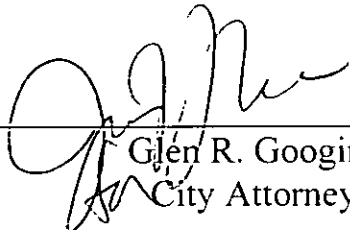


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



Glen R. Googins
City Attorney

Dated: 12/9/15

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NATIONAL CITY AND
THE CITY OF CHULA VISTA
FOR THE ADMINISTRATION OF THE FREE RESOURCE AND
ENERGY BUSINESS EVALUATION PROGRAM

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NATIONAL CITY
AND THE CITY OF CHULA VISTA
FOR THE ADMINISTRATION OF THE FREE RESOURCE
AND ENERGY BUSINESS EVALUATION PROGRAM**

This Memorandum of Understanding ("MOU") is entered into by and between the CITY OF NATIONAL CITY ("National City"), a municipal corporation, and the CITY OF CHULA VISTA ("Chula Vista"), a municipal corporation, and is dated December 15, 2015 for the purposes of reference only.

RECITALS

A. In 2009, Chula Vista began administering its Free Resource and Energy Business Evaluation ("FREBE") program, which helps local businesses identify opportunities to save energy and water.

B. With funding support from San Diego Gas & Electric, Chula Vista created the South Bay Energy Action Collaborative ("SoBEAC") in 2013 to assist smaller neighboring cities with their energy efficiency and sustainability initiatives.

C. On June 2, 2015, National City and Chula Vista entered into a Memorandum of Understanding for the administration of the FREBE program in National City by Chula Vista through December 31, 2015.

D. On June 16, 2015, National City adopted an ordinance amending Chapter 6.04 of the National City Municipal Code to require businesses in National City to accept a no-cost resource and energy evaluation through the FREBE Program.

E. National City anticipates amending the ordinance to extend the effective date of the FREBE program from December 31, 2015 to December 31, 2020.

F. National City does not have sufficient staff to administer the FREBE Program.

G. Chula Vista has agreed to administer the FREBE Program in National City, through calendar year 2020, under the SoBEAC component of its Local Government Partnership with San Diego Gas & Electric.

H. The FREBE program in National City would be fully supported through SDG&E Local Government Partnership funding

AGREEMENT

1. Term of the MOU. This MOU shall be effective on the date that the ordinance described in Recital E, above, is effective and shall remain in effect through December 31, 2020.

2. Chula Vista's Responsibilities.

2.1. Chula Vista staff agrees to administer the FREBE Program in National City with funding provided by SDG&E Local Government Partnership.

2.2. Chula Vista staff shall draft and mail a letter introducing the FREBE Program, explaining that Chula Vista staff will perform the evaluation on behalf of National City, and requesting an appointment to conduct the evaluation (the "Introduction and Appointment Letter"). The Introduction and Appointment Letter will be on National City letterhead and be signed by National City's Director of Finance, or designee.

2.3. If there is no response, or a negative response, from the business, Chula Vista staff shall draft a postcard reminding the business of its obligation to accept the evaluation (the "Follow-up Postcard"). The Follow-up Postcard will include the National City Logo.

2.4. In performing the evaluations, Chula Vista staff will use best efforts to minimize inconvenience and disruption to the businesses.

2.5. In implementing the FREBE Program in National City, Chula Vista staff will use best efforts to minimize disruption to the National City Finance Department.

2.6. Chula Vista staff will provide the businesses with information that may include, but not be limited to the following:

2.6.1. Historical energy and water consumption, identified conservation and efficiency opportunities, potential utility cost savings, and an estimate of the corresponding greenhouse gas emission reductions;

2.6.2. Recommendations for sustainable practices applicable to the business, their employees or customers, and an estimate of the corresponding greenhouse gas emission reductions;

2.6.3. Information and assistance regarding federal, state, and local rebate programs, financing options, and other funding resources to reduce the time and cost of implementing conservation and efficiency measures; and

2.6.4. Contact information for local utility account and program staff and contractors that may provide services to implement conservation and efficiency measures.

