any bankruptcy, reorganization or similar proceeding;

(vi) any restriction, prevention or curtailment of or interference with any use of the Leased Facility and the Additional Assets or any part thereof;

(vii) any defect in title to or rights to the Leased Facility and the Additional Assets or any Lien on such title or rights or on the Leased Facility and the Additional Assets;

(viii) any change, waiver, extension or indulgence by any Person party to the Lease Documents except to the extent provided in such change, waiver, extension or indulgence;

(ix) any claim that MEU or the City has or might have against any Person, including any vendor, manufacturer or contractor of or for the Leased Facility and the Additional Assets;

(x) any disaffirming of this Lease by MEU or the City or any provision hereof or any of the other Lease Documents or any provision thereof;

(xi) the impossibility of performance by MEU, the Commission, WPPI, or the City under this Lease or any other Lease Document to which any of them is a party;

(xii) any failure on the part of WPPI to perform or comply with any of the terms of this Lease or any other Lease Document;

(xiii) any action of any Governmental Authority, including but not limited to condemnation of all or any part of the Leased Facility or Additional Assets;

(xiv) any claim for infringement or other liability resulting from any patent, trademark, copyright or other intellectual property rights; or

(xv) any other cause, whether similar or dissimilar to the foregoing, any present or future Law to the contrary notwithstanding.

(c) It is the intention of the Parties that all payments of Rent, the Termination Payment and the Option Payment payable by the City hereunder shall be payable in all events in the manner and at the times herein provided. Each such payment shall be final, and the City shall not seek to recover all or any part of such payment from WPPI except as expressly provided in this Lease. The Parties intend that the obligations of the City under this Lease shall be covenants and agreements that are separate and independent from any obligations of WPPI hereunder or under any other Lease Document and the obligations of the City under this Lease shall continue unaffected unless such obligations have been modified or terminated in accordance with an express provision of this Lease. The City hereby waives any right to setoff any amounts owed by WPPI to the City or any claims that it may have against WPPI against the City's obligations to make payments of Rent, the Termination Payment and the Option Payment under this Lease.

3.4 Payment Covenants. The City's obligation to pay Rent under this Lease is an Operating and Maintenance Expense, which has priority over any other obligations of MEU. The City and Commission agree to collect and maintain adequate working capital available for payment of Operating and Maintenance Expenses, in an amount equal to or greater than 30 days' of trailing Operating and Maintenance Expenses for MEU plus funds previously accrued for the purpose of funding the annual PILOT Payment. After paying Operating and Maintenance Expenses (including Rent), the City and Commission agree to first apply any remaining funds of MEU to restore any shortfall in the Lease Reserve Fund, and then to restore any shortfall in the Capital Fund. These payment obligations shall have priority over any other obligations of MEU, including but not limited to payment of bonds or loan obligations of MEU, except to the extent that WPPI agrees, in writing, to waive its right to priority.

3.5 Lease Reserve Fund; Covenant to Replenish Fund. Simultaneously with execution of this Lease, WPPI, the Commission and the City have entered a Lease Reserve Escrow Agreement, under which the parties initially have escrowed one year's Base Rent payments. If WPPI acquires Additional Assets pursuant to Section 5.3 below, the City agrees to deposit in the Lease Reserve Fund an amount equal to the annual Additional Rent payments calculated pursuant to Schedule 3.1(b) and which are attributable to the acquisition of such Additional Assets, immediately upon WPPI's acquisition of the Additional Assets. If funds are withdrawn from the Lease Reserve Escrow Agreement to satisfy any unpaid Rent obligations, or if WPPI exercises its collateral rights to the Lease Reserve Fund upon a default by the City and applies the funds to unpaid Rent obligations, such payments received by WPPI will be credited against the City's Rent obligations, and the City and Commission agrees to replenish the funds in the Lease Reserve Fund from available MEU funds as soon as possible. If the City and Commission cannot replenish funds withdrawn funds within 90 days, the City and Commission shall seek rate increase approval from the PSCW as provided in Section 3.7.

3.6 Capital Fund. Upon execution of this Lease, the City and Commission have established a segregated account ("Capital Fund") to be used primarily for the purpose of funding the acquisition of Improvements, and has made an initial deposit of \$1,000,000 in the Capital Fund. During the term of this Lease, the City and Commission will maintain and make annual additions to the Capital Fund sufficient to fund Improvements contemplated under MEU's then-current Five-Year Plan, in amounts which will not be less than \$987,000 annually (and which amount may not be decreased unless consented to by WPPI and approved by the PSCW). The City and Commission may withdrawal funds from the Capital Fund to fund the acquisition and installation of Improvements. The City and Commission may also use the Capital Fund to make payments of Operating and Maintenance Expenses for power supply expenses and Rent only if no other MEU funds are unavailable for the payment of such expenses. If funds in the Capital Fund are withdrawn to pay such Operating and Maintenance Expenses, the

City and Commission agree to replenish funds in the Capital Fund with available MEU funds as soon as possible. If the City and Commission are unable to replenish these funds within ninety (90) days, the City and Commission shall seek a rate increase approval from the PSCW as provided in Section 3.7. Any funds collected in rates by the City specifically for the Capital Fund, and any additional funds collected in rates as necessary to reach \$987,000 annually, shall be deposited in such fund as soon as practicable after receipt, after payment of Operating and Maintenance Expenses and restoration of any shortfall in the Lease Reserve Fund. The City and Commission agree to seek PSCW approval to increase annual funding for the Capital Fund as necessary and prudent for future capital projects, based upon Menasha's then-current Five-Year Plan and to replenish any funds withdrawn from the Capital Fund to pay Operating and Maintenance Expenses if operating revenues from the utility are insufficient to do so. The City and Commission hereby grant WPPI a security interest in the account(s) used to hold the Capital Fund, and identify the account(s) for WPPI. From time to time the City shall execute, acknowledge and deliver to WPPI a UCC financing statement or other documents in any form reasonably necessary or requested by WPPI to record, perfect, or otherwise preserve WPPI's interest in the Capital Fund. The City may not otherwise pledge or encumber any account in which the Capital Fund monies are held. Capital Fund monies must be invested as provided in sec. 34.05, Wis. Stats. or sec. 66.0603, Wis. Stats.; however, any deposit accounts or time deposits must be collateralized to the extent not covered by FDIC insurance. Any interest earned by the Capital Fund shall belong to the City.

3.7 Rate Covenant. The City and Commission shall use their best efforts to obtain PSCW approval of electric rate changes from time to time sufficient to enable the City and Commission to make all payments due to WPPI under this Lease, meet all payment covenants contained in Sections 3.4 through 3.6, meet coverage requirements and recover all other costs reasonably incurred in operating MEU.

3.8 Limitation on Rent Obligations; Not General Obligation Debt. The payments required to be made by the City for Base Rent, Additional Rent, the Option Payment and the Termination Payment, and to make contributions to the Lease Reserve Fund and Capital Fund, shall be required to be made solely from revenues to be derived by the City from the operation of MEU, and from other funds of the City or MEU that are legally available for such payments and which have been appropriated by the Common Council of the City for such purpose. This limitation of payments shall not limit WPPI's ability, upon an MEU Event of Default, to exercise its remedies under Section 10.1(a)(ii), (iv) (as to the City's obligations under the Lease Reserve Escrow Agreement and other collateral agreements) and (vi) and Section 10.4, or to seek any other remedies against MEU and its assets. This Lease shall not constitute the indebtedness of the City nor a charge against its general credit or the City's taxing power, nor shall it constitute indebtedness of the City within the meaning of any statutory or constitutional debt limitation.

ARTICLE 4
**USE, MAINTENANCE AND OPERATION OF LEASED FACILITY,
ADDITIONAL ASSETS AND UTILITY**

4.1 Use and Possession of Leased Facility and Additional Assets. Without limiting the City's obligations under Section 4.2, the City shall use and operate the Leased Facility and Additional Assets in compliance in all material respects with all applicable Laws. The City shall obtain and maintain in full force and effect all Authorizations required by applicable Law to use and operate the Leased Facility and Additional Assets and to perform its other obligations under this Lease and the other Lease Documents to which it is a party and shall comply in all material respects with all such Authorizations in connection with the use and operation of the Leased Facility and Additional Assets and the performance of its other obligations under this Lease and the other Lease Documents to which it is a party. The City shall not use and operate the Leased Facility and Additional Assets for any purpose or in any manner that would adversely affect the Fair Market Value, utility, remaining useful life or residual value of the Leased Facility and Additional Assets (other than to the extent any of the foregoing constitutes Ordinary Wear and Tear). The City agrees that WPPI will not be obligated to (a) repair, renew, replace or improve all or any part of the Leased Facility or (b) make any repairs to the Leased Facility and Additional Assets at the expense of WPPI. Subject to Article 10, the Leased Facility and Additional Assets shall at all times during the Lease Term be and remain in the possession and control of the City. To the extent that the Lease conflicts with the provisions of any ordinances, regulation or resolution of the City, the City hereby agrees that the Lease governs and controls.

4.2 Maintenance of Leased Facility and Additional Assets. During the Lease Term, the City shall, at its own cost and expense, keep, repair, maintain and preserve the Leased Facility and Additional Assets in all material respects: (a) in good condition (Ordinary Wear and Tear excepted), repair and working order; (b) in accordance with Prudent Utility Practice and all insurance policies required to be maintained by the City under this Lease; (c) so as not to cause any manufacturer's warranties then in effect on the Leased Facility and Additional Assets to become void; and (d) in compliance with all applicable Laws and Authorizations; *provided* in each case that all Improvements shall be paid for in accordance with Article 5.

