

It is expected that a Quorum of the Personnel Committee, Board of Public Works, and Common Council 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
ADMINISTRATION COMMITTEE
Third Floor Council Chambers
140 Main Street, Menasha
January 4, 2010
6:30 PM
or immediately following Common Council**

AGENDA

- A. CALL TO ORDER
- B. ROLL CALL/EXCUSED ABSENCES
- C. MINUTES TO APPROVE
 - 1. [Administration Committee, 12/21/09](#)
- D. ACTION ITEMS
 - 1. [Division of Public Health Contract #17539 for Public Health Emergency Preparedness, Jan. 1, 2010-Dec. 31, 2010, and authorized signature](#)
 - 2. Grant Agreements between Winnebago County and City of Menasha for the term Jan. 1, 2010 to Dec. 31, 2010 for:
 - [a\) Senior Center Supervisor](#)
 - [b\) Senior Center Activity Coordinator](#)
 - [c\) Older Adult Health Screening Program](#)
 - 3. [First National Bank Fox Valley Wire Transfer Services Agreement](#)
- E. 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."

CITY OF MENASHA
ADMINISTRATION COMMITTEE
Third Floor Council Chambers
140 Main Street, Menasha
December 21, 2009
MINUTES

DRAFT

A. CALL TO ORDER

Meeting called to order by Chairman Wisneski at 8:25 p.m.

B. ROLL CALL/EXCUSED ABSENCES

PRESENT: Ald. Zelinski, Englebert, Benner, Roush, Taylor, Wisneski, Pack, Hendricks
ALSO PRESENT: Mayor Merkes, CA/HRD Captain, PC Stanke, DPW Radtke, CDD Keil,
C/T Stoffel, Clerk Galeazzi

C. MINUTES TO APPROVE

1. [Administration Committee, 12/7/09](#)

Moved by Ald. Englebert, seconded by Ald. Pack to approve minutes.
Motion carried on voice vote.

D. ACTION ITEMS

1. [Appeal of Denial of Operators License – Stacie Christie](#)

PC Stanke explained he denied Ms. Christie an Operator's License because of two OWI convictions in seven years. The seconded offence was March, 2009, less than one year.

Ms. Christie spoke on the importance of the bartending job and would like to move on with her life.

Discussion ensued on following the guidelines created by the Police Dept. for issuing Operator's License.

Moved by Ald. Pack, seconded by Ald. Zelinski to deny the appeal
Motion carried on voice vote.

2. [2010 Impound Agreement between City of Menasha and Fox Valley Humane Association](#)

PC Stanke explained this is a renewal contract and the cost is based on the number of animals picked up the previous year. There is an additional charge for pickup by the Fox Valley Humane Society.

Mayor Merkes explained staff has checked with other humane societies and their options are limited.

Moved by Ald. Englebert, seconded by Ald. Benner to recommend approval to Common Council

Motion carried on voice vote

3. [Pitney Bowes Mailing System Rental Agreement](#)

C/T Stoffel explained this agreement will replace the current contract that is in effect until March 2010. The new equipment will be installed at that time.

Moved by Ald. Englebert, seconded by Ald. Pack to recommend approval to Common Council

Motion carried on voice vote.

4. Consideration of Listing Agreements for City owned Commercial Properties at Midway Business Park and Province Terrace.

Listing contracts were submitted by Bomier Properties and Drifka Group.

Ald. Pack expressed concern there may be a conflict of interest with Drifka Group, as part owners of Midway Crossing Development who also has commercial properties on Province Terrace.

Moved by Ald. Pack, seconded by Ald. Englebert to recommend to Common Council approval of Listing Agreement with Bomier Properties for City owned commercial properties at Midway Business Park and Province Terrace.

Motion carried on voice vote

E. ADJOURNMENT

Moved by Ald. Taylor, seconded by Ald. Pack to adjourn at 8:39 p.m.

Motion carried on voice vote.

Respectfully submitted by
Deborah A. Galeazzi, WCMC
City Clerk

**DIVISION OF PUBLIC HEALTH
CONTRACT AGREEMENT
DPH CONTRACT #17539
Public Health Emergency Preparedness (PHEP)**

Contract Preamble

This Contract Agreement is entered into for the period January 1, 2010 through December 31, 2010, by and between the State of Wisconsin represented by its Division of Public Health of the Department of Health Services, whose principal business address is One West Wilson Street, PO Box 2659, Madison WI 53701-2659, hereinafter referred to as Contractor, and **City of Menasha Health Department**, whose principal business address is 316 Racine Street, Menasha, WI 54952-3190, hereinafter referred to as Contractee.

The Contractee address above is the address to which payments shall be mailed. If any legal notices required to be sent to the Contractee in the execution of this Contract Agreement should be sent to an address different from the Contractee address noted above, that address should be provided below:

Whereas, the Contractor wishes to purchase services from the Contractee as it is authorized to do by Wisconsin law; and Whereas, the Contractee is engaged in furnishing the desired services; Now, therefore, the Contractor and the Contractee agree as follows:

I. SERVICES TO BE PROVIDED

The Contractee agrees to provide services consistent with the purposes and conditions of the objectives that it has agreed to attain within the contract period. A detailed description of the objectives to be attained and the documentation associated with that attainment is part of this Contract Agreement as listed in Exhibits I and II, which are attached to this Agreement. The Contractee also agrees to provide to the Contractor documentation (as agreed to in negotiations with the Contractor) of the attainment of those objectives no later than 30 days after the end of the contract period or as specified in Exhibit II.

II. CONTRACT ADMINISTRATION

The Contractor's Contract Administrator is Rebecca Hovarter of the Division of Public Health, whose principal business address is 200 N. Jefferson Street, Suite 511, Green Bay, WI 54301-5123. The telephone number of the Contractor's Contract Administrator is (920) 448-5230. In the event its Contract Administrator is unable to administer this Contract Agreement, the Contractor will contact the Contractee and designate a new Contract Administrator.

The Contractee's Contract Administrator is **Sue Nett**, whose principal business address is 316 Racine Street, Menasha, WI 54952-3190. The telephone number of the Contractee's Contract Administrator is (920) 967-3520. In the event its Contract Administrator is unable to administer this Contract Agreement, the Contractee will contact the Contractor and designate a new Contract Administrator.

III. PAYMENT LIMIT

The Contractor agrees to pay the Contractee in accordance with the terms and conditions of this Contract Agreement, an amount not to exceed **\$25,893**. This amount is contingent upon receipt of sufficient funds by the Contractor.

The Contractor will not make payments for costs in excess of the Contract Agreement amounts or for costs incurred outside the contract period or for costs that are inconsistent with applicable State and Federal allowable cost policies. The Contractor can make payments in excess of the Contract Agreement amounts based on performance-based incentive funds pursuant to Section XXIII.

IV. PAYMENT PROCESS

A. The Contractor, following execution of this Contract Agreement, shall pay to the Contractee one month's estimated operating expenses of the contract amount for each of the first three months of this Agreement. If any prepayments are made, these prepayments may be recovered from future payments (see paragraph 2 below) due the Contractee under this Agreement if the Contractor determines that such prepayments are in excess of the Contractee's reported expenses.

B. Payments will be made monthly based on expense reports submitted by the Contractee on the DES F-80855 CARS Expenditure Report. Claims for reimbursement of allowable costs shall be submitted to the Contractor no later than the fifteenth (15th) day of the month following the month in which costs are incurred. The Contractee shall report, by Contractor assigned profile number, all allowable costs plus any required matching funds stipulated in the reporting instructions for this grant which are incorporated by reference. See the Department's Allowable Cost Policy Manual.

C. The Contractee shall submit the request for reimbursement (DES F-80855) to the BFS/CARS Unit, Department of Health Services, Division of Management and Technology, PO Box 7850, Madison WI 53707-7850, with one copy to the Contract Administrator. Payments and reported expenses will be reconciled by the Department in accordance with state procedures.

D. If the Contractor determines, after notice to the Contractee and opportunity to respond, that payments were made that exceeded allowable costs, the Contractee shall refund the amount determined to be in excess within 30 days of invoicing or notification by the Department. The Contractor may, at its sole discretion, effectuate such refund by withholding money from future payments due the Contractee at any time during or after the contract period. The Contractor also may recover such funds by any other legal means.

E. If the Contractee has failed to maintain quality criteria or proposed progress towards achievement of contract objectives as determined by the Contractor, the Contractor can make reductions in the monthly payment pursuant to Section XVI.

F. All payments shall be released by the Department on the last business day before the fifth (5th) day of the month for municipalities, or the last business day of each month for non-municipalities, with the exception that the payment that would normally be released on the last working day of June shall be released instead on the first working day of July. Checks will be mailed to the Contractee's principal business address unless the Contractee requests, in writing, subject to approval, that the Department mail the checks to a different address.

V. PROGRAM REPORTING

A. The Contractee shall comply with the program reporting requirements of the Contractor as specified during the negotiation process and as stated in Exhibits I and II of this Contract Agreement. The required reports shall be forwarded to the Contractor's Contract Administrator according to the schedule as specified in Exhibits I and II.

B. Failure to submit the reports specified in the reporting instructions may result in the Contractor rendering liquidated damages pursuant to Section XVI of this Contract Agreement.

VI. STATE AND FEDERAL RULES AND REGULATIONS

A. The Contractee agrees to meet State and Federal laws, rules and regulations, and program policies applicable to this Contract Agreement.

B. The Contractee agrees to comply with Public Law 103-227, also known as the Pro-Children Act of 1994, which prohibits tobacco smoke in any portion of a facility owned or leased or contracted for by an entity which receives Federal funds, either directly or through the State, for the purpose of providing services to children under the age of 18.

C. Affirmative Action Plan

1. An Affirmative Action Plan is a written document that details an affirmative action program. Key parts of an affirmative action plan are: (1) a policy statement pledging nondiscrimination and affirmative action employment, (2) internal and external dissemination of the policy, (3) assignment of a key employee as the equal opportunity officer, (4) a workforce analysis that identifies job classifications where there is an under representation of women, minorities, and persons with disabilities, (5) goals must be directed to achieving a balanced workforce, specific and measurable, having an implementation target date between six months and two years, and having a plan of action or description of procedures to implement the goals, (6) revision of employment practices to ensure that they do not have discriminatory effects, and (7) establishment of internal monitoring and reporting systems to regularly measure progress.

2. An Affirmative Action Plan is required from a Contractee who receives a contract from the Contractor in the amount of \$25,000 or more and who has a workforce of twenty-five (25) or more employees as of the award date, unless the Contractee is exempt by criteria listed in the Wisconsin Office of Contract Compliance, Department of Administration's Instruction for Vendors Affirmative Action Requirements (DOA-3021P (R06/96) s. 16765, Wis. Stats.), page 2. Universities, other states, and local governments, except those of the State of Wisconsin who receive state or federal contracts over \$25,000, must submit Affirmative Action Plans in the same manner as other Contractees.

3. In addition, for agreements of twenty-five thousand (\$25,000) or more, regardless of workforce size, the Contractee shall conduct, keep on file, and update annually, a separate and additional accessibility self-evaluation of all programs and facilities, including employment practices for compliance with ADA regulations, unless an updated self-evaluation under Section 504 of the Rehabilitation Act of 1973 exists which meets the ADA requirements. Contractees are to contact the Affirmative Action/Civil Rights Compliance Office, Department of Health Services, One West Wilson Street, Room 561, PO Box 7850, Madison WI 53707-7850, for technical assistance on Equal Opportunity.

D. Civil Rights Compliance

1. For agreements for the provision of services to clients, the Contractee must comply with Civil Rights requirements. Contractees with an annual workforce of less than twenty-five (25) employees, regardless of contract amount, and Contractees with contracts of less than \$25,000 are not required to submit a Civil Rights Compliance Action Plan; however, they must submit a Civil Rights Compliance Letter of Assurance. Contractees with an annual workforce of twenty-five (25) employees or more and contract agreements of \$25,000 or more shall submit a written Civil Rights Compliance Plan which covers a three-year period within fifteen (15) working days of the award date of the agreement or contract.

