

**MEMORANDUM OF UNDERSTANDING (MOU)**  
**BETWEEN**  
**THE COUNTY OF MERCED, DEPARTMENT OF PUBLIC HEALTH, DIVISION OF ENVIRONMENTAL HEALTH**  
**AND**  
**THE CITY OF MERCED**

**REGARDING ON-SITE WASTEWATER TREATMENT SYSTEMS**

**EFFECTIVE DATE:** \_\_\_\_\_

**SECTION I. RECITALS**

1. WHEREAS, the State of California adopted Assembly Bill 885 in September 2000, which requires the State Water Resources Control Board to adopt specific regulations or standards for the permitting and operation of onsite wastewater treatment systems (OWTS).
2. WHEREAS, on June 19, 2012, the State Water Resources Control Board adopted the Water Quality Control Plan for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy), and it became effective on May 13, 2013.
3. WHEREAS, the OWTS Policy establishes a waiver of Waste Discharge Requirement (WDR) permits for OWTS systems meeting the criteria of the OWTS Policy.
4. WHEREAS, the OWTS Policy establishes low-risk siting and design requirements for OWTS subject to the OWTS Policy and authorizes local agencies to submit a Local Agency Management Program (LAMP) to the Regional Water Quality Control Board for approval of alternate methods of siting and design to achieve the same purpose.
5. WHEREAS, the County of Merced, Department of Public Health, Division of Environmental Health (MCDEH) operates a program for the approval of the siting, design, operation, and maintenance of OWTS for individual residences within its Division of Environmental Health and has adequate staffing and technical knowledge to meet the requirements of the OWTS Policy.
6. WHEREAS, the County of Merced (County) submitted a LAMP to the Central Valley Regional Water Quality Control Board for approval.
7. WHEREAS, the OWTS Policy Section 4.3 states that the Regional Water Quality Control Board designated in Attachment 3 shall review, and if appropriate, approve a Local Agency Management Program submitted by the local agency pursuant to Tier 2 in this Policy.
8. WHEREAS, OWTS Policy Attachment 3 identifies Central Valley Regional Water Quality Control Board (Region 5) as the designated Regional Water Quality Control Board for the County of Merced for purposes of reviewing and, if appropriate, approving new Local Agency Management Plans.
9. WHEREAS, the Central Valley Regional Water Quality Control Board reviewed the County's LAMP, determined that it meets the requirements of the OWTS Policy.
10. WHEREAS, on April 7, 2017, the Central Valley Regional Water Quality Control Board approved the County's LAMP, for those areas within the Central Valley Regional Water Quality Control Board, and

as a result granted a Conditional Waiver of WDRs for all OWTS complying with the LAMP (for the most current version of the LAMP, contact MCDEH).

11. WHEREAS, on December 6, 2016, the Merced County Board of Supervisors approved the ordinance entitled, "Regulation of On-site Waste Water Treatment Systems", adding Chapter 9.54 to Title 9 of Merced County Code to implement the requirements of the LAMP.
12. WHEREAS, the Merced County Board of Supervisors delegates authority to the Public Health Director or authorized designee to enter into agreements with local jurisdictions to provide services under the LAMP.
13. WHEREAS, the City of Merced (City) has existing OWTS and areas without access to a public sewer system.
14. WHEREAS, both the County of Merced and the City of Merced are desirous of protecting the public's health and the quality of groundwater within the City.
15. NOW THEREFORE THE COUNTY OF MERCED AND THE CITY OF MERCED (PARTIES) HEREBY AGREE AS FOLLOWS:

## **SECTION II. DESIGNATION AND AGREEMENT**

1. The City designates the County as the permitting and inspecting agency, and the County accepts the designation for the implementation of the County's approved LAMP for the siting, design, operation, and maintenance of certain OWTS, as set forth and defined herein, within the City's incorporated area.
2. The County and City agree that the requirements of the LAMP, the County's LAMP enforcement ordinance and the County's adopted Plumbing Code will govern the applicable siting, design, operation, and maintenance of OWTS within the City.
3. Modification. Any modifications of this MOU shall be done in writing and signed by both Parties.
4. Effective Date. This MOU is effective on \_\_\_\_\_ and shall remain in effect indefinitely until either of the Parties terminates this MOU in writing.

## **SECTION III. APPLICABILITY**

1. The OWTS subject to the County's responsibilities in Section IV (A) (2) of this agreement shall consist of those OWTS that generate less than 10,000 gallons per day of domestic wastewater (as that term is defined in the OWTS Policy, Section 2 -Permit Requirement), that dispose of wastewater below the ground surface, and that are generated from single family residences, multi-family residences, commercial buildings where the wastewater is from domestic sources (e.g., toilets, urinals, bathtubs, showers, dishwashing facilities, laundry washing, and garbage disposals), buildings which are a combination of commercial and residential, and commercial food service buildings with wastewater with a Biological Oxygen Demand (BOD) of 900 mg/L or less and a properly functioning grease interceptor.
2. The County shall not be responsible for any fines, fees, or taxes imposed upon the City by the State, federal and special district agencies related to any activities associated with this MOU.

