

April 17, 2012

MEMORANDUM OF UNDERSTANDING (“MOU”) BETWEEN THE WISCONSIN DEPARTMENT OF TRANSPORTATION (“WisDOT”) AND MILWAUKEE COUNTY (“COUNTY”) (BOTH PARTIES TO THIS AGREEMENT TOGETHER REFERRED TO AS THE “PARTIES” AND EACH AS A “PARTY”) CONCERNING THE ACQUISITION OF PARCEL 1, ZOO INTERCHANGE RECONSTRUCTION PROJECT NO. 1060-33-23, INCLUDING THE LAND ACQUISITION AND THE FUNCTIONAL REPLACEMENT OF THE COUNTY GREENHOUSE FACILITY LOCATED AT 10340 WATERTOWN PLANK ROAD, WAUWATOSA, WISCONSIN, ASSOCIATED WITH THE RECONSTRUCTION OF THE ZOO INTERCHANGE IN MILWAUKEE COUNTY.

This MOU is made and entered into by and between WisDOT and County to address the WisDOT need to acquire land which currently houses the County greenhouse facility, due to the reconstruction of the zoo interchange.

WITNESSETH

- A. WHEREAS, WisDOT has been legislatively authorized to reconstruct the zoo interchange by the State of Wisconsin and by the Federal Highway Administration (“FHWA”) under various state and federal statutes and codes including part of Swan Boulevard and part of Watertown Plank Road under designated project 1060-33-23; and
- B. WHEREAS, County has powers and duties under various Wisconsin Statutes, as a municipal body corporate; and
- C. WHEREAS, WisDOT requires certain lands in order to reconstruct the zoo interchange, including certain lands located in and near the intersection of U.S. Highway 45, Swan Boulevard and Watertown Plank Road; and
- D. WHEREAS, County owns and operates a greenhouse facility on an 8.156 acre parcel of land within the area required by WISDOT to be acquired for reconstruction of the zoo interchange; and
- E. WHEREAS, WisDOT has given County the option of choosing Functional Replacement of the greenhouse facility pursuant to Wis. Stat. §84.01(15) and 23CFR Subpart B, Section 710.509 by letter dated January 4, 2012, a copy of which is attached hereto and incorporated herein as Exhibit A; and
- F. WHEREAS, County has exercised the aforesaid option and has chosen Functional Replacement of the greenhouse facility, by letter dated January 16, 2012, a copy of which is attached hereto and incorporated herein as Exhibit B; and
- G. WHEREAS, WisDOT has accepted County’s aforesaid choice, by letter dated February 20, 2012, a copy of which is attached hereto and incorporated herein as Exhibit C; and

- H. WHEREAS, federal funds will not participate in project 1060-33-23 and WisDOT will be utilizing only state funds for the Functional Replacement of the greenhouse facility.
- I. WHEREAS, the Parties agree that Functional Replacement, under state and federal law, provides an alternative method of acquisition and compensation for publicly owned properties which provide an essential public service, when WisDOT requires land for acquisition for highway purposes where the facility is currently located. Functional Replacement is not based on the actual cost of the Replacement Facility, but only those actual costs eligible as Functional Replacement costs, as more specifically described herein. Functional Replacement will reimburse County for costs to restore the status quo but not reimburse County for increases in Capacity or Betterment, in comparison to the current facility.