2. The Contractee assures that it has submitted to the Contractor's Affirmative Action /Civil Rights Compliance Office a current copy of its three-year Civil Rights Compliance Action Plan for meeting Equal Opportunity Requirements under Title VI and VII of the Civil Rights Act of 1964, Section 503 and 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Health Service Act, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Omnibus Reconciliation Act of 1981, the American with Disabilities Act (ADA) of 1990, and the Wisconsin Fair Employment Act. If the Plan was reviewed and approved during the previous year, a plan update must be submitted for this Contract Agreement period.

3. No otherwise qualified person shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any manner on the basis of race, color, national origin, sexual orientation, religion, sex, disability or age. This policy covers eligibility for and access to service delivery, and treatment in all programs and activities. All employees of the Contractee are expected to support goals and programmatic activities relating to nondiscrimination in service delivery.

4. No otherwise qualified person shall be excluded from employment, be denied the benefits of employment or otherwise be subjected to discrimination in employment in any manner or team of employment on the basis of age, race, religion, sexual orientation, color, sex, national origin or ancestry, disability (as defined in Section 504 and the American with Disability Act of 1990), or association with a person with a disability, arrest or conviction record, marital status, political affiliation, or military participation, unfair honesty testing and genetic testing, and use or non-use of lawful products outside of working hours. All employees of the Contractee are expected to support goals and programmatic activities relating to non-discrimination in employment.

5. The Contractee shall post the Equal Opportunity Policy, the name of the Equal Opportunity Coordinator and the Limited English Proficiency Coordinator, and the discrimination complaint process in conspicuous places available to applicants and clients of services, and applicants for employment and employees. The complaint process will be according to the Contractor's standards and the Contractee shall post the complaint process notice translated into the major primary languages of the limited English Proficient (LEP) participants in their service area. The notice will announce the availability of free oral interpretation of services if needed. The Contractee shall not request interpretation services from family members, friends and minors.

6. The Contractee agrees to comply with the Contractor's guidelines in the State of Wisconsin Department of Workforce Development and Department of Health Services, Affirmative Action, Equal Opportunity, Limited English Proficiency and Civil Rights Compliance Plan for Profit and Non-Profit Entities DWSD-14045 (R. 11/2003)) or subsequent revisions.

7. Requirements herein stated apply to any subcontracts or grants. The Contractee has primary responsibility to take constructive steps, as per the State of Wisconsin Department of Workforce Development and Department of Health Services, Affirmative Action, Equal Opportunity, Limited English Proficiency and Civil Rights Compliance Plan for Profit and Non-Profit Entities DWSD-14045 (R. 11/2003), to ensure the compliance of its subcontractors. However, where the Contractor has a direct contract with another Contractee's subcontractor, the Contractee need not obtain a Subcontractor or Subgrantee Civil Rights Compliance Plan or monitor that subcontractor.

8. The Contractor will monitor the Civil Rights Compliance of the Contractee. The Contractor will conduct reviews to ensure that the Contractee is ensuring compliance by its subcontractors or grantees according to guidelines in the State of Wisconsin Department of Workforce Development and Department of Health Services, Affirmative Action, Equal Opportunity and Limited English Proficiency, Civil Rights Compliance Plan for Profit and Non-Profit Entities, DWSD- 14045 (R. 11/2003). The Contractee agrees to comply with Civil Rights monitoring reviews, including the examination of records and relevant files maintained by Contractee, as well as interviews with staff, clients, and applicants for services, subcontractors, providers, and referral agencies. The reviews will be conducted according to Department procedures. The Contractor will also conduct reviews to address immediate concerns of complainants.

9. The Contractee agrees to cooperate with the Contractor in developing, implementing and monitoring corrective action plans that result from complaint investigations or monitoring efforts.

E. The Contractee agrees that it will: (1) hire staff with special translation or sign language skills and/or provide staff with special translation or sign language skills training, or find qualified persons who are available within a reasonable period of time and who can communicate with limited or non-English speaking or speech or hearing-impaired clients at no cost to the client; (2) provide aids, assistive devices and other reasonable accommodations to the client during the application process, in the receipt of services, and in the processing of complaints or appeals; (3) train staff in human relations techniques, sensitivity to persons with disabilities and sensitivity to cultural characteristics; (4) make programs and facilities accessible, as appropriate, through outstations, authorized representatives, adjusted work hours, ramps, doorways, elevators, or ground floor rooms, and Braille, large print or taped information for the visually or cognitively impaired; (5) post and/or make available informational materials in languages and formats appropriate to the needs of the client population.

VII.PRIVACY AND CONFIDENTIAL INFORMATION

- A. The Contractee shall not use Confidential Information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractee shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents ("Representatives") who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.
- B. Contractee shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation, whether physically or electronically.
- C. Contractee shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by Contractee on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Contractee shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed.
- D. If requested by the State, Contractee shall return or destroy all Individually Identifiable Health Information and Personally Identifiable Information it holds upon termination of this Agreement
- E. Definitions used herein:

1. "Confidential Information" means all tangible and intangible information and materials accessed or disclosed in connection with this Agreement, in any form or medium (and without regard to whether the information is owned by the State or by a third party), that satisfy at least one of the following criteria: (i) Personally Identifiable Information; (ii) Individually Identifiable Health Information; (iii) non-public information related to the State's employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information designated as confidential in writing by the State.

2. "Individually Identifiable Health Information" means information that relates to the past, present, or future physical or mental health or condition of the individual, or that relates to the provision of health care in the past, present or future, and that is combined with or linked to any information that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

3. "Personally Identifiable Information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (d) the individual's DNA profile; or (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

VIII. SUBCONTRACTS

- A. The Contractee may subcontract all or part of this Contract Agreement as agreed to during contract negotiation. The Contractor reserves the right of approval for any subcontracts and the Contractee shall report information relating to subcontracts to the Contractor. A change in a subcontractor or a change from direct service provision to a subcontract may only be executed with the prior written approval of the Contractor. In addition, Contractor approval may be required regarding the terms and conditions of the subcontracts, and the subcontractors selected. Approval of the subcontractors will be withheld if the

Contractor reasonably believes that the intended subcontractor will not be a responsible provider in terms of services provided, objectives to be attained, or required quality criteria.

B. The Contractee retains responsibility for fulfillment of all terms and conditions of this Contract Agreement when it enters into sub-contractual agreements and will be subject to enforcement of all the terms and conditions of this Agreement.

C. Recoupment of Contractor payments to the Contractee for failure to comply with either the attainment of contract objectives or the maintenance of quality criteria by either the Contractee or its subcontractor(s) will be made from the Contractee.

IX. GENERAL PROVISIONS

A. Any payments of monies to the Contractee by the Contractor for services provided under this Contract Agreement shall be deposited in a bank with Federal Deposit Insurance Corporation (hereinafter FDIC) insurance coverage. Any balance exceeding FDIC coverage must be collaterally secured.

B. The Contractee shall conduct all procurement transactions in a manner that provides maximum open and free competition.

C. The Contractee shall not engage the services of any person or persons concurrently employed by the State of Wisconsin, including any Department, commission or board thereof, to provide services relating to this Contract Agreement without the written consent of the employer of such person or persons and of the Contractor.

D. This Contract Agreement is voidable if the Contractee is a state public official, a member of a state public official's immediate family, or an organization in which the official or immediate family member owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness and failed to make the written disclosure required under sec. 19.45 Wis. Stats. This disclosure is required to be made to the State of Wisconsin Government Accountability Board, 44 East Mifflin Street, Suite 601, Madison WI 53703, [Telephone (608) 266-8123].

E. If the Contractee or any subcontractor is a corporation other than a Wisconsin corporation, it must demonstrate prior to providing services under this Contract Agreement that it possesses a certificate of authority from the Wisconsin Secretary of State, and must have, and continuously maintain, a registered agent, and otherwise conform to all requirements of Chapters 180 and 181, Wisconsin Statutes, relating to foreign corporations.

X. ACCOUNTING REQUIREMENTS

A. For Contract Agreements of twenty-five thousand dollars (\$25,000) or more, the Contractee shall maintain a uniform double entry, full accrual accounting system and a financial management information system in accordance with Generally Accepted Accounting Principles. (See DHS' Allowable Cost Policy Manual, available upon request from the Audit Staff, Bureau of Intergovernmental Relations and Contract Management, Division of Enterprise Services, Department of Health Services, PO Box 7850, Madison WI 53707-7850.)

B. For Contract Agreements of less than twenty-five thousand dollars (\$25,000), the Contractee shall at least maintain a simplified double entry bookkeeping system as defined in the Department's Allowable Cost Policy Manual.

C. The Contractee's accounting system shall allow for accounting for individual grants, permit timely preparation of expenditure reports (required by the Contractor as defined in Section IV), and support expenditure reports submitted to the Contractor.

D. The Contractee shall reconcile costs and match to expenses recorded in the Contractee's accounting or simplified bookkeeping system on an ongoing and periodic basis. The Contractee agrees that reconciliation will be completed at least quarterly, will be documented, and supplied to the Contractor upon request. The

Contractee shall retain the reconciliation documentation in accordance with the records retention requirement specified in Section XIV.

E. Expenditures of funds from this Contract Agreement must meet the Department's allowable cost definitions as defined in the Department's Allowable Cost Policy Manual.

XI. CHANGES IN ACCOUNTING PERIOD

A. The Contractee's accounting records are maintained on a fiscal year basis, beginning on the date indicated in the CARS Payment Information section of this contract. During the contract period, the accounting period may only be changed with prior written approval from the Contractor. The Contractor may approve a change in accounting period only if the Contractee has a substantial, verifiable business reason for changing the accounting period and agrees to submit a closeout audit, as defined in section (XII, 8), within 90 days after the first day of the new accounting period.

B. Proof of Internal Revenue Service approval shall be considered verification that the Contractee has a substantial business reason for changing its accounting period.

C. A change in accounting period shall not relieve the Contractee of reporting or audit requirements of this Contract Agreement. An audit meeting the requirements of this Agreement shall be submitted within 90 days after the first day of the start of the new accounting period for the short accounting period and within 180 days of the close of the new accounting period for the new period. For purposes of determining audit requirements, expenses and revenues incurred during the short accounting period shall be annualized.

XII. PROPERTY MANAGEMENT REQUIREMENTS

A. Property insurance coverage will be provided by the Contractee for fire and extended coverage of any equipment funded under this Contract Agreement which the Contractor retains ownership of, and which is in the care, custody and control of the Contractee.

B. The Contractor shall have all ownership rights in any hardware funded under this Contract Agreement or supplied by the Contractor and in any software or modifications thereof and associated documentation designed, developed or installed as a result of this Agreement. The Contractee is responsible for keeping all of Contractor's property secure from theft, damage or other loss.

C. The Contractee agrees that if any materials are developed under this Contract Agreement, the Contractor shall have a royalty-free, non-exclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, such materials. Any discovery or invention arising out of, or developed in the course of work aided by this Agreement, shall be promptly and fully reported to the Contractor.

XIII. AUDIT REQUIREMENTS

A. Requirement to Have an Audit: Unless waived by the Contractor, the Contractee shall submit an annual audit to the Contractor if the total amount of annual funding provided by the Contractor (from any and all of its Divisions taken collectively) through this and other contracts is \$25,000 or more. In determining the amount of annual funding provided by the Contractor, the Contractee shall consider both: (a) funds provided through direct contracts with the Contractor; and (b) funds from the Contractor passed through another agency which has one or more contracts with the Contractee.

B. Audit Requirements: The audit shall be performed in accordance with auditing standards generally accepted in the United States of America, s.46.036, Wis. Stats., *Government Auditing Standards*, issued by the U.S. Government Accountability Office; and the Department of Health Services Audit Guide (www.ssag.state.wi.us).

1. The audit shall also comply with the requirements in OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" if the agency meets the criteria for needing a federal single audit.

C. Reporting Package: The Contractee shall send to the Contractor a reporting package which includes the following:

1. Financial statements and other audit schedules and reports required for the type of audit applicable to the Contractee.
2. The Management Letter (or similar document conveying auditor's comments issued as a result of the audit) *or* written assurance that a Management Letter was not issued with the audit report.
3. Management responses/corrective action plan for each audit issue identified in the audit.

