

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal
Dept: City Manager
Subject: NEW AGREEMENT WITH THE MUNICIPAL WATER DISTRICT FOR TURF REMOVAL REBATE PROGRAM

From: William E. Murray
Dept: Public Works
Date: August 23, 2011

OBJECTIVE

To request that City Council approve a new agreement with the Municipal Water District of Orange County (MWD OC) for the participation in the Turf Removal Rebate Program (Program).

BACKGROUND

Last December, City Council approved an agreement with MWD OC for the participation in a four-month pilot program. The Program's goal is to further promote water efficient landscapes that are less turf intensive and more "California Friendly" (drought tolerant) oriented landscapes. It requires exposed soil, in areas where turf is removed, to be covered with a combination of plant types such as shrubs, flowering ground covers, or drought tolerant plants. Additionally, participants must comply with the City's updated Model Water Efficient Landscape Ordinance. The Program is designed similar to the current rebate program for the weather based irrigation controllers. The pilot program resulted in increased public interest and participation, which led MWD OC to continue implementation utilizing funds received from the Metropolitan Water District of Southern California.

DISCUSSION

MWD OC has developed a new agreement that will supersede the existing agreement. The new agreement further explains program requirements for pre- and post-turf removal inspections that are required for all residential and commercial rebate applicants. In addition, participating agencies are required to specify on the agreement if agency staff or MWD OC's contracted consultant, Mission Resource Conservation District (MRCD), are responsible for conducting both inspections. If agencies select the consultant, MRCD, a funding cap must be provided in the agreement. Due to limited staff time and expertise, the City has chosen to obtain MRCD's services to perform both inspections and has designated a funding cap of \$8,000.

NEW AGREEMENT WITH THE
MUNICIPAL WATER DISTRICT FOR THE
TURF REMOVAL REBATE PROGRAM
August 23, 2011
Page 2

FINANCIAL IMPACT

Funding for this new agreement, in the amount of \$8,000, is available within the Water Services Budget. There is no impact to the General Fund.

RECOMMENDATION

It is recommended that the City Council:

- Authorize the Mayor to execute the new agreement between the City and Municipal Water District of Orange County for the participation in the Turf Removal Rebate Program.
- Authorize the Finance Director to approve payment to participate in the Turf Removal Rebate Program.


WILLIAM E. MURRAY, P.E.
Director of Public Works/City Engineer


BY: David E. Entsminger
Water Services Manager

Attachment: Agreement

Recommended for Approval


Matthew Ferial
City Manager

**Agreement for Participation
in
Municipal Water District of Orange County's
Turf Removal Program**

This agreement for participation and, where indicated, co-funding ("Agreement") is made on the last date signed below by and between MUNICIPAL WATER DISTRICT OF ORANGE COUNTY ("MWDOC") and the City of Garden Grove ("Participant"). MWDOC and Participant are also referred to collectively as the "Parties."

R E C I T A L S

WHEREAS, MWDOC and Participant entered into an agreement dated January 26, 2011 ("Existing Participation Agreement") to establish the conditions for participation in the Turf Removal Program ("Program") administered by MWDOC in Participant's service area;

WHEREAS, MWDOC and Participant now wish to terminate the Existing Participation Agreement and continue participating in the Program under this Agreement, as provided herein; and

WHEREAS, this Agreement establishes the new conditions for Participant's participation in the Program administered by MWDOC in Participant's service area for the term stated herein and supersedes the Existing Participation Agreement.

NOW, THEREFORE, for and in consideration of the mutual terms and conditions contained herein, the Parties hereby agree as follows:

1. **Termination of Existing Participation Agreement.** The Existing Participation Agreement is hereby terminated by mutual agreement of the Parties, effective upon final execution of this Agreement. The Parties acknowledge that all obligations arising under the Existing Participation Agreement have been met.
2. **Rebate Program.** MWDOC has developed and arranged funding for the Program through the Metropolitan Water District of Southern California ("Metropolitan"). The Program will provide financial incentives on a first come, first served basis while Metropolitan funding lasts for the removal of turf by residential and small commercial water users within Participant's service area. Turf removal projects must meet Program guidelines to be eligible for financial incentives in the form of a cash payment for each square foot of removed turf. The Program's objectives are to achieve savings in water consumption, reduce water runoff to storm drains and natural water bodies, and promote the goals of the applicable Best Management Practices.
3. **Site Inspection; Election by Participant.** Participant must either (1) conduct pre-and post-turf removal site inspections for all Program Applications submitted to

