# UNIVERSITY OF WISCONSIN SYSTEM

### Office of General Counsel

1852 Van Hise Hall 1220 Linden Drive Madison, WI 53706 (608) 262-2995 (608) 263-3487 Fax

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Tomas L. Stafford Anne E. Bilder Wade Harrison Erin E. Kastberg Jennifer Sloan Lattis Matthew J. Lind

June 29, 2016

Ms. Joan Woldt Bank First National 101 City Center Oshkosh, WI 54903

Dear Ms. Woldt:

This letter is sent to you in connection with your bank's purchase of the City of Oshkosh Series 2013 Revenue Bonds (UW Oshkosh Foundation Welcome Center Project) bond issue.

As you know, our office and the Wisconsin Department of Justice have reviewed a letter from the University of Wisconsin-Oshkosh (University) which was provided to you as part of that bond issue, either before or after the bond closing. This letter purports to guarantee that the University will pay certain sums if those sums are not paid by the University of Oshkosh Foundation (Foundation) in connection with the bond issue. A copy is enclosed.

The letter states, generally, that if the Foundation fails to cover project expenses or debt service or if other specified eventualities occur, the University will pay the defaulted obligations. We have concluded that the pledges made in this letter are void and unenforceable. That conclusion rests on the provisions of the Wisconsin Constitution.

Article VIII, Section 3 of the Constitution provides (with exceptions not material here) that the credit of the state shall never be given, or loaned in aid of any individual, association, or corporation. The University's enclosed letter violates that provision because it purported to lend the credit of the University to support the Foundation's borrowing in connection with the bond issue.

Two Wisconsin appellate court cases have addressed the problems that these void guaranties create. In *Ehrlich v. City of Racine*, 26 Wis. 2d 352, 132 NW 2d 489 (1965), the parties agreed that the City would annex certain land and would receive a storm sewer easement across that land. The City agreed to pay the landowners the difference between their actual property taxes and the amount they would have paid at a property assessment of \$500/acre. The Supreme Court held that the agreement violated the Uniformity Clause of the Constitution, set forth in Article VIII, Section 1.

In *Cornwell v. City of Stevens Point*, 159 Wis. 2d 136, 464 NW 2d 33 (Ct. App. 1990), Cornwell and the City had agreed that the City would annex Cornwell's land. Cornwell agreed not to develop the land, and granted the City the right to pump groundwater from the land for

city use. In exchange, the City agreed to reimburse Cornwell for all real estate taxes payable for the annexed property. This, too, was held to violate the Uniformity Clause of the Constitution.

In both of these cases, the reviewing court ruled that because the contracts between the cities and the landowners were unconstitutional, their provisions could not be enforced. But the courts also refused to invalidate the annexations and easements. The courts declared that the judiciary would not assist the parties, deliberately leaving the parties where they had placed themselves through their unconstitutional agreements.

We have concluded that our courts, asked to enforce the unconstitutional guaranty agreement the University has issued, would deny enforcement of the guaranty and would not grant any other relief. That result would leave the University, the Foundation, and the Foundation's lenders exactly where the court found them.

Having determined that this guaranty is void and unenforceable, we write to notify the bank that the University will not honor the guaranty set forth in the enclosed letter. This statement applies with the same force to any purported University guaranty that may have been provided to the bank, but of which the University currently is unaware. Further, the bank must not offer or provide this purported guaranty to other entities as an assurance of payment by the University of any Foundation liabilities or obligations of any kind.

We are available to meet if you have questions or wish to discuss this matter in more detail.

Sincerely,

Tomas L. Stafford General Counsel

Jan 1- 14/10

Encl.



January 18, 2013

Bank First National 101 City Center Oshkosh, WI 54903

The UW-Oshkosh Foundation, Inc (the "Foundation") provides necessary support to the University of Wisconsin Oshkosh (the "University") in a variety of ways as part of its not-for-profit mission. The UW Oshkosh Foundation Alumni Welcome & Conference Center, LLC (the "Borrower") is building an Alumni Welcome and Conference Center located at 625 Pearl Avenue, Oshkosh, Wisconsin (the "facility"). The 39,000 square foot facility will house a 440-person ballroom, four breakout rooms and an executive board room, establishing the facility as a premier, accessible meeting and event center on campus. The facility will create several significant benefits for the future of the University, including:

- · University front-door for prospective students, parents, guests
- · Expanded conference and event capabilities with unique venue
- · Facilitate Alumni/Community relationship building

The City of Oshkosh will issue its \$10,000,000 Revenue Bonds, Series 2013 (UW-Oshkosh Foundation Welcome Center Project) (the "Bonds") to assist the Borrower to finance construction and equipping of the facility. The Bonds will be purchased by Bank First National (the "Purchaser").