NOW, THEREFORE, in consideration of these premises and the mutual and dependent agreements hereinafter set forth, the Parties do hereby agree as follows:

1. The recitals in the foregoing lettered paragraphs A-I, inclusive, are true and correct and incorporated herein.
2. WisDOT will acquire from County such part of the land described in paragraph D, above (County Land) either as agreed by the Parties, or as determined by a court of competent jurisdiction, pursuant to chapter 32, Wis. Stats., in an action or proceeding, separated and independent from the Functional Replacement of the County greenhouse facility.
3. WisDOT will also acquire from County the greenhouse facility described in paragraph D, above, pursuant to Wis. Stats. Sec. 84.01(15), and in accordance with 23 CFR Sec. 710.509 and Chapter 32, Wis. Stats., in a subsequent action or proceeding, separated and independent from the aforesaid land acquisition.
4. The following definitions shall govern the Functional Replacement of the County greenhouse facility.
 - (a) Functional Replacement is the replacement of a qualifying facility being displaced by a highway project with another of equivalent function, where such facility is needed by the public, is actually replaced, and the costs to presently replace the facility are incurred by the County. Functional Replacement provides restoration of the status quo of the facility being displaced and does not include any increase in Capacity or Betterment.
 - (b) Betterment is any upgrading of the facility being replaced that is made solely for the benefit, and at the election, of the owner of the facility being replaced.
 - (c) Costs Actually Incurred are those amounts which the owner of the facility being replaced is legally obligated to pay, or has paid.

- (d) Costs Eligible for Reimbursement are Costs Actually Incurred, as agreed to be reimbursed by WisDOT under this MOU.
- (e) Capacity means current use and allocation of the space utilized in the facility being replaced and does not include idle space which has not been utilized, actively maintained, or needed within a reasonably recent time period, including space which has been allowed to fall into disrepair for lack of use.
- (f) Legal or Regulatory Requirements are those requirements lawfully imposed by any governmental body with jurisdiction over the Replacement Facility.
- (g) Industry Standards means those reasonable prevailing requirements generally accepted and utilized by members of the greenhouse industry.
- (h) Replacement Facility means the facility designed and constructed by the County.

5. Procedure

County will provide to WisDOT:

- (a) An appraisal for the County owned land and greenhouse facility has been provided.
- (b) On or before April 13, 2012, a detailed timeline for all County activities associated with the Functional Replacement through completion of the activity, including key turn on the Replacement Facility and final payment by WisDOT, a copy of which is attached hereto and incorporated herein as Exhibit D.
- (c) On or before April 20, 2012, a schematic design and engineering plan for the Replacement Facility identifying increases in Capacity or Betterment (if any) that County is including at its own cost.
- (d) On or before April 20, 2012, a list of required permits for the Replacement Facility.
- (e) On or before April 20, 2012, an itemization of any changes from the current facility needed to be made at the Replacement Facility required for compliance with Legal or Regulatory Requirements or Industry Standards and estimated costs for the same.
- (f) On or before June 11, 2012, a construction plan detail for the Replacement Facility including identification of work or costs associated

with Betterment or Capacity increases desired by County (if any) and to be funded solely by County.

- (g) On or before June 11, 2012, an itemization of all furniture, fixtures and equipment at the current facility to be moved to the Replacement Facility by WisDOT and items to be abandoned at the current facility (for which WisDOT will charge a disposal or sale fee).
- (h) On or before August 31, 2012, at least two bids for construction of the Replacement Facility including identification of work or costs associated with Betterment or Capacity increases desired by County (if any) and to be funded solely by County.

WisDOT will provide to the County:

- (i) Within ten (10) business days of receipt, a review and approval/rejection of the schematic design and engineering plan submitted by County.
 - (j) Within ten (10) business days of receipt, a review and approval/rejection of the construction plan detail for the Replacement Facility submitted by County.
 - (k) Within ten (10) business days of receipt, a review and approval/rejection of the itemization of any changes from the current facility required for compliance with Legal or Regulatory Requirements or Industry Standards and estimated costs for the same.
 - (l) Within ten (10) business days of receipt, a review and approval/rejection of a bid for construction of the Replacement Facility, including identification of work or costs associated with Betterment or Capacity increases.
6. Pursuant to paragraph 2, above, WisDOT shall provide to the County payment for the County Land, upon satisfaction of all closing requirements, at the close of the real estate transaction for the County Land.
 7. Pursuant to section 5(g) above, WisDOT will pay the cost of moving of any furniture, fixtures, and equipment from the facility being replaced to the Replacement Facility.
 8. WisDOT shall provide payment of Costs Eligible for Reimbursement to the County in four (4) installments. The initial payment shall be made at the time of the first County contractor construction draw. The second payment shall be made upon completion of 50% of construction. The third payment shall be made upon completion of 75% of construction. The fourth and final payment shall be made upon 100% completion of construction. All payments shall be based upon advance written construction completion notices submitted by County and