D. Sending the Reporting Package: The Contractee shall send one copy of the required reporting package to the Contractor either: (a) within nine (9) months of the end of the Contractee's fiscal year if the Contractee is a local government, or (b) within 180 days of the end of the Contractee's fiscal year for non-governmental Contractee agencies. Reports sent to DHS may be in either paper or electronic pdf format. Paper copies of audit reports may be sent to the following address:

Attn: DHS Auditors
Division of Enterprise Services
Department of Health Services
1 West Wilson Street, Room 627
PO Box 7850
Madison WI 53707-7850

Reports in pdf format may be sent to DHS Auditors at the following email address:

DHSAuditors@Wisconsin.gov

E. Access to Auditor's Work Papers: When contracting with an audit firm, the Contractee shall authorize its auditor to provide access to work papers, reports, and other materials generated during the audit to the appropriate representatives of the Department. Such access shall include the right to obtain copies of the work papers and computer disks, or other electronic media, upon which records/working papers are stored.

F. Access to Contractee Records: The Contractee shall permit appropriate representatives of the Department and/or the Contractor to have access to the Contractee's records and financial statements as necessary to review Contractee's compliance with the Federal and State requirements for the use of the funding.

G. Failure to Comply with the Requirements of this Section: In the event that the Contractee fails to have an appropriate audit performed or fails to provide a complete audit report to the Contractor within the specified timeframes, in addition to applying one or more of the liquidated damages available in Section XVI of this contract, the Contractor may:

1. Conduct an audit or arrange for an independent audit of the Contractee and charge the cost of completing the audit to the Contractee;
2. Charge the Contractee for all loss of Federal or State aid or for penalties assessed to the Contractor because the Contractee did not submit a complete audit report within the required timeframe; and/or
3. Disallow the cost of audits that do not meet these standards.

H. Closeout Audits:

1. A specific audit of an accounting period of less than twelve (12) months is required when an agreement is terminated for cause, when the Contractee ceases operations or when the Contractee changes its accounting period (fiscal year). The purpose of the audit is to closeout the short accounting period. The required closeout audit may be waived by the Contractor upon written

request from the Contractee, except when the agreement is terminated for cause. The required closeout audit may not be waived when an agreement is terminated for cause.

2. The Contractee shall ensure that its auditor contacts the Contractor prior to beginning the audit. The Contractor, or its representative, shall have the opportunity to review the planned audit program, request additional compliance or internal control testing and attend any conference between the Contractee and the auditor. Payment of increased audit costs, as a result of the additional testing requested by the Contractor, is the responsibility of the Contractee.

3. The Contractor may require a closeout audit that meets the audit requirements specified in XII, 2. above. In addition, the Contractor may require that the auditor annualize revenues and expenditures for the purposes of applying OMB Circular A-133 and determining major Federal financial assistance programs. This information shall be disclosed in a note to the schedule of Federal awards.

4. All other provisions in the Audit Requirements section apply to Closeout Audits unless in conflict with the specific Closeout Audits requirements.

XIV. OTHER ASSURANCES

A. The Contractee shall notify the Contractor in writing, within thirty (30) days of the date payment was due of any past due liabilities to the Federal Government, State Government or their agents for income tax withholding, FICA, Workers' Compensation, Unemployment Compensation, garnishments or other employee related liabilities, Sales Tax, Income Tax of the Contractee, or other monies owed. The written notice shall include the amount(s) owed, the reason the monies are owed, the due date, the amount of any penalties or interest, known or estimated, the unit of government to which the monies are owed, the expected payment date and other related information.

B. The Contractee shall notify the Contractor, in writing, within thirty (30) days of the date payment was due, of any past due payment in excess of five hundred dollars (\$500), or when total past due liabilities to any one or more vendors exceed one thousand dollars (\$1000), related to the operation of this Contract Agreement for which the Contractor has reimbursed or will reimburse the Contractee. The written notice shall include the amount(s) owed, the reason the monies are owed, the due date, the amount of any penalties or interest, known or estimated, the vendor to which the monies are owed, the expected payment date and other related information. If the liability is in dispute, the written notice shall contain a discussion of facts related to the dispute and the information on steps being taken by the Contractee to resolve the dispute.

C. The Contractor may require written assurance at the time of entering into this Contract Agreement that the Contractee has in force and will maintain for the course of this Agreement employee dishonesty bonding in a reasonable amount to be determined by the Contractor.

D. The Contractee certifies that neither the Contractee organization nor any of its principals are debarred, suspended, or proposed for debarment for Federal financial assistance (e.g., General Services Administration's List of Parties Excluded from Federal Procurement and Non-Procurement Programs). The Contractee further certifies that potential sub-recipients, contractors, or any of their principals are not debarred, suspended or proposed for debarment.

XV. RECORDS

A. The Contractee shall maintain such records (in either written or electronic form) as required by State and Federal law and as required by program policies. Records shall be retained for no less than the retention period specified in law or policy. Records for periods which are under audit or subject to dispute or litigation must be retained until the audit, dispute or litigation, and any associated appeal periods, have ended.

B. The Contractee will allow inspection of records and programs, insofar as is permitted by State and Federal law, by representatives of the Contractor and its authorized agents, and Federal agencies, in order to confirm the Contractee's compliance with the specifications of this Contract Agreement.

C. The Contractee agrees to retain and make available to the Contractor all program and fiscal records in accordance with the retention period specified in paragraph 1 above. Upon the Contractor's request, at the expiration of the Contract Agreement, the Contractee will transfer at no cost to the Contractor, records regarding the individual recipients who received services from the Contractee under this Agreement. The transfer of records includes transfer of any record, regardless of media, if that is the only method under which records were maintained.

D. The Contractee and its subcontractors shall comply with all State and Federal confidentiality laws concerning the information in both the records it maintains and in any of the Contractor's records that the Contractee accesses to provide the services under this Contract Agreement.

XVI. AGREEMENT REVISIONS AND/OR TERMINATION

A. The Contractee agrees to re-negotiate with the Contractor this Contract Agreement or any part thereof in such circumstances as:

1. Increased or decreased volume of services as required by the Contractor;
2. Changes required by State and Federal law or regulations, or court action; or,
3. Increase or reduction in the monies available affecting the substance of this Agreement.

Failure to agree to a re-negotiated Contract Agreement under these circumstances is cause for the Contractor to terminate this Agreement.

B. This Contract Agreement can be terminated for any reason by a 30-day written notice by either party.

C. Revision of this Contract Agreement may be made by mutual agreement. The revision will be effective only when the Contractor and Contractee attach an addendum or amendment to this Agreement, which is signed by the authorized representatives of both parties, except in circumstances in which increased caseload or grant award amount, where such increase in funds is for the same purpose as originally agreed upon, the Agreement may be amended by a unilateral amendment made by the Contractor.

D. The Contractee shall notify the Contractor whenever it is unable to provide the required quality or quantity of services required. Upon such notification, the Contractor shall determine whether such inability will require revision or termination of this Contract Agreement.

E. If the Contractor finds it necessary to terminate this Contract Agreement prior to the stated expiration date for reason other than non-performance by the Contractee, payment by the Contractor shall cease upon termination. Termination of the contract does not nullify the recoupment of funds by the Contractor, per the negotiated Agreement, associated with failure to attain program objectives or the failure to maintain quality criteria.

XVII. NON-COMPLIANCE, LIQUIDATED DAMAGES AND REMEDIAL MEASURES

A. If the Contractor determines, after notice to the Contractee and opportunity to respond, that the Contractee:

1. Is out of compliance with the program quality criteria as listed in Exhibit I, the Contractor may withhold part or all of the Contractee's funding at a level deemed appropriate by the Contractor as defined in paragraph 3 below.
2. Has not attained the negotiated objective(s) as listed in Exhibit II, the Contractee shall refund the amount designated in Exhibit II under Risk Profile. Recoupments will be collected during the subsequent contract year via an adjustment (decrease) in the CARS monthly payment. In such case where a Contractee is subject to recoupment and no longer holds a Contract Agreement with the Contractor, the Contractor will issue an invoice to be paid by the Contractee.

The Contractor may also, at its sole discretion, effectuate such refunds by withholding money from future payments due the Contractee at any time during or after the contract period or may recover such funds by any other legal means.

B. Failure to comply with any part of this Contract Agreement may be considered cause for revision, suspension or termination of this Agreement. Suspension includes withholding part or all of the payments that otherwise would be paid the Contractee under this Agreement, temporarily having others perform, and receive reimbursement for, the services to be provided under this Agreement and any other measure that suspends the Contractee's participation in the Agreement if the Contractor determines it is necessary to protect the interests of the State.

C. The Contractee shall provide written notice to the Contractor of all instances of non-compliance with the terms of program quality criteria associated with this Contract Agreement by itself or its subcontractors. Notice shall be given as soon as practicable but in no case later than 15 days after the Contractee became aware, or should have been aware, of the non-compliance. Non-compliance can also be determined by the Division of Public Health Regional Office Contract Administrator through on-site inspection or desk review of documentation. The written notice shall include information on reason(s) for and effect(s) of the non-compliance. The Contractee shall provide the Contractor with a plan to correct the non-compliance and a timetable for the implementation of that plan to correct. The plan to correct must be approved by the Contractor. If at the end of the implementation period, the Contractee is found to still be out of compliance, the Contractor may, at its sole discretion, take whatever action it deems necessary to protect the interests of the State, including withholding part or all of the Contractee's funding, if it reasonably believes that the non-compliance will continue or will reoccur.

D. The Contractee shall provide within 30 days after the end of the contract period (or by the date specified in Exhibit II) to the Contractor via the Contract Administrator, the documentation specified in Exhibit II relating to attainment or failure to attain the objectives agreed to in this Contract Agreement. If any objective is not attained, the Contractor will determine, at its sole discretion, the proportion of non-attainment and will recoup from the Contractee an amount as defined by the Risk Profile identified in Exhibit II. Any degree of non-attainment, as judged by the sole discretion of the Contractor, shall be used by the Contractor in determining the conditions of any continuation of this Agreement.

E. If the Contractor determines that non-compliance with other requirements (not stated in Exhibit I or Exhibit II) in this Contract Agreement has occurred, or is occurring, it shall demand immediate correction of continuing non-compliance and it may impose whatever liquidated damages or remedial measures it deems necessary to protect the interests of the State. Such liquidated damages and measures may include termination of the Agreement, suspension of the Agreement as defined in paragraph 2 above, imposing additional reporting requirements and monitoring of subcontractors and any other measures it deems appropriate and necessary.

F. If audits are not submitted when due, the Contractor may take action pursuant to Section XII of this Contract Agreement.

G. If required program deliverables or other required information or reports, other than audits, are not submitted when due, the Contractor may withhold all payments that otherwise would be paid the Contractee under this Contract Agreement until such time as the reports and information are submitted. In addition, the Contractor can hold implementation of continuation of this Agreement pending submittal of this documentation.

XVIII. DISPUTE RESOLUTION

If any dispute arises between the Contractor and Contractee under this Contract Agreement, including the Contractor's finding of non-compliance and imposition of liquidated damages or remedial measures, the following process will be the exclusive administrative review.

- A. The Contractor's and Contractee's Contract Administrators will attempt to resolve the dispute, in coordination with the Division of Public Health Regional Office Director and appropriate program staff within the Division.
- B. If the dispute cannot be resolved by the Contract Administrators, the Contractee may ask for review by the Administrator of the Division of Public Health.
- C. If the dispute is still not resolved, the Contractee may request a final review by the Secretary of the Department of Health Services.

XIX. FINAL REPORT DATE

- A. The due date of the final fiscal report shall be ninety (90) days after the Contract Agreement period ending date.
- B. Expenses incurred during the Contract Agreement period but reported later than ninety (90) days after the period ending date will not be recognized, allowed or reimbursed under the terms of this Grant Agreement.

XX. INDEMNITY

The Contractor and Contractee agree they shall be responsible for any losses or expenses (including costs, damages, and attorney's fees) attributable to the acts or omissions of their officers, employees or agents.

XXI. SURETY BOND

The Contractor may require the Contractee to have a surety bond. The surety bond shall be in force for the period of the Contract Agreement and shall be a reasonable amount to be determined by the Contractor.