In consideration of the benefits which will accrue to the University and its students and in pursuit of the University's educational mission, and to provide necessary liquidity coverage the University agrees, that if the Foundation is unable to raise the additional pledges needed to service the debt, that the University will make the required debt service payments on the Bonds and any other liability owed by the Borrower to the Purchaser. The University acknowledges that a breach of its obligations in this letter will be an "event of default" on the Series 2013 Bonds.

The undersigned is authorized on behalf of the University to make the foregoing commitment and acknowledges that the obligations hereunder are enforceable against the University.

Accepted and agreed to by:

(Signature) Thomas G. Sonnleitner

Title: Vice Chancellor for Administrative Services, University of Wisconsin Oshkosh

Date: January 18, 2013

## UNIVERSITY OF WISCONSIN SYSTEM

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Tomas L. Stafford Anne E. Bilder Wade Harrison Erin E. Kastberg Jennifer Sloan Lattis Matthew J. Lind

June 29, 2016

Attorney Barbara Conley 401 Charmany Drive Madison, WI 53719

Dear Ms. Conley:

This letter is sent to you in connection with your client, First Business Bank, and the bank's purchase of the City of Oshkosh Conduit Bonds, Series 2012 (Oshkosh Investors, LLC. Project) bond issue, and its purchase of the Town of Rosendale Revenue Refunding Bonds, Series 2015 (Rosendale Biodigester Project) bond issue.

As you know, our office and the Wisconsin Department of Justice have reviewed letters from the University of Wisconsin-Oshkosh (University) which were provided to you as part of these bond issues, either before or after the bond closing. These letters purport to guaranty that the University will pay certain sums if those sums are not paid by the University of Oshkosh Foundation (Foundation) in connection with the bond issues. Copies are enclosed.

The letters state, generally, that if the Foundation fails to cover project expenses or debt service or if other specified eventualities occur, the University will pay the defaulted obligations. We have concluded that the pledges made in these letters are void and unenforceable. That conclusion rests on the provisions of the Wisconsin Constitution.

Article VIII, Section 3 of the Constitution provides (with exceptions not material here) that the credit of the state shall never be given, or loaned in aid of any individual, association, or corporation. The University's enclosed letter violates that provision because it purported to lend the credit of the University to support the Foundation's borrowing in connection with the bond issue.

Two Wisconsin appellate court cases have addressed the problems that these void guaranties create. In *Ehrlich v. City of Racine*, 26 Wis. 2d 352, 132 NW 2d 489 (1965), the parties agreed that the City would annex certain land and would receive a storm sewer easement across that land. The City agreed to pay the landowners the difference between their actual property taxes and the amount they would have paid at a property assessment of \$500/acre. The Supreme Court held that the agreement violated the Uniformity Clause of the Constitution, set forth in Article VIII, Section 1.

In *Cornwell v. City of Stevens Point*, 159 Wis. 2d 136, 464 NW 2d 33 (Ct. App. 1990), Cornwell and the City had agreed that the City would annex Cornwell's land. Cornwell agreed not to develop the land, and granted the City the right to pump groundwater from the land for city use. In exchange, the City agreed to reimburse Cornwell for all real estate taxes payable for the annexed property. This, too, was held to violate the Uniformity Clause of the Constitution.

In both of these cases, the reviewing court ruled that because the contracts between the cities and the landowners were unconstitutional, their provisions could not be enforced. But the courts also refused to invalidate the annexations and easements. The courts declared that the judiciary would not assist the parties, deliberately leaving the parties where they had placed themselves through their unconstitutional agreements.

We have concluded that our courts, asked to enforce the unconstitutional guaranty agreement the University has issued, would deny enforcement of the guaranties and would not grant any other relief. That result would leave the University, the Foundation, and the Foundation's lenders exactly where the court found them.

