

MEMORANDUM OF UNDERSTANDING

Environmental Oversight of Maintenance Dredging Projects

This Memorandum of Understanding (MOU) is between the State of Oregon, acting by and through its Department of Environmental Quality (DEQ) and the Peninsula Drainage District # 1 (PEN 1), Peninsula Drainage District # 2 (PEN 2), Sandy Drainage Improvement Company (SDIC), and Multnomah County Drainage District# 1 (MCDD), PEN 1, PEN 2, SDIC, and MCDD shall be collectively referred to as Drainage Entities. Each entity shall be referred to as a Party and collectively referred to as the Parties.

RECITALS

- A. DEQ is authorized under Oregon Revised Statutes (ORS) 465.200 et seq. to administer the remediation of hazardous substances through DEQ's Environmental Cleanup Program.
- B. MCDD, PEN 1, and PEN 2 are local public service agencies authorized under ORS Chapter 547, and SDIC is a special service agency authorized under Chapter 554 to plan and implement flood control along the Columbia Corridor and adjacent to the Columbia River, Columbia Slough, Salmon Creek, and Arata Creek watersheds (collectively referred to as the watersheds). For purposes of this MOU, MCDD is acting on its behalf, as well as on the behalf of PEN 1, PEN 2, and SDIC pursuant to intergovernmental agreements conveying to MCDD general management authority over flood control.

The Parties understand and agree that the Parties will be best served by entering into this MOU to outline (i) DEQ's intent to provide environmental oversight for MCDD maintenance dredging projects; (ii) MCDD's intent to reimburse DEQ for DEQ environmental oversight in order to enable MCDD to achieve its maintenance requirements with respect to contaminated sites in a timely manner as set forth in the respective Flood Control Plans; and (iii) DEQ's intent to take advantage of overlapping maintenance dredging to achieve concurrent remediation of sediment contamination – as identified in the DEQ Remedial Action Record of Decision (ROD) for the Columbia Slough. MCDD projects consist of maintenance of drainage ditches and levee resurfacing to provide adequate flood control to protect landowners within their jurisdictional boundaries, and ecological habitat restoration and protection. DEQ and MCDD may establish separate agreements to cover associated costs where dredging addresses DEQ's remedial action objectives exceeding dredging required for flood maintenance.

PURPOSE OF MOU; GOALS AND OBJECTIVES OF PARTIES

The purpose of this MOU is to set forth the intent of the Parties in allocation of resources by DEQ for Cleanup Program oversight over MCDD maintenance dredging projects in the watersheds in the interest of promoting effective cleanup of contaminated sediments during maintenance dredging activities. DEQ intends to provide a single point of contact and sufficient environmental staff resources to perform timely and responsive oversight to enable MCDD to achieve its flood control goals with respect to contaminated sites in a timely manner, and MCDD intends to identify and prioritize such maintenance projects and provide funding resources to reimburse DEQ costs for such services.

The objective of this MOU is to describe the working relationship between DEQ and MCDD necessary to maintain timely and responsive DEQ oversight and assistance on multiple MCDD maintenance dredging sites. Another objective of the MOU, and where appropriate, is to identify and carryout MCDD's maintenance dredging to the extent that DEQ's objective to remediate hot spots of contamination in the sediments of the Columbia Slough, as identified in the DEQ ROD is also achieved. DEQ Cleanup Program oversight will ensure compliance with the 401 Certification from the DEQ Water Quality Program and completion of hot spot remedial action measures consistent with the Columbia Slough ROD.

Therefore, MCDD and DEQ agree as follows:

1. **Term of MOU.** This MOU is effective on the date executed by both Parties. Unless terminated earlier or extended in accordance with the provisions of this MOU, this MOU shall automatically terminate without any further action by either Party on **June 30, 2024**.
2. **Key Personnel.** In order to achieve the stated goals and objectives, DEQ agrees that it will assign one (1) Natural Resources Specialist (Key Personnel) from the DEQ Cleanup and Emergency Response Program to provide environmental oversight services primarily to MCDD projects under the DEQ Voluntary Cleanup Program (VCP). MCDD agrees to reimburse DEQ for the costs associated with the provision of such services as shall be expressly described in project-specific cost recovery agreements.
3. **Scope of Work.** The scope of work (Work) to be performed by Key Personnel is generally described in the attached Exhibit A (Statement of Work). It is the expectation of the Parties that DEQ environmental oversight activities undertaken with respect to MCDD projects will be assigned to the Key Personnel.
4. **Notices.** All plans, reports, notices, and other communications required by and relating to this MOU shall be sent in writing by personal delivery, by overnight delivery or by fax with a telephonic confirmation of receipt. Correspondence concerning this MOU shall be addressed to the following individuals:

MCDD PROGRAM MANAGER

Sunny Simpkins
 Natural Resources Program Manager
 Multnomah County Drainage District #1
 1880 NE Elrod Drive
 Portland, OR 97211
 (503) 281-5675 x 313
 (503) 281-0392 Fax
 (503) 705-4944 Cell
ssimpkins@mcdd.org

DEQ PROJECT MANAGER

Sarah Miller
 NWR Cleanup and Tanks
 Department of Environmental Quality
 700 NE Multnomah Street, Suite 600
 Portland, OR 97232
 (503) 229-5040
 (503) 229-6899 Fax

miller.sarah@deq.state.or.us

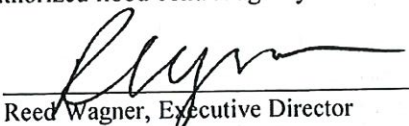
Either Party may, from time to time, designate in writing another person to receive notices under this Section and may specify another notice address for the above individuals.

5. **Prioritization of Tasks.** MCDD will provide a proposed outline of work tasks and prioritization of projects to DEQ within 30 calendar days of execution of this MOU. Within 30 days after DEQ receipt of MCDD proposal, the Parties will consult to finalize the anticipated project work tasks, priorities and key milestones. It is anticipated that MCDD will provide an annual updated proposed priority list no later than July of each year. Key milestones will be provided in MCDD's Annual Report at least annually.
6. **Coordination Meetings.** During the term of this MOU, DEQ and MCDD will meet at least annually to discuss project prioritization, key milestones, work, and any unresolved issues for each project.
7. **Incorporation of Exhibits.** The Exhibits to this MOU are, by this reference, incorporated into and deemed a part of this MOU as if they were fully set forth in the text hereof.
8. **Amendments.** This MOU may not be modified or amended except by the written agreement of both Parties. Modification of this MOU requires the document to be reauthorized by such authorities that are equivalent to the original signatories.
9. **Termination.** This MOU may be terminated by mutual consent of both parties or by either party upon 30 days written notice. This notice may be transmitted by personal delivery, by mail, or by fax with a telephonic confirmation of receipt.

- 10. Independent Authority. Nothing in this MOU diminishes, modifies, or otherwise affects the statutory or regulatory authorities of either Party. This MOU neither affects the obligations of MCDD and its agents and contractors to comply with any applicable statute, rule, permit or order, nor limits the liability of MCDD or its agents or contractors for violation of such statutes, rules, permits or orders. DEQ will exercise independent judgment in carrying out the Work described in this MOU. This MOU will not be construed to affect in any way DEQ authority and discretion with regard to remedial and corrective actions necessary on MCDD projects under ORS Chapter 465 or 466, the VCP Programs, or other required regulatory actions or decisions as may be determined necessary by DEQ.
- 11. Non-binding Agreement. This MOU is a statement of the current intent of the Parties, and does not create a binding agreement between the Parties, except as specified in Section 9 above, as it relates to the termination rights of the Parties and may not be relied upon as a basis for a contract by estoppel or serve as a basis for a claim based on detrimental reliance or any other theory. The Parties understand that no Party shall be bound until the respective project-specific cost recovery agreements have been negotiated, executed, delivered and approved by the DEQ and MCDD.
- 12. Counterparts; Execution. This MOU may be executed in any number of counterparts, all of which together shall constitute one and the same agreement.
- 13. Conflict Resolution. In the event of dispute between MCDD and DEQ regarding implementation of this MOU, the Parties agree to exercise good faith in expeditiously resolving the conflict. All conflicts will be discussed and resolved by the MCDD and DEQ Program Managers if possible. If the dispute cannot be resolved by the Program Managers, the dispute will be elevated to the MCDD Executive Director and the DEQ Regional Administrator for discussion and resolution.


Executed by the duly authorized representatives of the Parties.

MULTNOMAH COUNTY DRAINAGE DISTRICT, Peninsula Drainage District No. 1, Peninsula Drainage District No. 2, and Sandy Drainage Improvement Company
a duly authorized flood control agency for the State of Oregon

By: 
Reed Wagner, Executive Director

Date: 7/31/19

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

By: 
Kevin Parrett, NWR Cleanup and Tanks Manager

Date: 8/2/19

**EXHIBIT A
STATEMENT OF WORK**

1. Typical MCDD Maintenance Dredging Project Sites

To meet its flood control mission within the watersheds, on its behalf, and on the behalf of PEN 1, PEN 2, and SDIC pursuant to intergovernmental agreements, MCDD conducts maintenance activities for ditches and levees in proximity to certain industrial, commercial or residential properties within the Cities of Portland, Gresham, Fairview and Troutdale. Typical environmental impacts include sediment contamination with various hazardous substances including polychlorinated biphenyls (PCBs), metals, petroleum and associated polycyclic aromatic hydrocarbons (PAHs), pesticides and other contaminants. Issues include migration of site generated contamination offsite or in-migration of offsite generated contamination from other surrounding properties.

