

AGENDA ITEM FOR ADMINISTRATIVE MEETING () Discussion only
(XXX) Action

FROM (DEPT/ DIVISION): UCo Health

SUBJECT: Approve IGA and MOA to allow expansion of onsite septic system program into Morrow County.

<p>Background: Since implementation of Onsite Septic program in Umatilla County in 2016, DEQ and UCo Health staff have been interested in expanding this program to include Morrow County. UCo Health currently administers the Food, Pool, & Lodging program on behalf of Morrow County currently. After discussions with counterparts in Morrow County, the counties are prepared to move forward with expanding the program to also cover Morrow County. The agreements have been drafted that will allow for UCo Health staff to administer the onsite septic program on behalf of Morrow County. This program would be fully supported by the existing fee schedules.</p>	<p>Requested Action: Approve IGA between Umatilla and Morrow Counties; and approve the MOA between DEQ, Morrow County, and Umatilla County, to allow for the administration of the Onsite Septic program in Morrow County by Umatilla County</p>
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ATTACHMENTS: Draft IGA
Draft MOA

Date: (4/12/2019) Submitted By: Joseph Fiumara

*****For Internal Use Only*****

Checkoffs:

- () Dept. Heard (copy)
- () Human Resources (copy)
- () Fiscal
- () Legal (copy)
- () (Other - List:)

To be notified of Meeting:

Needed at Meeting:

Scheduled for meeting on: April 17, 2019

Action taken:

Follow-up:

INTERGOVERNMENTAL AGREEMENT
UMATILLA COUNTY and MORROW COUNTY
On-Site Wastewater Treatment Systems Program
Agreement No. 2019-417

WHEREAS, the State of Oregon, pursuant to ORS 454.725, has entered into an agreement with Morrow County and Umatilla County to perform the duties of the Oregon Department of Environmental Quality for an on-site wastewater treatment systems program in Morrow County;

WHEREAS, Umatilla County previously entered into a separate agreement with the State of Oregon for administration and enforcement of an on-site wastewater treatment systems program within Umatilla County, and has established such program within Umatilla County;

WHEREAS a county may enter into any contracts the county deems necessary to accomplish the work required for an environmental health program;

WHEREAS ORS 190.010 authorizes Umatilla County and Morrow County to enter into an agreement for cooperative performance of any function or activity that a party to the cooperative agreement has authority to perform.

NOW THEREFORE, the Counties agree to the following regarding an on-site wastewater treatment systems program within Morrow County:

1. Each party will perform its duties and obligations as set out in the Memorandum of Agreement Relating to Permitting and Inspection of Onsite Wastewater Treatment Systems with the Oregon Department of Environmental Quality (“DEQ Agreement”).

2. In addition, Umatilla County will provide for the administration and the enforcement of an on-site wastewater treatment systems program within Morrow County, under the terms and the conditions of this Intergovernmental Agreement and the DEQ Agreement.

3. Morrow County delegates its authority under the Morrow County Ordinances and regulations, to Umatilla County, for the administration and the enforcement of an on-site wastewater treatment systems program, including citation and prosecution of violations.

4. Morrow County will adopt any necessary rules and regulations for the administration and enforcement of an on-site wastewater treatment systems program, as required by the DEQ Agreement, and also as requested by Umatilla County, including but not limited to, adoption of State Statutes and Administrative Rules, violation proceedings, contested case proceedings, public nuisance, delegation, and fees.

5. Umatilla County will provide to Morrow County the monthly report submitted to DEQ, showing activity for the program within Morrow County.

6. By the end of the first quarter of each year, Umatilla County will provide a report to Morrow County showing all activity for the program within Morrow County for the previous year.

7. For the convenience of the citizens of Morrow County, applications for permits will be accepted by Morrow County at its Irrigon office, along with any necessary filing fees. Morrow County will scan and send the application electronically to Umatilla County and retain the hard copy for Umatilla County to retrieve at its earliest convenience. Morrow County will also forward any fees collected by Morrow County to Umatilla County on a monthly basis. Umatilla County will pay on monthly basis to Morrow County, five percent of any fees collected by Morrow County as an administrative fee for the processing of these applications and fees.

8. Subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), each party shall indemnify and hold, within the limits of and subject to the restrictions in the Oregon Tort Claims Act, the other county, its officers, agents, and employees, harmless from any and all claims, actions, costs or damages caused by the actions of that party's employees under this IGA.

