

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER A MEMORANDUM OF UNDERSTANDING WITH THE SANTA CLARA VALLEY WATER DISTRICT FOR A LANDSCAPE CONVERSION REBATE PROGRAM AND APPROPRIATE \$115,000

WHEREAS, the City of Cupertino, a municipal corporation and general law city duly organized and existing under and pursuant to the laws of the State of California (City) is authorized to enter contracts on its behalf and for the benefit of the City; and

WHEREAS, the reasons supporting the entrance of the City into the Memorandum of Understanding with the Santa Clara Valley Water District for Conservation Programs is set forth in detail in the staff reports and hearings for June 2, 2015 and June 16, 2015 Council meetings and are incorporated herein by reference; and

WHEREAS, the City entered into a similar Memorandum of Understanding with the Santa Clara Valley Water District for a Landscape Conversion Program in FY 15/16; and

WHEREAS, the consideration by the City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and Council provided members of the public an opportunity to comment and be heard and considered all testimony and evidence in connection with the adoption of this Resolution; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA"), the City determines that the provisions of this Resolution are exempt as a project intended to protect the environment and natural resources (14 Cal.Reg. 15307, 15308); and

WHEREAS, the City Council determines that the adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES HEREBY FIND, DETERMINE, RESOLVE, AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine, and resolve that the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve that:

- a. The Memorandum of Understanding with the Santa Clara Valley Water District (MOU) for water conservation programs in substantially in the form attached hereto as Exhibit "A" is approved;
- b. The City Manager is delegated the authority and is authorized to negotiate and execute the MOU in substantially in the form as attached Exhibit "A", provided that the funds do not exceed one hundred fifteen thousand dollars (\$115,000.00).

Section 3: Effective date: This Resolution is effective immediately upon adoption.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 5th day of July, 2016, by the following vote:

Vote

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Barry Chang, Mayor

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT AND THE
CITY OF CUPERTINO FOR A LANDSCAPE CONVERSION REBATE
PROGRAM**

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 Cupertino (hereinafter referred to as CUPERTINO) sets forth the respective roles of the WATER DISTRICT and CUPERTINO in regard to the WATER DISTRICT'S WATER CONSERVATION LANDSCAPE CONVERSION REBATE PROGRAM (hereinafter referred to as PROGRAM) is made and entered into this July , 2016.

RECITALS

WHEREAS the PROGRAM involves providing Water Conservation Landscape Conversion Rebates for properties located within CUPERTINO's jurisdiction; and

WHEREAS the PROGRAM includes the Landscape Conversion Rebate Program for Water Efficient Landscape Conversions; 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 the WATER DISTRICT has established the PROGRAM, in part, to provide financial incentive to remove existing turf lawns; and

WHEREAS CUPERTINO wishes to participate in the PROGRAM and provide additional incentives for Cupertino residents to remove existing lawns.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties expressed in this MOU, WATER DISTRICT and CUPERTINO 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.

Exhibit A

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.b. below, to eligible persons residing in CUPERTINO ("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 receipt of CUPERTINO residential applicant's request.

d) Invoicing CUPERTINO, on a quarterly basis.

e) Work cooperatively with CUPERTINO in appropriately advertising the PROGRAM to targeted customers.

2. CUPERTINO'S RESPONSIBILITIES

a) Work cooperatively with WATER DISTRICT in appropriately advertising the PROGRAM to the targeted customers.

b) CUPERTINO must pay WATER DISTRICT as set forth below for each activity performed by the WATER DISTRICT in the CUPERTINO service area:

- Up to \$1.00 per each square foot of turf removed per qualified residential and for commercial rebate, up to \$1,000 per residential and up to \$10,000 per commercial site, as per the District's Landscape Rebate Program requirements.

c) CUPERTINO's obligation to pay for the PROGRAM activities is capped at a total maximum of \$115,000.

d) Make payment to WATER DISTRICT within 60 days of receipt of Invoice from WATER DISTRICT.

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,

Exhibit A

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 CUPERTINO 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, 2016 to December 30, 2017, 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 CUPERTINO.

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
5760 Almaden Expressway
San Jose, CA 96118
Attn: Conservation Programs

If to CUPERTINO:

Public Works Department
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attn: Environmental Programs

Exhibit A

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.

Exhibit A

APPROVED AS TO FORM:

Randolph Hom
City Attorney
City of Cupertino

David Brandt
City Manager
City of Cupertino

SANTA CLARA VALLEY WATER DISTRICT

An independent special district created by the California Legislature

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