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July 24, 2015

**MEMO**

From: Attorney Stan Riffle, mediator

To: City of Manawa Mayor and Common Council  
c/o: Meg Vergeront, Attorney

Re: Sturm Foods. v. City of Manawa

Dear Mayor and Alderpersons:

I was appointed to mediate the above-referenced dispute, and conducted the mediation on Wednesday July 19, 2017. By way of introduction, I am a lawyer from Waukesha, Wisconsin. My firm's practice is almost exclusively focused on municipal law, and we are regular municipal attorneys for more than 50 cities, villages, towns and specialty districts, and are engaged as special counsel to dozens of additional municipalities at any given time. I am the Waukesha County Condemnation Commissioner (and thus deal with valuation issues outside of my municipal practice), lecture regularly on tax and property valuation issues, testify as an expert witness on property valuation issues and conduct about twenty-five mediations in valuation disputes each year.

Mediation is a negotiation process in which the disputing parties are assisted by a neutral third-party—a mediator. The value of mediation is that the parties, not a court or jury, resolve the dispute. Unless this matter is resolved, Sturm's claims regarding tax years 2011-2013 proceed to the Court of Appeals for review of the trial court decision, which upheld the Tax Appeals Commission's (TAC) decision. After a hearing, the TAC lowered the Department of Revenue's (DOR) original assessments. This means that, even if the City wins on appeal, it will still have to pay a refund. Moreover, the City risks a decision from the Court of Appeals for the 2011-2013 claims that may well be more adverse than a settlement *and* risks that Sturm might prevail on its 2014-2016 claims as well. So your present decision involves an application of risk management not only regarding the 2011 through 2013, but 2014 through today and beyond.

The DOR and Sturm differ substantially in their valuation of the subject properties. Their respective valuations for all of the buildings and land in Manawa are:

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<u>Tax Year</u>	<u>DOR Valuation</u>	<u>Sturm Valuation</u>
2011	\$18,254,400	\$8,300,400
2012	\$19,048,000	\$8,300,400
2013	\$19,425,000	\$8,306,400

The TAC determined that the assessments were excessive and determined the appropriate assessments should be:

<u>Tax Year</u>	<u>TAC Decision</u>
2011	\$17,365,700
2012	\$18,293,300
2013	\$18,293,300

This reduction, affirmed by the court, amounts to \$2,775,100. Thus, the City already owes Sturm a rebate of City taxes at the then existing mill rates totaling nearly \$25,000 (the City will need to refund the entire tax initially, but will be granted a refund from the other taxing entities (school district, county, etc.)). But, if this case is not settled before the Court of Appeals and, ultimately, perhaps the Supreme Court finally ruling, the potential exposure upon reversal of the TAC would be about \$288,000 for the first 3 years alone.

As far as 2014 through 2016, the respective valuations are:

<u>Tax Year</u>	<u>DOR Valuation</u>	<u>Sturm Valuation</u>
2014	\$18,100,000	\$8,306,400
2015	\$18,100,000	\$7,173,300
2016	\$18,100,000	\$7,173,300

I would suggest that the first hearing before TAC and the court has educated the Sturm lawyers, and they are likely to tailor their approach in light of the rulings. Further, they will likely change appraisers and also bring in different lawyers, so the outlook may not be as bright for a complete victory. If the DOR's valuations are completely reversed in favor of Sturm's, the reduction for the 3 years would total over \$43,000,000 and the City refund alone would exceed \$430,000. I do not believe that it is likely that the TAC and ultimately the courts would rule for such a drastic reduction, but it is entirely possible that a substantial reduction, perhaps 30-40% of the DOR valuation is entirely possible based upon the appraisal theories originally employed by the DOR. Further, in this process, 3 to 4 additional years could pass, adding to this risk.