subsequent inspection and approval by WisDOT. Inspection and approval by WisDOT shall not be unreasonably delayed. All payments are subject to offset under WisDOT standard review and audit process for payments. Notices from the County regarding percent construction completion shall be in writing and made to:

Craig Andersen
Wisconsin Department of Transportation
DTSD SE Region
141 N W Barstow Street
P.O. Box 798
Waukesha, WI 53187-0798
Craig.andersen@dot.wi.gov

This project will be located at FIIPS _____ and EAPS _____.

Cost changes are not anticipated. However, any amount that WisDOT or the County believes constitutes an unanticipated cost change (as not originally provided on the approved bid) shall be considered under the change order process as approved by the WisDOT Division of Real Estate Program Manager.

9. WisDOT will monitor construction of the Replacement Facility. WisDOT will designate a primary contact person to assist County during the construction process. The County shall contract for, manage, and be solely responsible for all aspects of the construction of the Replacement Facility including obtaining permits and inspections, complying with regulatory and insurance requirements, personnel, bids, agreements, contractor management and all other typical construction activities.
10. In the event a dispute arises in administering this MOU, the parties shall endeavor to resolve such dispute, by means of direct discussion between their respective designated representatives. Such representatives are:

WisDOT:

Claudia Peterson
Tanace Matthiesen
Rebecca Burkel
Carrie Cox

COUNTY:

Frank Busalacchi
Craig Dillman
Gregory High
Kimberly Walker

The Parties agree that, due to the construction schedule for project 1060-33-23, any disagreement not resolved by discussion by the Parties will be resolved by WisDOT. Notwithstanding anything expressed in this MOU, any WisDOT decision under this MOU will not prevent County from seeking and obtaining any legal redress to which it is entitled under any applicable law or code.

11. Each signatory to this MOU attests that he or she is authorized to execute this MOU on behalf of the party represented and that any approval required to effectuate this MOU has been made or will be made in the course of the Parties' actions under this MOU.

WISCONSIN DEPARTMENT OF TRANSPORTATION

By: _____

Printed Name: _____

Title: _____

Date: _____

MILWAUKEE COUNTY

By: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENTS:

- Exhibit A – Correspondence dated January 4, 2012 to County from WisDOT regarding Functional Replacement Option
- Exhibit B – Correspondence dated January 16, 2012 to WisDOT from County regarding choice of Functional Replacement
- Exhibit C – Correspondence dated February 20, 2012 to County from WisDOT acknowledging County choice of Functional Replacement
- Exhibit D – County Timeline

EXHIBIT "A"



Division of Transportation
System Development
Southeast Regional Office
141 NW Barstow Street
PO Box 798
Waukesha WI 53187-0798

Scott Walker, Governor
Mark Gottlieb, P.E., Secretary
Internet: www.dot.wisconsin.gov

Telephone: 262-548-5903
Facsimile (FAX): 262-548-6424
E-mail: ser.dtsd@dot.wi.gov

January 04, 2012

CERTIFIED MAIL
7007 2680 0001 1152 3159

MILWAUKEE COUNTY
MILWAUKEE COUNTY CLERK
901 N. 9TH STREET, ROOM 105
MILWAUKEE, WI 53233

CERTIFIED MAIL

MILWAUKEE COUNTY
c/o FRANK BUSALACCHI
DEPARTMENT OF TRANSPORTATION & PUBLIC WORKS
2711 WEST WELLS STREET SUITE 300
MILWAUKEE, WI 53208