9. This agreement may be terminated by either party at any time on 90 days written notice to the other party.

SIGNED AND AGREED TO BY:

MORROW COUNTY
through its County Court

Jim Doherty, County Commission Chair

Melissa Lindsay, Commissioner

Don Russell, Commissioner

Date: _____

UMATILLA COUNTY
through its Board of Commissioners

William J. Elfering Chair

George L. Murdock, Commissioner

John M. Shafer, Commissioner

Date: _____

**Memorandum of Agreement
Relating to
Permitting and Inspection of Onsite Wastewater Treatment Systems**

I. Parties:

The parties to this agreement are the Oregon Department of Environmental Quality (DEQ), Umatilla County (Umatilla), and Morrow County (Morrow).

II. Purpose:

In accordance with the authority provided by Oregon Revised Statutes (ORS) 190.010, 190.030, 190.110, 454.640, 454.725 and 454.745, this Memorandum of Agreement (MOA) sets forth the roles and responsibilities of DEQ, Morrow, and Umatilla with respect to the Onsite Wastewater Management Program services in Umatilla and Morrow Counties that will be provided by Umatilla. The Parties intend this MOA to document the agreement between each county and DEQ to perform DEQ duties under ORS 454.635, 454.655, 454.665, and 454.755 as well as Umatilla's agreement with Morrow (Agreement # [REDACTED]) to perform all such functions and activities within Morrow county. This MOA hereby rescinds and replaces the MOA dated October 31, 2016 between DEQ and Umatilla (R025-16-I).

III. Effective Date: This MOA becomes effective upon signature by all parties listed in Section VII and terminates on June 30, 2028 unless terminated sooner pursuant to Section VI.

IV. Agreements:

1. Morrow agrees to the following:

- a. Morrow will perform the duties of DEQ under ORS 454.635, 454.655, 454.665, and 454.755 in Morrow County pursuant to ORS 454.725, through its cooperation and this MOA with Umatilla pursuant to ORS 190.010.
- b. Morrow will submit to Umatilla timely requests for services with as much advance notice as reasonably possible.
- c. Morrow will adopt fee schedules in accordance with ORS 454.745. Fees shall be based on actual costs for efficiently conducting services at the minimum level required by this MOA.

2. Umatilla agrees to the following:

- a. Umatilla will maintain adequate personnel and resources to receive and process applications for evaluation reports and permits for all onsite wastewater treatment systems proposed for construction, alteration, repair, or connection in accordance with the provisions of ORS

454.605 through 454.755, and Oregon Administrative Rules (OAR) 340-071-0100 through 340-071-0650 and utilizing procedures approved by DEQ, in both Umatilla and Morrow counties.

- b. Umatilla will administer this MOA and serve as the Agent for DEQ in both Umatilla and Morrow counties, except where DEQ staff involvement is expressly specified in Environmental Quality Commission (EQC) rules or this MOA.
- c. Umatilla will adopt fee schedules in accordance with ORS 454.745. Fees shall be based on actual costs for efficiently conducting services at the minimum level required by this MOA. All fees collected by Umatilla, for onsite services provided by Umatilla in Umatilla county, will be used by the Umatilla to defray Onsite Wastewater Management Program expenses in Umatilla county. All fees collected by Umatilla, for onsite services provided by Umatilla in Morrow county, will be used by Umatilla to defray Onsite Wastewater Management Program expenses in Morrow county.
- d. Umatilla will collect a DEQ surcharge for onsite system activities in Umatilla and Morrow counties in accordance with OAR 340-071-0140. Umatilla must submit both an accounting of monthly surcharge receipts and payment to DEQ on a monthly basis, within ten (10) business days of the first day of each month.
- e. Umatilla and DEQ agree to comply with State Treasurer rules for depository and public official filings (ORS 295.006).
- f. Umatilla will collect required fees from applicants according to the applicable fee schedule. Umatilla will keep a complete and accurate record of activities performed and of the fees collected. Umatilla will send the records to DEQ, upon request, in accordance with the instructions provided by DEQ.
- g. Upon request by DEQ, Umatilla will produce a financial report that itemizes Umatilla's onsite services provided, fees collected and program costs. Umatilla will provide DEQ with a copy of the financial report within sixty (60) calendar days of the request.
- h. Following the receipt of a completed site evaluation application and specified fee, Umatilla will timely conduct a site evaluation and issue a report, as described in ORS 454.655(5), 454.655(6), 454.755(1)(b) and OAR 340-071-0150 for all proposed systems with design flows of 2,500 gallons per day or less.
- i. Following the receipt of a completed application, for a permit for proposed systems with residential strength wastewater and design flows of 2,500 gallons per day or less, Umatilla will determine if the proposed construction will be in accordance with the rules of the EQC. Umatilla will issue a permit only if it finds that the proposed construction will be in accordance with the rules of the EQC. Umatilla will inspect the construction to determine if it complies with EQC rules and conditions of the permit. Based upon the results of the inspection Umatilla will issue a Certificate of Satisfactory Completion or Correction Notice, as appropriate.

