

**FIRST AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING  
#A3889S BETWEEN THE  
SANTA CLARA VALLEY WATER DISTRICT  
AND THE CITY OF MORGAN HILL  
FOR WATER CONSERVATION PROGRAMS**

This First Amendment ("First Amendment") to Memorandum of Understanding A3889S between the Santa Clara Valley Water District ("WATER DISTRICT") and the City of Morgan Hill ("MORGAN HILL"), originally entered into on July 1, 2015, is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015 ("First Amendment Effective Date").

**RECITALS**

**WHEREAS**, on July 1, 2015, MORGAN HILL and WATER DISTRICT entered into the attached agreement entitled "Memorandum of Understanding between the Santa Clara Valley Water District and the City of Morgan Hill for Water Conservation Programs" ("MOU"); and

**WHEREAS**, MORGAN HILL and WATER DISTRICT desire that MORGAN HILL increases its maximum commitment to fund the District's Landscape Conversion Rebate Program from \$80,000 to \$117,000.

**NOW, THEREFORE, the parties agree to amend the MOU as follows:**

In the MOU, Section 2, Item "e" delete the sentence and replace it with the following:

- e) MORGAN HILL's obligation to pay for the PROGRAM activities is capped at a total **maximum of \$117,000**.

All of the terms and conditions of the MOU not modified by this First Amendment shall remain in full force and effect.

**IN WITNESS THE EXECUTION HEREOF** the parties have caused the First Amendment to be executed as of the First Amendment Effective Date set forth above.

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

Approved as to form:

By: \_\_\_\_\_  
Anthony Fulcher  
Senior Assistant District Counsel

By: \_\_\_\_\_  
Beau Goldie  
Chief Executive Officer

**CITY OF MORGAN HILL**

Approved as to form:

By: \_\_\_\_\_  
Gary Baum  
Interim City Attorney

By: \_\_\_\_\_  
Steve Rymer  
City Manager

**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 July 2, 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.

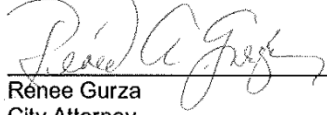
**12. SIGNATURES**

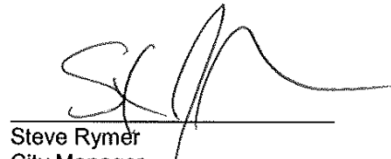
The individuals executing this MOU represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

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

**CITY OF MORGAN HILL**

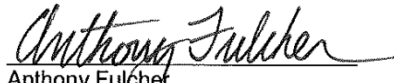
APPROVED AS TO FORM:

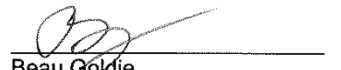
  
Renee Gurza  
City Attorney  
City of Morgan Hill

  
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