VIA U.S. MAIL

SUBJECT: Project ID: 1060-33-23
Zoo Interchange Projects
Local Roads/Various Highways
Milwaukee County

RE: Parcel # 1 (Milwaukee County – Greenhouses)

In compliance with Wisconsin Statutes and Federal Regulations, this letter is provided, along with the enclosed appraisal report, to initiate negotiations for the acquisition of your property interests needed for this project. In addition to the appraisal report, we have enclosed (or sent previously) the following documents:

- The Rights of Landowners Under Wisconsin Eminent Domain Law
- Transportation Project Plat
- Names of neighboring landowners affected by the project
- Legal description of the land and/or interest(s) needed for the project
- Agreement for Purchase and Sale of Real Estate
- Appraisal Guidelines

The loss in fair market value is estimated at \$593,000 and is allocated as follows:

Allocation	Description	Size	Unit	Per Unit	Value (\$)
Land	Land in FEE	6.056	Acres	\$81,406.87	\$493,000.00
Temporary Limited Easement (TLE)		2.100	Acres	\$6,666.67	\$14,000.00
Severance					\$86,000.00
				Total Damages	\$593,000.00

The following structures, building equipment and fixtures have also been considered as part of the real estate and are part of the property being acquired: as identified in the Vitale Realty Advisors LLC appraisal report dated December 16, 2011 which includes greenhouses, connecting corridors, office & appurtenant structures, forestry building, boiler building, generator building, hoop houses, etc. In the event you wish to retain any of these items, please contact me for more information.

Please note that you have the option of EITHER payment for the loss in fair market value to the property as reflected in the above offer OR reimbursement for the greenhouse "functional replacement." You must tell WISDOT in writing which option you intend to choose.

EXHIBIT "A"

WisDOT's determination of compensation is based on the fair market value of the property, and it disregards any increase or decrease in market value caused by the project for which the property is being acquired.

If you agree with the values determined in the appraisal report and wish to enter into an agreement with WisDOT, sign the enclosed Agreement for Purchase and Sale of Real Estate and return it in a timely manner, in the enclosed postage paid envelope to WisDOT for final review and approval.

Once WisDOT is satisfied that the negotiations for we will provide you with a fully executed copy of the agreement and contact you to arrange for payment and closing. Please note that your execution of the Agreement For Purchase and Sale of Real Estate alone is not sufficient to result in an enforceable contract for the purchase of the needed property.

If you are not satisfied with the above-stated conclusions of value for the needed property, you are eligible to obtain an additional appraisal from a qualified appraiser of your choice. If you elect to have an appraisal report prepared, you must take certain steps. First, the appraisal report must conform to the Appraisal Guidelines. Second, to qualify for reimbursement of the reasonable cost of the appraisal, a copy must be submitted to the WisDOT Waukesha Region Office within 60 days of your receipt of this letter. The 60-day period for reimbursement eligibility will expire on March 5, 2012. Please note that there is no statutory provision to extend this deadline. We are unable to pay the cost of an appraisal received after that date. We can, however, consider the merits of the report findings.

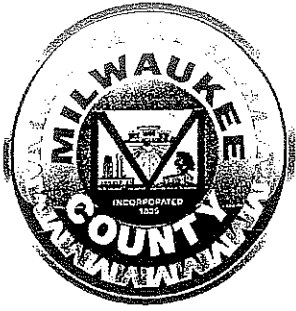
WisDOT will be pleased to provide additional information you may need in your decision- making, if available, and further discuss any concerns you may have.

If you have any questions, please call me at (262) 548-8781.

