

Agenda Item: 7.

Memorandum

To: Programs, Projects and Operations Subcommittee
From: Brian L. Henkel, Groundwater Management Engineer
Date: February 7, 2012
Re: Lied Platte River Bridge Research Station

Dr. Alan Kolok, Director of the University of Nebraska at Omaha's (University) Aquatic Toxicology Laboratory requests a Memorandum of Understanding (MOU) to construct an environmental science laboratory on the Lied Platte River Bridge (Lied Bridge). The District previously entered into a cost share agreement to partially fund the Elkhorn River Research Station (ERRS) at the T. L. Davis Prairie on The University of Nebraska Foundation property on 240th Street, South of Q Street. The ERRS serves as a three season laboratory for real time data collection and distance education. The Lied Bridge project will be similar in concept to the ERRS. Water quality research, like that of the ERRS, is an important component of the mission of the District and supporting this research will help to supplement the Districts ongoing water quality programs.

Staff recommends that the Programs, Projects and Operations Subcommittee recommend to the Board of Directors that the General Manager be authorized to enter into a Memorandum of Understanding with the University of Nebraska for the Lied Platte River Bridge Research Station project subject to approval as to form by District Legal Counsel.

MEMORANDUM OF UNDERSTANDING

BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA,
doing business as THE UNIVERSITY OF NEBRASKA AT OMAHA
and
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
NEBRASKA GAME AND PARKS COMMISSION

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of _____ 2012 by and among the Board of Regents of the University of Nebraska, doing business as the UNIVERSITY OF NEBRASKA AT OMAHA, a non-profit, public educational institution of the State of Nebraska, (hereinafter referred to as “the UNIVERSITY”), the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska (hereinafter referred to as “LPSNRD”); the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska (hereinafter referred to as “P-MRNRD”); and the NEBRASKA GAME AND PARKS COMMISSION, an agency of the State of Nebraska (hereinafter referred to as “the COMMISSION”). The LPSNRD, the P-MRNRD and the COMMISSION are herein referred to collectively as the “SPONSORS”.

WHEREAS, the SPONSORS previously entered into an interlocal agreement to acquire, rehabilitate, maintain, repair and operate the abandoned Chicago, Rock Island and Pacific Railroad Company bridge across the Platte River and the approaches thereto (hereinafter referred to as “the LIED BRIDGE”), located on the abandoned railroad rights-of-way in Cass and Sarpy Counties, as a public recreational trail,

WHEREAS, the P-MRNRD and the UNIVERSITY previously entered into a cost share agreement to construct a three season, water quality research station on the Elkhorn River in Douglas County, owned and operated by the UNIVERSITY and known as the Elkhorn River Research Station (hereinafter referred to as “ERRS”).

WHEREAS, the activities contemplated by this MOU are of mutual interest and benefit to the UNIVERSITY and the SPONSORS, and will further the UNIVERSITY’S instructional, research and public service objectives in a manner consistent with its status as a non-profit, tax-exempt, educational institution; and,

WHEREAS such activities also will advance the statutory purposes of the SPONSORS and will be of general benefit to the SPONSORS,

NOW, THEREFORE, in consideration of the above recitals and their mutual promises and covenants contained herein, the parties hereto mutually agree as follows:

1. Statement of Work

The UNIVERSITY desires to undertake a project (hereafter referred to as “the PROJECT”) to establish a three season water quality research station, similar in concept to ERRS, on the LIED BRIDGE.

The UNIVERSITY agrees to use reasonable efforts to perform the PROJECT, which will include engineering, design, and construction of the research facility to be constructed thereon. The SPONSOR acknowledges that the UNIVERSITY makes no expressed or implied warranties for results of the PROJECT.

The UNIVERSITY, at its sole cost and expense, shall perform all operation, maintenance, repair, replacement and regulation of the PROJECT, as the UNIVERSITY determines is necessary and convenient.

2. Principal Investigator

The PROJECT will be supervised by Dr. Alan Kolok, hereinafter referred to as the “Principal Investigator”. If for any reason Dr. Kolok is unable to continue to serve as Principal Investigator and a successor, acceptable to both the UNIVERSITY and the SPONSOR, is not available, this MOU may be terminated by the UNIVERSITY as provided in Section 6.

3. Period of Performance

The PROJECT activities may be conducted during the period March 1, 2012 through December 31, 2012, and may be extended into future years by mutual agreement of the parties.

4. Costs and Consideration

The UNIVERSITY shall be responsible for all costs associated with the design, engineering, construction, operation, maintenance, repair, replacement, and regulation of the PROJECT.

5. Sponsorship Recognition

The UNIVERSITY shall publicly acknowledge the SPONSORS’ contribution to the PROJECT on a permanent sign, plaque or other fixture (containing the SPONSOR’S logos), to be maintained by the UNIVERSITY for the life of the PROJECT. Such acknowledgement shall also be contained on all temporary construction signs, in all media publicity about the PROJECT and in all operation and maintenance agreements executed for the PROJECT.

6. Termination

Performance under the MOU may be terminated for any reason by either party upon sixty (60) days’ written notice.

7. Patents and Inventions

Title to any invention made solely by a SPONSOR’S personnel under the terms of this MOU (Sponsor Invention”) shall remain with the SPONSOR.