**Agreement for Participation
MWDOC Turf Removal Program**

MWDOC from within the Participant's service area, or (2) provide funding to MWDOC, as set forth in Section 3.1.3 below, for the cost of MWDOC's site installation inspection consultant, Mission Resource Conservation District (MRCD), to conduct both pre- and post-turf removal inspections.

By its initials below, Participant hereby elects to either:

(1) Conduct its own inspections, as described herein: _____
Initials Here

or

(2) Provide funding to MWDOC to conduct inspections, as described herein: _____
Initials Here

3.1. If Participant elects to provide funding to MWDOC for MRCD inspection services for the pre- and post-turf removal inspections, Participant shall be responsible for the following activities.

3.1.1. Upon receipt of a completed application, MWDOC will contact MRCD to request a pre-turf removal inspection. At the conclusion of the pre-turf removal inspection, and from the results of the pre-turf removal inspection, MWDOC will notify Participant of MWDOC's preliminary determination that the application under consideration should be approved or denied. Participant shall promptly review MWDOC's determination and inform MWDOC whether it agrees or disagrees. MWDOC will work with Participant in good faith to resolve differences of opinion regarding the status of a particular application, but the final decision on issuing a Notice to Proceed lies with MWDOC. Once MWDOC has made a final decision on an application, MWDOC will issue a Notice to Proceed or a Participation Denial Notice to the applicant.

3.1.2. Participant shall be responsible for the actual cost charged to MWDOC by MRCD for pre- and post-turf removal inspections, which will be invoiced to Participants on a monthly basis by MWDOC. MRCD inspection costs are invoiced to MWDOC pursuant to a services agreement between MRCD and MWDOC. At the time this Agreement is executed, the residential turf removal inspection cost as charged to MWDOC by MRCD is \$105 per residential inspection. The total cost for both pre and post-turf removal residential inspections is thus \$210.00. The current commercial inspection cost as charged to MWDOC by MRCD is approximately \$165.36 per inspection, based on an average of four (4) hours for a small commercial site at \$37.84 per hour, plus \$28 per hour for inspection verification administration. Again, two commercial inspections are required, for a total

**Agreement for Participation
MWDOC Turf Removal Program**

estimated cost of \$330.72. Should the MRCD costs decrease or increase, MWDOC will pass these changes through to Participant.

3.1.3. Inspection Funding Cap. Participant agrees to provide inspection funding for inspections conducted by MRCD as requested by Participant, up to \$8,000.00. MWDOC agrees that it shall inform Participant when that cap has been reached. At that point, Participant shall have the following options and shall immediately inform MWDOC of its decision to: (1) elect to perform the pre- and post-turf removal inspections, (2) increase the funding cap via letter from Participant's General Manager, or (3) end its participation in the Program. Selecting option #3 will not eliminate Participant's responsibility to perform or fund pre-and post-turf removal inspections underway (in the queue).

3.2. If Participant elects to perform the pre- and post-turf removal inspections, Participant shall be responsible for the following activities.

3.2.1. Upon receipt of a Program Application, MWDOC shall enter the application information into its database and issue a pre-turf removal inspection work order to Participant. Participant shall schedule and conduct the pre-turf removal inspection, complete the pre-turf removal work order as provided by MWDOC with the required data and site photographs, and establish that the applicant's proposed project and site are consistent with the intent of the Program. The pre-turf removal inspection shall establish that the applicant's site consists of between 250 and 10,000 square feet of live turf being irrigated with potable water.