- j. Umatilla will accept and process applications for evaluation reports on the adequacy of wastewater treatment methods for proposed and existing subdivisions, and will prepare such evaluation reports as described in ORS 454.755(1)(b) and 92.090(5)(c).
- k. Umatilla will evaluate existing onsite wastewater treatment systems and prepare a report in response to appropriate applications for Authorization Notices under OAR 340-071-0205.
- l. Umatilla will evaluate existing onsite wastewater treatment systems and prepare a report in response to appropriate applications for Existing System Evaluation Reports under OAR 340-071-0155.
- m. Umatilla will assist applicants making requests for a variance. If requested by DEQ, Umatilla will review and make recommendations on applications for variances from the onsite wastewater treatment system rules, and will participate in inspections and hearings as needed. If DEQ grants the variance, Umatilla will issue the permit, conduct the construction completion inspection and issue the Certificate of Satisfactory Completion or Correction Notice, as appropriate.
- n. Umatilla will notify the applicant in writing that the applicant may request a DEQ review for onsite evaluation reports, permits or Authorization Notice denials in accordance with OAR 340-071-0150(5), 340-071-0165, or 340-071-0205(10).
- o. Umatilla will adopt and maintain ordinances, consistent with state enforcement, for enforcement of the onsite program, including the authority to take action against any person who commits an onsite program rule violation, except for license and certification violations. Umatilla may meet this obligation by adopting its own enforcement ordinances or by adopting ordinances that incorporate existing DEQ enforcement provisions implementing ORS 454.605 through 454.755 or both. In addition, Umatilla will cooperate and assist DEQ in any action it takes to obtain compliance with the provisions of ORS 454.605 through ORS 454.755 and to implement EQC rules. Umatilla will provide information on enforcement activity to DEQ upon request by DEQ.
- p. Umatilla will investigate complaints relating to onsite wastewater treatment systems and when appropriate conduct an inspection. Umatilla will notify each alleged violator of the violation and order corrections. If the alleged violator fails to comply, Umatilla shall take appropriate enforcement action. Umatilla will provide information on complaint activity to DEQ upon request by DEQ.
- q. Umatilla will maintain documentation of non-compliance of persons performing sewage disposal services and forward non-compliance information to DEQ. Umatilla will provide information on non-compliance activity to DEQ upon request by DEQ.
- r. Upon request of DEQ or a licensee or applicant, Umatilla will inspect pumping equipment of businesses or persons licensed, or proposed to be licensed, to perform sewage disposal services under ORS 454.695.

- s. Umatilla will ensure that personnel hired to perform services within the Onsite Wastewater Management Program under this MOA meet the minimum qualifications for the State of Oregon. These minimum qualifications are:
 - (i) Registration with the State of Oregon as an Environmental Health Specialist, Environmental Health Specialist Trainee, Waste Water Specialist or Waste Water Specialist Trainee in accordance with ORS Chapter 700; and
 - (ii) Personnel who perform site evaluations or any other activity that requires the evaluation of soil must have at least ten (10) academic quarter hours, or equivalent semester hours, in Introductory Soil Science, Soil Morphology and Physical Geology or Geomorphology.

In the event Umatilla is unable to hire personnel with the qualifications listed above, DEQ may authorize hiring of someone who qualifies for registration as an Environmental Health Specialist, Environmental Health Specialist Trainee, Waste Water Specialist or Waste Water Specialist Trainee in accordance with ORS Chapter 700, if Umatilla provides DEQ with a training program and a plan to qualify that person.