XXII. CONDITIONS OF THE PARTIES' OBLIGATIONS

- A. This Contract Agreement is contingent upon authorization of Wisconsin and United States law, and any material amendment or repeal of the same affecting relevant funding or authority of the Contractor shall serve to revise or terminate this Agreement, except as further agreed to by the parties hereto.
- B. The Contractor and Contractee understand and agree that no clause, term or condition of this Contract Agreement shall be construed to supersede the lawful powers or duties of either party.
- C. It is understood and agreed that the entire Contract Agreement between the parties is contained herein, except for those matters incorporated herein by reference, and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.

XXIII. SPECIAL PROVISIONS

- A. If the Contractor determines that the Contractee has exceeded the agreed upon program objective(s) to the level specified in Exhibit II, Conditions for an Incentive Payment, the Contractee may be eligible to receive performance-based incentive funds if such funds are available as determined by the Contractor.
- B. The Contractor may make these incentive awards at its discretion based on the amount of available incentive funding and the terms of agreement with the Federal agency(s) as to the distribution of such incentive funding. The awards will be made during the subsequent contract year via an adjustment (increase) in the monthly CARS payment. In such case where a Contractee is eligible for an incentive payment and no longer holds a contract agreement with the Contractor, the Contractor will make a separate payment to the Contractee. The incentive funds must be expended by the Contractee within the subsequent contract or calendar year and can not be diverted outside of the set of programs defined by this Contract Agreement or used for supplanting purposes. The Contractee shall report, in a manner specified by the Contractor, on how the Contractee expended these incentive funds.

C. To the extent allowed by law:

1. All funding recouped by the Contractor from the Contractee shall be held by the Contractor in a fund designated for use within the program area associated with the recoupment action.
2. These funds may be used to award other Contractees who have exceeded their objectives in that program, general funding of the program area to all Contractees via formula in the next contract period, general funding of the program for all Contractees during the current contract period, or returned to the Federal funding agency of that program.

These funds cannot be used by the Contractor for their own operational costs.

XXIV. CONTRACT RENEWAL OPTIONS

This contract can be renewed on an annual basis for up to two (2) one-year extensions with the mutual agreement of both the Contractor and Contractee. The objectives to be attained by program will be re-negotiated each year by the Contractor and Contractee, as well as documentation deliverables and risk conditions.

XXV. TIMELY CONTRACT SIGNING

This Contract Agreement becomes null and void if the time between the earlier dated signature and the later dated signature of the Contractee's and Contractor's Authorized Representative on this Agreement (or addendum) exceeds sixty (60) days inclusive of the two signature dates.

Contractee's Authorized Representative _____
Date

Contractor's Authorized Representative _____
Date
Seth Foldy, MD, MPH
State Health Officer and Administrator
Division of Public Health
Department of Health Services

CARS PAYMENT INFORMATION

The information below is used by the Department's Bureau of Fiscal Services, CARS Unit to facilitate the processing and recording of payments made under this Contract Agreement.

Agency Name	City of Menasha Health Department
Agency Number	256420
Agency Type	060
Contract Period	January 1, 2010 through December 31, 2010
Contract Amount	\$25,893

Profile ID# 155015 Bioterrorism Focus A Amount \$25,893
DPH Contract #17539

Program Name: Public Health Emergency Preparedness

CFDA#: 93.069

GRANT AGREEMENT

Between

WINNEBAGO COUNTY

and

CITY OF MENASHA

for

Menasha Senior Center Supervisor

This GRANT AGREEMENT is made and entered into this 1st day of January, 2010 by and between WINNEBAGO COUNTY, hereinafter referred to as "COUNTY," and CITY OF MENASHA, 140 MAIN STREET, MENASHA, WI 54952, Menasha Senior Center Supervisor hereinafter referred to as "GRANTEE", for the period from **January 1, 2010 through December 31, 2010**.

WITNESSETH:

WHEREAS, the COUNTY has applied for financial assistance to the Wisconsin Bureau of Aging and Disability Resources; and

WHEREAS, the COUNTY has provided monies for development of programs to older adults; and

WHEREAS, Winnebago County desires to provide financial assistance to GRANTEE in carrying out a service to older adults in Winnebago County;

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereto, it is agreed as follows:

SECTION I: RESPONSIBILITIES OF GRANTEE

- A. GRANTEE agrees to use monies provided through this GRANT AGREEMENT to undertake the aforementioned service program to older adults identified by name and generally as described in the Winnebago County's Plan for Services to the Elderly 2010-2012, which is hereby incorporated by reference into this GRANT AGREEMENT.
- B. GRANTEE agrees to obtain prior approval from the COUNTY if funds covered under this GRANT AGREEMENT are to be used for purposes other than those described in Section III of the aforementioned Plan and Budget.
- C. GRANTEE shall adhere to Assurances of Compliance with Federal and State Regulations as described in Section IV of the aforementioned Plan and Budget.

SECTION II: BUDGET & PAYMENT PROCEDURES

A. **COUNTY** agrees to provide the **GRANTEE** with funding as follows:

\$15,820.00 Total

B. **GRANTEE** agrees to provide at least the minimum matching share as follows:

\$0.00 In Kind Match and/or Cash Match

The term "In-Kind Match" shall have a meaning as defined in the Wisconsin Aging Network Policies and Procedures Manual. Cash and In-Kind Match shall be applied toward the cost of Older Adult program(s) funded through this GRANT AGREEMENT. Insufficient match by **GRANTEE** may reduce the Federal and/or State funded amount.

- C. **GRANTEE** agrees to provide to **COUNTY** monthly fiscal reports **within ten (10) working days** of the end of each calendar month and to complete other reports as requested by **COUNTY**. **COUNTY** shall reimburse **GRANTEE** within ten (10) days of the report due date with payment based upon actual expenses reported by **GRANTEE**. **GRANTEE** agrees to submit a final year-end report, if applicable, by February 18, 2011.
- D. **GRANTEE** may in no case obligate Federal, State, or County monies provided through this grant agreement beyond December 31, 2010. Obligated funds not actually expended by **GRANTEE** must be returned to the **COUNTY** within thirty (30) days.
- E. **GRANTEE** shall in accordance with the Department of Treasury Internal Revenue Service Tax Equity and Fiscal Responsibility Act of 1982 submit to the **COUNTY** the **GRANTEE'S** Taxpayer Identification Number and Certification by completing and signing the Form W-9 attached hereto. **COUNTY** will comply with the reporting provisions assigned by federal and state tax laws.

SECTION III: AUDIT AND RECORD DISCLOSURES

- A. **GRANTEE** shall maintain financial and accounting records, supporting documents, reports, and other materials pertinent to this GRANT AGREEMENT in accordance with the Wisconsin Department of Health & Family Services Allowable Cost Policies Manual and shall retain such records and supporting documentation for a period of at least three years from the date of termination of this GRANT AGREEMENT.
- B. **GRANTEE** shall, upon request, allow representatives of the Federal Administration of Aging, Bay Area Agency on Aging, State of Wisconsin and/or **COUNTY** to have access to such records as may be necessary to confirm compliance with the specifications of this GRANT AGREEMENT.
- C. **GRANTEE** shall submit to **COUNTY** a certified annual financial and compliance audit report completed in accordance with the Department of Health & Family Services GRANTEE Agency Audit Guide and (for governmental agencies) the Federal Government Office of Management and Budget OMB Circular A-128 or (for non-governmental agencies) the Federal Government Office of Management and Budget OMB Circular A-133, if required by amount of funding.

- D. **GRANTEE** shall submit to **COUNTY** complete copies of all management and internal control reports/letters prepared by the auditor. Copies of **GRANTEE'S** response to the reports/letters shall be submitted to **COUNTY**. These documents shall be submitted to the **COUNTY** within 30 days of receipt and/or completion by **GRANTEE**.
- E. In the event that the **COUNTY** determines that amounts are owed to it by the **GRANTEE** subsequent to receiving the audit report, **COUNTY** is hereby authorized to deduct such sums from any funds approved for payment by **COUNTY** to **GRANTEE**.

SECTION IV: HOLD HARMLESS

- A. **GRANTEE** agrees that it will at all times during the existence of this GRANT AGREEMENT indemnify and hold harmless **COUNTY** against any and all losses, damages and costs or expenses which **COUNTY** may sustain, incur or be required to pay as a result of **GRANTEE'S** acts or omissions in relationship to this GRANT AGREEMENT or in relationship to providing care or services pursuant to this GRANT AGREEMENT.
- B. In no event shall the making of any payment required by this agreement constitute or be construed as a waiver by the **COUNTY** of any breach of the covenants of this agreement or a waiver of any default of the **GRANTEE** and the making of any such payment by the **COUNTY** while any such default or breach shall exist shall in no way impair or prejudice the right of the **COUNTY** with respect to recovery of damages or other remedy as a result of such breach or default.
- C. **GRANTEE is Independent Contractor - GRANTEE** shall be treated as an independent contractor and its employee(s) shall not be considered to be an employee(s) of the **COUNTY**, Winnebago County, or its Human Services Department. **COUNTY** will not pay or withhold federal, state, or local income tax or other payroll tax of any kind on behalf of **GRANTEE** or its employees. **GRANTEE** is not eligible for, nor entitled to, and shall not participate in any of **COUNTY'S** pension, health, or other benefit plans. **GRANTEE** is responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including, but not limited to income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law. **GRANTEE** shall indemnify **COUNTY** and hold it harmless against any fines, damages, assessments, or attorney fees in the event that the **GRANTEE**, Grantee's employees or their agents challenge this clause in a court of law and/or before any administrative agency or arbitrator for any reason.

SECTION V: AFFIRMATIVE ACTION/CIVIL RIGHTS COMPLIANCE

- A. **GRANTEE** employs fewer than twenty-five (25) employees or has a total grant dollar amount of \$25,000 or less throughout this period and shall submit a Civil Rights Compliance Plan when **GRANTEE** exceeds twenty-five (25) employees or \$25,000.
- B. In connection with the performance of work or the rendering of any services under this GRANT AGREEMENT, the **GRANTEE** agrees not to discriminate against any properly qualified employee, applicant for employment, or client because of any status protected pursuant to s.111.321, Wisconsin Statutes, or developmental disability as defined in s. 51.05 (5), Wisconsin Statutes. This provision shall include, but not be limited to, the

following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

1. **GRANTEE** agrees to post the Equal Opportunity Policy, the name of the Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, and applicants for employment and employees. The complaint process will be made available in languages and formats understandable to applicants, clients, and employees.
2. The **GRANTEE** agrees that through its normal selection of staff, it shall make an effort to employ staff with special language skills or find persons who are available within a reasonable time and who can communicate with non-English speaking clients; train staff in human relations techniques and sensitivity to cultural patterns; and making the programs and facilities accessible, as appropriate, through outstations, authorized representatives adjusted work hours, ramps, doorways, elevators, or ground floor rooms.

SECTION VI: GRANT AGREEMENT REVISIONS AND/OR TERMINATIONS

- A. Failure to comply with any part of this GRANT AGREEMENT may be considered cause for revision or termination.
- B. **GRANTEE** shall return any grant funds to **COUNTY** not used for the intended purpose stated in this GRANT AGREEMENT.
- C. Revision of this GRANT AGREEMENT must be agreed to by **COUNTY** and **GRANTEE** by an addendum signed by the authorized representatives of both parties.
- D. **GRANTEE** shall notify **COUNTY** whenever it is unable to provide the required quality or quantity of services. Upon such notification, **COUNTY** and **GRANTEE** shall determine whether such inability will require a revision or cancellation of this GRANT AGREEMENT.
- E. If **COUNTY** finds it necessary to terminate the GRANT AGREEMENT prior to the GRANT AGREEMENT expiration date for reasons other than non-performance by the **GRANTEE**, actual cost incurred by the **GRANTEE** may be reimbursed for an amount determined by mutual agreement of both parties.
- F. This GRANT AGREEMENT can be terminated by 30-day written notice by either party.

SECTION VII: CONDITIONS OF THE PARTIES OBLIGATIONS

- A. This GRANT AGREEMENT is contingent upon authorization of Wisconsin and United States laws and any material amendment or repeal of the same affecting relevant funding or authority of the **COUNTY** shall serve to terminate this GRANT AGREEMENT, except as further agreed to by the parties hereto.
- B. Nothing contained in this GRANT AGREEMENT shall be construed to supersede the lawful powers or duties of either party.
- C. It is understood and agreed that the entire GRANT AGREEMENT between the parties is contained herein, and that this GRANT AGREEMENT supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.