4.3 Replacement of Components. In the ordinary course of operating, repairing, maintaining, preserving or testing the Leased Facility and Additional Assets or any component thereof, the City shall have the right to remove or cause to be removed any component of such Leased Facility or Additional Assets which is in need of replacement or is being taken out of service due to a change in technology or design (e.g., removal of a pole line to convert to underground construction) ("Obsolete Component"); *provided, however,* that: (i) the City shall cause any Obsolete Component to be replaced by a replacement component in the event that replacement is necessary consistent with Prudent Utility Practice; (ii) the City shall cause such replacement component to be free and clear of all Liens (other than Permitted Encumbrances), which is in good operating condition and which has a residual value, utility and remaining useful life at least equal to that of the component replaced (in each case, assuming that the replaced component was maintained in accordance with the terms of this Lease); (iii) MEU's records will reflect the replacement of any Obsolete Component; and (iv) the replacement components shall be considered to be Improvements and shall be paid for and owned in accordance with Article 5.

4.4 Claims Against Third Parties Relating to the Leased Facility And Additional Assets. During the Lease Term, so long as no MEU Event of Default shall have occurred and be continuing, WPPI hereby appoints and constitutes the City as its agent and attorney-in-fact to assert and enforce, from time to time, in the name and for the account of WPPI and the City, as their interests may appear, but in all cases at the sole cost and expense of the City, whatever Claims and rights MEU and WPPI may have in respect of the Leased Facility and Additional Assets against any manufacturer, vendor or contractor, or under any express or implied warranties relating to the Leased Facility and Additional Assets.

4.5 Management of MEU; Planning. MEU shall operate under the charge and management of the Commission. The Commission shall consult with WPPI in hiring a general manager of MEU. WPPI will have the right to veto any candidate selected by the Commission who WPPI reasonably determines not to be qualified. The Commission shall develop and maintain an annual electric utility budget, a five-year distribution improvements and capital expenditure plan ("Five-Year Plan"), staffing plan and operations and maintenance plan. These planning documents shall be approved by the Commission and updated on at least an annual basis. The City shall provide current copies of these planning documents to WPPI.

4.6 No Subsidization of Other City Departments. The City and the Commission agree that the assets, facilities and personnel of MEU shall not be utilized to subsidize the operations of any other agencies, departments or divisions of the City (including but not limited to any other utilities operated by the City), including by means of cost allocation, shared services, facilities or personnel without proper compensation. All interdepartmental contracts, leases and other agreements and arrangements

(regardless of whether such agreements or arrangements are in writing) between MEU and any other agency, department or division of the City, or arrangements for the provision of goods and services (including the provision of electric distribution services) must be acceptable to the PSCW and be consistent with arms-length transactions for equivalent goods and services.

4.7 Taxes. City shall pay all Taxes due arising out of the operation of its utility or otherwise relating to the Leased Facility, Additional Assets and MEU Assets.

4.8 PILOT Payments. The City agrees that it shall apply any and all payments in lieu of taxes received by it from MEU ("PILOT Payments") to pay debt service on or to pay off general obligation debt that the City incurred in funding its unregulated steam utility or debt incurred to refund/refinance such general obligation debt. Once such general obligation debt (or any debt incurred to refund/refinance such general obligation debt) is paid in full, the City may use the PILOT Payments for any purpose, except that the City agrees that it shall use the PILOT Payments to remedy any shortage in the Lease Reserve Fund or the Capital Fund before using the PILOT Payments for any other purpose.

4.9 Separate Utility. The City and Commission agree and covenant that they shall maintain MEU as a separate utility for all purposes and shall not combine MEU with any other utility that the City may own or operate, including but not limited to any water utility, steam utility, telecommunications utility, energy services or electric generation facilities.

ARTICLE 5 IMPROVEMENTS

5.1 Improvements.

(a) Improvements shall be undertaken by the City and Commission at a time and in a manner that is not inconsistent with the then-current Five-Year Plan. The City and Commission shall provide to WPPI such additional information with respect to the Improvements as WPPI may reasonably request.

(b) The City and Commission shall be obligated to obtain any Authorizations required to design, engineer, procure, permit, construct and operate any Improvement, including any PSCW Authorizations that may be applicable.

(c) Except as provided in Section 5.3, the City and Commission shall pay all capital costs with respect to any Improvement through the Capital Fund. The City

and Commission shall pay for any improvement that is not capital in nature as an Operating and Maintenance Expense.

5.2 Title. Title to all Improvements and other assets acquired by the City for MEU shall be and remain the property of the City, unless such Improvements are acquired by WPPI as provided in Section 5.3.

5.3 Improvements Acquired by WPPI. If the City is unable to finance Improvements due to financial constraints, WPPI may elect, in its sole discretion, to acquire such Improvements. Such assets shall be Additional Assets and subject to the terms and conditions of this Lease. The City and Commission shall install any Additional Assets. Upon the acquisition and installation of Additional Assets, the City shall pay Additional Rent to WPPI in an amount calculated in accordance with Schedule 3.1(b).

ARTICLE 6 INSPECTION AND RIGHT TO ENTER

6.1 Inspection. The City and Commission shall make the Leased Facility and Additional Assets available to WPPI or its designee for inspection at reasonable times and under conditions reasonably acceptable to the City and the Commission; *provided* that WPPI and its designees shall comply with all of the City's and Commission's reasonable rules and regulations, including security and safety requirements and any applicable insurance policies.

6.2 Right to Enter.

(a) WPPI and its designees shall have the right to enter the Leased Facility and Additional Assets for the purpose of exercising any of WPPI's rights or performing any of its obligations under this Lease; *provided* that WPPI and its designees shall comply with all of the City's and Commission's reasonable rules and regulations, including security and safety requirements and any applicable insurance policies.

(b) Upon the occurrence and continuation of a MEU Event of Default and the exercise of remedies by WPPI pursuant to Article 10, WPPI shall have the right to enter the Leased Facility for the purpose of repossessing the Leased Facility and Additional Assets

ARTICLE 7
RISK OF LOSS; INSURANCE

7.1 Risk of Loss.

(a) During the Lease Term (and upon expiration of the Lease Term), the risk of loss of or decrease in the enjoyment and beneficial use of the Leased Facility and Additional Assets as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by the City.

(b) The City shall notify WPPI of any Event of Loss (including a description of the loss of, destruction or damage to, or the taking of the Leased Facility or Additional Assets) resulting in physical loss, destruction or damage to the Leased Facility or Additional Assets in excess of \$50,000. Following any Event of Loss with respect to the Leased Facility or Additional Assets occurring during the Lease Term, the City and Commission shall promptly repair the Leased Facility or Additional Assets or replace a component thereof, as applicable so that the Leased Facility and Additional Assets shall have a current and residual value, remaining useful life and utility at least equal to that of the Leased Facility and Additional Assets prior to such Event of Loss. The City and Commission shall notify WPPI of the repairs to be undertaken with respect to the Leased Facility and Additional Assets and when such repairs are completed. WPPI and its designees shall be entitled to make a physical inspection of the damaged and restored property in accordance with Section 7.2. There shall be no abatement of the City's obligation to pay rent to WPPI during any such repair period.

7.2 Insurance. At all times during the Lease Term, the City or Commission shall maintain insurance with respect to the Leased Facility and Additional Assets in a manner consistent with Prudent Utility Practice. WPPI shall be a named additional insured and loss payee on all policies to the extent they related to the Leased Facility and Additional Assets. If neither the City nor Commission take out or maintain the insurance coverage required by this Section 7.2, then WPPI may (but shall not be obligated to), upon 30 days prior written notice (unless the aforementioned insurance would lapse within such period, in which event notice should be given as soon as reasonably possible) to the City of any such failure, take out the required policies of insurance and pay the premiums on such required policies of insurance. The City shall reimburse WPPI for any such premiums paid by WPPI within ten (10) days of written notice of such premium payment by WPPI.

7.3 Condemnation. If all or any part of the Leased Facility or Additional Assets is taken by Condemnation, any Condemnation Award will be paid to WPPI (regardless of whether the Governmental Authority that is carrying out the Condemnation makes such award to WPPI, MEU or the City). The parties' obligations under this Lease (including but not limited to the obligation of the City to pay Rent) will continue in full

force and effect; provided, that WPPI shall apply any Condemnation Award to (a) replace any portion of the Leased Facility or Additional Assets taken by Condemnation, and/or (b) reduce the City's obligations to pay Rent, the Termination Payment or the Option Payment, so that WPPI receives all but no more than its expected rate of return of 6.5 percent under the Lease as provided in Schedules 3.1(a) and (b), Schedule 8.1 and Schedule 8.2.

ARTICLE 8
END OF TERM OBLIGATIONS OF CITY;
CITY OPTION TO ACQUIRE LEASED FACILITY AND ADDITIONAL ASSETS

8.1 End of Term Purchase of Leased Facility and Additional Assets. Upon expiration of the Lease Term, the City shall purchase the Leased Facility and Additional Assets from WPPI, and WPPI shall sell the Leased Facility and Additional Assets to the City, and the City shall pay WPPI the Termination Payment of one dollar (\$1), which payment is subject to increase as provided on Schedule 8.1. WPPI shall transfer the Leased Facility and Additional Assets on an "as is" and "where is" basis by an appropriate instrument of transfer prepared and recorded at the City's expense; *provided* that such instrument of transfer shall contain a warranty as to the authority to execute and deliver the instrument of transfer and as to the absence of Liens attributable to WPPI. Closing will occur on the last day of the Lease Term, if it is a Business Day, with the transaction to be deemed effective as of midnight the following day. If the last day of the Lease Term is not a Business Day, closing will occur on the next Business Day and the Lease Term is extended for such period until closing occurs.