At the mediation, I recommended the following resolution to both parties. The Mayor and City's outside counsel reluctantly agreed to recommend this to the Common Council (for reasons I have stated):

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<u>Tax Year</u>	<u>Proposed Valuation</u>
2011 through 2013	Valuations set by the TAC (refunds of approximately \$25,000)
2014 through 2015	Valuations set by the DOR (no refunds)
2016	\$23,000,000 (refunds of approximately \$74,000)
2017	\$20,200,000 (no refund – Council to correct assessment roll before 2018 budget)

This resolution will result in a City refund (apart from the 2011 – 2013 years) of about \$74,000, and a shifting of revenue based upon the 2017 reduction to all other tax-payers. As a result, instead of facing the worst-case possibility of City refunds totaling over \$700,000, the City will refund only about \$99,000. I firmly believe that the City Council should accept the settlement, because I am convinced that the City will not do as well in future litigation; that is, the appellate courts, TAC and circuit courts are more likely than not to enter judgment with lower valuations, which would result in the City owing additional refunds. I believe this for many reasons, including:

- The DOR employed assessment methodologies that the TAC has subsequently rejected.
- The Supreme Court justices are very well versed in this area of the law, as there have been many appellate court decisions involving tax disputes over recent years, and they have become prone to side with taxpayers.
- DOR is not likely to retain independent appraisers, leaving it to the City to fund these costs.
- Resolution at the 2017 valuation of \$20,200,000 will likely avoid assessment challenges for at least several years.
- If this matter is not settled, the 2011-2013 case will proceed to a determination by the Court of Appeals, and will undoubtedly be appealed to the Supreme Court. In the meantime, 2014 – 2017 will come before the TAC, then appealed to the circuit court, the Court of Appeals and the Supreme Court. By the time these cases are finally resolved, it will likely be 2020 and multiple years will be added to the cycle adding substantial additional costs, risks and real concern for the financial future for the City.

I believe that the City risks far more by proceeding with litigation rather than settling this matter at this time. Thank you for allowing me to be of service in an effort to resolve this matter.

Very truly yours,

ARENZ, MOLTER, MACY, RIFFLE & LARSON, S.C.,

**H. Stanley Riffle**

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H. Stanley Riffle

Confidential Memorandum  
Privileged Lawyer-Client Communication

To Mayor John Smith  
Manawa City Council  
David Forsythe

From Meg Vergeront

Date August 1, 2017

Re Recommendation re Settlement of Sturm Tax Refund Cases

**Background**

Over the years, Sturm has brought numerous challenges to the State's assessment of its properties in Manawa. There are currently six such cases pending, one each for tax years 2011, 2012, 2013, 2014, 2015 and 2016. Additionally, Sturm has made it clear that it will challenge the 2017 assessment if we cannot reach a settlement on the assessment for this year. The challenges are in front of different venues: the 2011-2013 are in front of the court of appeals and the 2014-2016 cases are in front of the Tax Appeals Commission (TAC).

We (mostly) won the 2011-2013 cases at the TAC and trial court levels. We anticipate that, if we win in front of the court of appeals, Sturm will petition the Wisconsin Supreme Court for review. There is a good chance that the court will take the case because it raises interesting legal issues not addressed before. [REDACTED]

[REDACTED] For 2011-2013, we will need to write briefs and participate in oral arguments, likely at two levels.

No trials have been held for 2014-2016, so we will still need to commission appraisals and conduct written discovery and depositions, as well as participate in what will likely be at least a two-day trial. Either party can appeal to the trial court and then to the appellate courts. Sturm has a new argument in support of its claims that, if adopted by the TAC and the courts, will result in an adverse decision for the City. The argument is based on a TAC decision issued fairly quickly after the TAC issued its decision for 2011-2013. [REDACTED]

You can see, if this case goes forward for all tax years, there is a lot of work to be done. The translates into a lot of attorney and expert fees, with no assurance of a favorable result.