Respectfully,



Larry D Stein
Real Estate Specialist



DEPARTMENT OF TRANSPORTATION
Milwaukee County

FRANK BUSALACCHI • Director
• Highway Commissioner

January 16, 2012

Fay Roberts
Assistant Director of
Transportation

Brian Dranzik
Director of Administration

C. Barry Bateman
Director of General Mitchell
International Airport

Daniel Goeden
Director of Fleet
Management

Jack Takerian
Director of Highway
Operations

Andrea Weddle-Henning
Resident Contract
Manager-Design,
Transportation Services

Lloyd Grant
Managing Director
Milwaukee County
Transit System

Mr. Larry Stein, SE Freeways Real Estate
Wisconsin Department of Transportation
DTSD SE Region
141 N W Barstow Street
PO Box 798
Waukesha, Wisconsin 53187-0798

Subject: Parcel 1
Milwaukee County greenhouse property
Project I.D. 1060-33-23

Dear Mr. Stein:

You indicated, as alternative to WisDOT compensating Milwaukee County ("County") for the acquisition of the project property interests on the subject parcel using the conventional acquisition and cash compensation concept, the County is eligible for the Functional Replacement Program ("Functional Replacement"), since it is recognized the cash compensation offered in your letter, dated January 4, 2012, is insufficient to duplicate the function and utility of the public facility located on the subject parcel.

Since the subject property and facility thereon are publicly owned and provide an essential public service, the County is requesting WisDOT pursue the Functional Replacement compensation approach for the subject parcel/facility. Please advise the County in writing how WisDOT will fund the County obtaining design/construction estimates for the replacement facility. It is my understanding since the County is contemplating constructing a replacement facility on another County-owned property, the compensation package from WisDOT will include construction costs for an equivalent replacement facility, the fair market value of Parcel 1 and the moving costs to relocate the current operation to the replacement property/facility.

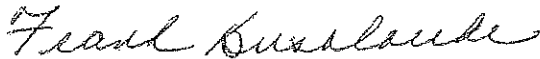
MILWAUKEE COUNTY – CITY CAMPUS 2711 WEST WELLS STREET SUITE 300 MILWAUKEE, WI 53208
PHONE NUMBERS: Administration 414 -278-4941 Transportation Services 414-278-5096
FAX NUMBERS: Administration 414 -223-1899 Transportation Services 414-223-1850

EXHIBIT "B"

I greatly appreciate your understanding of the service the subject property and facility provides the public and I look forward to working with WisDOT to reach a mutually acceptable acquisition.

Please direct future correspondence to my attention.

Sincerely,



Frank Busalacchi, Acting Director
Milwaukee County Department of Transportation

- cc. Chris Abele, County Executive
Lee Holloway, County Board Chairman
William Drew, Chairman, Zoo Interchange Task Force Committee
Sue Black, Director, Milwaukee County Parks, Recreation & Culture (MCPRC)
Jim Keegan, Chief of Planning and Development, MCPRC
Patrick Farley, Director, County Department of Administrative Services
Brian Taffora, Director, County Economic Development
Craig Dillmann, Manager, County Real Estate Services

EXHIBIT "C"



Division of Transportation Systems Development
Bureau of Technical Services
3502 Kinsman Blvd
Madison, WI 53704

Scott Walker, Governor
Mark Gottlieb, P.E., Secretary
Internet: www.dot.wisconsin.gov

Telephone: 608-264-5399
Facsimile (FAX): 608-267-0307

E-mail: rebecca.burkei@dot.wi.gov

February 20, 2012

Frank Busalacchi,
Department of Transportation & Public Works
Milwaukee County
2711 West Wells Street, Suite 300
Milwaukee, WI 53208

RE: Milwaukee County Functional Replacement Request

Dear Mr. Busalacchi:

Thank you for your letter of January 16, 2012, requesting approval of functional replacement for the Milwaukee County greenhouse, located at the intersection of USH 45 and Watertown Plank Road (on Parcel 1 of WISDOT Project I.D. 1060-33-23). This letter is to inform you that the Wisconsin Department of Transportation has approved your request of functional replacement for the Milwaukee County greenhouse.

