



Agenda Report

File #: 18-2228

AGENDA REPORT REQUEST FOR CITY COUNCIL AND CORONA UTILITY AUTHORITY ACTION

DATE: 11/7/2018

TO: Honorable Mayor and City Council Members
Honorable President and Board Members

FROM: Public Works Department
Department of Water and Power
Community Development Department

SUBJECT:

City Council consideration of a Memorandum of Understanding with the County of Riverside Department of Environmental Health for environmental planning review, technical assistance, and plan check review for City Onsite Wastewater Treatment Systems in accordance with the Riverside County Local Agency Management Program.

RECOMMENDED ACTION:

That the:

1. City Council authorize the City Manager to execute the Memorandum of Understanding between the City and the County of Riverside Department of Environmental Health for environmental planning review, technical assistance, and plan check review for City Onsite Wastewater Treatment Systems in accordance with the Riverside County Local Agency Management Program.
2. Corona Utility Authority (CUA), review, ratify, and to the extent necessary, direct that the City Council take the above actions.

ANALYSIS:

On May 13, 2018, the State Water Resources Control Board adopted Resolution No. 2012-0032, approving the Onsite Wastewater Treatment Systems (OWTS) Policy. The policy is available at: https://www.waterboards.ca.gov/water_issues/programs/owts/index.shtml.

The OWTS Policy established a statewide, risk-based, tiered approach to the regulation and management of OWTS including low-risk (Tier 1) statewide standards for the siting, design, operation and maintenance of onsite wastewater treatment systems. OWTS also known as septic systems, means individual disposal systems, community collection and disposal systems, and alternative collection and disposal systems that use subsurface disposal.

In addition to Tier 0 (Existing OWTS), Tier 3 (Existing, new, and replacement OWTS that are near impaired water bodies) and Tier 4 (OWTS Requiring Corrective Action), the policy allows local agencies that wish to continue to permit OWTS that do not meet the Tier 1 low-risk criteria to develop a Local Agency Management Program (LAMP) that meets Tier 2 requirements for Water Board approval. Tier 2 requirements provide alternative protective guidelines for regulation, installation, and maintenance of OWTS, which if met, allows Regional Water Boards to defer regulation of the systems to a local agency. Once a LAMP is approved, all future OWTS decisions will be governed by the LAMP until it is modified, withdrawn, or revoked.

The Santa Ana Regional Water Quality Control Board (Regional Board) gave three (3) options to cities within its jurisdiction, including the City of Corona (City), to manage discharge from new and replacement OWTS to comply with the policy as summarized below:

- Option 1) The Cities can regulate new and replacement OWTS under the OWTS Policy requirements for Tier 1.
- Option 2) The Cities can develop a LAMP consistent with Tier 2 for Regional Board review and approval and adopt implementing ordinance(s) as necessary.
- Option 3) The Cities can develop a formalized contractual agreement with the Riverside County Department of Environmental Health (DEH) that allows the DEH to provide technical services to the City for regulation, installation, and management of OWTS under the DEH's approved LAMP.

Staff determined that Option 3 was the best option for the following reasons:

- Eliminates the requirement for the City to develop a LAMP.
- There are very few undeveloped lots in the City that would require OWTS.
- Many Cities within the Regional Board jurisdiction have formalized an Memorandum of Understanding (MOU) with DEH for these services.

The MOU agreement with DEH will allow the DEH to collect fees and provide environmental planning review, technical assistance, and plan check review for City Onsite Waste Treatment Systems in accordance with the Riverside County LAMP. City revenue will decrease as the City will reduce the plan check fees for the review of new OWTS within the City limits.

COMMITTEE ACTION:

Not applicable.

STRATEGIC PLAN:

Not applicable.

FISCAL IMPACT:

City revenues will decrease when the County of Riverside Department of Environmental Health collects fees directly from the project proponent and assumes plan review of OWTS systems within the City limits. Currently the City collects \$291.28 (\$220.19 for plan review and \$71.09 for inspection) for a Septic Tank/Leach Field. Effective November 4, 2018, the revised fee will be \$99.48 (\$28.39 for plan review and \$71.09 for inspection) for a Septic Tank/Leach Field. The fee revision was approved by the City Council on September 5, 2018, based on the pending agreement to transition the plan review services to Riverside County. We have an average of one (1) septic system per year and therefore the total estimated decline in revenue is \$191.80 per year due to services no longer provided. The General Fund revenue impacts were already addressed and incorporated into the estimated fund balance with the September 5, 2018, Council Action.

ENVIRONMENTAL ANALYSIS:

This action is exempt from CEQA requirements.