Having determined that these guaranties are void and unenforceable, we write to notify the bank that the University will not honor the guaranties set forth in the enclosed letters. This statement applies with the same force to any purported University guaranty that may have been provided to the bank, but of which the University currently is unaware. Further, the bank must not offer or provide these purported guaranties to other entities as an assurance of payment by the University of any Foundation liabilities or obligations of any kind.

We are available to meet if you have questions or wish to discuss this matter in more detail.

Sincerely,

Tomas L. Stafford General Counsel

Encls.



First Business Bank 3913 West Prospect Avenue Appleton, WI 54914

The UW-Oshkosh Foundation, Inc (the "Foundation") provides necessary support to the UW-Oshkosh (the "University") in a variety of ways as part of its not-for-profit mission. Oshkosh Investors, LLC (members include UW Oshkosh Foundation Hotel Project, LLC and Oshkosh Hotel Venture, LLC) is renovating the downtown Oshkosh hotel. The hotel is located at 1 North Main Street in Oshkosh (formerly City Center Hotel).

The hotel will create several significant benefits for the future of the University, including:

- The hotel will provide a visible, downtown presence for UW Oshkosh, enhancing image and
  loyalty to the University by providing high-quality, nearby lodging for alumni and guests visiting
  campus for events, job interviews, and other visits.
- A renovated and successfully operated hotel, working in conjunction with the Oshkosh
  Convention Center and the University's AWCC and other campus event facilities, will enhance
  the local economy and provide support to both UW Oshkosh and citizens in area communities.
- The hotel operation may be used as a site for University internships
- The Oshkosh Convention and Visitors Bureau has branded Oshkosh as "Wisconsin's Event City" and UW Oshkosh plays a major role in hosting a variety of workshops, meetings, seminars and conferences. A high-quality hotel will enhance the University's ability to host such events.

The City of Oshkosh will issue its conduit \$7.5 million Midwestern Disaster Area Bonds, Series 2012 (Oshkosh Investors, LLC project) to assist the Oshkosh Investors, LLC in financing the renovation of the hotel. The series 2012 Bonds will be purchased by First Business Bank (the "Purchaser"). In addition, the Purchaser will provide interim financing in the form of a line of credit in the amount of \$2.1 million (the "Line of Credit") to be repaid with the proceeds from the bonds.

In consideration of the benefits which will accrue to the University and its students and in pursuit of the University's educational mission, the University agrees that if the revenues from the operation of the facility are insufficient to cover the debt service on the bonds, that the University will pay the UW Oshkosh Foundation Hotel Project, LLC's obligations, whether as a co-borrower or guarantor, under the Line of Credit and the Series 2012 Bonds, as applicable. The University acknowledges that a breach of its obligations in this letter will be an "event of default" on the Series 2012 Bonds.

The undersigned is authorized on behalf of the University to make the foregoing commitment and acknowledges that the obligations hereunder are enforceable against the University.

Accepted and agreed to by:

(Signature) Thomas G. Sonnleitner

Title: Vice Chancellor for Administrative Services, University of Wisconsin Oshkosh

Date: August 21, 2012



November 19, 2015

First Business Bank Madison WI

The UW-Oshkosh Foundation, Inc (the "Foundation") provides necessary support to the UW-Oshkosh (the "University") in a variety of ways as part of its not-for-profit mission. As you know, the UW-Oshkosh Foundation Rosendale Biodigester, LLC (the "Borrower") has completed Phase One of the Rosendale biodigester project, by constructing a wet fermentation anaerobic biodigester facility (the "Facility") in the Town of Rosendale. Commercial operations began in June 2014. Phase Two of the project, constructing a Fiber Plant, will take the digestate and process it into compost that is marketable. We are currently gathering information and evaluating our options relating to the Fiber Plant and continue to work towards finding a financially viable solution for the fiber. The University remains fully engaged and financially committed to this project.

The Facility creates several significant benefits for the University, including:

- New Engineering Technology degrees added to curriculum;
- Living, learning laboratory for our students; faculty and staff
- Movement toward zero waste policies and campus sustainability plan;
- National recognition/awards for sustainability initiatives.

