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Attorney Thomas L. Shriner, Jr.  
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Re: State of Wisconsin ex rel. Care for Lake Geneva, Inc., v. Michael D.  
Hawes, City Clerk, City of Lake Geneva, Wisconsin  
Case No.: 12-CV-1332  
Our File No.: 22007

Dear Mr. Shriner:

Per our exchanged telephone messages, I am writing to advise that I have been retained to represent the City of Lake Geneva and its clerk, Michael Hawes, in the above-referenced matter. Your action seeks a copy of the "Memorandum of Understanding" (MOU) signed by counsel for the parties during mediation in the federal lawsuit "*Geneva Ridge Joint Venture, et. al. v. City of Lake Geneva, et. al.*", Eastern District Case No. 09-C-964.

There appear to be a couple of issues with the Writ of Mandamus. First, I'm not sure that a Wisconsin state court has the authority/jurisdiction to command the disclosure of the MOU that was produced in a federal mediation. The discussions during mediation amount to confidential communications protected by both Wisconsin statute and by federal code. In response to one prior open records request for a copy of the MOU, counsel for the plaintiff specifically objected to its disclosure- as it was part of the mediation.

Second, with respect to your current request, we considered the alternative of having either the state court or the federal court do an *in camera* inspection and balancing under Wis. Stat. §904.85(4)(e), or petitioning the court for the same type of review under the concepts discussed in *Jessup v. Luther*, 277 F.3d 926 (7<sup>th</sup> Cir., 2002) and *Thermal Design, Inc. v. Guardian Bldg. Products, Inc.*, 270 F.R.D. 437 (E.D. Wis. 2010), but ultimately it is the City's position that because the case has been dismissed, because the City has long preferred to release a copy of the MOU, and because we have received no response/objection from the plaintiff to the two messages recently sent to counsel for the plaintiff, the City may release the MOU.

A copy of the MOU accompanies this letter. Pursuant to our telephone messages, I would ask that you advise the court that the return date on December 11, 2012, may be removed

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Attorney Thomas L. Shriner, Jr  
December 7, 2012

from the court's calendar. Please call with any questions or concerns. Thank you.

Very Truly Yours,

PIPER & SCHMIDT

JOSEPH M. WIRTH

Enclosure

Cc - Attorney Daniel S. Draper (w/ encl.)