

May 29, 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 July 23, 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: CLAUDIA PETERSON
Title: TSS CHIEF
Date: 5-30-12

MILWAUKEE COUNTY

By: 
Printed Name: _____
Title: Director
Date: 5/29/12