In consideration of the benefits received, the University in pursuit of the its educational mission, and to provide necessary liquidity coverage to induce the Original Purchaser to purchase the Bonds', the University agrees, that if the revenues from the operation of the Facility are insufficient to service the operational budget and debt service on the Bonds and any liability of the Borrower related to the Borrower's indemnification of the Purchaser in that certain Environmental Indemnity Agreement dated as of Dec 1, 2015 between the Borrower and the Purchaser, that the University will support the operations of the Facility, the payment of debt service on the Bonds and any other liability owed by the Borrower to the Purchaser.

The undersigned is authorized on behalf of the University to make the foregoing commitment and acknowledges that the obligations hereunder are enforceable against the University.

(Capitalized terms referenced above: Borrower, Facility, Original Purchaser and Bonds are defined in the Town of Rosendale, Wisconsin Midwestern Disaster Area Revenue Refunding Bonds Series 2015 Agreement dated December 1<sup>st</sup>, 2015)

Accepted and agreed to by:

(Signature) Thomas G. Sonnleitner

Title: Vice Chancellor for Administrative Services, University of Wisconsin Oshkosh

VICE CHANCELLOR ADMINISTRATIVE SERVICES UNIVERSITY OF WISCONSIN OSHKOSH, 800 ALGOMA BLVD. OSHKOSH, WISCONSIN 54901 (920) 424-3030, FAX (920) 424-2240

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Tomas L. Stafford Anne E. Bilder Wade Harrison Erin E. Kastberg Jennifer Sloan Lattis Matthew J. Lind

June 29, 2016

Mr. Thomas Harkless Senior Vice President Wells Fargo, Government and Not-for-Profit Banking Group 100 E. Wisconsin Avenue, 14<sup>th</sup> Floor Milwaukee, WI 53202

Dear Mr. Harkless:

This letter is sent to you in connection with your bank's purchase of the City of Oshkosh Midwestern Disaster Area Bonds, Series 2010 (UW Oshkosh Foundation Witzel biodigester project) bond issue, and its purchase of the Town of Rosendale Midwestern Disaster Area Bonds, Series 2012 (UW Oshkosh Foundation Rosendale biodigester project) bond issue.

As you know, our office and the Wisconsin Department of Justice have reviewed letters from the University of Wisconsin-Oshkosh (University) which were provided to you as part of these bond issues, either before or after the bond closing. These letters purport to guarantee that the University will pay certain sums if those sums are not paid by the University of Oshkosh Foundation (Foundation) in connection with the bond issues. Copies are enclosed.

The letters state, generally, that if the Foundation fails to cover project expenses or debt service or if other specified eventualities occur, the University will pay the defaulted obligations. We have concluded that the pledges made in these letters are void and unenforceable. That conclusion rests on the provisions of the Wisconsin Constitution.

Article VIII, Section 3 of the Constitution provides (with exceptions not material here) that the credit of the state shall never be given, or loaned in aid of any individual, association, or corporation. The University's enclosed letter violates that provision because it purported to lend the credit of the University to support the Foundation's borrowing in connection with the bond issue.

Two Wisconsin appellate court cases have addressed the problems that these void guaranties create. In *Ehrlich v. City of Racine*, 26 Wis. 2d 352, 132 NW 2d 489 (1965), the parties agreed that the City would annex certain land and would receive a storm sewer easement across that land. The City agreed to pay the landowners the difference between their actual property taxes and the amount they would have paid at a property assessment of \$500/acre. The Supreme Court held that the agreement violated the Uniformity Clause of the Constitution, set forth in Article VIII, Section 1.

In *Cornwell v. City of Stevens Point*, 159 Wis. 2d 136, 464 NW 2d 33 (Ct. App. 1990), Cornwell and the City had agreed that the City would annex Cornwell's land. Cornwell agreed not to develop the land, and granted the City the right to pump groundwater from the land for city use. In exchange, the City agreed to reimburse Cornwell for all real estate taxes payable for the annexed property. This, too, was held to violate the Uniformity Clause of the Constitution.

In both of these cases, the reviewing court ruled that because the contracts between the cities and the landowners were unconstitutional, their provisions could not be enforced. But the courts also refused to invalidate the annexations and easements. The courts declared that the judiciary would not assist the parties, deliberately leaving the parties where they had placed themselves through their unconstitutional agreements.