As you know, the purpose of functional replacement is to provide an alternate method of acquiring and compensating for publicly owned properties that provide essential public services. Functional replacement is a mechanism to provide a replacement facility for a publicly-owned facility when the fair market value (FMV) compensation for the acquisition of the facility would not be sufficient to restore the status quo of the public facility.

This approval includes the following:

- WISDOT will compensate Milwaukee County for the FMV of the land being acquired for Project I.D. 1060-33-23 at the current greenhouse location. Milwaukee County will provide the land on which the new greenhouse will be located.
- WISDOT will provide funding to Milwaukee County for the cost of functionally replacing the existing greenhouse facility. This will not include funding for any capacity increases (capacity does not include idle space which has not been utilized, actively maintained, or needed within a reasonably recent time period including space which has been allowed to fall into disrepair for lack of use), betterments or enhancements. It will, however, include compensation for the cost of surveys, necessary permits, site preparation, engineering, and construction of the greenhouse at the new location.
- WISDOT will pay to move the personal property located at the current greenhouse.

It is WisDOT's intention to:

- Negotiate the FMV of the land upon which the green house is located, as soon as is practicable. As part of this negotiation, WISDOT will review an owner's appraisal submitted by Milwaukee County. Please note, to be reimbursed for the cost of the appraisal, it must be submitted by March 5, 2012.

EXHIBIT "C"

Name
Date
Page 2

- Complete the land acquisition and provide the compensation to Milwaukee County. These funds may be used as the County determines. No advance payments will be made for preliminary engineering or other early planning costs.

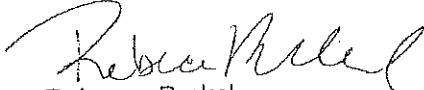
We would like to begin working with you as soon as possible on the development of a mutually acceptable, functional replacement agreement. The agreement will need to include, among other things:

- o A detailed timeline for the planning and construction of the new greenhouse, that will allow for the completion of the new greenhouse in approximately April, 2013, and construction of Swan Boulevard to begin in July of 2013.
- o Identification of the location of the new greenhouse.
- o Agreement from Milwaukee County that any existing greenhouse plans or designs will be provided to WISDOT at the earliest opportunity.
- o The process and timeframe by which Milwaukee County will obtain bids for the design and construction of the new greenhouse, and submit those bids to WisDOT for review.
- o The process and timeframe WisDOT will use to review the proposed design and determine the components of that design that are functionally equivalent to the existing greenhouse, and therefore compensable under functional replacement.

The process that will be used for making payments to Milwaukee County, and in what increments, for the design and construction of the new greenhouse.