3.2.2. At the conclusion of the pre-turf removal inspection, Participant shall submit the completed work order and site photographs to MWDOC. The pre-turf removal inspection work order shall contain Participant's recommendation to approve or deny the application. If MWDOC staff agrees with the recommendation, it shall approve the application, designate the site as an eligible Program turf removal project, and issue a Notice to Proceed to the applicant, or reject the application and issue a Participation Denial Notice to the applicant. The post-turf removal inspection work order shall be the basis for calculating the rebate incentive.

3.2.3. If MWDOC staff disagrees with Participant's recommendation, MWDOC will so notify Participant. Participant may renew its recommendation and submit it to MWDOC for reconsideration, but the final decision on a Notice to Proceed lies with MWDOC.

3.2.4. It will be the responsibility of applicant to notify MWDOC that the work has been completed at the site. Upon notification from the applicant that the work has been completed, MWDOC shall issue a post-turf removal work order to Participant. Participant shall schedule and conduct the post-turf

**Agreement for Participation
MWDOC Turf Removal Program**

removal inspection, complete the post-turf removal work order as provided by MWDOC with the required data and site photographs, and establish that the applicant's completed project and site are consistent with the intent of the Program.

3.3. The post-turf removal inspection, whether completed by Participant or MRCD, shall establish the items set forth in Sections 3.3.1- 3.3.6 below. At the conclusion of the post-turf removal inspection, MWDOC will direct its accounting department to issue a rebate incentive check to the party listed on the Program application within a ten (10) week period. Rebate incentive shall be based on the square footage calculation listed on the post-turf removal work order.

- 3.3.1. The site's precise turf removal area in square feet as removed in association with this Program. This shall be the basis for calculating the amount of each site's rebate.
- 3.3.2. The site's turf removal area does not include any live or synthetic turf.
- 3.3.3. The converted area's irrigation system, if any, is a low flow system (drip, bubblers, or low-precipitation high-efficiency rotating nozzles). If part of a lawn is converted, the sprinkler system must be properly modified to provide adequate coverage to the remaining lawn without spraying the converted area.
- 3.3.4. All exposed soil in the converted area is covered with a 2-3" layer of mulch, except in areas planted with creeping or rooting groundcovers.
- 3.3.5. Converted area is permeable to air and water. Weed barriers must be permeable. Concrete, plastic sheeting or other impermeable surfaces do not qualify for incentives under the Program.
- 3.3.6. No invasive plant species are used.

4. **Option Requirements for Participants Providing Supplemental Funding For Rebate Incentives.** Participant has the option to provide supplemental funding to customers in its service area to further incentivize participation. Supplemental funding for rebate incentives on behalf of Participant, if any, is set forth in Table 4.1 below. If Participant has elected not to provide additional funding upon initial execution of this Agreement, Table 4.1 below will contain "\$0" funds:

TABLE 4.1 – OPTIONAL SUPPLEMENTAL FUNDING

Agency Name : City of Garden Grove	
Supplemental Funding Levels	
Incentive per Square Foot/Site	\$0.00
Not To Exceed Funding Cap	\$0.00

Without formal written amendment of this Agreement, Participant (if no supplemental funding is initially provided) may at any time during the term of the Agreement notify MWDOC that it will begin providing supplemental funding. In addition, at any time during the term of the Agreement, Participant may make additional supplemental

Agreement for Participation MWDOC Turf Removal Program

funding available. Both changes may be accomplished by written notice to MWDOC in the form of a letter from Participant's General Manager.

If Participant notifies MWDOC of its intent to terminate its supplemental funding, or the maximum supplemental funding amount is exhausted, Participant will be responsible for all supplemental funding for those applicants approved in the Program. Once supplemental funding is exhausted, MWDOC will continue to offer the basic incentives provided herein.