Inventions made jointly by employees and/or students of the UNIVERSITY and employees of the SPONSOR under the terms of this MOU ("Joint Inventions") shall be jointly owned by all Parties.

Title to any invention conceived or first reduced to practice solely by employees and/or students of UNIVERSITY under the terms of this MOU ("UNO Invention") shall remain with the UNIVERSITY.

8. Copyrights

Except as required under regulations relating to copyrights and "The work for hire" all copyright ownership shall be the exclusive property of the author(s).

9. Publication

In keeping with its educational research mission, the UNIVERSITY and its employees shall have the right, at their discretion, to release information or to publish any data, writings, or material resulting from the PROJECT or to use such in any way for its own internal purposes. The UNIVERSITY shall furnish to the SPONSORS a copy of any proposed publication or release of information at least thirty (30) days in advance of the submission of such proposed publication or release of information to a journal, editor or other third party. Within this thirty (30) day period, the SPONSORS may request in writing that the UNIVERSITY delay such proposed publication or release of information for an additional sixty (60) days in order to protect the potential patentability of any invention described therein. Such delay shall not, however, be imposed on the filing of any student thesis or dissertation.

10. Publicity

No party shall use another's name, nor the name of any member of the other party's staff in connection with any products, promotion, or advertising without prior written approval of such other party. This shall not include internal documents available to the public that identify the existence of the MOU.

11. Proprietary Data

Unless otherwise required by law, each party will exercise its best effort to maintain in confidence proprietary or trade-secret information disclosed or submitted to it by another party, which is designated in writing as confidential information at the time of disclosure. Confidential information does not include information which at the time of receipt:

- a. Is generally available in the public domain or thereafter becomes available to the public through no act of the receiving party; or
- b. Was independently known prior to receipt thereof or was discovered independently by an employee of the receiving party who had no access to the information supplied by the disclosing party under this MOU; or was made available to the receiving party as a matter of lawful right by a third party.

The receiving party retains the right to refuse to accept any such information that is not considered to be essential to the completion of the PROJECT. The obligations of the receiving party under this paragraph shall survive and continue for one (1) year after termination of this MOU.

12. Indemnifications

Each party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of another party and the results thereof. Each party therefore agrees that it will assume all risk and liability to itself, its agents or employees for any injury to persons or property resulting in any manner from the conduct of its own operations and the operations of its agents or employees under this MOU, and for any loss, cost, or damage caused thereby during the performance of this MOU.

13. Assignment

No party shall assign this MOU to another person without the prior written consent of the other parties hereto. Any other purported assignment shall be void.

14. Independent Inquiry

Nothing in this MOU shall be constructed to limit the freedom of researchers who are participants in this MOU from engaging in similar inquiries made independently under other grants, contracts or MOUs with parties other than the SPONSORS.

15. Independent Contractor

In the performance of all services hereunder:

- a. Each party hereto shall be deemed to be and shall be an independent contractor, and as such, shall not be entitled to any benefits applicable to employees of another party.
- b. No party is authorized or empowered to act as agent for another party for any purpose and shall not on behalf of another party enter into any contract, warranty, or representation as to any matter. No party shall be bound by the acts or conduct of another party.

16. Insurance

Each party hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof.

17. Notices

Notices and communications hereunder shall be deemed made if given by registered or certified envelope, and addressed to the party to receive such notice, invoice, or communication at the address given below, or such other addresses as may hereafter be designated by notice in writing.

If to SPONSOR:

Brian Henkel
Papio-Missouri River Natural Resources District
8901 South 154th St
Omaha, NE 68138-3621

If Technical Matter:

Dr. Alan Kolok
Principal Investigator
Department of Biology
University of Nebraska at Omaha
6001 Dodge Street
Omaha, NE 68182

If to UNIVERSITY:

Julie Totten
Associate Vice Chancellor for Business & Finance
University of Nebraska at Omaha
6001 Dodge Street
Omaha, NE 68182-0047

18. Governing Law

This MOU shall be governed by the laws of the State of Nebraska.

19. Entire MOU

Unless otherwise specified, this MOU embodies the entire understanding among the UNIVERSITY and the SPONSORS for the PROJECT, and any prior contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this MOU, including without limitation, changes in the statement of work, total estimated cost, and period of performance, shall be effective unless made in writing and signed by authorized representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this MOU in duplicate by proper persons thereunto duly authorized.

PAPIO-MISSOURI RIVER
NATURAL RESOURCES DISTRICT

By _____
John Winkler, General Manager

Date: _____

LOWER PLATTE SOUTH
NATURAL RESOURCES DISTRICT

By _____
Glenn Johnson, General Manager

Date: _____

NEBRASKA GAME AND PARKS
COMMISSION

By _____
Name, Title

Date: _____

THE BOARD OF REGENTS OF
THE UNIVERSITY OF NEBRASKA

BY _____
Julie Totten, Associate Vice Chancellor for Business and Finance

DATE: _____

I have read this MOU and agree to perform my obligations as principal investigator under this MOU. I will inform students and other participants performing research services of the terms and conditions of this MOU.

Alan Kolok, UNO Principal Investigator

Date _____