D. **GRANTEE** shall comply with Wisconsin Administrative Code Chapters DHFS 12 and 13 and any related statutes in relationship to all persons employed or contracted with by **GRANTEE** to provide any services pursuant to this GRANT AGREEMENT and shall provide **COUNTY** with appropriate proof as to said compliance.

SECTION VIII: GRANTEE'S LEGAL STATUS

GRANTEE warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, and that the persons executing this agreement on its behalf are authorized to do so. **GRANTEE** shall notify **COUNTY** immediately, in writing, of any change in address or **GRANTEE'S** legal status.

SECTION IX: AUTHORIZATION

COUNTY enters into this GRANT AGREEMENT pursuant to and by authority of the Winnebago County Commission on Aging and Winnebago County Board of Supervisors. **GRANTEE** enters into this GRANT AGREEMENT pursuant to and by authority of its Board of Directors, City Council, or other governing body, which has legal authority to enter into contractual agreements.

GRANTEE

WINNEBAGO COUNTY by its **DEPARTMENT OF HUMAN SERVICES (COUNTY)**

Signed by:

Signed by:

_____ Winnebago County Executive

Date

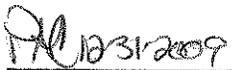
Date

Signed by:

_____ Winnebago County Clerk

Date

Approved



City Attorney

GRANT AGREEMENT

Between

WINNEBAGO COUNTY

and

CITY OF MENASHA

for

Menasha Senior Center Activity Coordinator

This GRANT AGREEMENT is made and entered into this 1st day of January, 2010 by and between WINNEBAGO COUNTY, hereinafter referred to as "COUNTY," and CITY OF MENASHA, 140 MAIN STREET, MENASHA, WI 54952, Menasha Senior Center Activity Coordinator hereinafter referred to as "GRANTEE", for the period from **January 1, 2010 through December 31, 2010**.

WITNESSETH:

WHEREAS, the COUNTY has applied for financial assistance to the Wisconsin Bureau of Aging and Disability Resources; and

WHEREAS, the COUNTY has provided monies for development of programs to older adults; and

WHEREAS, Winnebago County desires to provide financial assistance to GRANTEE in carrying out a service to older adults in Winnebago County;

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereto, it is agreed as follows:

SECTION I: RESPONSIBILITIES OF GRANTEE

- A. GRANTEE agrees to use monies provided through this GRANT AGREEMENT to undertake the aforementioned service program to older adults identified by name and generally as described in the Winnebago County's Plan for Services to the Elderly 2010-2012, which is hereby incorporated by reference into this GRANT AGREEMENT.
- B. GRANTEE agrees to obtain prior approval from the COUNTY if funds covered under this GRANT AGREEMENT are to be used for purposes other than those described in Section III of the aforementioned Plan and Budget.
- C. GRANTEE shall adhere to Assurances of Compliance with Federal and State Regulations as described in Section IV of the aforementioned Plan and Budget.

SECTION II: BUDGET & PAYMENT PROCEDURES

A. **COUNTY** agrees to provide the **GRANTEE** with funding as follows:

\$9,921.00 Total

B. **GRANTEE** agrees to provide at least the minimum matching share as follows:

\$0.00 In Kind Match and/or Cash Match

The term "In-Kind Match" shall have a meaning as defined in the Wisconsin Aging Network Policies and Procedures Manual. Cash and In-Kind Match shall be applied toward the cost of Older Adult program(s) funded through this GRANT AGREEMENT. Insufficient match by **GRANTEE** may reduce the Federal and/or State funded amount.

- C. **GRANTEE** agrees to provide to **COUNTY** monthly fiscal reports **within ten (10) working days** of the end of each calendar month and to complete other reports as requested by **COUNTY**. **COUNTY** shall reimburse **GRANTEE** within ten (10) days of the report due date with payment based upon actual expenses reported by **GRANTEE**. **GRANTEE** agrees to submit a final year-end report, if applicable, by February 18, 2011.
- D. **GRANTEE** may in no case obligate Federal, State, or County monies provided through this grant agreement beyond December 31, 2010. Obligated funds not actually expended by **GRANTEE** must be returned to the **COUNTY** within thirty (30) days.
- E. **GRANTEE** shall in accordance with the Department of Treasury Internal Revenue Service Tax Equity and Fiscal Responsibility Act of 1982 submit to the **COUNTY** the **GRANTEE'S** Taxpayer Identification Number and Certification by completing and signing the Form W-9 attached hereto. **COUNTY** will comply with the reporting provisions assigned by federal and state tax laws.

SECTION III: AUDIT AND RECORD DISCLOSURES

- A. **GRANTEE** shall maintain financial and accounting records, supporting documents, reports, and other materials pertinent to this GRANT AGREEMENT in accordance with the Wisconsin Department of Health & Family Services Allowable Cost Policies Manual and shall retain such records and supporting documentation for a period of at least three years from the date of termination of this GRANT AGREEMENT.
- B. **GRANTEE** shall, upon request, allow representatives of the Federal Administration of Aging, Bay Area Agency on Aging, State of Wisconsin and/or **COUNTY** to have access to such records as may be necessary to confirm compliance with the specifications of this GRANT AGREEMENT.
- C. **GRANTEE** shall submit to **COUNTY** a certified annual financial and compliance audit report completed in accordance with the Department of Health & Family Services GRANTEE Agency Audit Guide and (for governmental agencies) the Federal Government Office of Management and Budget OMB Circular A-128 or (for non-governmental agencies) the Federal Government Office of Management and Budget OMB Circular A-133, if required by amount of funding.

- D. **GRANTEE** shall submit to **COUNTY** complete copies of all management and internal control reports/letters prepared by the auditor. Copies of **GRANTEE'S** response to the reports/letters shall be submitted to **COUNTY**. These documents shall be submitted to the **COUNTY** within 30 days of receipt and/or completion by **GRANTEE**.
- E. In the event that the **COUNTY** determines that amounts are owed to it by the **GRANTEE** subsequent to receiving the audit report, **COUNTY** is hereby authorized to deduct such sums from any funds approved for payment by **COUNTY** to **GRANTEE**.

SECTION IV: HOLD HARMLESS

- A. **GRANTEE** agrees that it will at all times during the existence of this GRANT AGREEMENT indemnify and hold harmless **COUNTY** against any and all losses, damages and costs or expenses which **COUNTY** may sustain, incur or be required to pay as a result of **GRANTEE'S** acts or omissions in relationship to this GRANT AGREEMENT or in relationship to providing care or services pursuant to this GRANT AGREEMENT.
- B. In no event shall the making of any payment required by this agreement constitute or be construed as a waiver by the **COUNTY** of any breach of the covenants of this agreement or a waiver of any default of the **GRANTEE** and the making of any such payment by the **COUNTY** while any such default or breach shall exist shall in no way impair or prejudice the right of the **COUNTY** with respect to recovery of damages or other remedy as a result of such breach or default.
- C. **GRANTEE is Independent Contractor** - **GRANTEE** shall be treated as an independent contractor and its employee(s) shall not be considered to be an employee(s) of the **COUNTY**, Winnebago County, or its Human Services Department. **COUNTY** will not pay or withhold federal, state, or local income tax or other payroll tax of any kind on behalf of **GRANTEE** or its employees. **GRANTEE** is not eligible for, nor entitled to, and shall not participate in any of **COUNTY'S** pension, health, or other benefit plans. **GRANTEE** is responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including, but not limited to income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law. **GRANTEE** shall indemnify **COUNTY** and hold it harmless against any fines, damages, assessments, or attorney fees in the event that the **GRANTEE**, **Grantee's** employees or their agents challenge this clause in a court of law and/or before any administrative agency or arbitrator for any reason.

SECTION V: AFFIRMATIVE ACTION/CIVIL RIGHTS COMPLIANCE

- A. **GRANTEE** employs fewer than twenty-five (25) employees or has a total grant dollar amount of \$25,000 or less throughout this period and shall submit a Civil Rights Compliance Plan when **GRANTEE** exceeds twenty-five (25) employees or \$25,000.
- B. In connection with the performance of work or the rendering of any services under this GRANT AGREEMENT, the **GRANTEE** agrees not to discriminate against any properly qualified employee, applicant for employment, or client because of any status protected pursuant to s.111.321, Wisconsin Statutes, or developmental disability as defined in s. 51.05 (5), Wisconsin Statutes. This provision shall include, but not be limited to, the

following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

1. **GRANTEE** agrees to post the Equal Opportunity Policy, the name of the Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, and applicants for employment and employees. The complaint process will be made available in languages and formats understandable to applicants, clients, and employees.
2. The **GRANTEE** agrees that through its normal selection of staff, it shall make an effort to employ staff with special language skills or find persons who are available within a reasonable time and who can communicate with non-English speaking clients; train staff in human relations techniques and sensitivity to cultural patterns; and making the programs and facilities accessible, as appropriate, through outstations, authorized representatives adjusted work hours, ramps, doorways, elevators, or ground floor rooms.

SECTION VI: GRANT AGREEMENT REVISIONS AND/OR TERMINATIONS

- A. Failure to comply with any part of this GRANT AGREEMENT may be considered cause for revision or termination.
- B. **GRANTEE** shall return any grant funds to **COUNTY** not used for the intended purpose stated in this GRANT AGREEMENT.
- C. Revision of this GRANT AGREEMENT must be agreed to by **COUNTY** and **GRANTEE** by an addendum signed by the authorized representatives of both parties.
- D. **GRANTEE** shall notify **COUNTY** whenever it is unable to provide the required quality or quantity of services. Upon such notification, **COUNTY** and **GRANTEE** shall determine whether such inability will require a revision or cancellation of this GRANT AGREEMENT.
- E. If **COUNTY** finds it necessary to terminate the GRANT AGREEMENT prior to the GRANT AGREEMENT expiration date for reasons other than non-performance by the **GRANTEE**, actual cost incurred by the **GRANTEE** may be reimbursed for an amount determined by mutual agreement of both parties.
- F. This GRANT AGREEMENT can be terminated by 30-day written notice by either party.

SECTION VII: CONDITIONS OF THE PARTIES OBLIGATIONS

- A. This GRANT AGREEMENT is contingent upon authorization of Wisconsin and United States laws and any material amendment or repeal of the same affecting relevant funding or authority of the **COUNTY** shall serve to terminate this GRANT AGREEMENT, except as further agreed to by the parties hereto.
- B. Nothing contained in this GRANT AGREEMENT shall be construed to supersede the lawful powers or duties of either party.
- C. It is understood and agreed that the entire GRANT AGREEMENT between the parties is contained herein, and that this GRANT AGREEMENT supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.

- D. **GRANTEE** shall comply with Wisconsin Administrative Code Chapters DHFS 12 and 13 and any related statutes in relationship to all persons employed or contracted with by **GRANTEE** to provide any services pursuant to this GRANT AGREEMENT and shall provide **COUNTY** with appropriate proof as to said compliance.

SECTION VIII: GRANTEE'S LEGAL STATUS

GRANTEE warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, and that the persons executing this agreement on its behalf are authorized to do so. **GRANTEE** shall notify **COUNTY** immediately, in writing, of any change in address or **GRANTEE'S** legal status.

SECTION IX: AUTHORIZATION

COUNTY enters into this GRANT AGREEMENT pursuant to and by authority of the Winnebago County Commission on Aging and Winnebago County Board of Supervisors. **GRANTEE** enters into this GRANT AGREEMENT pursuant to and by authority of its Board of Directors, City Council, or other governing body, which has legal authority to enter into contractual agreements.

GRANTEE

**WINNEBAGO COUNTY by its DEPARTMENT
OF HUMAN SERVICES (COUNTY)**

Signed by:

Signed by:

_____ Winnebago County Executive

_____ Date

_____ Date

Signed by:

_____ Winnebago County Clerk

_____ Date

Approved



City Attorney

GRANT AGREEMENT

Between

WINNEBAGO COUNTY

and

CITY OF MENASHA

for

Older Adult Health Screening Program

This GRANT AGREEMENT is made and entered into this 1st day of January, 2010 by and between WINNEBAGO COUNTY, hereinafter referred to as "COUNTY," and CITY OF MENASHA, 140 MAIN STREET, MENASHA, WI 54952, Older Adult Health Screening Program hereinafter referred to as "GRANTEE", for the period from **January 1, 2010 through December 31, 2010**.

