



## Town Council Agenda Report

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Date: November 10, 2020 Item No. 7

To: Honorable Mayor and Town Council

Subject: LANDSCAPING INSTALLATION AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND DANIEL AND ANGELA YOUNG

From: Douglas Robertson, Town Manager

Submitted by: Daniel Alcayaga, AICP, Planning Manager

Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION

It is recommended that the Town Council enter into a landscaping installation agreement between the Town of Apple Valley and Daniel and Angela Young.

### BACKGROUND & ANALYSIS

On September 13, 2018, Daniel and Angela Young, as homeowner-builders, pulled permits to construct a 2,060 square foot house with a 564 square foot garage located at 22248 Lupine Road, Apple Valley, CA 92308. Pursuant to Section 9.75.060(C) of the Development Code, 25% of the land area within the required front and street side setback is required to have landscaping and irrigation. Landscaping and irrigation plans were prepared in compliance of the Development Code and approved on August 7, 2018 by the Planning Division.

Daniel and Angela Young approached Town staff seeking options because they are unable to complete the required landscaping and irrigation due to economic hardship caused by the global coronavirus COVID-19 pandemic. The homeowners lost income from their small business, and one of the homeowners was temporarily unemployed due to COVID-19. The house is completed, except for the required landscaping. The agreement will provide the homeowners six-months to install the required landscaping and irrigation following final inspection of the house.

Home builders are required to install the landscaping and irrigation at final inspection, or they have an option of posting a landscape deposit in the amount of \$6,149.00. The deposit is returned upon successful installation of the required landscaping and irrigation. The installation must occur within six-months following final inspection of the house with an option to request an additional six-month extension in special circumstances. Due to

economic hardship related to COVID-19, the homeowners are unable to install the required landscaping and irrigation or pay the required landscape deposit.

Upon obtaining final inspection, the homeowners intend to refinance the house and use equity to fund installation of the required landscaping and irrigation. Daniel and Angela Young are homeowner-builders and intend to live in the house in question. They are not professional home builders and cannot complete the required installation without this agreement in place due to this unusual circumstance.

### **FISCAL IMPACT**

No fiscal impact.

### **ATTACHMENTS**

Landscaping Installation Agreement

RECORDING REQUESTED BY  
AND  
WHEN RECORDED MAIL TO:

Town Clerk  
Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

APN: 0438-043-21

Above Space for Recorder's Use  
No Recording Fee Pursuant to Gov't Code §§ 6103, 27383

### LANDSCAPE INSTALLATION AGREEMENT

This Landscape Installation Agreement (the "Agreement") is made and entered this 10<sup>th</sup> day of November, 2020 ("Effective Date") by and between the Town of Apple Valley, a municipal corporation, hereinafter referred to as "Town" and Daniel J. Young and Angela M. Young, a private homeowner in the Town ("Homeowner"). Town and Homeowner are sometimes hereinafter individually referred to as a "Party" and/or collectively referred to as the "Parties".

### RECITALS

**WHEREAS**, Homeowner has completed construction of a house located at 22248 Lupine Road ("House") in the Town and is seeking final approval from the Town; and

**WHEREAS**, in order for Homeowner to receive final approval from the Town, Homeowner is required to either landscape the front and side yards or to pay a fee of \$6,149.00 to extend the time required to complete the landscaping by six (6) months; and

**WHEREAS**, at or around the time of the completion of the House, the Homeowner experienced economic hardship due to the global coronavirus COVID-19 pandemic; and

**WHEREAS**, Homeowner neither has the money at this time to pay to landscape the front and side yards of the House nor to pay the required fee to extend the time required to complete the required landscaping; and

**WHEREAS**, the Town is willing to waive the fee requirement that ordinarily accompanies the time extension for one (1) time only in order to give Homeowner a period of six (6) months to landscape the front and side yards of the House.

**NOW THEREFORE**, in consideration of the mutual covenants agreed to by the

Parties, the adequacy and sufficiency of which are acknowledged, the Parties agree as follows:

#### TERMS

1. Incorporation of Recitals. The recitals above are true and correct and are hereby incorporated herein by this reference.

2. Term. The term of this Agreement shall be from November 10, 2020 to May 10, 2021.

3. Town Waiver of Landscaping Fee. The Town agrees to waive the fee associated with extending the time required to complete the landscaping by a period of six (6) months. This waiver applies for the period beginning on the Effective Date and ending six (6) months from the Effective Date. Any further extension requested by Homeowner shall be subject to the \$6,149.00 fee, unless the Town, in its sole and absolute discretion, waives the fee for a subsequent six (6) month period.

4. Homeowner Duty to Landscape. In consideration for the Town granting Homeowner this one (1) time fee waiver, Homeowner shall landscape the House's front and side yards within six (6) months from the Effective Date. At the completion of the landscaping, Homeowner shall notify the Town in writing of such completion and shall submit before and after pictures indicating the landscaping has been installed.

5. Waiver of Right to Contest Code Enforcement Actions for Failure to Landscape. If Homeowner fails to complete the landscaping within this six (6) month period, Homeowner waives any right to contest finding(s) or citation(s) of the Town's Code Enforcement department related to the required landscaping.

6. Recording. Homeowner shall be responsible for recording this Agreement with the County of San Bernardino to be reflected on the title for the Homeowner's property and shall be responsible for all associated costs, if any. At the completion of Homeowner's landscape installation in the front and side yards of the House, Homeowner shall remove this Agreement from the title for the property at its sole cost and expense.

7. Compliance with Laws and Regulations. Homeowner shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations related to the landscape installation.

8. Any and all notices to be sent to the Parties to this Agreement will be mailed to the following addresses:

Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
Attn: Daniel Alcayaga, Planning Manager

Daniel and Angela Young  
22248 Lupine Road  
Apple Valley, CA 92308

9. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

10. Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

11. Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

12. Governing Law; Venue. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

13. Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

14. Authority. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

15. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

16. Signatures. The Parties hereto hereby agree that electronic signatures are acceptable and shall have the same force and effect as original wet signatures.

17. Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

18. Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**[Signatures on Following Page]**

**TOWN:**

**HOMEOWNER:**

THE TOWN OF APPLE VALLEY  
a California municipal corporation

By:

By:

\_\_\_\_\_  
Scott Nassif, Mayor

\_\_\_\_\_  
Daniel J. Young

Date:

Date:

10-27-2020

By:

\_\_\_\_\_  
Angela M. Young

Date:

10-27-2020

ATTEST:

By:

\_\_\_\_\_  
LaVonda M-Pearson, Town Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER, LLP

By:

\_\_\_\_\_  
Town Attorney

# ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

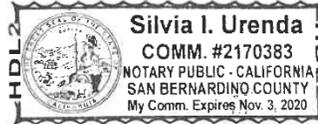
On October 27, 2020 before me, Silvia I. Urenda, Notary Public,

personally appeared Daniel J. Yang and Angela M. Young, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are/ subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer
- Title(s):
- Partner(s)       Limited       General
- Attorney-In-Fact       Trustee
- Guardian/Conservator
- Other:
- Signer is representing:

#### DESCRIPTION OF ATTACHED DOCUMENT

Landscape Installation Agreement  
Title or Type of Document

5 pages - Youngs      10/27/2020  
Number of Pages      Date of Document

\_\_\_\_\_  
Signer(s) other than Names Above