8.2 City Option to Acquire Leased Facility and Additional Assets. At any time during the Lease Term, the City has the non-assignable right to acquire the Leased Facility and the Additional Assets for the Option Payment as calculated on Schedule 8.2 ("Option") if at such time it is current on all obligations to WPPI under this Lease, including but not limited to the obligation to pay Rent. The City shall exercise this Option by providing written notice to WPPI at least thirty (30) days prior to the City's proposed closing date. At closing on the Option, WPPI shall transfer the Leased Facility and the Additional Assets on an "as is" and "where is" basis by an appropriate instrument of transfer prepared and recorded at the City's expense; *provided* that such instrument of transfer shall contain a warranty as to the authority to execute and deliver the instrument of transfer and as to the absence of Liens attributable to WPPI. Upon closing on the Option, and WPPI's receipt of the Option Payment, this Lease shall terminate, except for those provisions that expressly survive the termination of this Lease.

ARTICLE 9 EVENTS OF DEFAULT

At any time after the Execution Date, the following shall constitute events of default by the City under this Lease (each, an “MEU Event of Default”):

9.1 Payment Default. Any amount due and payable by the City under this Lease shall not have been paid within 30 days of its respective due date and after notice thereof by WPPI and failure of the City to make such payment within five (5) Business Days of such notice.

9.2 Misrepresentation. Any representation or warranty of the City or the Commission contained in this Lease or the Asset Purchase Agreement is false or misleading in any material respect when made, deemed made or reaffirmed, as the case may be, and is, if capable of being corrected, still incorrect 60 days later with reference to the facts and circumstances existing on such later date and which has a Material Adverse Effect.

9.3 Covenant Defaults. The City or Commission defaults in the performance or observance of any of their other material obligations under this Lease or any other Lease Document to which either is a party and such default is not cured within 30 days after written notice is provided by WPPI; *provided, however*, that such 30-day period shall be extended for up to an additional 150 days so long as such default is remediable and the City or the Commission is diligently pursuing such remedy. The parties acknowledge that the City's failure to replenish the Lease Reserve Fund as required under Section 3.5 is a default in the performance of a material obligation under this Lease.

9.4 Judgment Default. One or more final judgments in the aggregate in excess of \$250,000, to the extent not paid or covered by insurance provided by an insurance carrier who has acknowledged coverage in writing, shall be rendered against the City and shall not be discharged within 90 days from the date of entry thereof, and such judgment(s) will have a material effect on the ability of the City to meet its obligations under this Lease.

9.5 Bankruptcy. The City shall have:

- (a) applied for or consented to the appointment of a receiver, trustee or liquidator of the City or of all or a substantial part of the City's assets or MEU's assets;
- (b) been adjudicated bankrupt or insolvent, or filed a voluntary petition in bankruptcy, or admitted in writing its inability to pay its debts as they come due;
- (c) made a general assignment for the benefit of creditors;

(d) filed a petition or an answer seeking reorganization or arrangement with creditors or taken advantage of any insolvency law;

(e) filed an answer admitting the material allegations of, or consented to, or defaulted in answering, a petition filed against it in any bankruptcy, reorganization or insolvency proceedings; or

(f) been the subject of an order, judgment or decree entered by any court of competent jurisdiction, approving a petition seeking reorganization of MEU or the City or appointing a receiver, trustee or liquidator of the City or of all or a substantial part of MEU's assets, and such order, judgment or decree shall have continued (without stay) and in effect for a period of at least 60 consecutive days.

9.6 Lack of Authorizations. Any Authorization required by applicable Law for the continued performance by the City or the Commission of its obligations under this Lease or any other Lease Document to which it is party shall have been revoked, suspended, modified or withdrawn, and the City or the Commission shall have failed to seek restoration of such Authorizations within 45 days after such revocation, suspension, modification or withdrawal, and such revocation, suspension, modification or withdrawal has a Material Adverse Effect.

9.7 Default Under Supply Agreement. The City defaults on any of its material obligations under the Long Term Power Supply Agreement and such default is not cured within thirty (30) days after notice thereof from WPPI to the City.

ARTICLE 10 REMEDIES

10.1 Remedies.

(a) WPPI Remedies Upon MEU Event of Default. Whenever any MEU Event of Default has occurred, WPPI may, upon written notice to the City, declare this Lease to be in default. At any time thereafter, so long as all outstanding MEU Events of Default have not been remedied, WPPI may take any one or more of the following actions set forth in this Section 10.1(a), subject to Section 10.5:

(i) WPPI may demand in writing that the City pay to WPPI immediately, as and for final liquidated damages and not as a penalty (but exclusive of any indemnities of the City under this Lease and the Asset Purchase Agreement), and in lieu of all damages for Rent beyond the effective date of such demand (the "Demand Date"), and the City shall pay on the Demand Date, the Option Payment for the Leased Facility and Additional Assets calculated pursuant to Schedule 8.2 and determined as of

the Demand Date. Concurrently with the payment by the City of the Option Payment to WPPI pursuant to this Section 10.1(a)(i):

(A) Base Rent and Additional Rent shall cease to accrue;

(B) this Lease shall terminate and the City shall cease to have any liability to WPPI with respect to the Leased Facility and the Additional Assets, except for obligations surviving pursuant to the express terms of this Lease and any other Lease Document; *provided* that it shall be a condition of such termination that the City shall pay all amounts due which it is obligated to pay under this Lease and the other Lease Documents;

(C) WPPI shall transfer to the City the Leased Facility and Additional Assets on an “as is” and “where is” basis by an appropriate instrument of transfer prepared and recorded at the City’s expense; *provided* that such instrument of transfer shall contain a warranty as to the authority to execute and deliver the instrument of transfer and as to the absence of Liens attributable to WPPI; and

(D) WPPI shall execute and deliver and/or cause to be executed and delivered, all appropriate releases and other documents or instruments (and in such form) as the City may reasonably request to effect the foregoing and otherwise to release the Leased Facility and Additional Assets from the terms of this Lease, all of which shall be prepared, filed and, if appropriate, recorded at the cost and expense of the City.

(ii) WPPI may require the City, upon WPPI’s written demand, to surrender to WPPI possession of the Leased Facility and Additional Assets in the condition required under Section 4.2 and the City shall quit the same. WPPI may act to repossess the Leased Facility by such means as are available at law or in equity. Upon repossession, WPPI may:

(A) Operate all, or any portion, of the Leased Facility, MEU Assets and Additional Assets, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Lease Term) and on such conditions and for such purposes as WPPI may determine. WPPI may collect, receive and retain the rents resulting from any operation of the Leased Facility, Additional Assets and MEU Assets by WPPI to the extent necessary to ensure that WPPI receives all but no more than the Rent and either Option Payment or Termination Payment to which it is entitled under the Lease. WPPI may retain a third party to operate the Leased Facility, MEU Assets and Additional Assets on its behalf. While WPPI operates the Leased Facility, Additional Assets and MEU Assets, the City agrees to provide WPPI with sole possession and control of the MEU Assets at no cost to WPPI until WPPI receives net revenues from operations equal to all payments of Rent to which it is entitled under the Lease, as well as the Option Payment or the Termination Payment

due as of such date. Upon a breach of the covenants of this Section 10.1(a)(ii)(A), WPPI may obtain an order of specific performance from a court of competent jurisdiction, requiring the City to give WPPI possession and control of the MEU Assets as provided in this Section 10.1(a)(ii)(A). The City hereby waives (i) any requirement that WPPI post bond or establish damages as a condition to the issuance of any such order and (ii) the claim or defense that WPPI has an adequate remedy at law, and shall not assert a right to bond, proof of damages, or a claim or defense that such a remedy at law exists. The City and Commission also hereby request WPPI to sell power and energy at retail within the City's service area for MEU if an MEU Event of Default occurs and WPPI repossesses the Leased Facility and Additional Assets and operates such assets pursuant to this Section 10.1(a)(ii)(A).

(B) Sell the Leased Facility and Additional Assets and apply any sales proceeds to the payment of Rent and either the Option Payment or the Termination Payment to which it is entitled under the Lease and sue the City for any deficiency;

(iii) WPPI may declare the entire amount of all Rent past due as well as that Rent which would become due and payable during the remainder of the term of the Lease, as if the City had exercised its rights to acquire the Leased Facilities and Additional Assets under Section 8.2 (as determined on Schedule 8.2), to be due and payable immediately.

