

MEMORANDUM OF UNDERSTANDING BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT AND THE CITY OF MILPITAS FOR PARTICIPATION IN THE WATER EFFICIENT LANDSCAPE PROGRAM

This MEMORANDUM of UNDERSTANDING (MOU) between the Santa Clara Valley Water District (“DISTRICT”) and the City of Milpitas (“MILPITAS”) is made and entered into as of _____, 2008.

RECITALS

WHEREAS, the District’s Water Efficient Landscape Program (“PROGRAM”) involves providing rebates to qualifying residential customers located within MILPITAS; and

WHEREAS, water efficient landscape rebates are an appropriate measure to achieve the Best Management Practices regarding outdoor irrigation at residential landscape sites addressed in the “Memorandum of Understanding Regarding Urban Water Conservation in California,” an agreement signed by certain urban water suppliers, public advocacy organizations and other interested groups in order to implement water conservation measures in urban areas; and

WHEREAS, MILPITAS is not a signator to the “Memorandum of Understanding Regarding Urban Water Conservation in California,” but nevertheless wishes to participate in the PROGRAM.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties herein expressed, DISTRICT and MILPITAS agree as follows:

1. DISTRICT’S RESPONSIBILITIES

- a) Administration of the PROGRAM in MILPITAS, including the creation of brochures, advertising and applications and the coordination with contractors;
- b) Collection and analysis of data to determine water savings;
- c) Administration of all PROGRAM funds;
- d) Marketing of PROGRAM;
- e) Issuance of checks for water efficient landscape rebates to customers, in the amount of \$150 per 100 square feet of turf removed per qualified residential rebate as per PROGRAM requirements;
- f) Verification of water efficient landscape installation;
- g) Invoice MILPITAS on a quarterly basis for \$75 per 100 square feet of turf removed from eligible City of Milpitas residents, subject to the restrictions set forth in Section 2.d.
- h) Any MILPITAS customer information provided by MILPITAS to DISTRICT and any such information provided by DISTRICT to DISTRICT’S consultants or subcontractors shall be used by DISTRICT and by DISTRICT’S consultants or subcontractors in their capacity as agents for DISTRICT only for public conservation purposes and shall not be used for any other purpose.

2. MILPITAS' RESPONSIBILITIES

- a) Work cooperatively with DISTRICT in identifying and notifying all qualifying residential properties;
- b) Work cooperatively with DISTRICT in appropriately advertising the PROGRAM to targeted residential customers;
- c) Provide DISTRICT with water usage records and other data necessary to determine savings and cost effectiveness of the PROGRAM;
- d) Reimburse DISTRICT \$75 per 100 square feet of turf removed per qualified residential rebate from a City of Milpitas property and according to PROGRAM requirements, up to a maximum MILPITAS reimbursement of \$5,000 for all participants in the DISTRICT's PROGRAM within City of Milpitas boundaries for Fiscal Year 2008-2009. The maximum individual reimbursement by MILPITAS for any one particular residential applicant shall not exceed \$1,000.

3. CEQA

DISTRICT shall be responsible for assuring that the PROGRAM complies with the requirements of the California Environmental Quality Act (CEQA) and that all necessary documents have been filed.

4. HOLD HARMLESS AND LIABILITY

MILPITAS and DISTRICT each agree to mutually indemnify, defend at its own expense, including attorneys' fees, and hold each other harmless 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 an negligent act, error or omission, or willful misconduct of that party, its officers or employees, or any other agent acting pursuant to its control and performing under this agreement.

5. DOCUMENT REVIEW

DISTRICT and MILPITAS will make available for inspection to the other party, upon reasonable advance written notice, all non-privileged records, books and other documents relating to the PROGRAM

6. TERM

The term of the MOU shall be **from November 1, 2008 until June 30, 2009**. The term of the MOU may, prior to its expiration, be extended by written mutual consent of the Parties acting through their authorized representatives.

7. 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 or email transmission is sent as long as original is placed in the mail on the same day.

If to DISTRICT: Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3614
Attn: Karen Morvay,
Water Conservation Specialist
Facsimile: (408) 979-5639
Email: kmorvay@valleywater.org

If to MILPITAS: City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411
Attn: Howard Salamanca,
Associate Civil Engineer
Facsimile: 408.586.3305
Email: hsalamanca@ci.milpitas.ca.gov

Either party may change such address or contact person by notice given to the other party as provided herein.

8. AMENDMENTS

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

9. ASSIGNMENT

Neither this Agreement nor any of the rights or interests in this Agreement can be assigned without the written consent of the other party.

10. 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.

11. GOVERNING LAW

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

12. 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.

13. 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 MILPITAS, CALIFORNIA,
a California municipal corporation**

APPROVED AS TO FORM:

ATTEST:

Michael J. Ogaz
City Attorney

Thomas C. Williams
City Manager

**SANTA CLARA VALLEY WATER DISTRICT,
a Public Entity**

APPROVED AS TO FORM:

ATTEST:

Emily J. Cote
Senior Assistant District Counsel

Olga Martin Steele
Chief Executive Officer