3. National City's Responsibilities.

3.1. National City Finance staff will periodically give Chula Vista staff a list of the most recent business licenses issued by National City. The information will include the business name, address, phone number(s), and names of principals.

3.2. National City Finance staff will approve the Introduction and Appointment letter.

3.3. National City Finance staff will approve the Follow-up Postcard.

3.4. National City staff will cooperate and work with Chula Vista staff.

4. Indemnity.

4.1 Claims Arising From Sole Acts or Omissions of Chula Vista. Chula Vista agrees to defend and indemnify National City, and its respective agents, officers and employees, from any claim, action or proceeding against National City, arising solely out of the negligent acts or omissions or willful misconduct of Chula Vista in the performance of its duties pursuant to this MOU. At its sole discretion, National City may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve Chula Vista of any obligation imposed by this MOU. National City shall promptly notify Chula Vista of any claim, action or proceeding and cooperate fully in the defense.

4.2 Claims Arising From Sole Acts or Omissions of National City. National City agrees to defend and indemnify Chula Vista, and its agents, officers and employees, from any claim, action or proceeding against Chula Vista, arising solely out of the negligent acts or omissions or willful misconduct of National City in the performance of its duties pursuant to this MOU. At its sole discretion, Chula Vista may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve National City of any obligation imposed by this MOU. Chula Vista shall promptly notify National City of any claim, action or proceeding and cooperate fully in the defense.

4.3 Claims Arising From Concurrent Acts or Omissions. National City agrees to defend and indemnify Chula Vista from any claim, action or proceeding arising out of, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions, or willful misconduct of Chula Vista, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of National City, its employees, agents or officers, or any third party.

4.4 Joint Defense. Notwithstanding subsection 4.3, above, in cases where Chula Vista and National City agree in writing to a joint defense, Chula Vista and National City may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of Chula Vista and National City. Joint defense counsel shall be selected by mutual agreement of the parties. The parties further agree that no party may bind the other party to a settlement agreement without the written consent of the other party.

4.5 Reimbursement and/or Reallocation. Where a final judgment of a court award allocates or determines the comparative fault of the parties, Chula Vista and National City may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

4.6 Limitation of Liability. Other than claims for physical injury to person or property, the Parties acknowledge that each Party's liability under this MOU shall be limited to actual damages only and that the Parties shall have no obligation or liability for general or special damages.

4.7 Survival. A Party's obligations under this Indemnity section shall survive the termination of this MOU.

5. Insurance. Chula Vista shall provide its own liability insurance, including automobile liability insurance, health, disability and other insurance. National City shall not be responsible for insurance coverage for Chula Vista's employees. Chula Vista shall provide its own workers compensation insurance for any Chula Vista employee who performs services pursuant to this MOU.

6. Termination. Either Party may terminate this MOU by providing fifteen days' written notice to the other Party. Notwithstanding the foregoing, if, for any reason, SDG&E ceases to provide Chula Vista with the funding necessary to perform Chula Vista's responsibilities under this MOU, then the MOU shall be immediately terminated and Chula Vista shall be relieved of all obligations imposed on it by this MOU.

7. Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this MOU, against Chula Vista unless a claim has first been presented in writing and filed with Chula Vista and acted upon by Chula Vista in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same.

8. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this MOU must be in writing. All notices, demands, and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered, or certified, with return receipt requested, at the addresses identified below:

- a. City of Chula Vista
Bob Beamon, Conservation Manager
276 Fourth Avenue, Chula Vista, CA 91910
619-409-1965
- b. City of National City
Brad Raulston, Executive Director
1243 National City Boulevard
National City, CA 91902
619-336-4240

9. Integration. This MOU, together with any other written document referred to or contemplated in it, embody the entire agreement and understanding between the Parties relating to the subject matter hereof. Neither this MOU nor any provision of it may be amended, modified, waived or discharged except by an instrument in writing executed by the Party against which enforcement of such amendment, waiver or discharge is sought.