(iv) WPPI shall be entitled to enforce payment of the indebtedness and performance of the obligations secured hereby and to exercise all rights and powers under this Lease or any Laws now or hereafter in force. Neither the acceptance of this Lease nor its enforcement shall prejudice or in any manner affect WPPI's right to realize upon or enforce any other security now or hereafter held by WPPI (including but not limited to rights under the Lease Reserve Escrow Agreement), it being agreed that WPPI shall be entitled to enforce this instrument and any other security now or hereafter held by WPPI in such order and manner as WPPI may determine in its absolute discretion;

(v) WPPI shall be entitled to reimbursement from the City for any and all attorneys' fees, court costs, and any other expenses reasonably incurred by WPPI in enforcing its rights under this Lease;

(vi) If WPPI determines that it is necessary to terminate the Long Term Power Supply Agreement in order for WPPI to recover all payments of Rent, the Termination Payment, the Option Payment, or any other remedy available to WPPI under this Section 10.1 and required to provide WPPI with a rate of return of 6.5 percent on its investment in the Leased Facility and Additional Assets, the City gives advance consent to such termination, in which event the City and the Commission hereby also provide their advance consent to the termination of the City's membership in WPPI;

(vii) If the City breaches its obligation to reacquire the Leased Facility and Additional Assets under Section 8.1 upon the expiration of the Lease Term, WPPI may obtain an order of specific performance from a court of competent jurisdiction, requiring the City to re-acquire the Leased Facility and the Additional Assets and pay the Termination Payment as provided in Section 8.1. The City hereby waives (i) any requirement that WPPI post bond or establish damages as a condition to the issuance of any such order and (ii) the claim or defense that WPPI has an adequate remedy at law, and shall not assert a right to bond, proof of damages, or a claim or defense that such a remedy at law exists. WPPI may also obtain an order of specific performance requiring the City to comply with Section 10.1(a)(i), if the City fails to reacquire the Leased Facility and Additional Assets after a demand is made by WPPI to the City under Section 10.1(a)(i); and

(viii) WPPI may exercise any other right or remedy that may be available to it under applicable Law to enforce the terms hereof and/or to recover damages for the breach hereof.

(b) City Remedies. If WPPI fails to perform any of its material obligations during the Lease Term, and such default continues unremedied for a period of 90 days after written notice thereof by the City (*provided, however, that such 90-day period shall be extended for an additional 90 days so long as such default is remediable and WPPI is diligently pursuing such remedy*), then the City may, upon written notice to WPPI, declare this Lease to be in default, and at any time thereafter, subject to Section 10.3 and the other terms of this Lease, shall have all remedies available to it at law or in equity.

(c) Remedies cumulative. No remedy herein conferred upon or reserved to WPPI is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Lease Documents to WPPI or to which it may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by WPPI. In no event shall WPPI, in the exercise of the remedies provided in this Lease, be deemed a mortgagee in possession, and WPPI shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

10.2 Limitation on Liability. Notwithstanding any provision to the contrary contained in this Lease, the Parties acknowledge and agree that:

(a) WPPI shall have no personal liability to the City, Commission or their respective successors and permitted assigns for any claim based on or in respect of this Lease or arising in any way from the transactions contemplated hereby (other than

for WPPI's Liens attributable to WPPI), and any recourse shall be solely had against WPPI's interest in the Leased Facility and Additional Assets;

(b) WPPI shall not be liable to the City or Commission for any costs or expenses incurred by the City or Commission in accordance with the fulfillment of their obligations under this Lease or any other Lease Document to which the City or Commission is a party, nor for any claims for damages or losses of the City or the Commission arising out of or related to WPPI's operation of the Leased Facility, MEU Assets and Additional Assets upon an MEU Event of Default.

(c) Notwithstanding anything to the contrary contained herein, no Party shall be liable to another Party under this Lease for any consequential, exemplary or punitive damages. This Section 10.2(c) does not limit the obligation of the City to indemnify WPPI under Article 12.

10.3 No Delay or Omission to be Construed as Waiver. No delay in exercising or omission to exercise any right, power or remedy accruing to a Party upon any breach or default by another Party under this Lease or any other Lease Document to which it is a party shall impair any such right, power or remedy of such Party, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default hereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

10.4 WPPI Option to Purchase. In the event an MEU Event of Default occurs and WPPI repossesses the Leased Facility and the Additional Assets as provided in Section 10.1, the City hereby grants WPPI the option to purchase any or all MEU Assets from the City for the net book value of such MEU Assets that WPPI elects to acquire. WPPI may offset any monies due the City upon exercise of this option to purchase against unpaid obligations of the City under this Lease. The City hereby grants WPPI a security interest in the MEU Assets to secure its obligations under this paragraph, agree to execute and deliver any documents necessary to confirm this grant of a security interest, and agree and acknowledge that WPPI may file financing statements and any other documents necessary to perfect its security interest. The City will provide WPPI with all customer information necessary to maintain the continued operations of the utility, will assign the right to serve MEU customers to WPPI, and will cooperate with WPPI to obtain any Authorizations necessary for WPPI or a purchaser to operate the electric distribution utility. If necessary, the parties will cooperate to obtain PSCW approval of WPPI's purchase of MEU Assets. Upon a breach of the covenants of this Section 10.4, WPPI may obtain an order of specific performance from a court of competent jurisdiction, requiring the City to sell the MEU Assets to WPPI as provided in this Section 10.4. The City hereby waives (i) any requirement that WPPI post bond or establish damages as a condition to the issuance of any such order and (ii) the claim or defense that WPPI has an adequate remedy at law, and shall not assert a right to bond, proof of damages, or a claim or defense that such a remedy at law exists.

10.5 Intention Of Remedy Provisions; Limitations. The intent of the remedy provisions in this Article 10 is to ensure that when exercising one or more remedies under Article 10, WPPI receives all but no more than its expected rate of return of 6.5 percent under the Lease, based on the date when WPPI receives final payment of any and all monies due under the Lease, net of any costs or expenses (including but not limited to reasonable attorneys' expenses) incurred by WPPI in collecting amounts due WPPI. Upon application of any or all remedies, WPPI shall be entitled to recoup the amounts that it has invested in the Leased Facility and Additional Asset plus a rate of return of 6.5 percent on those investments through the date of final payment, net of any costs or expenses (including but not limited to reasonable attorneys' expenses) incurred by WPPI in collecting amounts due WPPI. Provided, however, WPPI's right to recover Rent, the Option Payment and Termination Payment are subject to the provisions of Section 3.8.

10.6 Inapplicability to Indemnification Obligations. The limitations on remedies set forth in Section 10.5 are not applicable to the City's obligation to indemnify WPPI pursuant to Article 12.

10.7 City to Cooperate. The City agrees to cooperate to obtain any consents or approvals required by any Governmental Authority that may be necessary for WPPI to exercise its remedies set forth in Sections 10.1 and 10.4 above.

ARTICLE 11 LIENS

No Party shall directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Encumbrances) on or with respect to the Leased Facility, the Additional Assets, the Improvements or any part thereof or its interest or another Party's interest therein or in this Lease or any other Lease Document to which it is a party.

ARTICLE 12 INDEMNIFICATION OF WPPI

12.1 General Indemnity. The City hereby indemnifies WPPI, its respective officers, directors, employees, representatives and agents (each an "Indemnitee") from, and hold each Indemnitee harmless against, any and all Claims that may at any time be imposed on, asserted against or incurred by any Indemnitee as a result of, or arising out of, or in any way related to: (a) the execution, delivery or performance by the City or the Commission of this Lease (other than payment of Rent, the Termination Payment or the Option Payment) and any other Lease Document to which either the City or the Commission is a party; (b) any breach or default by the City or Commission of any of its

covenants or representations and warranties under this Lease (other than payment of Rent, the Termination Payment or the Option Payment) or any other Lease Document to which it is a party; (c) any violation by the City or Commission of any applicable Law or Authorization; (d) any and all operations of MEU or any other agency or department of the City, both prior to the execution of this Lease and during the term of this Lease; and (e) any Environmental Claim related to the Leased Facility, Additional Assets or MEU Assets, either before or during the Lease Term; *provided, however*, in each case, that in no event shall an Indemnitee be indemnified for any such claims solely caused by reason of the gross negligence or willful misconduct of such Indemnitee.

12.2 Manner of Indemnification. Within thirty days of receipt of written notice by City of a claim for indemnification from WPPI or other Indemnitee(s), the City shall (a) satisfy such claim by the payment of cash to WPPI or other Indemnitee for the full amount of such claim; (b) dispute such claim in a written notice to WPPI and any other Indemnitee specifying in reasonable detail the basis for such dispute; or (iii) to the extent that the indemnification is based upon a claim asserted against WPPI or another Indemnitee by a third party, comply with the provisions of Section 12.3.

12.3 Defense of WPPI. In connection with any claim giving rise to indemnity of WPPI or another Indemnitee hereunder resulting from or arising out of any claim or a legal proceeding by a person other than WPPI, the City, at its sole cost and expense, shall assume the defense of any such claim or proceeding. The City shall select counsel reasonably acceptable to WPPI to conduct the defense of such claims or legal proceedings and, at the City's sole cost and expense, take all steps necessary in the defense or settlement thereof. The City shall not consent to a settlement of, or entry of any judgment arising from, any such claim or legal proceeding without the prior written consent of WPPI or other Indemnitee(s), unless such settlement or judgment can be satisfied solely by the payment of money and the City admits in writing its liability to hold WPPI and other Indemnitee(s) harmless from and against any losses, damages, expenses and liabilities arising out of such settlement, and concurrently with such settlement the City pays into court (or into a mutually acceptable third party escrow) the full amount of all losses, damages, expenses and liabilities to be paid by the city in connection with such settlement. WPPI is entitled to participate in (but not to control) the defense of any such action, with its own counsel and at its own expense. If the City does not assume the defense of any such claim or litigation resulting therefrom in accordance with the terms hereof, or having assumed such defense, fails, in the reasonable judgment of WPPI, to competently and adequately defend the same, or if WPPI reasonably believes that the City will be unable to fully indemnify and defend WPPI or other Indemnitees, WPPI and other Indemnitees may, at the sole cost and expense of the City, defend against such claim or litigation in such manner as they deem appropriate, after giving notice to the City. The parties agree to cooperate in the defense of any such claim by providing necessary and appropriate information, documents and witnesses, to the extent available.

