

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT AND
THE CITY OF MORGAN HILL FOR WATER CONSERVATION PROGRAMS**

This MEMORANDUM OF UNDERSTANDING (MOU) between the Santa Clara Valley Water District, an independent special district created by the California Legislature (hereinafter referred to as WATER DISTRICT) and The City of Morgan Hill (hereinafter referred to as MORGAN HILL) sets forth the respective roles of the WATER DISTRICT and MORGAN HILL in regard to the WATER DISTRICT'S Landscape Rebate Program for Water-Efficient Landscape Conversions (hereinafter referred to as PROGRAM) is made and entered into as of _____, 2015.

RECITALS

WHEREAS the PROGRAM involves providing Water Conservation landscape rebates for properties located within MORGAN HILL's service area and providing WaterSmart reports to residents; and

WHEREAS the PROGRAM is an appropriate measure for the Best Management Practices addressed in the California Urban Water Conservation Council's MOU regarding Urban Water Conservation in California; and

WHEREAS MORGAN HILL wishes to participate in the PROGRAM.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties expressed in this MOU, WATER DISTRICT and MORGAN HILL agree as follows:

1. WATER DISTRICT'S RESPONSIBILITIES

- a) Administration of the PROGRAM, which administration shall include the creation of the PROGRAM brochures and applications.
- b) Collection and analysis of data to determine water savings.
- c) Administration of all PROGRAM funds including, but not limited to,
 - Processing the payment of the amounts set forth in 2.d) below, to eligible persons residing in MORGAN HILL ("ELIGIBLE RESIDENTS"). This supplemental rebate amount shall be in addition to the customary amounts paid by the WATER DISTRICT for the PROGRAM.
 - Payment of standard PROGRAM amounts to ELIGIBLE RESIDENTS within 8-12 weeks of approval of MORGAN HILL residential applicant's request.
- d) Invoicing MORGAN HILL, on a quarterly basis (aggregate invoice, broken down by program).
- e) Work cooperatively with MORGAN HILL in appropriately advertising the PROGRAMS to targeted customers.
- f) Pay MORGAN HILL 50 percent of MORGAN HILL's contract costs to send WaterSmart notices to MORGAN HILL residents, subject to a not-to-exceed total cost to the WATER DISTRICT under this MOU of \$47,000.
- g) Make payment to MORGAN HILL within 60 days of receipt of invoice from MORGAN HILL.

2. MORGAN HILL'S RESPONSIBILITIES

- a) Identification and notification of all qualifying properties within the MORGAN HILL service area.
- b) Work cooperatively with WATER DISTRICT in appropriately advertising the PROGRAMS to the targeted customers.
- c) Provide WATER DISTRICT with cumulative water usage records and other data necessary to determine savings and cost effectiveness of the PROGRAMS. Water usage records for individual accounts will only be made available to WATER DISTRICT for those account holders who have authorized the WATER DISTRICT to obtain the information from MORGAN HILL.
- d) MORGAN HILL must pay WATER DISTRICT as set forth below for each activity performed by the WATER DISTRICT in the MORGAN HILL service area:
 - Up to \$1.00 per each square foot of turf removed per qualified residential and/or commercial rebate, up to \$1,000 per residential site and up to \$10,000 per commercial site, as per the Landscape Rebate Program requirements.
- e) MORGAN HILL's obligation to pay for the PROGRAM activities is capped at a total **maximum of \$80,000**.

- f) Make payment to WATER DISTRICT within 60 days of receipt of invoice from WATER DISTRICT.
- g) Administration of the WaterSmart Program.
- h) Invoicing WATER DISTRICT, on a quarterly basis, for 50 percent of the contract cost (not to exceed a total cost to the WATER DISTRICT under this MOU of \$47,000) for MORGAN HILL to send WaterSmart notices to MORGAN HILL residents. Only costs paid directly to WaterSmart shall be included in the quarterly invoice. Include with invoice participant data, such as total number of participants and date of report.

3. HOLD HARMLESS AND LIABILITY

Each Party ("Indemnifying Party") agrees to indemnify, defend at its own expense, including attorneys' fees, and hold harmless the other Party ("Indemnified Party") from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to the negligence, or willful misconduct of that Indemnifying Party, its officers or employees, or any other agent acting pursuant to this MOU.

4. DOCUMENT REVIEW

WATER DISTRICT and MORGAN HILL will, upon reasonable advance written notice, make available for inspection to the other party records, books and other documents relating to the PROGRAMS.

5. TERM

The term of the MOU is from July 1, 2015 to June 30, 2016, or until funds are depleted, whichever occurs first. The term of the MOU may be extended by mutual consent of the Parties. This MOU shall be contingent upon approval of program funding each fiscal year by both the WATER DISTRICT's Chief Executive Officer and by MORGAN HILL.

6. NOTICE

Any notice, payment, credit or instrument required or permitted to be given hereunder shall be deemed received upon personal delivery or five (5) days after deposit in any United States mail depository, first class postage prepaid and addressed to the party for whom intended; or on the same day as a facsimile transmission is sent as long as original is placed in the mail on the same day.

If to WATER DISTRICT:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn: Conservation Programs
Facsimile: 408.979-5639

If to MORGAN HILL:

Community Services Director and City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Facsimile: 408.779-3117

Either party may change such address by notice given to the other party as provided in this Section 6.

7. AMENDMENTS

The MOU may only be amended by written agreement executed by both parties.

8. ASSIGNMENT

Neither party is allowed to assign, sublet, or transfer this MOU or any of the rights or interests in this MOU without the written consent of the other party.

9. SEVERABILITY

The partial or total invalidity of one or more parts of this MOU will not affect the intent or validity or remaining parts of this MOU.

10. GOVERNING LAW

This MOU is a contract under the laws of the State of California and for all purposes must be interpreted in accordance with such laws.

11. TERMINATION OF AGREEMENT

This MOU may be terminated by either party hereto for any reason upon thirty (30) days written notice to the other Party.

12. SIGNATURES

The individuals executing this MOU represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

In WITNESS WHEREOF, the parties have executed this MOU as of the effective date.

CITY OF MORGAN HILL

APPROVED AS TO FORM:

Renee Gurza
City Attorney
City of Morgan Hill

Steve Rymer
City Manager
City of Morgan Hill

SANTA CLARA VALLEY WATER DISTRICT
an independent special district created by the California Legislature

APPROVED AS TO FORM:

Anthony Fulcher
Sr. Assistant District Counsel
Santa Clara Valley Water District

Beau Goldie
Chief Executive Officer
Santa Clara Valley Water District