**Refunds**

So, how much will it cost the City if we lose any/all of these claims? A lot. Here is how the refunds break down:

*2011-2013*

I mentioned above that we *mostly* won on the 2011-2013 claims. Let me explain why I said “mostly.” The DOR’s assessment figures for those years were mostly upheld by the TAC, but the TAC *did change* a couple of the numbers based on new evidence at trial. The original assessments and the TAC numbers are as follows:

Year	Property	DOR Original Assessment	Commission
2011	Downtown	\$2,171,400	\$2,103,800
	1310 Industrial	\$4,528,000	\$4,528,000
	1250 Industrial	\$11,555,000	\$10,733,900
2012	Downtown	\$2,100,000	\$2,100,000
	1310 Industrial	\$4,528,000	\$4,528,000
	1250 Industrial	\$12,420,000	\$11,665,300
2013	Downtown	\$2,100,000	\$2,100,000
	1310 Industrial	\$4,828,000	\$4,828,000
	1250 Industrial	\$12,497,000	\$11,665,300

The fact that the original assessments were a bit too high in some of the years for some of the properties means that there was an overassessment. And that means that Sturm is entitled to a refund, even if the Commission’s decision is upheld on appeal. The amount of refund that must be paid even if we win on appeal regarding the 2011-2013 claims is as follows:

2011 \$22,413.01  
 2012 \$17,976.95  
 2013 \$20,750.92

**Total \$61,140.88**

The City’s portion of the refund after chargeback will be **\$21,817.76**. Legal fees will also be incurred.

The bottom line is that a refund will have to be paid for those years whether we settle or not. Keep in mind though that, if the City and DOR *lose* on appeal regarding the 2011-2013 challenges, i.e., if the court of appeals or supreme court reverses the TAC's decision, the refund for 2011-2013 would be \$784,606.48, with \$281,894.78 being allocated to the City after chargeback.

#### *2014-2016*

The refund calculation above does not take into consideration the refund that would have to be paid if the DOR's assessments are not upheld for 2014-2016

The potential loss is significant. If Sturm wins on the 2014-2016 claims, the refund before chargeback will be \$1,090,102.45, with the City's portion being \$453,663.12. This would be on top of the refund for 2011-2013. Additionally, there will be a cost for my legal services.

#### *Total Potential Refund*

Worst case scenario, the total potential refund would be \$1,874,708.93 before chargeback and \$735,557.90 after. The full amount would have to be paid by the City and then the City could request a chargeback.

#### **Tentative Settlement**

In recognition that further litigation of these cases carries a risk of significant monetary harm, particularly because of the recent TAC decision which may well be interpreted adverse to the City's interests, I recommended to the Mayor that we try to mediate a resolution that would result in as small of a refund as possible and perhaps tying 2017 in to the mix to avoid litigation over this year's assessment. The parties mediated the disputes on July 19, 2017 and came to the following tentative (i.e., subject to Council and Department of Revenue approval) agreement:

#### *2011-2013*

A refund of \$61,140.88 total and \$21,817.76 after chargeback. Note that this is the same amount that the City would have to pay even if it *won* the 2011-2013 cases. The reason that there was no negotiating the refund for these years was precisely because the City could not get a better result by continuing the litigation, even if it won. There was no argument to the contrary to make.

#### *2014-2015*

No refund will be paid for these years.

#### *2016*

A refund of \$172,984.97 before chargeback and \$68,219.42 after.

*Total Refund Under Settlement Proposal*

A refund of **\$234,125.85** before charge back and **\$90,037.18** after.

Please note that all of these numbers are approximate—they may vary in the final analysis, depending on whether DOR rounds the numbers up/down, uses decimal points, etc. The variation will not be significant.

*2017*

The 2017 tax bill has not yet been issued and so it is possible to change it from the current proposed assessment so that the City would not have to pay any refund. The parties tentatively agreed on an assessment of \$20,200,000 for tax year 2017 for all three properties. This needs to be formalized with the Department of Revenue, but I don't foresee any problem with that.

**Recommendation**

Given the *huge* exposure if the City loses on even some of the claims, and the amount of attorneys' and expert's fees that will be incurred in litigating the matter, for the reasons set forth above, I strongly recommend that the Council approve the tentative settlement agreement.



STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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STURM FOODS, INC.,

SETTLEMENT AGREEMENT

Petitioner,

Docket Nos. 15-M-037, 15-M-038,  
15-M-039, 16-M-124, 16-M-125, 16-M-126,  
16-M-132, 16-M-133, 17-M-077, 17-M-078,  
17-M-079, 17-M-080, and 17-M-081

CITY OF MANAWA,

Petitioner,

Docket Nos. 15-M-064, 15-M-065,  
15-M-066, 16-M-174, 16-M-175, 16-M-176,  
17-M-099, 17-M-100, 17-M-101, 17-M-102,  
and 17-M-103

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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Sturm Foods, Inc. ("Sturm"), the City of Manawa ("the City") and the Wisconsin Department of Revenue ("Department"), collectively, the Parties, by their undersigned representatives, enter into this agreement in settlement of the full value assessments identified herein ("Agreement"). Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

IT IS HEREBY STIPULATED that this Agreement is contingent upon and subject to the following terms and conditions:

- (1) Settlement of the full value assessment of the subject property for the 2017 assessment year, which is itself subject to the execution of a separate written agreement between the Parties;
- (2) Within ten (10) calendar days from the date this Agreement is fully executed, Sturm shall file a Notice of Voluntary Dismissal with the Wisconsin Court of Appeals in Sturm

Foods, Inc. v. DOR, Appeal No. 2017AP932, relating to assessment years 2011, 2012 and 2013.

IT IS FUTHER STIPULATED that the original assessments for the following parcels, as revised or as sustained by the State Board of Assessors under the respective notices issues for each of the subject parcels, will **NOT** be modified and thus shall bear the following full value assessments:

<u>Docket No.</u>	<u>State Identification No.</u>	<u>Assessment Year</u>	<u>Full Value Assessment</u>
15-M-037, 15-M-038, 15-M-039, 15-M-064, 15-M-065, 15-M-066	81-68-251-R000030639 and 81-68-251-R000069528 (1250 Industrial Drive)	2014	\$11,500,000
	81-68-251-R000011881 and 81-68-251-R000036715 (1310 Industrial Drive)	2014	\$4,500,000
	81-68-251-R000011877 (150 South Bridge Street)	2014	\$2,100,000
16-M-124, 16-M-125, 16-M-126, 16-M-132, 16-M-133, 16-M-174, 16-M-175, 16-M-176	81-68-251-R000030639 and 81-68-251-R000069528 (1250 Industrial Drive)	2015	\$11,500,000
	81-68-251-R000011881 and 81-68-251-R000036715 (1310 Industrial Drive)	2015	\$4,500,000
	81-68-251-R000011877 (150 South Bridge Street)	2015	\$2,100,000

IT IS FURTHER STIPULATED that the original assessments for the following parcels, as revised or as sustained by the State Board of Assessors under the respective notices issued for each of the subject parcels, ARE modified as follows:

<u>Docket No.</u>	<u>State Identification No.</u>	<u>Assessment Year</u>	<u>Modified Assessment</u>
17-M-077, 17-M-078, 17-M-079, 17-M-080, 17-M-081, 17-M-099, 17-M-100, 17-M-101, 17-M-102, 17-M-103	81-68-251-R000030639 and 81-68-251-R000069528 (1250 Industrial Drive)	2016	\$11,913,000
	81-68-251-R000011881 and 81-68-251-R000036715 (1310 Industrial Drive)	2016	\$8,947,000
	81-68-251-R000011877 (150 South Bridge Street)	2016	\$2,140,000

IT IS FURTHER STIPULATED that Sturm waives the right to any interest under § 70.511(2)(b), Wis. Stat., if any interest is warranted.

IT IS FURTHER STIPULATED that the Parties waive fees, costs and attorney's fees, if any fees, costs and attorney's fees are warranted.