12.4 Application of §893.80 Notice Requirements. The City and Commission hereby waive the provisions of §893.80, Wis. Stats., as to WPPI's rights to claim indemnification under this Article 12 or upon a breach of this Lease. However, nothing in this Lease is intended, or is to be construed, as the waiver by any Party of the provisions of §893.80, Wis. Stats., as to claims of persons or entities that are not parties to this Agreement, it being intended that the City may avail itself of any of the defenses of §893.80, Wis. Stats., in defending any third-party claim pursuant to this Article 12.

12.5 Application of Insurance Proceeds. All indemnification payments due to Buyer under this Article 12 shall be reduced by the amount of any insurance proceeds that are received by Buyer relating to such claim.

12.6 Survival. The provisions of Article 12 shall survive termination of this Lease.

ARTICLE 13 FINANCIAL REPORTING

13.1 Right of Access to Books of Accounts and Utility Staff. With reasonable notice, WPPI will have full, unrestricted access to MEU's books of account and to cooperation from MEU staff in relation thereto.

13.2 Capital Fund Reports. The City and Commission will provide WPPI with an annual summary of activity in the Capital Fund, identifying both sources and uses of monies in the fund, and allow WPPI to inspect and copy any documents and records relating to the Capital Fund.

13.3 Financial Statements. The City and Commission will provide WPPI with monthly financial statements prior to the end of the following month and annual audited financial statements before April 30 of the following year.

13.4 Adoption of Mass Asset Reporting Standards. MEU shall adopt the mass asset reporting standards established for PSCW Class A utilities, so that all mass assets are unitized and inventoried at actual cost per unit. MEU shall unitize all mass assets annually, identifying average cost of installed units no later than 120 days after year end.

ARTICLE 14 NO WARRANTIES; DEEMED SECURITY INTEREST

14.1 UCC INAPPLICABLE; NO WARRANTIES. THIS LEASE IS INTENDED TO SUPERSEDE IN ALL RESPECTS THE PROVISION OF THE

RIGHTS GRANTED UNDER, AND THE OBLIGATIONS IMPOSED BY CHAPTER 411 OF THE WISCONSIN STATUTES. TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY ALL REQUIREMENTS OF LAW, THE CITY HEREBY WAIVES ALL OF ITS RIGHTS AND REMEDIES UNDER SUCH CHAPTER 411. THE CITY ACKNOWLEDGE AND AGREE THAT (a) THE LEASED FACILITY IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE ACCEPTABLE TO THE CITY; (b) THE CITY IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES; (c) WPPI IS NOT A MANUFACTURER THEREOF OR A DEALER IN OR VENDOR OF SUCH KIND; AND (d) THE CITY WILL SELECT, INSTALL AND OPERATE ANY ADDITIONAL ASSETS ACQUIRED BY WPPI. CITY HEREBY ACKNOWLEDGES AND AGREES THAT THE FOREGOING HAS BEEN NEGOTIATED AND IS INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ALL REPRESENTATIONS, WARRANTIES (INCLUDING, WITHOUT LIMITATION, THOSE OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY), OBLIGATIONS AND DUTIES, EXPRESS OR IMPLIED, IMPOSED ON WPPI UNDER CHAPTER 411 OR OTHERWISE BY WISCONSIN STATUTES. CITY ACKNOWLEDGES THAT IT LEASES THE LEASED FACILITY AND ADDITIONAL ASSETS ON AN AS-IS, WHERE-IS BASIS. IN NO EVENT SHALL CITY HAVE ANY RECOURSE AGAINST WPPI FOR ANY DEFECT IN OR EXCEPTION TO TITLE TO THE LEASED FACILITY OR ADDITIONAL ASSETS.

14.2 Security Interest. Notwithstanding the express intent of the parties, should a court of competent jurisdiction determine that this Lease is not a true lease, but rather one intended as security, then solely in that event and for the expressly limited purposes thereof, the City shall be deemed to have hereby granted WPPI a security interest in all of its right, title and interest in and to this Lease, the Leased Facility, Additional Assets and all accessions and substitutions and replacements thereof, and proceeds (including insurance proceeds) thereof (but without the power of the City to dispose of the Leased Facility and Additional Assets); to secure the prompt payment and performance as and when due of all obligations and indebtedness of the City to WPPI, now existing or hereafter created. From time to time the City shall execute, acknowledge and deliver to WPPI a UCC financing statement, fixture filing financing statement or other documents in any form reasonably necessary or requested by WPPI to record, perfect, or otherwise preserve WPPI's interest in the Leased Facility and Additional Assets and a consent by the City to assignment of such security interest to any lender of WPPI.

ARTICLE 15 MISCELLANEOUS

15.1 Applicable Law; Venue. The rights and obligations of the Parties under this Lease shall be governed by, construed, interpreted and enforced in accordance with

the Laws of the State of Wisconsin. Any Party bringing a legal action or proceeding arising out of or relating to this Lease or the transactions that it contemplates shall bring the legal action or proceeding in a state or federal court located in Dane County, Wisconsin. Each Party hereby irrevocably consents and submits to the exclusive jurisdiction and venue of any state or federal court located in Dane County, Wisconsin and waives all objections that it may with respect to such jurisdiction and venue.

15.2 Cure for Unenforceable Provisions; Covenant Not to Sue. The parties agree and acknowledge that should any provision of this Agreement be found by a court of competent jurisdiction or PSCW to be unenforceable, invalid or illegal for any reason, the parties shall take all steps necessary to re-execute the Lease, if re-executing the Lease would cure any invalid, illegal or unenforceable provisions. If it is not possible to re-execute the Lease to cure such invalid, illegal or unenforceable provision, at Buyer's option, the parties shall either (i) modify the Lease to the least extent necessary to cure any invalid, illegal or unenforceable provision or (ii) enter a new agreement governing the Leased Facility and Additional Assets, so that (a) WPPI realizes a 6.5 percent rate of return on its investments in the Utility Financed Leased Facility and the Additional Assets through payments of Rent and Termination Payment or Option Payment, on the same payment terms as are included in the Lease; (b) the City assumes all obligations relating to operation of the Leased Facility and Additional Assets under a triple net lease; (c) the term of the Lease and obligations of the City to reacquire the Leased Facility and Additional Assets at the end of the Lease Term are reaffirmed; (d) WPPI is provided with the remedies set forth in Article 10 and indemnification required under Article 12; and (e) the covenants of Sections 3.4 through 3.7 and Section 4.8 are reaffirmed. If it is not possible to modify the Lease or enter a new agreement so that the Lease contains such terms, WPPI may declare the Lease null and void and repossess the Leased Facility and Additional Assets. The indemnification provisions of Article 12 shall survive any termination of this Lease under this Section 15.2. The City and the Commission hereby agree not to undertake any action to disaffirm this Lease, file any claim or lawsuit or assert any defense or counterclaim that the Lease is unenforceable, invalid, illegal or not properly authorized by any Party, and the City hereby indemnifies WPPI against any breach of this covenant. Buyer does not hereby waive any right to seek enforcement of this Agreement through law or equity.

15.3 Quiet Enjoyment. So long as no MEU Event of Default shall have occurred and be continuing, and subject to the provisions of Article 6, the City shall peaceably and quietly have, hold and enjoy the use, operation and possession of the Leased Facility and Additional Assets for the Lease Term free of any claim or other action by WPPI or anyone rightfully claiming by, through or under WPPI. Such right of quiet enjoyment is independent of, and shall not affect the rights of WPPI (or anyone claiming by, through or under WPPI) otherwise to initiate legal action to enforce, the obligations of the City and Commission under this Lease.

15.4 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein to a Party shall be in writing or shall be produced by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clause (a) or (b) above, in each case addressed as provided below, or to such other address as any Party may designate by written notice to the other Party:

If to WPPI: General Counsel
 WPPI Energy
 1425 Corporate Center Drive
 Sun Prairie, WI 53590

With a copy to: Richard K. Nordeng
 Stafford Rosenbaum LLP
 P.O. Box 1784
 Madison, WI 53701-1784

If to City or City Attorney
Commission: City of Menasha
 140 Main Street
 Menasha, WI 54952-2704

With a copy to: General Manager
 Menasha Utilities
 P.O. Box 340
 Menasha, WI 54932-0340

15.5 Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signed document transmitted by email or fax shall be treated as an original document and the signature of any party on a document transmitted by email or fax shall be considered an original signature.

15.6 Transfer Restrictions.

(a) This Lease shall be binding upon the Parties and their respective successors and permitted assigns. No Party may make a Transfer without the prior written consent of the other Party, and any such Transfer in contravention of this Section 16.7(a) shall be null and void *ab initio*.

(b) Notwithstanding any provision to the contrary contained herein, WPPI may, at any time, without the prior written consent of City or the Commission, assign to any Lenders as collateral security, all of WPPI's rights, benefits, advantages, titles and interests in and to this Lease and each other Lease Document to which it is a party and the Leased Facility and all replacements thereof and substitutions therefore; *provided, however*, that such assignment shall not in any way relieve WPPI of any of its obligations hereunder; *provided, further*, that in the event that any Lender exercise its remedies and forecloses on WPPI's rights, benefits, advantages, titles and interests in and to the Leased Facility and the Lease Documents, then such Lender shall, except to the extent otherwise agreed by City and Commission in writing, be bound by the terms and conditions of this Lease and the other Lease Documents. City and Commission hereby irrevocably consent to any such assignment and to the creation of any such security interest in favor of any Lenders.