10. Capacity of Parties. Each signatory and Party to this MOU warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this MOU, and that all necessary resolutions or other actions have been taken so as to enable it to enter into this MOU.

11. Governing Law/Venue. This MOU shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California.

IN WITNESS WHEREOF, Chula Vista and National City have executed this MOU, indicating that they have read and understood same, and indicate their full and complete consent to its terms:

CITY OF CHULA VISTA

By: _____
Mary Casillas, Mayor

Attest:

Donna Norris, City Clerk


APPROVED AS TO FORM:

Glen R. Googins, City Attorney

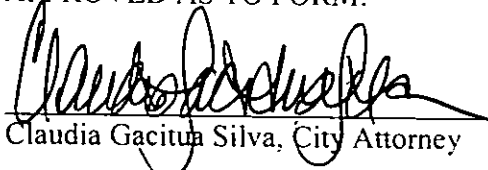
CITY OF NATIONAL CITY

By: 
Ron Morrison, Mayor

Attest:


Michael R. Dalla, City Clerk

APPROVED AS TO FORM:


Claudia Gacitua Silva, City Attorney

RESOLUTION NO. 2015 – 181

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY
AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF
UNDERSTANDING WITH THE CITY OF CHULA VISTA TO PROVIDE
IN-KIND SERVICES TO CONTINUE THE FREE RESOURCE
AND ENERGY BUSINESS EVALUATION PROGRAM

WHEREAS, in 2011, the City Council adopted the Climate Action Plan (“CAP”) with the goal of reducing National City’s greenhouse gas emissions to 15 percent below 2005 levels by 2020, which is consistent with California’s Global Warming Solutions Act of 2006 (AB32); and

WHEREAS, one of the CAP emission reduction measures encourages energy audits of existing buildings to inform owners of their energy usage; and

WHEREAS, on June 2, 2015, the City Council adopted Resolution No. 2015-75 implementing a Free Resource and Energy Business Evaluations (“FREBE”) program for businesses in the City, and entered into a Memorandum of Understanding (“MOU”) with the City of Chula Vista to implement the program in National City through December 31, 2015 at no cost to the City with funding through the South Bay Energy Action Collaborative; and

WHEREAS, on June 16, 2015, the City Council adopted Ordinance No. 2015-2404 amending Chapter 6.04 of the National City Municipal Code to require businesses in National City to accept a no-cost resource and energy evaluation through the FREBE Program; and

WHEREAS, National City anticipates amending Ordinance No. 2015-2404 to extend the effective date of the FREBE program from December 31, 2015 to December 31, 2020; and

WHEREAS, the City of Chula Vista has agreed to administer the FREBE Program in National City, through calendar year 2020, under the SoBEAC component of its Local Government Partnership with San Diego Gas & Electric; and

WHEREAS, the FREBE program in National City would be fully supported through SDG&E Local Government Partnership funding.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of National City hereby authorizes the Mayor to execute a Memorandum of Understanding with the City of Chula Vista to provide in-kind services to implement the Free Resource and Energy Business Evaluations (“FREBE”) program. The Memorandum of Understanding is on file in the office of the City Clerk.

[Signature Page to Follow]

Passed and adopted by the Council of the City of National City, California, on December 1, 2015 by the following vote, to-wit:

Ayes: Councilmembers Cano, Mendivil, Morrison, Rios, Sotelo-Solis.

Nays: None.

Absent: None.

Abstain: None.

AUTHENTICATED BY: RON MORRISON
Mayor of the City of National City, California

MICHAEL R. DALLA
City Clerk of the City of National City, California

By: _____
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 2015-181 of the City of National City, California, passed and adopted by the Council of said City on December 1, 2015.



Michael R. Dalla
City Clerk of the City of National City, California

By: _____
Deputy