IT IS FURTHER STIPULATED that assessment year 2017 is the field audit year, pursuant to § 70.995(7)(b), Wis. Stat.

IT IS FURTHER STIPULATED that the parties have reached this Agreement regarding the above-captioned matters before the Wisconsin Tax Appeals Commission ("Commission") and the Wisconsin Court of Appeals ("Appeals Court"), and that this Agreement fully and finally concludes all issues of fact and law in the appeals to the Commission and Appeals Court. FURTHER, that execution of this Agreement shall be final, conclusive, and binding between the Parties, with respect to any and every issue or matter which was discussed, or could have been discussed, in the course of litigating this case, in the course of settlement discussions or in the

STATE OF WISCONSIN  
STATE BOARD OF ASSESSORS

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IN THE MATTER OF:

STURM FOODS, INC.  
Appeal No. 81-020-REO-17  
Appeal No. 81-021-REO-17

SETTLEMENT AGREEMENT

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IT IS HEREBY STIPULATED that the original full value assessment for the following parcel is modified as follows:

<u>State Identification No.</u>	<u>Assessment Year</u>	<u>Modified Value Assessment</u>
81-68-251-R000011881 (1250 Industrial Drive & 1310 Industrial Drive)	2017	\$18,410,000
81-68-251-R000011877 (150 South Bridge Street)	2017	\$1,790,000

IT IS FURTHER STIPULATED that STURM FOODS, INC., and the CITY OF MANAWA waive the right to any interest due under WIS. STAT. §70.511(2)(b), if any is warranted.

IT IS FURTHER STIPULATED that upon execution of this Settlement Agreement, the Department of Revenue, via the State Board of Assessors, shall issue a Notice of Determination consistent with this Settlement Agreement and thus setting the full value assessment of the property for 2017 at \$20,200,000, but according to the table above. STURM FOODS, INC., and the CITY OF MANAWA will accept the full value assessment of the property for 2017 at \$20,200,000, but according to the table above. The parties to this Settlement Agreement shall have neither the right nor the power to appeal the settled upon full value assessment to the Wisconsin Tax Appeals Commission or any other forum. The parties to this Settlement Agreement explicitly waive the right to appeal this settled upon full value assessment to the Wisconsin Tax Appeals Commission or any other forum.

IT IS FURTHER STIPULATED that this Settlement Agreement is contingent upon and subject to an executed settlement agreement of the full value assessments of the subject properties the assessment years 2011, 2012, 2013, 2014, 2015 and 2016 as set forth in a separate ancillary and non-divisible settlement agreement between the parties in Docket Nos. 15-M-037, 15-M-038, 15-M-039, 16-M-124, 16-M-125, 16-M-126, 16-M-132, 16-M-133, 17-M-077, 17-M-078, 17-M-079, 17-M-080, and 17-M-081 and Docket Nos. 15-M-064, 15-M-065, 15-M-066, 16-M-174, 16-M-175, 16-M-176, 17-M-099, 17-M-100, 17-M-101, 17-M-102, and 17-M-103 before the Wisconsin Tax Appeals Commission and the dockets in Sturm Foods, Inc. v. DOR, Appeal No. 2017AP932, relating to the dockets for assessment years 2011, 2012 and 2013.

IT IS FURTHER STIPULATED that the parties to this Settlement Agreement waive fees, costs and attorney's fees, if any are warranted.

IT IS FURTHER STIPULATED that execution of this agreement shall be final, conclusive, and binding as between the parties, with respect to any and every issue or matter which was discussed, or could have been discussed, in the course of litigating this case, in the course of settlement discussions or in the course of any other discussions between the parties relating to the matters that are the subject of this Settlement Agreement.

course of any other discussions between the parties relating to the matters that are the subject of this Agreement.

IT IS FURTHER STIPULATED that the Commission and may enter an order without further notice to the Parties affirming the actions of the Department, as modified by the terms and conditions in this Agreement.