PREPARED BY: TOM KOPER, P.E., ASSISTANT PUBLIC WORKS DIRECTOR

REVIEWED BY: NELSON D. NELSON, P.E., PUBLIC WORKS DIRECTOR

REVIEWED BY: JOANNE COLETTA, COMMUNITY DEVELOPMENT DIRECTOR

REVIEWED BY: TOM MOODY, GENERAL MANAGER

REVIEWED BY: KIM SITTON, FINANCE MANAGER

REVIEWED BY: KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

REVIEWED BY: MICHELE NISSEN, ASSISTANT CITY MANAGER

SUBMITTED BY: DARRELL TALBERT, CITY MANAGER & EXECUTIVE DIRECTOR

Attachment: Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
BETWEEN
RIVERSIDE COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH
AND
THE CITY OF CORONA**

This Memorandum of Understanding (MOU) is made and entered into by and between the CITY OF CORONA , hereinafter referred to as "CITY" and the COUNTY OF RIVERSIDE, DEPARTMENT OF ENVIRONMENTAL HEALTH, hereinafter referred to as "COUNTY", to be effective on the date approved by both parties.

I. RECITALS:

WHEREAS, CITY desires Environmental Planning review, Technical Assistance, and Plan Review for Onsite Wastewater Treatment Systems (OWTS) in accordance with the Riverside County Local Agency Management Program (LAMP) and;

WHEREAS, CITY does not have an approved LAMP and;

WHEREAS, COUNTY's LAMP was approved by the Regional Water Quality Control Board on November 17, 2016 and;

WHEREAS, CITY desires to abide by the Riverside County LAMP and;

WHEREAS, CITY agrees to rescind any and all existing OWTS ordinances, rules and regulations prior to COUNTY'S review to avoid conflicting and duplicative rules and regulations and;

WHEREAS, CITY agrees to enact necessary regulation to allow for billing of permit fees by COUNTY for services to be rendered, according to County of Riverside Ordinance No. 640 and;

WHEREAS, COUNTY has personnel with sufficient training and expertise to provide such services in accordance with the LAMP and;

WHEREAS, COUNTY is prepared to provide such services under the terms and conditions set forth in this Memorandum of Understanding; and

WHEREAS, CITY and COUNTY agree to now enter into this Memorandum of Understanding for a period of five (5) years;

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties mutually agree as follows:

II. TERMS AND CONDITIONS

A. SUMMARY

The CITY requires professional services as described herein from the COUNTY for review of Onsite Wastewater Treatment Systems (OWTS).

B. TERM

The term of this MOU shall be effective on the date of execution, or on the date CITY enacts all necessary ordinances, rules and regulations regarding rescission of existing OWTS laws and to allow COUNTY to bill for permit fees. The MOU shall continue in effect for up to 5 five years, or until terminated as outlined in section IV below.

C. SERVICES TO BE RENDERED

Plan Review Services: COUNTY will provide plan review of OWTS for commercial and residential applications within the CITY. This review will include inspections of the property and technical review of the soil percolation study to ensure compliance with the Riverside County LAMP. Requests for an OWTS shall be accompanied by a City

application or building permit and shall be presented in person by the project proponent to a County Environmental Health office for their review. The project proponent shall be responsible for the payment of any applicable fees, as established in County Ordinance 640 and codified in Riverside County Code, Ch. 4.52 for the type of review requested at the time of submission of the request, to cover the cost of services provided. All such review shall be provided within fifteen (15) working days of submittal of a completed application.

Planning Review: COUNTY will provide environmental planning review to the City for all residential and commercial projects proposing OWTS, to ensure compliance with Riverside County LAMP. The project proponent shall be responsible for the payment of any applicable fees, at the current hourly rate established in County Ordinance 640 as codified in Riverside County Code, Ch. 4.52, to cover the cost of services provided. All such reviews shall be provided within (20) twenty working days of request for such services.

Inspection/Review of Annual Evaluation for Advanced Treatment Units (ATU): COUNTY will provide inspection and/or review of the annual evaluation report for ATUs as required in the LAMP. The project proponent and/or homeowner shall be responsible for the payment of any applicable fees, as established in County Ordinance 640 and codified in Riverside County Code, Ch. 4.52, to cover the cost of services provided.

Services to be rendered specifically exclude COUNTY response to and enforcement of any complaints regarding malfunction or failure of an OWTS. CITY agrees to enact any ordinances or regulations necessary to enforce the failure of any OWTS, and to enforce in a manner consistent with the LAMP.

CITY shall enact any necessary ordinances to allow for COUNTY to directly bill any applicant.

CITY shall rescind, or suspend for the duration of this MOU and any subsequent renewals, any and all ordinances, regulations or other mandatory laws regarding OWTS systems within the CITY to avoid duplication of laws or conflicting laws. CITY shall also enact necessary implementation ordinances, regulations or other laws that would allow the provisions of the LAMP to control within the CITY's border and also that would allow COUNTY to provide services under the LAMP.