3. This MOU shall not apply to any other OWTS within the incorporated area of the City, including those, but not limited to, OWTS that:
  - a) Generate 10,000 gallons or more per day;
  - b) Discharge high-strength wastewater (OWTS Policy, Section 1.0), other than commercial food service buildings meeting the above requirements;
  - c) Are commercial food service buildings that don't meet the above requirements;
  - d) Generate industrial wastewater;
  - e) Accept wastewater from Recreational Vehicles;
  - f) Utilize methods to dispose of wastewater above ground;
  - g) Treat and reuse wastewater onsite for non-potable uses.
4. Nothing in this MOU shall diminish or affect the ability of the City to exercise its lawful authority to regulate the type, siting, design, and installation for those OWTS within the incorporated area of the City that are exempt from this MOU. Issuance of a Waste Discharge Requirement or other permits by a Regional Water Quality Control Board shall not constitute authorization for any person or entity to construct, install, or operate any OWTS without such City approval.

#### **SECTION IV. GENERAL PROVISIONS**

##### **A. COUNTY RESPONSIBILITIES**

1. The County will notify the appropriate Regional Water Quality Control Board that the City has entered into an agreement to be regulated under the County's LAMP.
2. The County will review all permit applications and issue permits for new, replacement, repair, or demolition of applicable OWTS in the City for siting and design. The County will conduct inspections on all OWTS permit work to ensure the approved designs are completed as outlined in the County's OWTS permit.
3. The County shall provide the owner of the property or his/her representative with an approval of the application, a detailed list of corrections needed to proceed with the application, or a detailed reason why the project is unable to be approved. Projects that the County determines may impact ground or surface water may be directed to file a Report of Waste Discharge with the Regional Water Quality Control Board.
4. The City will coordinate with the County to review all applications for building permits where an OWTS is present on the property to evaluate whether the proposed construction will impact the OWTS by:
  - a) Potentially increasing wastewater flows (e.g., adding additional bedrooms, second dwellings);
  - b) Changing the strength of the wastewater;
  - c) Impinging upon required setbacks of the OWTS, any of its components, or the required 100% or 300% future expansion area.
5. The County will maintain an inventory of all OWTS permitted within the City's incorporated area including OWTS Policy tier, setback information, and if a non-conventional on-site wastewater treatment system was required.

6. The County shall respond to any complaint alleging an OWTS failure and, will issue directives to owners of OWTS when the County determines the OWTS is in need of replacement or repair and City service is unavailable. The County will refer the complaint and the County's directives to the City for follow-up and enforcement action.
7. The County will invoice the City for County staff time spent on responding to unsubstantiated complaints alleging an OWTS failure. The County will invoice the property owner for County staff time spent on responding to substantiated complaints of an OWTS failure. The County will bill at the current hourly rate, at one-hour minimum, for all staff time spent responding to complaints of OWTS failure including travel time.
8. The County will refer to the City for any enforcement of any violation of the City's ordinance or the County's LAMP including but not limited to instances when the property owner has failed to comply with the written directives of the Local Health Officer, or Environmental Health Division Director, or authorized designees.
9. The County will inspect and permit all sewage pumper trucks that service OWTS within the City's jurisdiction annually; however, such inspections and permits shall not be construed to prohibit or limit City's business licensing activity.
10. The County will complete and submit reports with the data outlined in the Merced County's LAMP, Section 5, according to the frequency outlined in the same section.
11. The County will invoice the City for staff time spent per event to obtain, compile, and submit reports with the data outlined in the Merced County's LAMP, Section 5, according to the frequency outlined in the same section. The County will bill at the current hourly rate, at one-hour minimum, for all staff time spent.

**B. CITY RESPONSIBILITIES**

1. The City will provide the County with a list of all reasonably known domestic OWTS and other applicable OWTS within the City's jurisdiction within 60 days of the effective date of this agreement.
2. The City shall provide the County by January 1<sup>st</sup> of each year a list of properties where an existing OWTS had been connected to the public sewer during the prior year.
3. The City will provide the County with a list of locations of all existing wells and surface water intakes and any future wells connected to the City's public water system within 60 days of the effective date of this agreement.
4. The City shall notify the County whenever a well is newly connected to or disconnected from the City's public water system.
5. The City shall notify the County whenever a new building with an applicable OWTS is issued a Certificate of Occupancy.
6. The City shall refer and seek approval from the County for any building permit application for a new building and/or a remodel of an existing building that will be utilizing an OWTS. The City shall also refer and seek approval from the County for any building permit application for repair of an existing OWTS, or construction of any building or permanent structure which may impinge upon an OWTS or its future expansion area.