WITNESSETH:

WHEREAS, the COUNTY has applied for financial assistance to the Wisconsin Bureau of Aging and Disability Resources; and

WHEREAS, the COUNTY has provided monies for development of programs to older adults; and

WHEREAS, Winnebago County desires to provide financial assistance to GRANTEE in carrying out a service to older adults in Winnebago County;

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereto, it is agreed as follows:

SECTION I: RESPONSIBILITIES OF GRANTEE

- A. GRANTEE agrees to use monies provided through this GRANT AGREEMENT to undertake the aforementioned service program to older adults identified by name and generally as described in the Winnebago County's Plan for Services to the Elderly 2010-2012, which is hereby incorporated by reference into this GRANT AGREEMENT.
- B. GRANTEE agrees to obtain prior approval from the COUNTY if funds covered under this GRANT AGREEMENT are to be used for purposes other than those described in Section III of the aforementioned Plan and Budget.
- C. GRANTEE shall adhere to Assurances of Compliance with Federal and State Regulations as described in Section IV of the aforementioned Plan and Budget.

SECTION II: BUDGET & PAYMENT PROCEDURES

A. **COUNTY** agrees to provide the **GRANTEE** with funding as follows:

\$23,551.00 Total

B. **GRANTEE** agrees to provide at least the minimum matching share as follows:

\$0.00 In Kind Match and/or Cash Match

The term "In-Kind Match" shall have a meaning as defined in the Wisconsin Aging Network Policies and Procedures Manual. Cash and In-Kind Match shall be applied toward the cost of Older Adult program(s) funded through this GRANT AGREEMENT. Insufficient match by **GRANTEE** may reduce the Federal and/or State funded amount.

- C. **GRANTEE** agrees to provide to **COUNTY** monthly fiscal reports **within ten (10) working days** of the end of each calendar month and to complete other reports as requested by **COUNTY**. **COUNTY** shall reimburse **GRANTEE** within ten (10) days of the report due date with payment based upon actual expenses reported by **GRANTEE**. **GRANTEE** agrees to submit a final year-end report, if applicable, by February 18, 2011.
- D. **GRANTEE** may in no case obligate Federal, State, or County monies provided through this grant agreement beyond December 31, 2010. Obligated funds not actually expended by **GRANTEE** must be returned to the **COUNTY** within thirty (30) days.
- E. **GRANTEE** shall in accordance with the Department of Treasury Internal Revenue Service Tax Equity and Fiscal Responsibility Act of 1982 submit to the **COUNTY** the **GRANTEE'S** Taxpayer Identification Number and Certification by completing and signing the Form W-9 attached hereto. **COUNTY** will comply with the reporting provisions assigned by federal and state tax laws.

SECTION III: AUDIT AND RECORD DISCLOSURES

- A. **GRANTEE** shall maintain financial and accounting records, supporting documents, reports, and other materials pertinent to this GRANT AGREEMENT in accordance with the Wisconsin Department of Health & Family Services Allowable Cost Policies Manual and shall retain such records and supporting documentation for a period of at least three years from the date of termination of this GRANT AGREEMENT.
- B. **GRANTEE** shall, upon request, allow representatives of the Federal Administration of Aging, Bay Area Agency on Aging, State of Wisconsin and/or **COUNTY** to have access to such records as may be necessary to confirm compliance with the specifications of this GRANT AGREEMENT.
- C. **GRANTEE** shall submit to **COUNTY** a certified annual financial and compliance audit report completed in accordance with the Department of Health & Family Services GRANTEE Agency Audit Guide and (for governmental agencies) the Federal Government Office of Management and Budget OMB Circular A-128 or (for non-governmental agencies) the Federal Government Office of Management and Budget OMB Circular A-133, if required by amount of funding.

- D. **GRANTEE** shall submit to **COUNTY** complete copies of all management and internal control reports/letters prepared by the auditor. Copies of **GRANTEE'S** response to the reports/letters shall be submitted to **COUNTY**. These documents shall be submitted to the **COUNTY** within 30 days of receipt and/or completion by **GRANTEE**.
- E. In the event that the **COUNTY** determines that amounts are owed to it by the **GRANTEE** subsequent to receiving the audit report, **COUNTY** is hereby authorized to deduct such sums from any funds approved for payment by **COUNTY** to **GRANTEE**.

SECTION IV: HOLD HARMLESS

- A. **GRANTEE** agrees that it will at all times during the existence of this GRANT AGREEMENT indemnify and hold harmless **COUNTY** against any and all losses, damages and costs or expenses which **COUNTY** may sustain, incur or be required to pay as a result of **GRANTEE'S** acts or omissions in relationship to this GRANT AGREEMENT or in relationship to providing care or services pursuant to this GRANT AGREEMENT.
- B. In no event shall the making of any payment required by this agreement constitute or be construed as a waiver by the **COUNTY** of any breach of the covenants of this agreement or a waiver of any default of the **GRANTEE** and the making of any such payment by the **COUNTY** while any such default or breach shall exist shall in no way impair or prejudice the right of the **COUNTY** with respect to recovery of damages or other remedy as a result of such breach or default.
- C. **GRANTEE is Independent Contractor** - **GRANTEE** shall be treated as an independent contractor and its employee(s) shall not be considered to be an employee(s) of the **COUNTY**, Winnebago County, or its Human Services Department. **COUNTY** will not pay or withhold federal, state, or local income tax or other payroll tax of any kind on behalf of **GRANTEE** or its employees. **GRANTEE** is not eligible for, nor entitled to, and shall not participate in any of **COUNTY'S** pension, health, or other benefit plans. **GRANTEE** is responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including, but not limited to income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law. **GRANTEE** shall indemnify **COUNTY** and hold it harmless against any fines, damages, assessments, or attorney fees in the event that the **GRANTEE**, Grantee's employees or their agents challenge this clause in a court of law and/or before any administrative agency or arbitrator for any reason.

SECTION V: AFFIRMATIVE ACTION/CIVIL RIGHTS COMPLIANCE

- A. **GRANTEE** employs fewer than twenty-five (25) employees or has a total grant dollar amount of \$25,000 or less throughout this period and shall submit a Civil Rights Compliance Plan when **GRANTEE** exceeds twenty-five (25) employees or \$25,000.
- B. In connection with the performance of work or the rendering of any services under this GRANT AGREEMENT, the **GRANTEE** agrees not to discriminate against any properly qualified employee, applicant for employment, or client because of any status protected pursuant to s.111.321, Wisconsin Statutes, or developmental disability as defined in s. 51.05 (5), Wisconsin Statutes. This provision shall include, but not be limited to, the

following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

1. **GRANTEE** agrees to post the Equal Opportunity Policy, the name of the Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, and applicants for employment and employees. The complaint process will be made available in languages and formats understandable to applicants, clients, and employees.
2. The **GRANTEE** agrees that through its normal selection of staff, it shall make an effort to employ staff with special language skills or find persons who are available within a reasonable time and who can communicate with non-English speaking clients; train staff in human relations techniques and sensitivity to cultural patterns; and making the programs and facilities accessible, as appropriate, through outstations, authorized representatives adjusted work hours, ramps, doorways, elevators, or ground floor rooms.

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GRANTEE

WINNEBAGO COUNTY by its **DEPARTMENT OF HUMAN SERVICES (COUNTY)**

Signed by:

Signed by:

Winnebago County Executive

Date

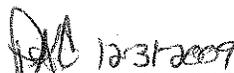
Date

Signed by:

Winnebago County Clerk

Date

Approved



City Attorney



FIRST NATIONAL BANK - FOX VALLEY
Appleton - Menasha - Neenah - Oshkosh

First National Bank Fox Valley Wire Transfer Services Agreement

This Wire Transfer Services Agreement is made as of the 11th day of Dec., 2009 by and between First National Bank Fox Valley (the "Bank"), and the undersigned City of Menasha (the "Customer").

1. **Definitions:** Capitalized terms used and not otherwise defined in this Agreement shall have the meanings given to them in Schedule A to this Agreement.
2. **Effective Date/Term:** This Agreement becomes effective when Bank notifies Customer that the Wire Transfer Services have become available and continues until terminated as provided in the Section titled "Termination" or when Customer no longer maintains any Accounts.
3. **Scope:** This Agreement describes the terms and conditions that apply to domestic and international Funds Transfers to and from Customer's accounts at or with Bank using Fedwire and other Funds Transfer systems recognized by Bank or used by Bank's Processors. Customer and Bank shall mutually designate upon signing this Agreement and from time to time thereafter those accounts of Customer at Bank for which Customer desires to originate Payment Orders to affect Funds Transfers under the terms of this Agreement. This Agreement excludes automated clearinghouse transactions.
4. **Agreement:** Bank shall provide Customer with the Wire Transfer Services as described and to the extent, but subject to the terms, conditions, and limitations, including limitations on liability, set forth in this Agreement.
5. **Funds Transfers:** Subject to the terms and conditions of this Agreement, Customer may issue, and Bank is authorized to honor, Payment Orders sent to Bank to affect Funds Transfers from Accounts to accounts of Customer or third parties at domestic or foreign financial institutions. Customer authorizes Bank (i) unless otherwise specifically designated by Customer, to select the Funds Transfer system routing and means of transmission Bank deems reasonable under the circumstances, (ii) to affect Funds Transfers on behalf of Customer upon receipt of Payment Orders communicated to Bank, and (iii) to charge Customer's accounts at Bank for each Payment Order Bank executes.
6. **Rules:** Customer agrees to comply with all Bank's Rules applicable to Funds Transfers, Payment Orders and related matters. Bank may, at any time and from time to time, prescribe or change Rules by posting notice of the change on its Website, by transmitting notice to Customer, or by making notice of the changes or the changed Rules available from Bank's branch offices or through its Private Banking Department.
7. **Format; Cut-off Time; Business Days:** If Bank receives a Payment Order or an amendment or cancellation thereof after the cut-off time established by Bank for same day processing of Payment Orders, then Bank may treat such Payment Order, amendment or cancellation as being received at the opening of business on the following Business Day. Until further notice by Bank, the cut-off time for receipt of Payment Orders for same day processing is 3:00 PM Central Standard Time for domestic wires and 3:00 PM for international wires. Bank shall provide the Wire Transfer Services hereunder only on those Business Days that both Bank and the Federal Reserve Bank are open for business.
8. **Insufficient Available Funds:** If there are insufficient Available Funds in the Customer's Account to honor the Payment Order, Bank, in its sole discretion, may (i) pay, reject or dishonor the Payment Order, or in its discretion, (ii) execute the Payment Order and, at Bank's option, transfer to the designated Account from any other account of Customer, funds sufficient to cover the deficiency in the designated Account. No course of dealing or conduct on any prior occasion or occasions shall give Customer the right to expect or rely on Bank's honoring a Payment Order from the designated Account if it lacks sufficient Available Funds. Customer shall immediately pay the amount by which any Account is short sufficient Available Funds as the result of Bank's honoring a Payment Order, together with any fees and charges resulting from the overdraft or Payment Order.
9. **Cancellation or Amendment of Payment Orders:** Customer has no right to cancel, correct or amend any Payment Order after it has been received by Bank. If Bank, in its discretion, acts on Customer's request to cancel or amend a Payment Order whether before or after Bank executes the Payment Order, Bank will have no liability if such cancellation, correction or amendment is not effected, regardless of the reasonableness or diligence or lack thereof Bank's actions. Bank may request that any cancellation, correction or amendment to a Payment Order be done in writing.
10. **Reliance on Account and Identifying Numbers:** Bank is not responsible for detecting errors in any Payment Order. Customer acknowledges that Funds Transfers may be made on the basis of an account number or other identifying number (including a bank transit routing number). Bank and any receiving bank (including any Beneficiary's Bank and any Intermediary Bank) may rely on the account number or other identifying number (including a bank transit routing number) of any bank, person or bank account specified in the Payment Order even if such numbers identify a bank, person or bank

account different from the bank, person or bank account designated by name, and Customer's obligation to pay the amount of the Payment Order to Bank is not excused in any such circumstances.