We have concluded that our courts, asked to enforce the unconstitutional guaranty agreement the University has issued, would deny enforcement of the guaranties and would not grant any other relief. That result would leave the University, the Foundation, and the Foundation's lenders exactly where the court found them.

Having determined that these guaranties are void and unenforceable, we write to notify the bank that the University will not honor the guaranties set forth in the enclosed letters. This statement applies with the same force to any purported University guaranty that may have been provided to the bank, but of which the University currently is unaware. Further, the bank must not offer or provide these purported guaranties to other entities as an assurance of payment by the University of any Foundation liabilities or obligations of any kind.

We are available to meet if you have questions or wish to discuss this matter in more detail.

Sincerely,

Tomas L. Stafford General Counsel

Encls.



Wells Fargo Securities, LLC 608 2<sup>nd</sup> Avenue South N9303-105 Minneapolis, MN 55479

The UW-Oshkosh Foundation, Inc (the "Foundation") provides necessary support to the UW-Oshkosh (the "University") in a variety of ways as part of its not-for-profit mission. The Foundation and UW-Oshkosh Foundation — Witzel, LLC are building the first dry fermentation anaerobic biodigester facility (the "Facility") in the nation. The Facility will be located adjacent to the Witzel Avenue Campus Service center. It is contemplated that the Facility will provide a turnkey energy solution that uses biomass and organic waste as the primary input. The majority of the organic waste process in the biodigester will be provided by campus and community sources. The Facility will create several significant benefits for the future of the University, including:

- Reduction of carbon footprint;
- Institution of "green" curriculum;
- Movement toward zero waste policies.

The University and the Foundation will enter into a Use Agreement, whereby the University will fully utilize, operate and maintain the Facility. The City of Oshkosh will issue its conduit \$3,700,000 Midwestern Disaster Area Bonds, Series 2010A and 2010B (UW-Oshkosh Foundation-Witzel, LLC Project) (the "Series 2010A Bonds", the "Series 2010B Bonds" and, collectively, the "Series 2010 Bonds") to assist the Foundation and UW-Oshkosh Foundation-Witzel, LLC to finance construction and equipping of the Facility. The Series 2010 Bonds will be purchased by Wells Fargo Securities, LLC (the "Purchaser")

In consideration of the benefits which will accrue to the University and its students and in pursuit of the University's educational mission, and to provide necessary liquidity coverage to induce the Purchaser to purchase the Bonds, the University agrees, that if the revenues from operation of the Facility are insufficient to service the operational budget and debt service on the Bonds, that the University will support the operations of the Facility and the payment of debt service on the Bonds.

The University acknowledges that a breach of its obligations in this letter will be an "event of default" on the Series 2010 Bonds.

Accepted and agreed to by:

BY:	Thomas G. Soundatner
- Γitle:	(Signature)Thomas Sonnleitner Vice Chancellor for Admin. Services, University of Wisconsin Oshkosh
Date:	September 22, 2010



December 27, 2012

Wells Fargo Bank, National Association Minneapolis, MN

The UW-Oshkosh Foundation, Inc (the "Foundation") provides necessary support to the University of Wisconsin Oshkosh (the "University") in a variety of ways as part of its not-for-profit mission. The UW-Oshkosh Foundation Rosendale Biodigester, LLC (the "Borrower") is building a wet fermentation anaerobic biodigester facility in Rosendale, Wisconsin (the "Facility"). The Facility will be located in the Town of Rosendale, Wisconsin upon the land owned by MS Real Estate Holdings, LLC. It is contemplated that the Facility will provide a turnkey energy solution that uses cow manure as the primary input. The organic waste process in the biodigester will be provided by Rosendale Dairy. The Facility will create several significant benefits for the future of the University, including:

- Reduction of carbon footprint;
- •. Institution of "green" curriculum:
- Movement toward zero waste policies.

The University and the Foundation will enter into a Use Agreement, whereby the University will fully utilize, operate and maintain the Facility. The Town of Rosendale will issue its \$10,000,000 Midwestern Disaster Area Bonds, Series 2012 (UW-Oshkosh Foundation Rosendale Biodigester, LLC Project) (the "Bonds") to assist the Borrower to finance construction and equipping of the Facility. The Bonds will be purchased by Wells Fargo Bank, National Association (the "Purchaser").

