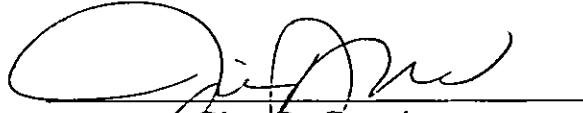


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL


Glen R. Googins
City Attorney

Dated: 6/8/15

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NATIONAL CITY AND
THE CITY OF CHULA VISTA
FOR THE ADMINISTRATION OF
THE FREE RESOURCE AND ENERGY EVALUATION
FOR BUSINESS 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 June 2, 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. National City wishes to participate in the Free Resource and Energy Business Evaluation (“FREBE”) Program.

D. As part of the FREBE Program, National City anticipates adopting 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 does not have sufficient staff to administer the FREBE Program.

F. Chula Vista has agreed to administer the FREBE Program in National City, during calendar year 2015, under the SoBEAC component of its Local Government Partnership with San Diego Gas & Electric.

G. The FREBE program expansion into National City would be fully supported through existing 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 D, above, is effective and shall remain in effect through December 31, 2015.

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 give Chula Vista staff a list of the most recent business licenses (approximately 300) 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 Finance staff will approve the Non-compliance Letter.

3.5 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. Chula Vista
Bob Beamon
276 Fourth Avenue, Chula Vista, CA 91910
619-409-1965

- b. National City
Brad Raulston
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.

(End of page. Next page is signature page.)

Signature Page

to

Memorandum of Understanding between

City of Chula Vista and

City of National City


For the Administration of the Free Resource and Energy Business Evaluation Program

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

CITY OF NATIONAL CITY

Mary Casillas Salas, Mayor



Ron Morrison, Mayor

Attest:

Attest:

Donna Norris, City Clerk



FOR Michael Dalla, City Clerk

Approved as to form:

Approved as to form:

Glen R. Googins, City Attorney



Claudia G. Silva, City Attorney