11. Rejection of Payment Orders: Bank has the right to reject and refuse to accept, and will have no liability for rejection of or refusal to accept, any Payment Order for any reason it determines in good faith to be valid ground for doing so, including:
- (a) any actual, threatened or suspected breach of system integrity, fraud, loss of confidential data, mistake violation of applicable laws or financial loss to Customer, Bank or any third party, and
 - (b) Customer's failure to (i) maintain sufficient Available Funds in the Account designated in the Payment Order, (ii) make the Payment Order unconditional, (iii) supply required or sufficient information in the Payment Order, (iv) submit the Payment Order to Bank in the proper format, (v) transmit the Payment Order by means designated or recognized by Bank, (vi) comply with any applicable federal, state, local or foreign law, regulation, code, ordinance, ruling or court or arbitration order, including those dealing with money laundering, wire fraud, and restrictions imposed by the Office of Foreign Asset Controls, (vii) provide accurate or consistent payment information, or (viii) comply with Security Procedures.

If Bank rejects any Payment Order, Bank will endeavor to notify Customer by telephone, electronic transmission, telecopy, or other reasonable means within a reasonable time of its rejection of such Payment Order, but Bank will have no liability to Customer for failure or delay in providing such notice.

12. Security Procedures:

- (a) Customer agrees to adopt, use and follow the Security Procedures. In addition to the Security Procedures, Bank may in its discretion use additional procedures to verify the authenticity of Payment Orders. Customer shall perform regular periodic audits of its compliance with Security Procedures and correct all deficiencies disclosed, conduct initial and periodic thorough background checks on all Authorized Users and other employees involved in Customer's Funds Transfers activities. When an Authorized User is no longer employed with the Customer, or no longer authorized to conduct Funds Transfers, Bank must be notified to delete Authorized User from database.
- (b) Any Payment Order communicated to Bank in the name of Customer will be effective as the Payment Order of Customer, whether or not authorized, if the Payment Order is accepted by Bank in good faith and in compliance with the Security Procedures (i) regardless of the actual identity of the sender thereof, and (ii) notwithstanding that any signature cards or other Account Documents or arrangements may require two or more signatures to access an Account.
- (c) Customer agrees to pay to Bank the amount of each Payment Order which is authorized by Customer or for which Customer is otherwise liable, whether or not Bank complied with the Security Procedures.
- (d) Customer acknowledges that the Security Procedures are designed to verify the authenticity of Payment Orders and not to detect errors contained in any Payment Order. Customer is solely responsible for the accuracy and completeness of each Payment Order.
- (e) Customer acknowledges that the Security Procedures agreed upon by Customer and Bank provide to Customer a commercially reasonable degree of protection against unauthorized Funds Transfers in light of Customer's particular needs and circumstances.
- (f) Bank is not obligated to accept any Payment Order, amendment or cancellation that is communicated to Bank other than in compliance with the Security Procedures. Bank will not be responsible for its refusal to act upon any Payment Order that does not comply with the Security Procedures including, but not limited to, those situations which Bank's reasonable efforts to verify a Payment Order in accordance with the Security Procedures have failed, or when action has been delayed by Bank until verification can be obtained.
- (g) If a Payment Order (including any amendment or cancellation of a Payment Order) is communicated to Bank by or on behalf of Customer other than in compliance with the Security Procedures, and Bank accepts such Payment Order, amendment or cancellation in good faith, then (i) Customer agrees to be bound by that Payment Order, amendment or cancellation, whether or not it is authorized under the terms of this Agreement, (ii) Customer will be deemed to have refused the Security Procedures that Bank offers and recommends as "commercially reasonable" and (iii) Customer will be obligated to pay Bank the amount of such Payment Order even if it was not otherwise authorized or in conformance with the terms of this agreement.
- (h) Customer agrees to safeguard and not disclose to any third party any Security Procedures, including personal identification numbers, access codes, passwords or other security devices or measures used in connection therewith, in each case whether or not Bank is then performing Wire Transfer Services for Customer. Customer agrees to limit the internal disclosure and distribution of such information to its employees, agents and representatives who have a need to know such information and will at all times have appropriate policies in effect to ensure the confidential status of such information. Customer will be responsible for the acts and omissions of its employees, agents and representatives in the use, misuse or failure to maintain the confidentiality of any Security Procedures. The provisions of this subsection survive termination of this Agreement.

13. Pay ments and Fees: Customer agrees to pay to Bank (i) the amount of each Payment Order no later than the date on which it is processed by Bank, (ii) immediately, any overdrafts in any of its Accounts arising from a Funds Transfer or other charge or amount owing under this Agreement, and (iii) all fees when due for Wire Transfer Services. Bank may modify or make additions to its fee schedule, at any time and from time to time, without prior notice to Customer except as may be required by applicable federal law; provided, however, that such changes or additions to the fee schedule will be posted on Bank's website, published in any of Bank's schedule of fees and services, or made available from Bank's branch offices or Private Banking Department. Customer agrees to pay any and all fees and/or charges not covered under Bank's published fee schedule for any requested or required special service or handling. Customer hereby authorizes Bank to charge any account it maintains with Bank for payment of the amounts described in this section.
14. Li m itation on Liability; Indemnity; Force Majeure: As used in this Section, the term "Bank" includes any and all officers, directors, employees agents, affiliates, successors, assigns of Bank as well as its Processors, each of which are hereby deemed beneficiaries of the limitations of liability and indemnities set forth in this section, in other Sections of this Agreement and in the other Account Documents, to the extent applicable. The indemnities, limitations and disclaimers of liability and damages contained below are in addition and cumulative to those contained in the other Account Documents to the extent they are applicable. Customer understands that Bank's fees for Funds Transfers are very small in relation to the amount involved in a Funds Transfer and that accordingly; Bank's willingness to provide the Wire Transfer Services to Customer is contingent upon limitation of Bank's liability in accordance with the terms of this Agreement and the other Account Documents.
- (a) Except as otherwise required by non-variable provisions of applicable law, (i) Bank's liability to Customer for failure to exercise ordinary care resulting in a delay in executing, improper execution of, or failure to execute, a Payment Order shall be limited to interest losses attributable thereto and Customer's incidental expenses incurred in connection therewith, and (ii) Bank shall not be liable under this Agreement for any other damages. Bank's liability for loss of interest described above shall be limited to interest on the funds that become unavailable to Customer as a result of Bank's actions or inaction, computed at the average federal funds rate determined by Bank to be applicable for the period such funds are unavailable.
 - (b) In no event will bank be liable hereunder for any special, indirect, consequential or exemplary damages, including loss of revenues, lost profits, lost opportunities, loss of or damage to reputation or lost goodwill.
 - (c) Customer agrees to indemnify and hold Bank harmless from and against any and all actions, suits, claims, damages, losses, liabilities, assessments, charges, taxes, costs and expenses (including reasonable attorneys' fees, costs of investigation and court costs at the trial level and in any appeal) directly or indirectly arising from or relating to (i) Bank's honoring or complying with a Payment Order or cancellation or amendment of a Payment Order sent in Customer's name communicated to Bank and relating to a Funds Transfer, whether or not the Payment Order, or amendment or cancellation of the Payment Order, was actually authorized by Customer, so long as Bank accepts the Payment Order in good faith and in compliance with the Security Procedures, (ii) Bank's honoring or complying with a Payment Order which was authorized by Customer or which was effected in accordance with the terms of this Agreement or an amendment to or cancellation of a Payment Order under this Agreement, (iii) Bank's refusal to accept or process a Payment Order that is communicated to it other than in compliance with the Security Procedures and the Bank's Rules, (iv) the actions, taxes or assessments imposed by any foreign, federal, state or local government or government agency, body or department (other than the taxes on the Bank's net income), (v) the failure of Customer (or its employees, agents, affiliates, or representatives) to comply with its obligations in this Agreement or the other Account Documents or with any applicable law, statute, rule, regulation, ordinance, code, or executive, judicial or administrative order or ruling, (vi) Bank's compliance with applicable federal, state, local and foreign laws, regulations, codes, orders, rulings and judgments in performing the Wire Transfer Services, including compliance with inconsistent orders or laws of competing jurisdictions, or (vii) other acts or omissions of Customer (including its affiliates, agents, employees and representatives) or any third party which create, lead to or result in claims, liability, damages, costs or expenses; provided, however, that Customer shall not be obligated to indemnify Bank for such claims, damages, losses, liabilities and expenses to the extent they are attributable to Bank's gross negligence or willful misconduct. The provisions of this subsection survive termination of this Agreement.
 - (d) Bank shall have no responsibility, and shall not incur any liability, for any failure, error, malfunction or other delay in carrying out any of its obligations under this Agreement resulting from acts of God, fires, electrical problems, strikes or stoppages of labor, power or equipment failure (including that of any common carrier, transmission line or software), failure of communication facilities, emergency conditions, acts of terrorism, vandals, hackers or law breakers, adverse weather conditions or any other factor, medium, instrumentality, condition or cause beyond Bank's control.
 - (e) Bank shall have no responsibility and shall incur no liability for (i) any act or failure to act by any other financial institution or Processor, including any Intermediary Bank, Beneficiary's Bank, or any other third party, including any data processor, funds transfer agency or system, Internet service provider, telephone service or repair services,

- or (ii) any inaccuracy, delays, interruptions, disruptions or omissions in any notice or communication received by Bank from Customer, another financial institution, any Processor or any third party.
- (f) Customer agrees that Bank shall not be liable or responsible for any delay or failure to transfer any amount hereunder because of rules, regulations, or policies of the Federal Reserve Board or the Office of the Comptroller of the Currency which limit in aggregate, the amount that Bank can transfer from time to time during any Business Day. Bank shall endeavor to notify Customer of any such failure or delay and to effectuate the Payment Order as soon as is reasonably possible thereafter.

15. Account Statements; Reconciliation

- (a) Customer agrees promptly, by telephone and in writing, to notify Bank of any discrepancy between Customer's records and the information shown on any statement or confirmation of a Payment Order, Funds Transfer or debit to Customer's Account provided by Bank or otherwise made available to Customer. If Customer fails to notify Bank of any such discrepancy as soon as practicable after receipt of a statement or confirmation and in any event no later than 14 days of receipt of such information (whether in its periodic account statement, a confirmation, telephone, telecopy or computer notice or otherwise), Customer agrees that, to the fullest extent permitted by applicable law, it shall be precluded from asserting such discrepancy against Bank and any other losses that could have been prevented had Customer provided Bank with timely notice. Notwithstanding the foregoing, Bank reserves the right to, in its sole discretion; adjust transaction records for good cause after the expiration of said 14 day period.
- (b) The periodic account statements provided to Customer by Bank will notify Customer of incoming Funds Transfers received by Bank for credit to Customer's Accounts at Bank. Customer agrees that Bank will not be required to provide any other notice to Customer of receipt of incoming Funds Transfers.

16. Provisional and Wrong fully Received Credits. All credits to any account of Customer for incoming Funds Transfers are provisional until Bank receives final settlement for the funds according to the rules of the Funds Transfer system by which such funds have been transmitted. Customer acknowledges and agrees that if Bank does not receive such final settlement, or a Funds Transfer has, in Bank's judgment, been mistakenly, negligently or fraudulently credited to Customer's account, Bank is entitled without notice to debit the amount so credited to Customer's Account or to debit or offset that amount against any other accounts of Customer at or with Bank.