D. PERSONNEL

The services provided by the COUNTY shall be performed by COUNTY personnel under the control and direction of COUNTY. To the extent that CITY personnel may also participate in any of the activities herein provided for, CITY agrees to conduct those activities in accordance with the COUNTY LAMP, and any expenses by the CITY in this process shall be borne by CITY.

E. MUTUAL HOLD HARMLESS/INDEMNIFICATION

- 1) CITY agrees to defend, indemnify, and hold harmless COUNTY, its directors, officers, agents, Board of Supervisors, elected and appointed officials, employees, and representatives from and against any liability, damages, costs, losses, claims and expenses, based or asserted upon any services of CITY, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this MOU, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever and resulting from any reason whatsoever arising from the performance of CITY's obligations under this MOU, its officers, agents, employees, subcontractors, agents or representatives.

- 2) In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve CITY from indemnifying the COUNTY to the fullest extent allowed by law.
- 3) With respect to any action or claim subject to indemnification herein by CITY, CITY shall, at their sole cost, have the right to use counsel of their own choice, subject to approval of COUNTY, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CITY'S indemnification to COUNTY as set forth herein. CITY'S obligation to defend, indemnify and hold harmless COUNTY shall be subject to COUNTY having given CITY written notice within a reasonable period of time of the claim or of the commencement of the related action as the case may be, and information and reasonable assistance, at COUNTY'S expense, for the defense or settlement thereof. CITY'S obligation hereunder shall be satisfied when CITY has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.
- 4) COUNTY agrees to defend, indemnify, and hold harmless CITY, its directors, officers, agents, City Council, elected and appointed officials, employees, and representatives from and against any liability, damages, costs, losses, claims and expenses, based or asserted upon any services of COUNTY, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this MOU, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever and resulting from any reason whatsoever arising from the performance of COUNTY'S obligations under this MOU by COUNTY, its officers, agents, employees, subcontractors, agents or representatives.

- 5) In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve COUNTY from indemnifying the CITY to the fullest extent allowed by law.
- 6) With respect to any action or claim subject to indemnification herein by COUNTY, COUNTY shall, at their sole cost, have the right to use counsel of their own choice, subject to approval of CITY, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of CITY provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes COUNTY'S indemnification to CITY as set forth herein. COUNTY'S obligation to defend, indemnify and hold harmless CITY shall be subject to CITY having given COUNTY written notice within a reasonable period of time of the claim or of the commencement of the related action as the case may be, and information and reasonable assistance, at CITY'S expense, for the defense or settlement thereof. COUNTY'S obligation hereunder shall be satisfied when COUNTY has provided to CITY the appropriate form of dismissal relieving CITY from any liability for the action or claim involved.

III. AMENDMENTS

Any amendment, modification, or variation from the terms of this MOU shall be in writing and shall be effective only upon mutual approval by the authorized parties.

IV. TERMINATION

Either CITY or COUNTY may terminate this MOU at any time by giving (30) day written notice with or without cause to the designated contacts. Upon receipt of any notice of termination on the agreed upon effective date of termination services shall cease thereafter. Upon termination of this MOU, any OWTS under permit and subject to annual inspection shall revert to the CITY for inspection and permitting. Any fees paid to the COUNTY for an annual permit prior to notification of termination, shall not be refunded by the COUNTY.

V. COMPLETE MEMORANDUM OF UNDERSTANDING

This written MOU, including all writings specifically incorporated hereby in reference, shall constitute the complete MOU between the parties hereto. No oral MOU, agreement or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral MOU, agreement or representation be binding upon the parties hereto. Any previous agreements between the CITY and COUNTY, whether oral or written, with regards to the activities outlined in Section II C of this MOU, shall be supplanted by this MOU. Other agreements or contracts between the CITY and COUNTY, not involving OWTS, shall be unaffected by this MOU.

VI. JURISDICTION/VENUE

This MOU shall be governed by, and construed in accordance with, the laws of the State of California. CITY agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this MOU and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Riverside.

VII. NOTICE

All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

CITY:

**City of Corona
400 S. Vincentia Ave.
Corona, CA 92882**

COUNTY:

**County of Riverside
Department of Environmental Health
4065 County Circle Drive
Riverside, CA 92503**

VIII. AUTHORITY TO EXECUTE MEMORANDUM OF UNDERSTANDING

Both CITY and COUNTY do covenant to each individual executing this MOU on behalf of each party is a person duly authorized.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on _____ (Date)

CITY OF CORONA

COUNTY OF RIVERSIDE

Darrell Talbert, City Manager

Steve Van Stockum, Director

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: _____
Eric Stopher, Deputy County Counsel

Dated _____