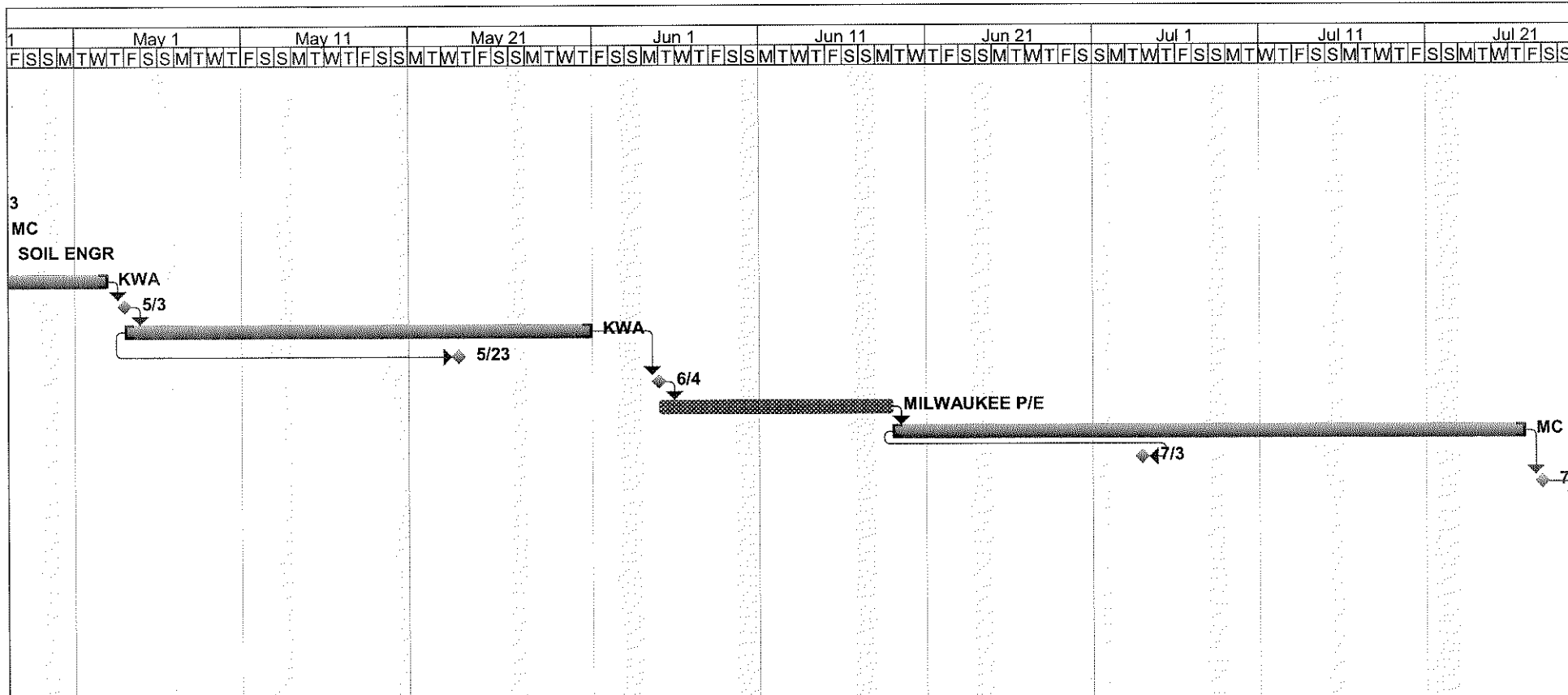
Please contact Claudia Peterson, Technical Services Chief, Southeast Region, at 262-545-5905, at your earliest convenience to initiate the development of a functional replacement agreement.