17. Termination.

- (a) This agreement shall continue in full force and effect until this Agreement is terminated as provided herein.
- (b) Customer may terminate this Agreement by giving the Bank fifteen (15) days advance written notice of its intent to terminate the Wire Transfer Services under this Agreement.
- (c) Bank reserves the right to terminate this Agreement or terminate or suspend any or all of the Wire Transfer Services, at any time, at Bank's discretion and without cause, upon providing advance written notice of such termination to Customer.
- (d) Bank may terminate this Agreement and/or terminate or suspend the Wire Transfer Services immediately, with or without notice, if: (i) Customer fails to comply with any of its material obligations hereunder, including the Security Procedures; (ii) Customer is in default under any other Account Documents or other material obligations with the Bank; (iii) a receiver, custodian, trustee or similar official has been appointed, or been applied for by the Customer for all or a substantial part of the Customer's property, any general assignment has been made for the benefit of creditors, a voluntary or involuntary case, petition or proceeding has been commenced under the United States Bankruptcy Code or any other statute or regulation relating to bankruptcy or relief of debtors seeking liquidation, reorganization or other relief with respect to the Customer, or its debts, or the Customer or any other person on behalf of the Customer has taken any action under the laws of any jurisdiction applicable to the Customer which is similar to any of the foregoing; (iv) there has been a material adverse change in the financial circumstances of the Customer; (v) Customer's Account(s) at or with Bank have been closed or the Master E-Corp Agreement, if entered into by Customer with Bank, has been terminated; (vi) Bank deems immediate termination of Wire Transfer Services, this Agreement and/or any other Account Document as necessary or appropriate in its discretion in order to prevent, reduce the risk of, or in the event of, an actual, threatened or suspected fraud, mistake, abuse, compromise of system integrity, breach of confidentiality, breach of Security Procedures, interruptions of Service, virus, hacker, force majeure events, or financial loss to the Bank, the Customer or any third party; or (vii) termination or suspension of Wire Transfer Services is required by law, regulation, bank regulatory authority, or court order. For purposes of this subsection, the term "Customer" shall be deemed to include any affiliate of the Customer.
- (e) In event of a bankruptcy proceeding filed by or against Customer, termination of Wire Transfer Services shall be deemed automatic, unless the Bank otherwise consents in writing to continuation of the Wire Transfer Services. In all other cases, Bank shall endeavor to give notice of its termination of this agreement or termination or suspension of Wire Transfer Services, but its failure to do so or doing so after suspension or termination of Wire Transfer Services or this Agreement shall not affect Bank's right to do so, nor subject it to any liability. If Bank determines to give notice, it may do so in any manner it deems expedient or appropriate.

18. Currency Conversion/International Transfers. If Customer submits a Payment Order to Affect a Funds Transfer, receives return of funds or receives an incoming Funds Transfer, in each case in a currency other than US Dollars, Bank will convert the currency at the then current exchange rate for the specified foreign currency used by Bank or Bank's Processor. Bank may and does use Processors and other third parties to effect currency conversions and international Funds Transfers. Customer agrees to pay Bank its costs and charges incurred and a fee specified by Bank for handling any currency conversions or foreign funds transfers. Bank shall not be liable to Customer for any losses arising from currency conversions effected by Bank in good faith within reasonable time after receiving funds to be converted.
19. Third Party Processors. Customer acknowledges and agrees that Bank may arrange for some or all of the Wire Transfer Services hereunder to be performed by Processors. Customer agrees that each reference to "Bank" in this Agreement includes any Processor selected by Bank to perform some or all of the Wire Transfer Services, that any Processor is a third party Beneficiary of this Agreement and as such is entitled to rely on, and avail itself of, the provisions of this Agreement as if it was Bank, including, without limitation, the limitations on liability and indemnities described in this Agreement.
20. Entire Agreement. This Agreement (including Set-Up Forms and Rules) and the applicable provisions of other Account Documents constitute the complete and exclusive statement of the agreement between Bank and the Customer with respect to the subject matter hereof and supersedes any and all prior agreements between Bank and Customer with respect to such subject matter. In the event of any conflict between this Agreement and the Master E-Corp Agreement, and if applicable, other Account Documents, the terms of this Agreement shall control, except to the extent that the terms of the Master E-Corp Agreement and the other Account Documents are more protective of Bank with respect to the conduct or transaction in question.
21. Amendments. From time to time hereafter, except as otherwise required by applicable federal law, Bank may unilaterally amend and add to any or all of the terms and conditions of this Agreement, including the Rules. Any amendment or addition shall become effective on its stated date of effectiveness. Prior to its effective date, Bank shall (i) notify Customer of the amendment or addition, or (ii) make the amendment or addition available to Customer by posting it on its Website or publishing it for distribution at its branch offices.
22. Governing Law.

(a) This Agreement shall be construed in accordance with and governed by the laws of the United States and the State of Wisconsin, applicable federal law and regulations, Article 4A of the Uniform Commercial Code, applicable operating circulars of any Federal Reserve Bank which may handle Funds Transfers, and applicable rules of SWIFT, CHIPS and any other Funds Transfers network or agency that may be used or involved by Bank, Intermediary Bank or a Processor in a Funds Transfer. Customer also understands and acknowledges that international Funds Transfers may be subject to laws and regulations of foreign jurisdictions involved.

(b) Customer shall comply with (and acknowledges that Bank may report violations or suspected violations of) applicable foreign, federal, state, local, executive, administrative or judicially mandated laws, codes, statutes, regulations, orders, rules, ordinances, and restrictions, including those dealing with money laundering, anti-terrorism measures and restrictions imposed by the Office of Foreign Assets Control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein above written.

City of Menasha
Customer

First National Bank Fox Valley

Name: _____
Signature: _____ Date _____

Name: _____
Signature: _____ Date _____

Address of Customer:

140 Main St. Menasha WI 54952

Schedule A- Definitions

As used in this Agreement, the following terms shall have the following meanings:

“Account” means any of the deposit accounts actively maintained by Customer at or with Bank that Bank acknowledges or recognizes is eligible for Wire Transfer Services.

“Account Documents” means this Agreement, including the schedules and exhibits to it and the Set-Up Forms, and, to the extent applicable, Bank’s (i) Business Account Application and Agreement, (ii) the Master Ecorp Agreement including the Schedule of Services and Prices, (iii) other agreements, forms, brochures, schedules, services, prices and documents given at the time of opening or otherwise relating to any Accounts, (iv) disclosures relating to any of the foregoing or Customer’s Accounts (to the extent applicable to the type account or transaction involved, e.g., commercial vs. consumer), and (v) any amendments or additions to any of the foregoing that Bank issues from time to time.

“Agreement” means this wire Transfer Services Agreement, including the schedules to it, the Set-Up Forms, the Security Procedures and the Rules, and all amendments to any of them posted or made by Bank from time to time.

“Authorized User” means any agent or employee of Customer designated as an Authorized User on Schedule D.

“Available Funds” means funds from a deposit which become available under Bank’s Funds Availability Schedule for Checking and Savings Accounts furnished at the time the Account is opened, as amended from time to time.

“Beneficiary” means the person or entity to be paid by the Beneficiary’s Bank from a Funds Transfer.

“Beneficiary’s Bank” means the bank at which an account is maintained which is to be credited as identified in a Payment Order.

“Business Day” means any day other than a Saturday, Sunday or federal holiday.

“Funds Transfer” means a series of transactions beginning with the Payment Order to Bank for the purpose of making payment to the Beneficiary of the Payment Order.

“Intermediary Bank” means any bank involved in a Funds Transfer other than Bank and Beneficiary’s Bank.

“Master Agreement” means the First National Bank Fox Valley Internet Banking E-Corp Agreement, as amended from time to time.

“Payment Order” means an instruction for a Funds Transfer from an Account communicated to Bank in accordance with the terms of this Agreement and Section 4A-103 (a) of the Uniform Commercial Code. Each Payment Order shall contain the amount of the Funds Transfer, the Account to be debited, the Beneficiary’s name and account number, the name and number of the Beneficiary’s Bank, and such other information as Bank may request or specify, but shall not be conditional.

“Processor” means a third party engaged by Bank to perform some or all of the Wire Transfer Services covered by this Agreement.

“Rules” means the rules, requirements and procedures established, posted or modified by Bank from time to time governing the format or means of transmission of Payment Orders, cut-off hours for delivery of Payment Orders, and other administrative rules relating to Payment Orders and the Wire Transfer Services provided under this Agreement.

“Security Procedures” means those procedures required of or specified for Customer by the terms of this Agreement, and, to the extent applicable, the Master Agreement and other Account Documents, and by good commercial practices for Customer to follow for authenticating, safeguarding, preserving the confidentiality of and transmitting Wire Transfers and Payment Orders. The Security Procedures include those set forth in Schedule B of this Agreement.

“Set-Up Forms” means those forms that Bank has prepared for its use or reliance based on information or designations provided by Customer to implement the Wire Transfer Services, including the Security Procedures.

“Wire Transfer Services” means those Funds Transfer services offered by Bank to Customer under the terms of this Agreement and the Set-Up Forms.

Schedule B- Security Procedures

The Bank makes available to its Customers various Security Procedures for initiation of Payment Orders not in person at Bank's physical location, including those specified in this Schedule, and to the extent applicable, the Master Agreement and the other Account Documents. For internet access to Bank's Wire Transfer Services, the Master Agreement and the Security Procedures set forth in it also apply to the extent not covered by those set forth below.

1. Set-Up Security Procedures

- (a) Customer shall designate employees or representatives ("Authorized Users") by executing and delivering the Authorization Certificate in the form of Schedule D who will have the authority to (i) initiate, amend or cancel Payment Orders, (ii) receive callbacks confirming Payment Orders, (iii) agree upon or modify Security Procedures, (iv) add or remove employees of Customer who are designated to initiate, amend or cancel Payment Orders, (v) set dollar threshold limits when callbacks are to be used to confirm Payment Orders, (vi) designate or change telephone numbers to be called to confirm Payment Orders or amendments or cancellations of them, and (vii) otherwise authorize and provide designations for the Set-Up Forms and changes to this Agreement.
- (b) Bank requires that the Authorized User who initiates, cancels or amends a Payment Order not be the same Authorized User who receives a callback to confirm the Payment Order.
- (c) The Authorized Users who can agree upon or modify Security Procedures, add or remove employees of Customer who are designated to initiate, amend or cancel Payment Orders, set threshold dollar limits for when callback confirmations should be made, designate telephone numbers to be called initially to confirm Payment Orders or amendments or cancellations of them, and otherwise authorize and provide designations for the Set-Up Forms and changes to this Agreement are so designated on the Authorization Certificate. They should be officers, partners or principals of the Customer.
- (d) Customer will assign telephone numbers to each Authorized User which Bank may utilize for callbacks, but Customer agrees that Bank may utilize Customer's general number to confirm Payment Orders when callbacks are required to be made by Bank.
- (e) Bank may establish daily aggregate dollar limits on the amounts of Funds Transfers to be made from Customer's Account.
- (f) For electronic initiated Payment Orders via the internet, Bank will assign to each employee or agent designated as an Authorized User on the Authentication Certificate, and individual token and an individual access code. Customer may also establish dollar limits on each Authorized User's authority to transmit Payment Orders through the Internet to the Bank.
- (g) Customer has the responsibility for the use and safekeeping of the individual token and Access Codes assigned for each Authorized User. Customer shall make the tokens and Access Codes available only to those employees who are designated as Authorized Users to initiate Funds Transfers and then only to the extent they need to use the tokens and Access Codes, i.e., Company will not permit a token and User Access code assigned to a specific Authorized User to be shared with or disclosed to anyone other than that Authorized User and Company will not disclose the Token or Access Code to anyone other than Authorized Users. Customer shall instruct each Authorized User to keep his or her token and User Access Code confidential and safeguarded at all times.
- (h) Customer assumes responsibility for all losses that could have been avoided if Customer fails to comply with or directs Bank to waive any Security Procedures. For example, if Customer elects to have the same individual initiate and confirm by callback any Payment Order, Customer is responsible for all losses that could have been avoided had Customer required Bank to contact another individual to confirm Payment Orders.

2. Execution of Payment Orders

Computer Initiated Payments Orders. Bank may execute any Payment Order if the Payment Order is submitted electronically to Bank through the internet if (i) the Payment Order is initiated by anyone who uses Customer's individual assigned Token and User Access Code assigned to an Authorized User, (ii) the amount of the Payment Order is within the dollar limit of the Authorized User whose User Token and User Access Code is used for transmitting the Payment Order, and (iii) if the Payment Order exceeds the Callback Threshold, it is confirmed by callback to Customer to a person who identified himself or herself as an Authorized User other than the Authorized User identified as the initiator as the initiator of the Payment Order, amendment or cancellation.