- 5. MWDOC's Obligations.** In addition to the obligations stated above, under this Agreement MWDOC shall be responsible to Participant for the following:
 - 5.1. Providing a base incentive of \$1 per square foot of verified removed turf on a first come first served basis while Metropolitan funds exist during the term of this Agreement to the eligible applicants who successfully complete the participation process. MWDOC does not guarantee the Metropolitan funding will last the entire term of the Agreement;
 - 5.2. Databasing all applications received on Participant's behalf;
 - 5.3. Ensuring that timely reports on the Program's results are prepared by MWDOC's staff;
 - 5.4. Developing a database of information regarding participation in the Program and providing monthly electronic and written reports of activity to Participant. The electronic reports will include, without limitation, Participant's customer account number, customer name, service address, quantity of turf removed, Participant's level of supplemental funding provided (if any), and base incentive paid;
 - 5.5. Invoicing Participant for its supplemental funding obligation and monitoring the number of rebate applications approved in Participant's service territory to ensure that it is within the "Optional Supplemental Funding" as provided in Table 4.1 of this Agreement. MWDOC does not guarantee any minimum number of rebates will be available for Participant's service area.
 - 5.6. Invoicing Participant for Participant's obligation for inspection services as performed by MWDOC's inspection contractor, MRCD.
 - 5.7. Reporting to Metropolitan on a monthly basis, detailing the Program's activity and requesting reimbursement for those activities at a rate of \$1 per square foot of removed turf.

- 6. Participant's Obligations.** In addition to the obligations stated above, under this Agreement Participant shall be responsible to MWDOC for the following:
 - 6.1. Based on invoicing from MWDOC, paying MWDOC for the amount of supplemental funding(s) expensed on its behalf within thirty (30) days of the date of the MWDOC invoice.
 - 6.2. Based on invoicing from MWDOC, paying MWDOC for the inspection services MWDOC's inspection contractor, MRCD, performed for Participant.
 - 6.3. Working with MWDOC in good faith to evaluate each site's qualifications for participation in the Program.

**Agreement for Participation
MWDOC Turf Removal Program**

6.4. Working in an expedient manner to process all applicants through the Program.

- 7. Confidentiality.** MWDOC agrees to maintain the confidentiality of Participant's customer names, addresses and other information about participants in the Program gathered in connection with the Program, and MWDOC will not cause or permit the disclosure of such information except as necessary to carry out the Program. To the extent MWDOC contracts with third party contractors to carry out all or any portion of the Program, MWDOC will require such contractors to maintain the confidentiality of such customer information.
- 8. Indemnification.** MWDOC has designed the Program so that the applicant is solely responsible for the manner in which the turf is removed and selection of the landscape contractor, if any, that will remove it, and each applicant will be required to sign a release and waiver of any claims against MWDOC and/or Participant. MWDOC will require applicants to indemnify MWDOC and Participant against claims arising out of the turf removal. Nevertheless, to the extent that MWDOC or Participant or their respective staffs perform any activities in connection with the Program, each agrees to indemnify and hold the other harmless from any and all liability, claims, obligations, damages and suits to the extent caused by the negligence of the responsible party.
- 9. Term.** This Agreement shall commence on the last date signed below and continue until June 30, 2012 ("Program Expiration"), unless extended by the Parties.
- 10. Early Termination.** Participant may terminate this Agreement at any time upon thirty (30) days' written notice to MWDOC. MWDOC may terminate this Agreement prior to the Program Expiration date without prior notice in the event funding for the Program is exhausted, reduced, eliminated or unavailable from any funding source, for any reason. If MWDOC deems it necessary to terminate this Program for any other reason, MWDOC shall give Participant thirty (30) days' written notice. In the event of termination by either party, Participant shall be responsible for payment of its supplemental funding contribution for all applications for which MWDOC has issued a Notice to Proceed prior to the effective date of the termination.

[INTENTIONALLY BLANK – SIGNATURES ON NEXT PAGE]

**Agreement for Participation
MWDOC Turf Removal Program**

MUNICIPAL WATER DISTRICT OF
ORANGE COUNTY

Kevin P. Hunt, General Manager
Date: _____

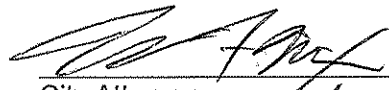
Approved as to Form

Kidman, Behrens & Tague, LLP
Russell G. Behrens
Daniel J. Payne
Legal Counsel
Date: _____

CITY OF GARDEN GROVE

William J. Dalton, Mayor
Date: _____

Approved as to Form



City Attorney
Date: 7/20/11

Attest:

City Clerk
Date: _____