**STURM FOODS, INC.**

**WISCONSIN DEPARTMENT OF REVENUE**

By: \_\_\_\_\_ Date  
Title: \_\_\_\_\_

\_\_\_\_\_  
Timothy J. Drascic, Director Date  
Manufacturing and Utility Bureau  
Division of State and Local Finance

\_\_\_\_\_  
Robert A. Hill Date  
Attorney for Sturm Foods, Inc.

\_\_\_\_\_  
Axel F. Candelaria Rivera Date  
Attorney for the Department of Revenue

**CITY OF MANAWA**

John D. Smith 8-16-17  
By: Mayor John Smith Date

Meg Vergeron 8/15/17  
Meg Vergeron Date  
Attorney for the City of Manawa

IT IS FURTHER STIPULATED that STURM FOODS, INC. and the CITY OF MANAWA both understand that once the Department of Revenue, via the State Board of Assessors, issues its Notice of Determination consistent with this Settlement Agreement and thus setting the full value assessment of the property for 2017 at \$20,200,000, but according to the table above, neither STURM FOODS, INC. nor the CITY OF MANAWA will appeal the Notice of Determination despite the fact that the official notice of determination template is always issued with the appeal rights information. Both STURM FOODS, INC. and the CITY OF MANAWA explicitly and irrevocably waive their rights to appeal the Notice of Determination.

**STURM FOODS, INC.**

**WISCONSIN DEPARTMENT OF REVENUE**

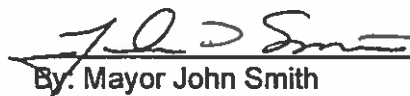
By: \_\_\_\_\_ Date \_\_\_\_\_  
Title: \_\_\_\_\_

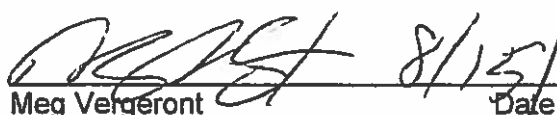
Timothy J. Drascic, Director Date \_\_\_\_\_  
Manufacturing and Utility Bureau  
Division of State and Local Finance

Robert A. Hill Date \_\_\_\_\_  
Attorney for Sturm Foods, Inc.

Axel F. Candelaria Rivera Date \_\_\_\_\_  
Attorney for the Department of Revenue

**CITY OF MANAWA**

 8-16-17  
By: Mayor John Smith Date

 8/15/17  
Meg Vergeront Date  
Attorney for the City of Manawa

**CITY OF MANAWA  
PO BOX 248  
MANAWA WI 54949  
920-596-2577**

July 28, 2010

David Forsythe, City Attorney  
PO Box 922  
Manawa WI 54949

Dear David,

Previously I had informed you that Kurt Keller, (920-448-5197) from the State of Wisconsin Board of Assessment in Green Bay, WI indicated that they intended to drop the values of Sturm Foods in Manawa.

He also indicated that we may have to pay back taxes for the year 2009 because the appeal was filed in the allotted time frame but the State had not finished the appeal in time for the tax bills to be distributed.

I informed him that we have building permits in the amount of approximately \$17,000,000.00 since 2006, and that the City had created a TIF district to assist them in development. We amended the district 3 times since it was started, each time to assist the Sturm Foods in their needs. We paid for new roads and we remodeled our waste water treatment plant all at the expense of the TIF district. I also informed him that Sturm Foods had been sold for \$660,000,000.00 and that the selling company had requested the decrease in value not the new buyer.

I have attached for your information the following:

1. Sturm Foods sale
2. Copy of letter from State of Wisconsin with the manufacturing assessment roll
3. Copy of all Sturm Foods building permits
4. The originals of all real estate objections filed through the State and their decisions.

I am asking you to help me to see how the City can object to the Sturm Foods values or if we can at all. The County Treasurer Clyde Tellock stated that you can't object to their decision for 2009 but you can file an objection to the tax year 2010.

If you would like to discuss this further please call me.

Sincerely,

  
Cheryl Hass, City Clerk