- t. Umatilla will provide technical personnel with equipment necessary to fulfill the duties included in this MOA. The equipment must be in good working condition and include at a minimum:
 - (i) Five foot tape measure
 - (ii) 100 foot tape measure
 - (iii) Laser level
 - (iv) Tile probe
 - (v) Munsell Soil Color Chart
 - (vi) Clinometer
 - (vii) Soil knife or pick hammer or equivalent
 - (viii) Water bottle sufficient to moisten soil
- u. All Umatilla program personnel who perform technical permitting and inspection duties within the Onsite Wastewater Management Program must attend DEQ-provided onsite trainings such as soil workshops and program conferences.
- v. Umatilla will budget for necessary training and continuing education opportunities for Umatilla program staff.
- w. Umatilla onsite program manager, or the manager's designee, must attend the meetings referenced in section 3(e)(ii).
- x. Subject to Umatilla workload and staffing constraints, Umatilla will provide program personnel, to assist in program reviews of neighboring Counties as provided in section 3(e)(i).
- y. In the event Umatilla ceases providing onsite services pursuant to this MOA, Umatilla shall remit the following amount of the collected fees to DEQ, less the surcharge remitted separately:

- (i) 45 percent of the application fee where the permit has been issued and a final inspection has not been conducted and no Certificate of Satisfactory Completion issued.
 - (ii) 22.5 percent of the application fee where the permit has been issued, a final inspection responded to, and a correction notice was posted.
 - (iii) 100 percent of the application fee for any onsite application where no significant work has been done in response to the application.
3. DEQ agrees to the following:
- a. DEQ will maintain adequate personnel and resources to carry out its commitments under this MOA. It will supply Umatilla with electronic copies of revisions of the rules, internal management directives, procedural memoranda, and recommended or required forms.
 - b. DEQ will accept enforcement referrals for sewage disposal service license violations. DEQ may defer action on enforcement referrals for situations that also violate local land use, planning, zoning, and/or building ordinances until the ordinance violations have been resolved by Umatilla.
 - c. DEQ will provide training programs that include soil workshops and program conferences for all onsite personnel in the state, and other training programs DEQ determines to be necessary.
 - d. DEQ will provide the following program support services to counties upon request:
 - (i) Rule interpretation.
 - (ii) Technical assistance.
 - e. DEQ will perform oversight and coordination services to ensure an appropriate level of standardization is established within each county in the State. The following services will be provided by DEQ on an as-needed basis:
 - (i) DEQ will perform a program review and provide a written report. The program review will include evaluating field data and file information to determine Umatilla implementation of the terms of this MOA. The program review will also collect financial information to ensure fees collected are used appropriately and that the applicable fee schedule is appropriate. DEQ staff and technical staff from neighboring counties may conduct the program evaluation.
 - (ii) The DEQ regional onsite program staff will meet with Umatilla representatives to exchange information regarding rules, policies, standards, and technology.
 - (iii) DEQ regional technical staff will accompany Umatilla technical staff on field activities to exchange technical information, practices and procedures, as DEQ staffing and schedules allow.
 - f. DEQ will provide Umatilla with surcharge payment and activity reporting instructions.

- g. DEQ will evaluate materials used in onsite systems within the State of Oregon, and provide a list of approved materials to Umatilla. DEQ may also conduct site evaluations and issue permits for onsite systems that include new or innovative technologies, materials or designs being evaluated with an application for approval, as outlined in OAR 340-071-0135.
- h. DEQ will accept and process applications for permits to construct systems designed for treating greater than residential strength wastewater and with design flows greater than 2,500 gallons per day.
- i. DEQ will license sewage disposal service applicants and provide Umatilla with a list of licensees.
- j. DEQ will certify installers and maintenance providers and provide Umatilla with a list of certified individuals.
- k. DEQ will resume administration of the Onsite Wastewater Management Program in the event of termination of this MOA.
- l. In the event the DEQ ceases providing onsite services, DEQ must remit the following amount of the application fees collected to Umatilla, less the surcharge collected separately for applications that have been received and the required activity has not been completed;
 - (i) 45 percent of the application fee where the permit has been issued, is not expired and a final inspection has not been conducted and no Certificate of Satisfactory Completion issued.
 - (ii) 22.5 percent of the application fee where the permit has been issued, a final inspection responded to, and a correction notice was posted, and the permit has not expired.
 - (iii) 100 percent of the fee for applications where no significant work has been done in response to the application.
- m. Within thirty (30) business days after execution of this MOA, DEQ agrees to submit a one time payment to Umatilla for onsite applications not closed at time of transfer for Morrow County. The breakdown of the permit applications and amount per permit is identified below.