Typical Site Impacts and Maintenance Dredging/Cleanup Scenarios:

Small Impacted Sites

- Typically consist of ditch bank slope failure into drainage ditch
- Typically consist of removal of sloughed ditch bank material and repair of the bank above Ordinary High Water
- Typical low to moderate petroleum contamination
- Low metal impacts, little surface issues
- Vertical extent of impacts is less than planned dredge depth
- Dredging leads to cleanup to non-detect or below DEQ Cleanup criteria for sediment
- No restrictions imposed by sediment reuse in approved upland areas.

Medium Impacted Sites

- Moderate organic contaminant or heavy metal sediment impacts
- Contaminant levels extend to depths below dredge prism but not at levels exceeding ambient baseline
- BMPs will need to be carefully followed to control releases from work area in compliance with 401 Certification.

Large Impacted Sites

- Complex, widespread sediment contamination beyond maintenance dredge areas
- Dredging activities likely to generate sheen on water requiring more extensive BMPs to control
- Significant contaminant levels extend to depths below dredge prism
- Primary and secondary treatment required for return flow to the Slough from sediment dewatering

MCDD maintenance projects are subject to very critical timelines in order to meet flood control goals for the Drainage Entities, funding/financing, and developer requirements to meet redevelopment objectives. Projects may stop, start, or be reprogrammed. Hence, flexibility is required in order to maximize productivity. DEQ will work to perform timely and responsive oversight to enable MCDD to achieve its flood control goals. Where feasible, DEQ's objective is for MCDD maintenance actions to align with cleanup of sites to Columbia Slough risk-based cleanup goals or baseline values.

2. MCDD Technical Environmental Work Products

MCDD intends to use outside environmental consultants to generate the majority of environmental work products necessary to successfully undertake any assessment, cleanup or on-going monitoring work at individual sites. As may be necessary these and other work products will be provided to the DEQ Key Personnel.

Work products subject to DEQ Cleanup review and approval include:

- (i) Clean fill determination for ditch bank slides;

- (ii) Evaluate Sediment Evaluation Framework per agency protocols, the MCDD Environmental Management and Testing Plan for Ditch Maintenance, their equivalent, or more comprehensive. This includes review and approval of project specific Sampling and Analysis Plans (SAPs), sampling results, suitability of in-water or upland disposal of dredged sediment and return water; and potential management actions for the newly exposed riverbed surfaces;
- (iii) Evaluate and approve of sediment dredging and disposal methods (this may include reuse of materials if a clean fill determination can be made or via a Solid Waste Letter of Authorization, Beneficial Use Determination, or other actions that DEQ may develop under Oregon Administrative Rules);
- (iv) Implement best management practices to control turbidity during work;
- (v) Review streambank stabilization measures and erosion controls;
- (vi) Review Contaminated Media Management Plans (CMMP) where necessary;
- (vii) Review Closure Reports;

3. Principal Duties and Responsibilities

MCDD will initiate new dredge projects for DEQ VCP cleanup program review and submit applicable work products described in Exhibit A, Section 2. "Project" may include multiple testing and dredging sites. Project documents may include multiple site specific work products. As needed, sites may be called out into individual work projects at DEQ's request. The actual list of projects and prioritization of Work will occur within 30 calendar days of execution of the MOU and updated throughout the term as set forth in Section 5 by mutual discussion between the MCDD and DEQ Program Managers.

DEQ principal duties and responsibilities consist of the following:

- A. Prepare and process a MCDD site specific cost estimate for oversight of the project if requested by MCDD. The project will be billed through DEQ's Cleanup program to the specific Drainage Entity's account where the project is located, unless otherwise agreed to by MCDD and DEQ.
- B. Review MCDD SAP and make comments.
- C. Attend on-site meetings during assessment, dredging, remediation, construction or monitoring if needed.
- D. Review CMMPs, Closure Reports and other Reports as necessary to document compliance with applicable regulations.
- E. Facilitate and coordinate with other DEQ program staff on Water Quality Certification and Beneficial Use of Dredge Sediment reviews or approvals.
- F. Facilitate and coordinate with U.S. Army Corps of Engineers (USACE) and Division of State Lands (DSL) for required oversight steps as set forth between the Parties.
- G. Respond to emergency site specific issues as may be necessary; coordinate and facilitate with other DEQ resources.
- H. Initiate any project completion letters, public notice, prepare findings and other related actions.

4. Anticipated Dredging Projects

It is anticipated that the DEQ Key Personnel ongoing work load related to MCDD projects will consist of 4 to 10 projects annually. Each project may consist of a mixture between differently sized sites. DEQ estimates that oversight of small, medium, and large impact sites will require 20 to 40 hours, 100 hours, and 200 hours, respectively. If DEQ hours exceed these limits, MCDD will notify DEQ and further define complexity of project. DEQ will provide a specific hour estimate to complete review.