Sincerely,



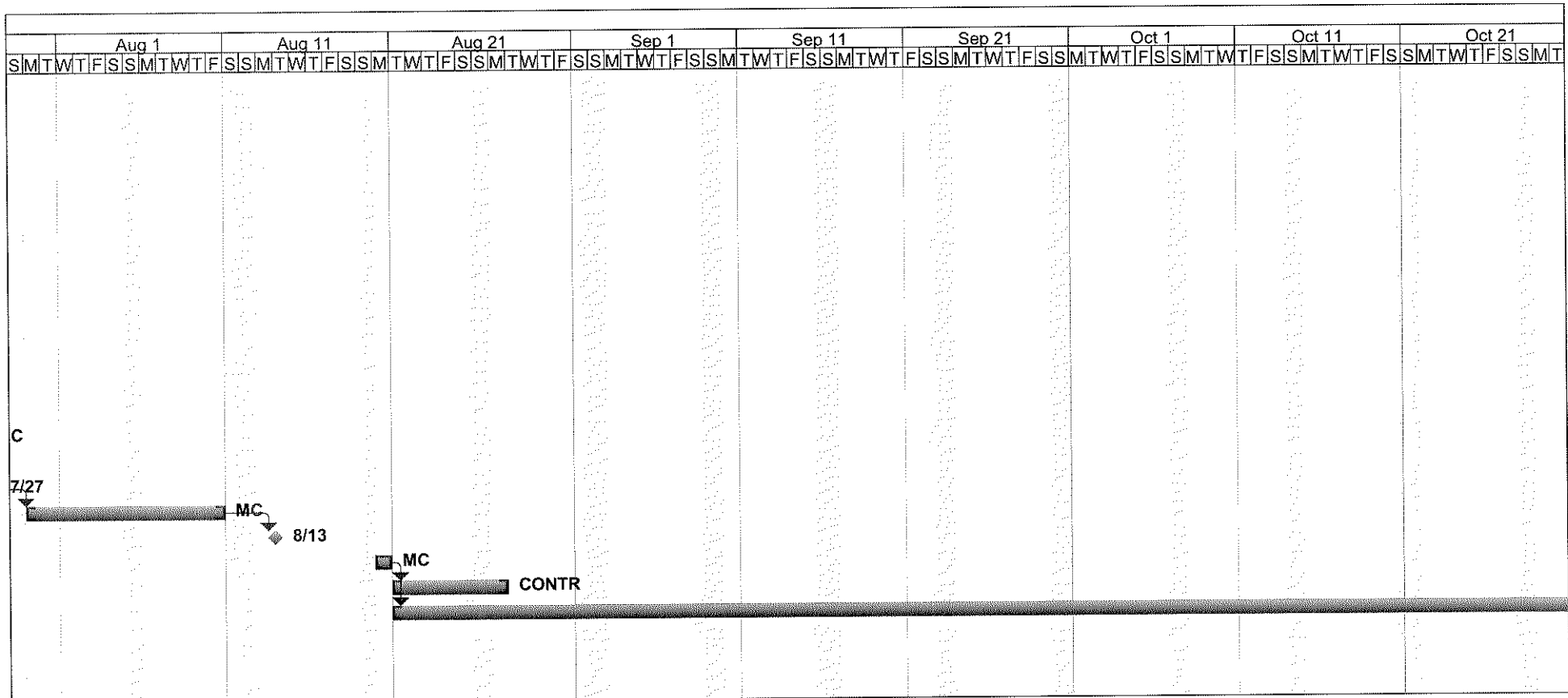
Rebecca Burkel
Director
Bureau of Technical Services

Cc: Craig Dillman Milwaukee County
Claudia Peterson WISDOT
Tanace Matthiesen WisDOT
Carrie L Cox WISDOT



Project: GREENHOUSE SCHED-2.mp
Date: Wed 3/21/12

Task		Inactive Task		Manual Summary	
Split		Inactive Task		Start-only	
Milestone		Inactive Milestone		Finish-only	
Summary		Inactive Summary		Progress	
Project Summary		Manual Task		Deadline	
External Tasks		Duration-only			
External Milestone		Manual Summary Rollup			



Project: GREENHOUSE SCHED-2.mp
Date: Wed 3/21/12

Task		Inactive Task		Manual Summary	
Split		Inactive Task		Start-only	
Milestone		Inactive Milestone		Finish-only	
Summary		Inactive Summary		Progress	
Project Summary		Manual Task		Deadline	
External Tasks		Duration-only			
External Milestone		Manual Summary Rollup			

Nov 1			Nov 11			Nov 21			Dec 1			Dec 11			Dec 21			Jan 1			Jan 11			Jan 21														
T	W	F	S	M	T	T	F	S	S	M	T	T	F	S	S	M	T	T	F	S	T	F	S	S	M	T	T	F	S	S	M	T	T	F	S	S	M	T
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Project: GREENHOUSE SCHED-2.mp
Date: Wed 3/21/12

Task		Inactive Task		Manual Summary	
Split		Inactive Task		Start-only	
Milestone		Inactive Milestone		Finish-only	
Summary		Inactive Summary		Progress	
Project Summary		Manual Task		Deadline	
External Tasks		Duration-only			
External Milestone		Manual Summary Rollup			