Location ID	Application Number	Application Type	Fees (without Surcharge)	Permit Issued?	Pre-Cover?	Amount to Umatilla
						\$
						\$
Total						\$

4. Umatilla and DEQ mutually agree:

- a. DEQ will notify Umatilla in writing if DEQ's oversight and coordination activities described in subsections IV(1) and IV(2) of this MOA indicate that significant improvements or program modifications are needed to comply with ORS 454.635, 454.655, 454.665, and 454.755, OAR Chapter 340, Division 071 and 073 or this MOA. Umatilla will provide a written response within thirty (30) calendar days upon notification from DEQ and provide a time schedule to implement needed improvements or modifications. If Umatilla fails to implement the needed improvements or modifications, DEQ may immediately terminate this MOA and assume administration of the program in Umatilla and Morrow Counties upon written notice to Umatilla. The requirement for ninety (90) calendar days notice in subsection VI does not apply under this provision.
- b. No party will assign all or any part of its interest in this MOA without the prior written consent of the other parties. No party will sub-contract all or any part of its duties under this MOA without the prior written consent of the other parties.

V. Indemnity:

1. Subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Umatilla shall indemnify and hold, within the limits of and subject to the restrictions in the Oregon Tort Claims Act, DEQ, its officers, agents, and employees, harmless from any and all claims, actions, costs or damages caused by Umatilla.
2. Subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), DEQ shall indemnify and hold, within the limits of and subject to the restrictions in the Oregon Tort Claims Act, Umatilla, its officers, agents, and employees, harmless from any and all claims, actions, costs or damages caused by DEQ.
3. Without limiting the generality of the foregoing, no party shall be liable to any other party for any incidental or consequential damages arising out of or related to this MOA. No party shall be liable for any damages of any sort arising solely from the termination of this MOA or any part hereof in accordance with its terms.

VI. Termination of the MOA:

A party may terminate the MOA by providing the other parties with ninety (90) calendar days prior written notice of the intent to terminate.

VII. General:

1. **No Discrimination.** Each party agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, age or sexual orientation, suffer discrimination in the performance of this agreement when employed by either party. Each party agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Section V of the Rehabilitation Act of 1973 as amended, and all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Additionally, each party shall comply with the Americans with

disabilities Act of 1990 as amended, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

2. No Waiver. The failure by any party to enforce any provision of this agreement shall not constitute a waiver by that party of that provision or of any other provision of this Agreement.
3. Severability. Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair or invalidate any of the other provisions of this Agreement which shall remain in full force and effect.
4. Headings. The headings of this Agreement are for convenience only and shall not be used to construe or interpret any provisions of this Agreement.
5. Entire Agreement. This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof, and supersedes any and all prior or contemporaneous agreements or understandings between the parties, if any; whether written or oral, concerning the subject matter of this Agreement which are not fully expressed herein.
6. Written Amendments Required. This Agreement may not be modified or amended except by a writing signed by both parties.
7. Counterparts. This Agreement may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

(continued on the next page)

VIII. Signatures:

All parties, by the signatures below, hereby acknowledge that they have read this MOA, understand it and agree to be bound by its terms and conditions.

Department of Environmental Quality

Umatilla Board of County Commissioners

By _____
Leah Feldon, Deputy Director

By _____
William Elfering, County Commission Chair

Date _____

Date _____

By _____
Mark Brown, Financial Services Manager-DPO

By _____
George Murdock, County Commissioner

Date _____

Date _____

By _____
John Shafer, County Commissioner

Date _____

Morrow County Court

By _____
Jim Doherty, County Commission Chair

Date _____

By _____
Melissa Lindsay, Commissioner

Date _____

By _____
Don Russell, Commissioner

Date _____

Approved for legal sufficiency by Anika E. Marriott, Oregon Department of Justice by separate document dated: _____