(c) The City shall not, without the prior written consent of WPPI, sublease all or any portion of the Leased Facility or the Additional Assets and all replacements thereof and substitutions therefor, or any Improvements, or its rights, benefits, advantages, titles and interest in and to this Lease and other Lease Documents to which it is a party, and any such sublease made in contravention of this Section 16.7(c) shall be null and *void ab initio*.

15.7 Third-Party Beneficiaries. Except as expressly provided herein, none of the provisions of this Lease is intended for the benefit of any Person except the Parties, their respective successors and permitted assigns.

15.8 Entire Agreement. This Lease states the rights of the Parties with respect to the leasing of the Leased Facility and Additional Assets and the other transactions contemplated by this Lease and supersedes all prior agreements, oral or written, with respect thereto, including but not limited to the Term Sheet executed by the Parties.

15.9 Headings and Table of Contents. Section headings and the table of contents used in this Lease (including the Schedules and Exhibits hereto) are for convenience of reference only and shall not affect the construction or interpretation of this Lease.

15.10 Schedules and Exhibits. The Schedules and Exhibits attached hereto, along with all attachments referenced therein, are incorporated herein by reference and made a part hereof.

15.11 No Joint Venture. Any intention to create a joint venture or partnership relation between WPPI and the City and Commission is hereby expressly disclaimed.

15.12 Relationship between City and Commission. The Parties acknowledge that WPPI has required both City and Commission to execute and deliver this Lease in order

to avoid any ambiguity regarding legal authority as to control and management of MEU during the term of this Lease, so that any party with authority over the assets and operations of MEU is bound by this Lease. Nothing in this Agreement is intended to change or modify the relationship between City and the Commission, pursuant to sec. 66.0805, Wis. Stats., in which City acts through the Commission in operating MEU.

15.13 Amendments and Waivers. No term, covenant, agreement or condition of this Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by both Parties and approved by the PSCW.

15.14 Further Assurances. Each Party shall promptly and duly execute and deliver such further documents and assurances for and take such further actions reasonably requested by another Party, all as may be reasonably necessary to carry out the intent and purpose of this Lease.

[SIGNATURE PAGES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, WPPI, City and Commission have caused this Lease to be duly executed and delivered under seal by their respective officers thereunto duly authorized.

City:

CITY OF MENASHA

By: _____
Name: _____
Title: Mayor

By: _____
Name: _____
Title: City Clerk

Commission, on its own behalf and acting on behalf of City:

MENASHA UTILITIES COMMISSION

By: _____
Name: _____
Title: Commission President

WPPI:

WPPI ENERGY

By: _____
Name: _____
Title: _____

- Schedule 1.1 Definitions
- Schedule 3.1(a) Calculation of Base Rent
- Schedule 3.1(b) Calculation of Additional Rent
- Schedule 8.1 Calculation of Termination Payment
- Schedule 8.2 Calculation of Option Payment
- Exhibit A Description Of Leased Facility

DEFINITIONS; INTERPRETATION

A. Interpretation. In each Lease Document, unless a clear contrary intention appears:

- (i) the singular number includes the plural number and vice versa;
- (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Lease Documents, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (iii) reference to any gender includes each other gender;
- (iv) reference to any agreement (including any Lease Document), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (v) reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision;
- (vi) reference in any Lease Document to any Preamble, Recital, Article, Section, Schedule or Exhibit means such Article or Section thereof or Preamble, Recital, Schedule or Exhibit thereto;
- (vii) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to a Lease Document as a whole and not to any particular Article, Section or other provision thereof;
- (viii) "including" (and with the correlative meaning "include") means including without limiting the generality of any description preceding such term; and
- (ix) with respect to any rights and obligations of the parties under the Lease Documents, all such rights and obligations shall be construed to the extent permitted by applicable Law.

B. Computation of Time Periods. For purposes of computation of periods of time under the Lease Documents, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

C. Accounting Terms and Determinations. Unless otherwise specified in any Lease Document, all terms of an accounting character used therein shall be interpreted, all accounting determinations thereunder shall be made, and any financial statements required to be delivered thereunder shall be prepared, in accordance with GAAP.

D. Conflict in Lease Documents. If there is any conflict between the Lease and any other Lease Document, such Lease Documents shall be interpreted and construed, if possible, so as to avoid or minimize such conflict.

E. Definitions. Unless the context otherwise requires, the following defined terms shall have the meanings ascribed to them below:

"Additional Insureds" shall have the meaning given to such term in Section 1.2(b) of Schedule 7.2.

"Additional Assets" means those Improvements acquired by WPPI pursuant to Section 5.3.

"Asset Purchase Agreement" means the Asset Purchase Agreement dated December 8, 2009 by and among WPPI, City and the Menasha Utilities Commission.

"Authorization" means any license, permit, approval, filing, exemption, variance, clearance, entitlement, allowance, franchise or authorization from any Governmental Authority.

"Base Rent" shall have the meaning given to such term in Section 3.1(a) of the Lease.

"Business Day" means any day on which commercial banks are not authorized or required to close in Madison, Wisconsin.

"Capital Fund" means the account with one or more financial institutions for which monies shall be deposited and held, for the restricted purposes set forth in Section 3.5.

"City" shall have the meaning given to such term in the Preamble to the Lease.

"Claims" means liabilities, obligations, damages, losses, demands, penalties, interest, fines, claims, actions, suits, judgments, settlements, and reasonable costs, fees, expenses and disbursements (including legal fees) and expenses and costs of investigation) whether any of the foregoing be founded or unfounded, of any kind and nature whatsoever.

"Commission" shall have the meaning given to such term in the Preamble to the Lease.

"Condemnation" means that all or any portion of the Leased Facility and Additional Assets is taken under the power of eminent domain or sold under the threat of the exercise of that power by a Governmental Authority.

"Condemnation Award" means the net amount that WPPI is to receive as a result of Condemnation of all or a portion of the Leased Facility or the Additional Assets, whether the

award is made as compensation for diminution in value of the City's leasehold or for the taking of the fee title to the Leased Facility or Additional Assets, or as severance damages.

“Confidential Information” means, with respect to a Party, all proprietary and confidential business information and data of such Party that is not generally known by or readily ascertainable by or available to, on a legal or authorized basis, the general public; *provided, however*, “Confidential Information” shall not include any information: (i) which is already known to the receiving Party; or (ii) has become generally known to the public through no wrongful act of the receiving Party or its representatives and agents, (iii) has been received by the receiving Party from a third party without (to the receiving Party’s knowledge) restriction on disclosure and without (to the receiving Party’s knowledge) a breach by the third party of an obligation of confidentiality; or (iv) is independently developed by the receiving Party without use of the Confidential Information received from a disclosing Party.

“Demand Date” shall have the meaning set forth in Section 10.1(a)(i).

“Dollars” and the sign “\$” means the lawful currency of the United States.

“Environmental Claim” means, with respect to any Person, any notice, claim, administrative, regulatory or judicial action, suit, lien, judgment, demand or other communication (whether written or oral) by any other Person alleging or asserting such Person’s liability for investigatory costs, cleanup costs, governmental response costs, damages to natural resources or other property, personal injuries, fines or penalties arising out of, based on or resulting from: (a) the presence, or Release into the environment, of any Hazardous Material at any location, whether or not owned by such Person; or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

“Environmental Law” means any and all Laws, now or hereafter in effect, and any judicial or administrative judgment, relating to the environment, or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or toxic or hazardous substances or wastes into the environment including ambient air, surface water, groundwater, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or toxic or hazardous substances or wastes.

“Event of Loss” means any loss of, destruction or damage to, or taking of the Leased Facility and Additional Assets (or any part thereof).

“Execution Date” means the date of the Lease.

“Fair Market Value” means, with respect to the Leased Facility and the Additional Assets, as of any date, the price a purchaser would pay to purchase such Leased Facility and Additional Assets in an arm’s-length transaction between a willing buyer and a willing seller, neither of them being under any compulsion to buy or sell.

“Five-Year Plan” means the five-year distribution improvements and capital expenditure plan to be prepared annually by MEU as described in Section 4.5.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

“Governmental Authority” means the federal government of the United States, and any state, county or local government or regulatory department, body, political subdivision, commission, agency, instrumentality, ministry court, judicial or administrative body, taxing authority, or other authority thereof (including any corporation or other entity owned or controlled by any of the foregoing) having jurisdiction over any Party, the Leased Facility, the Additional Assets and Improvements, whether acting under actual or assumed authority.

“Hazardous Material” means, collectively, any petroleum or petroleum product, asbestos in any form that is or could become friable, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCB’s), hazardous waste, hazardous material, hazardous substance, toxic substance, contaminant or pollutant, as defined or regulated as such under any Environmental Law including the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response Compensation and Liability Act, as amended, or any similar state statute.

“Improvements” means those modifications, alterations, additions or improvements to the Leased Facility and Additional Assets that involve capital costs and are (a) required or are advisable in accordance with Prudent Utility Practice, (b) necessary for the efficient operation of the Leased Facility or Additional Assets, or (c) required by applicable Law; *provided* that any such modification, alteration, addition, or improvement shall not (i) have a material adverse effect on the value of WPPI’s investment in the Leased Facility and Additional Assets (including an adverse effect on the Fair Market Value, residual value, utility or remaining useful life on the Leased Facility and Additional Assets), (ii) cause any manufacturer’s warranties then in effect on the Leased Facility or Additional Assets to become void, (iii) create any Liens on the Leased Facility or Additional Assets (other than Permitted Encumbrances); or (iv) otherwise cause harm to the Leased Facility or Additional Assets.