The City shall not issue a building permit for a project referred to the County unless plans for the project are first approved by the County.

7. The City shall require a property owner to submit a Report of Waste Discharge for issuance of WDRs by the appropriate Regional Water Quality Control Board for any OWTS project that does not meet the requirements identified in Section III, Paragraph 1 of this MOU.
8. The City shall investigate any complaint alleging construction of an OWTS or modification of an existing OWTS without obtaining the appropriate permits.
9. Except as otherwise provided by Section IV (A) (6), the City shall conduct all enforcement activities for any violation of the City's ordinance or the County's LAMP, including but not limited to, instances when the property owner has failed to comply with the written directives of the Local Health Officer, or Environmental Health Division Director, or authorized designees.
10. The City shall provide the County with its current sewer availability map and update the County with its sewer availability map by January 1<sup>st</sup> of each year.
11. The City, upon cancellation of this MOU, shall comply with the Tier 1 requirements in the State OWTS Policy until the Regional Water Quality Control Board has approved a LAMP authorizing the City to use alternative requirements. If as a result of the termination of this MOU the Regional Water Quality Control Board determines that WDRs are required for existing applicable OWTS, the City shall be responsible for issuing a notice to the owner of each property where an OWTS is installed within their jurisdiction directing the owner to obtain WDRs.
12. The City shall provide the County by January 1<sup>st</sup> of each year with surface or groundwater quality monitoring data for nitrates, pathogens, and other constituents that may be useful to the County's annual Water Quality Assessment Program. The data may be collected by the City as part of its National Pollutant Discharge Elimination System (NPDES) Permit requirements, a City-operated water utility, or other monitoring programs.
13. The City shall pay the County invoices that are billed to the City for the County's staff time spent on activities outlined in Section 4A of this MOU.

#### **SECTION V. TERMINATION**

1. The City may terminate this MOU, with or without cause, upon ninety (90) days written notice.
2. The County may terminate this MOU, with or without cause, upon ninety (90) days written notice from the Public Health Director or authorized designee, to the City.
3. Upon the effective date of the termination, the City shall become responsible for enforcement of the State OWTS Policy within its jurisdiction.
4. In addition to the above, in the event that the State Water Board adopts new regulations regarding OWTS, the County may, at its discretion, terminate this MOU upon the effective date of the new regulations. The City and the County, at their mutual agreement, may negotiate and adopt an amendment to this MOU to include the new regulations.

## SECTION VI. MUTUAL INDEMNIFICATION

1. County will indemnify, defend and hold harmless City, its elected and appointed officers, and employees from and against any and all liability, including but not limited to demands, claims, actions fees, costs, and expenses arising from or connected with County's negligent acts and/or omissions, arising from this MOU and/or relating to this MOU. County will not be obligated to indemnify, defend and hold harmless City from City's negligent acts and/or omissions relating to this agreement.
2. City will indemnify, defend and hold harmless County, its elected and appointed officers, and employees from and against any and all liability, including but not limited to demands, claims, actions fees, costs, and expenses arising from or connected with City's negligent acts and/or omissions, arising from this MOU and/or relating to this MOU. City will not be obligated to indemnify, defend and hold harmless County from County's negligent acts and/or omissions relating to this agreement.

## SECTION VII. STANDARD PROVISIONS

1. This is an integrated agreement and therefore contains all of the terms, considerations, understandings and promises between the Parties related to this MOU. This MOU may be modified, changed or rescinded only by written agreement, executed by the Parties.
2. All exhibits referred to herein are incorporated into this MOU. Failure to comply with the provisions or requirements of any exhibit shall constitute grounds for breach of this MOU by either Party.
3. This MOU shall be governed and construed in accordance with the laws of the State of California.
4. Any action arising out of this MOU shall be brought in Merced County, California, regardless of where venue may lie.
5. Any notice or communication required hereunder between the Parties must be in writing and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices of communications shall be given to the Parties at their addresses set forth below:

If to City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to County: Merced County Department of Public Health  
Division of Environmental Health  
260 E. 15<sup>th</sup> Street  
Merced, CA 95341

Attn: Environmental Health Division Director

6. This MOU may be executed in one or more counterparts and all so executed shall be binding upon the Parties, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.


**SECTION VIII. AUTHORIZING SIGNATURES**

As authorized by the \_\_\_\_\_ on \_\_\_\_\_.  
Authorizing City Entity Date

Signature: \_\_\_\_\_  
[ First and Last Name of Signatory / Title of Signatory ]

Attest Signature: \_\_\_\_\_  
[ First and Last Name of Attest / Title of Attest ]

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
SCHUYLER A. CAMPBELL Date  
Deputy City Attorney