In consideration of the benefits which will accrue to the University and its students and in pursuit of the University's educational mission, and to provide necessary liquidity coverage to induce the Purchaser to purchase the Bonds, the University agrees, that if the revenues from operation of the Facility are insufficient to service the operational budget and debt service on the Bonds and any liability of the Borrower related to the Borrower's indemnification of the Purchaser in that certain Environmental Indemnity Agreement dated as of December 1, 2012 between the Borrower and the Purchaser, that the University will support the operations of the Facility, the payment of debt service on the Bonds and any other liability owed by the Borrower to the Purchaser.

So long as the Bonds shall remain outstanding, the University agrees to maintain the cash and investments held as unrestricted net assets having a total fair market value of not less than \$10,000,000 (or such lesser amount equal to the outstanding amount of the Bonds) as of each Fiscal Year end. The University agrees to cause cash and investments held as unrestricted net assets to increase to at least \$10,000,000 (or such lesser amount equal to the outstanding amount of the Bonds) on or prior to the next valuation date to the extent the fair market value of the unrestricted net assets is less than \$10,000,000 (or such lesser amount equal to the outstanding amount of the Bonds).

The University represents that the fair value of the unrestricted net assets set forth in the financial statements as of December 31, 2011, is \$10,000,000 and that \$10,000,000 does not exceed the reasonable needs for which the unrestricted net assets are maintained. The University further represents that the fair value of its unrestricted net assets as of the date of issuance of the Bonds is equal to at least \$10,000,000. Nothing in this letter shall be construed to impose, directly or indirectly, restrictions on the management of the unrestricted net assets or the distribution of the income thereof.

The University acknowledges that a breach of its obligations in this letter will be an "event of default" under the CCA.

University of Wisconsin - Oshkosh

Name: Thomas G. Sonnleitner

Vice Chancellor for Administrative Services

Date: December 27, 2012



October 10, 2014

Wells Fargo Bank, National Association Minneapolis, MN

The UW-Oshkosh Foundation, Inc (the "Foundation") provides necessary support to the UW-Oshkosh (the "University") in a variety of ways as part of its not-for-profit mission. As you know, the UW-Oshkosh Foundation Rosendale Biodigester, LLC (the "Borrower") has completed Phase 1 of the Rosendale biodigester project, by constructing a wet fermentation anaerobic biodigester facility (the "Facility") in the Town of Rosendale. Commercial operations began in June 2014. Phase 2 of the project, constructing a Fiber Plant, will take the digestate and process it into compost that is marketable. We are currently gathering information and evaluating our options relating to the Fiber Plant. A project of this size and advanced technology comes with challenges. We have worked through a variety of issues and will continue to work towards finding a financially viable solution for the fiber. The University remains fully engaged and financially committed to this project.

The Facility creates several significant benefits for the University, including:

New Engineering Technology degrees added to curriculum; Living, learning laboratory for our students; faculty and staff Movement toward zero waste policies and campus sustainability plan; National recognition/awards for sustainability initiatives.

In consideration of the benefits received, the University and its students and in pursuit of the University's educational mission, and to provide necessary liquidity coverage to support the Town of Rosendale, Wisconsin Midwestern Diaster Area Revenue Bonds, Series 2012 (UW-Oshkosh Foundation Rosendale Biodigester, LLC Project) (the "Bonds"), the University agrees, that if the revenues from the operation of the Facility are insufficient to service the operational budget and debt service on the Bonds and any other liability of the Borrower to Wells Fargo Bank, National Association (the "Purchaser"), including, without limitation, related to the Borrower's indemnification of the Purchaser pursuant to the terms of that certain Environmental Indemnity Agreement dated as of December 1, 2012, between the Borrower and the Purchaser, that the University will support the operations of the Facility, make payment of the principal of and interest on the Bonds and make payment of any other amount owed by the Borrower to the Purchaser under the terms of that certain. Continuing Covenant Agreement dated as of December 1, 2012, among the University, the Foundation and the Bank.

This letter reaffirms our commitment as a University to the Rosendale biodigester project. All other commitments as written in our prior letter dated December 27, 2012 remain in effect.

Accepted and agreed to by:

BY: Thomas G. Sonnleitner

Title: Vice Chancellor for Administrative Services, University of Wisconsin Oshkosh

Date: October 10, 2014