“Law” means any statute, law, regulation, ordinance, rule, judgment, order, decree, applicable common law, permit, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority or judicial or administrative body, whether now or hereafter in effect (including any Environmental Law).

“Lease” shall have the meaning given to such term in the Preamble to the Lease.

“Lease Documents” means the Lease, the Lease Reserve Escrow Agreement and the collateral documents required under Sections 3.5 and 3.6.

“Lease Reserve Escrow Agreement” means the Lease Reserve Escrow Agreement entered by WPPI, the Commission and the City, either prior to or concurrently with the execution of this Lease.

“Lease Reserve Fund” means the lease payment reserve fund created under the Lease Reserve Escrow Agreement.

“Lease Term” shall mean twenty (20) years, unless terminated earlier pursuant to the terms and conditions of this Lease.

“Leased Facility” shall have the meaning given to such term in the Recitals to the Lease.

“Lenders” means any banks, bond and commercial paper holders and/or financial institutions (together with their administrative agent, collateral agents, depository banks and other agents) that provide financing to WPPI.

“Lien” means, with respect to any property, any mortgage, lien, pledge, charge, lease, easement, servitude, right of others, security interest or encumbrance of any kind in respect of such property.

“Long Term Power Supply Agreement” means the Long Term Power Supply Agreement between WPPI and the City dated July 18, 1989, as amended by Amendment No. 1 to Long Term Power Supply Agreement dated October 7, 2002.

“Loss Proceeds” means the net proceeds (including insurance proceeds received by WPPI or the City from a third-party (including an insurer) in respect of any Event of Loss or an Event of Total Loss; *provided, however*, that “Loss Proceeds” shall not include any third-party liability insurance proceeds payable directly to a third party.

“Material Adverse Effect” means, with respect to WPPI, a material adverse effect on: (a) the development, design, engineering, procurement, permitting, construction, commissioning, financing, ownership, leasing, use operation or maintenance of the Leased Facility or Additional Assets; (b) the business, operations, prospects, condition (financial or otherwise) or property of MEU or the City; (c) the ability of the City or the Commission to perform its obligations under any of the Lease Documents to which it is a party; or (d) the validity or enforceability of any of the Lease Documents to which the City or the Commission is a party.

“MEU” shall have the meaning given to such term in the Preamble to the Lease.

“MEU Assets” means Improvements and any other assets owned by the City that are used and useful in the continued operation of the electric distribution utility operated under the charge and management of the Commission.

“MEU Event of Default” shall have the meaning given to such term in Article 9 of the Lease.

“Obsolete Component” shall have the meaning given to such term in Section 4.3(b) of the Lease.

“Officer’s Certificate” means, with respect to any Person, a certificate signed by an authorized officer of such Person.

“Ordinary Wear and Tear” means the deterioration of the Leased Facility and Additional Assets which would be reasonably expected to result from operating the Leased Facility and Additional Assets in a manner consistent with Prudent Utility Practice.

"Operating and Maintenance Expenses" means all expenses of MEU that are reflected in MEU's income statement exclusive of interest expense, depreciation and amortization, but which shall also include a monthly accrual for PILOT Payments.

"Option Payment" shall have the meaning provided in Section 8.2, calculated as provided on Schedule 8.2.

"Party" shall mean WPPI, City or the Commission.

"Permitted Encumbrances" means, in respect of any property:

(a) Liens for Taxes, assessments or governmental charges not due and delinquent;

(b) Liens for Taxes, assessments or governmental charges already due, but whose validity or amount is being contested in good faith, by appropriate proceedings initiated timely and diligently prosecuted, and for which adequate reserves in accordance with GAAP are maintained against any adverse determination of such contest or a bond in the full amount thereof has been posted;

(c) Construction, carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business or incident to the construction or improvement of such property in respect of obligations which are not overdue for a period of more than 30 days or which are being contested in good faith, by appropriate proceedings initiated timely and diligently prosecuted, and for which adequate reserves in accordance with GAAP are maintained against any adverse determination of such contest or a bond in the full amount thereof has been posted; and

(d) easements, rights of way, reservations, restrictions, covenants, party-wall agreements, agreements for joint or common use, landlords' rights of distraint and other similar encumbrances affecting such property, granted in the ordinary course of business, which in the aggregate are not material in amount and which do not in the aggregate materially detract from the value of such property or impair the use of such property for the purposes for which it is held.

"Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, an unincorporated organization and any government or political subdivision thereof.

"PILOT Payment" shall have the meaning provided in Section 4.8.

"Prevailing Party" means, with respect to an arbitration proceeding conducted pursuant to Section 16.2(a) of this Lease, that party whose legal position in any such controversy or claim is the more substantially correct.

"Prudent Utility Practice" means, at a particular time: (a) any of the practices, methods and acts engaged in or approved by a significant portion of the United States electric distribution industry prior to such time and by constructors, owners, operators or maintainers of facilities

similar in size and operational characteristics to the Leased Facility, Additional Assets and Improvements; or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with applicable law, environmental considerations, good business practices, reliability, safety, expedition and the manufacturers' maintenance requirements; *provided* that "Prudent Utility Practice" is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of the acceptable practices, methods or acts generally accepted in such industry having due regard for, among other things, manufacturers' maintenance requirements, the requirements of governmental authorities and any applicable agreements.

"PSCW" means the Public Service Commission of Wisconsin or any successor thereto.

"Release" means any "release" as such term is defined in 42 U.S.C. § 9601(22) or any successor law thereto.

"Rent" shall mean Base Rent and Additional Rent.

"Rent Payment Date" means the 15th day of each calendar month or the next Business Day during the Lease Term.

"Taxes" and "Tax" mean any and all fees (including documentation, recording, license and registration fees), taxes (including income (whether net, gross or adjusted gross), gross receipts, lease, sublease, sales, rental, use, turnover, value-added, property, excise and stamp taxes), levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon or additions thereto imposed by any Governmental Authority.

"Termination Payment" shall have the meaning provided on Schedule 8.1, as calculated on Schedule 8.1.

"Transfer" means the sale, assignment, conveyance, or other direct or indirect disposition by a Party of all or any part of its rights, benefits, advantages, titles or interest in and to this Lease and each other Lease Document to which it is a party and the Leased Facility and all replacements thereof and substitutions thereafter, including all Improvements thereto.

"UCC" means the Uniform Commercial Code of Wisconsin.

"Utility Financed Leased Facility" means those assets included in the Leased Facility that were acquired by the City with utility financing.

"WPPI" shall have the meaning given to such term in the Preamble to the Lease.

BASE RENT CALCULATION AND EXAMPLE

Base Rent payments will equal an amount necessary to provide WPPI with a return on investment of 6.5% over the term of the Lease for the net book value at closing of the Asset Purchase Agreement of the Utility Financed Leased Facility, with the City making level lease payments over the 20-year period. Based on the net book value of the Utility Financed Leased Facility as of December 31, 2008 of \$13,366,565, the monthly lease payments would be \$99,657.52 and the annual lease payments would be \$1,195,890.22; the amount of these payments will be adjusted at closing based on the net book value of the Electric Assets financed by the utility as of closing. A spreadsheet illustrating the calculation of Base Rent payments is attached.

DRAFT

ADDITIONAL RENT CALCULATION AND EXAMPLE

If WPPI acquires Additional Assets, the Additional Rent to be paid by the City pursuant to Section 3.1(b) will be an amount sufficient to enable WPPI to recover depreciation of the Additional Assets during the remaining term of the Lease, plus receive an annual rate of return of 6.5% on WPPI's entire investment in the Additional Assets. These additional monthly lease payments will equal the sum of two components. The first component will be a level monthly payment based on the book depreciation of the Additional Assets over the remaining lease term, with WPPI also receiving an annual rate of return of 6.5% on the book depreciation amount for the remaining lease term. The second component will be a monthly payment equal to the net book value of the Additional Assets as of the end of the lease term, multiplied by 6.5%, divided by twelve. A spreadsheet illustrating the calculation of Additional Rent payments is attached.

DRAFT

CALCULATION OF TERMINATION PAYMENT

The Termination Payment shall be (a) one dollar (\$1) for the Leased Facility, plus (b) the net book value of all Additional Assets upon termination of the Lease; plus (c) all unpaid Rent and any other amounts due to WPPI under the Lease.

DRAFT

CALCULATION OF OPTION PAYMENT AND EXAMPLE

If the City exercises its non-assignable option to acquire the Leased Facility and Additional Assets as provided in Section 8.2 of the Lease, the City shall pay WPPI an Option Price equal to an amount that, when added to previous payments of Base Rent and Additional Rent made by City to WPPI, provides WPPI with a 6.5 percent rate of return through the date of closing on all monies paid by WPPI to acquire the Utility Financed Leased Facility and Additional Assets, plus all other amounts due to WPPI under the Lease. A spreadsheet illustrating the calculation of the Option Price is attached.

DRAFT

EXHIBIT A
TO THE LEASE

DESCRIPTION OF LEASED FACILITY

The Leased Facility consists of the following assets:

[To Be Determined At Closing]

DRAFT

WPPI'S Proposed Asset Purchase and Leaseback of
Menasha Electric Utility Assets
PSC Approvals and Rulings Sought

- A. Approval under section 66.0817 of the proposed asset sale from Menasha to WPPI. The Commission should approve, and adopt as its own terms and conditions of approval, the terms and conditions in the proposed asset sale, including approval of WPPI's proposed purchase of Menasha's Ownership Shares in ATC.
- B. Approval under section 196.80 of the proposed lease of the assets from WPPI to Menasha and the rental of such assets by Menasha from WPPI. As with the asset purchase agreement, the Commission should approve, and adopt as its own terms and conditions of approval, the terms and conditions in the proposed lease.
- C. A declaratory ruling that consummation of the sale and lease transaction shall not alter the extent of Commission regulation over WPPI.
- D. Approval under section 196.20 of revised rates for the MEU, including funding through rates of a Capital Fund that provides MEU cash flow sufficient to acquire additional assets as necessary after the sale/lease transaction.



321 Milwaukee Street • P.O. Box 340 • Menasha, WI 54952-0340 • www.menashautilities.com

Date: December 3, 2009

To: Menasha Utilities Commission
Menasha City Council

From: Dick Sturm and Melanie Krause, Co-General Managers Menasha Utilities

RE: PSC Application

The City of Menasha, acting through the Menasha Utilities Commission, will submit a joint application with WPPI Energy to the Public Service Commission of Wisconsin (PSC) seeking approval of the proposed sale/leaseback transaction between the parties as well as an adjustment in current electric rates (a separate summary of the transaction in being provided in a separate memorandum). Based on the current draft of the rate application the overall impact on the electric utility revenue requirement of this transaction and operational cost increases since our last rate case in 2006 is 1.74% or \$767,033. Based on the cost of service analysis typically applied by the PSC, the impact to each customer class will be different. These numbers are all subject to PSC review and will be based on the PSC's final analysis of the cost of providing electric service to each rate class.

<u>Potential impact to rate class</u>	
Residential	6.1%
Commercial	6.0%
Industrial	0.6-.8%
Street Lighting	14.0%
Security Lighting	10.1%
Athletic Lighting	8.8%

The average residential customer monthly bill will increase from \$68 to \$72. Menasha Utilities' current residential rates are approximately 19% lower than WE Energies, the utility that provides service outside Menasha. After the pending rate cases are complete for both Menasha and WE Energies the Menasha Utilities' residential rates are expected to still be 18% lower than WE Energies' rates.

RESOLUTION NO. _____

RESOLUTION OF THE MENASHA UTILITIES COMMISSION APPROVING A
PRELIMINARY ASSET SALE AGREEMENT WITH WPPI ENERGY INC. FOR THE
SALE OF CERTAIN CITY OF MENASHA ELECTRIC UTILITY ASSETS

WHEREAS, the City of Menasha and staff of Menasha Utilities, together with a team of expert consultants and legal advisors have been actively working to develop a work-out strategy with respect to outstanding steam utility related financial obligations ("the Work-out Process") and with the goal of minimizing the impact of the cessation in operation of the City's steam facility ("Steam Facility") on the City, its taxpayers, its steam customers, and bondholders; and

WHEREAS, events beyond the reasonable control of the City and the Menasha Utilities Commission made it impossible for the Steam Facility to generate sufficient revenues to recover its operation and maintenance costs, to meet debt coverage requirements, and to perform its obligations; and

WHEREAS, the City 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 are now in default; and

WHEREAS, a report prepared on behalf of the City by the financial firm of Stern Brothers & Co. concluded, based on an analysis of the financial viability of the Steam Facility, that the facility would not generate sufficient revenues to provide payment for any of the outstanding obligations issued by the City to finance the Steam Facility and recommended that the City cease operating the facility; and

WHEREAS, after exhaustive consideration of all other options, the City concluded that it was in the best interests of the City and its taxpayers to cease operation of the Steam Facility, which operations ceased on October 9, 2009; and

WHEREAS, the City has entered into a release and settlement agreement with two of its three former Steam Facility customers, settling all claims with regard to the Steam Facility, but has yet to reach a resolution of claims brought by the third former customer, whose claims exceed \$3 million; and

WHEREAS, on September 18, 2009, holders of the Revenue BANS filed a class action complaint in the United States District Court-Northern District of Indiana, Case No. 4:09CV0064, against the City, Menasha Utilities and the Steam Facility, alleging certain claims and causes of action with respect to the Revenue BANS; and

WHEREAS, as part of the Work-out Process, the City has carefully considered possible work-out strategies and has determined that the best opportunity to achieve a reasonable resolution of the bondholders' claims and the claims of other Steam Facility creditors and to help to protect the future financial health of the City is to enter into a proposed sale/leaseback transaction with WPPI Energy, Inc., under which the City would sell certain assets of the City's electric utility to WPPI Energy and then lease back such assets in order to provide a substantial source of funds for the Work-out Process; and

WHEREAS, the City has authority to sell any complete public utility plant it owns pursuant to Wis. Stat. ' 66.0817, subject to the approval of the Public Service Commission of Wisconsin and a local referendum seeking approval of the sale by a majority of those voting on the question; and

WHEREAS, the proposed terms of the preliminary asset sale agreement between the City and WPPI and associated lease agreement may be summarized as follows:

1. The City will sell substantially all the distribution assets of the City's electric utility and the utility administration building to WPPI Energy and will lease back the assets for 20 years at net book value.
2. The lease is structured as a capital lease so that the transaction will be viewed for tax purposes as a loan, allowing the City to retain the payments in lieu of tax the City receives from its electric utility. These payments will be used to pay debt service on the City's general obligation debt associated with the Steam Facility.
3. The City will also sell to WPPI Energy the City's ownership interests in the American Transmission Company.
4. The total purchase price is approximately \$18,156,818 (which price will be updated at the time of closing). This price includes a \$2.2 million premium that will not be recovered by WPPI Energy through the lease. WPPI Energy will earn a 6.5% return on the full amount of its costs of the transaction, less the premium amount.
5. The electric utility will be separated from the currently combined electric and water utilities, but will remain under the charge and management of the Menasha Utilities Commission in accordance with Wis. Stat. ' 66.0805.
6. At the end of the lease term, the City will buy back the electric utility for a nominal sum.
7. The transaction is conditioned on a number of regulatory approvals and on the City reaching a global settlement of all claims related to the Steam Facility. These regulatory approvals include: approval by the

Public Service Commission of Wisconsin of the sale/leaseback transaction as well as updated electric utility rates and approval of the Wisconsin Department of Revenue of the capital lease treatment of the transaction so that the City is regarded as the owner of the electric utility for tax purposes; and

WHEREAS, the proposed disposition of the proceeds from the sale may be summarized as follows:

The proceeds of the sale will be used to: (1) defease, redeem or satisfy, to the extent necessary, the City's existing electric utility debt; (2) establish a lease reserve fund equal to one year's lease payment to WPPI Energy; (3) establish a capital acquisition fund of \$1 million; (4) establish an adequate working capital fund; and (5) reimburse WPPI Energy for its external legal and consulting expenses relating to the proposed transaction. Finally, the proceeds of the sale in excess of the requirements of the preliminary asset sale and lease agreements and Wis. Stat. ' 66.0811(2) will be used to satisfy claims of the holders of the Revenue BANs and other creditors of the Steam Facility; and

WHEREAS, the proposed provisions to be made to protect holders of obligations against the assets to be sold may be summarized as follows:

The City currently has outstanding four revenue bond issues issued to finance improvements to the combined water and electric utilities ("Combined Utility"), as follows:

1. \$7,015,000 Combined Utility Revenue Refunding Bonds, Series 2005, dated December 28, 2005 ("2005 Bonds");
2. \$12,061,890 Combined Utility Revenue Bonds, Series 2006, dated April 26, 2006 ("2006 Bonds");
3. \$779,363 Combined Utility Revenue Bonds, Series 2007, dated April 11, 2007 ("2007 Bonds"); and
4. \$678,908 Combined Utility Revenue Bonds, Series 2009, dated April 22, 2009 ("2009 Bonds").

The 2006 Bonds, 2007 Bonds and 2009 Bonds issued to finance water utility improvements will be restructured, with the consent of the holders thereof, so they are secured solely by net revenues of the water utility. The 2005 Bonds, sold to investors in the bond market, are expected to be defeased, either prior to or contemporaneously with the proposed sale of the electric utility assets to WPPI Energy, with funds on hand in the electric utility, proceeds of the proposed sale of the electric utility assets to WPPI Energy, and/or a portion will be refunded through the issuance of revenue bonds payable solely from the net revenues of the separated water utility; and

WHEREAS, the terms of the preliminary asset sale agreement and lease agreement require that each agreement be entered into by both the City and the Menasha Utilities Commission;

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

1. That the preliminary asset sale agreement ("Sale Agreement") and the associated lease back agreement ("Lease Agreement") among the City, the Menasha Utilities Commission, and WPPI Energy, as described above and as presented to the Commission by the Mayor, the City Attorney, and the Commission's special counsel, are hereby approved.

2. That the Menasha Utilities Commission recommends to the Common Council of the City of Menasha that the Common Council authorize and direct the Commission President or his designee to execute the Sale Agreement and, upon closing of the sale transaction, to execute and deliver the Lease Agreement as required by the Sale Agreement and, in consultation with legal counsel, to take all other necessary actions in support of the transaction, including submitting, on behalf of the City, a joint application with WPPI Energy to the Public Service Commission of Wisconsin seeking approval of the transaction and an adjustment in current electric rates.

Approved on December ____, 2009.

MENASHA UTILITIES COMMISSION

By

President

Vice President