



CITY COUNCIL AGENDA REPORT

MEETING DATE: September 20, 2011

ITEM NUMBER: CC-9

SUBJECT: APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF HUNTINGTON BEACH AND THE CITY OF COSTA MESA AND ITS ORANGE COUNTY CITIES ENERGY LEADER PARTNERS FOR THE ADMINISTRATION OF AWARDED GRANT FUNDING VIA SOUTHERN CALIFORNIA EDISON.

DATE: SEPTEMBER 12, 2011

FROM: OFFICE OF THE CEO

PRESENTATION BY: DANIEL K. BAKER, MANAGEMENT ANALYST

FOR FURTHER INFORMATION CONTACT: DANIEL K. BAKER AT (714) 754-5156

RECOMMENDATION:

1. Approve the Memorandum of Understanding (MOU) between the Cities of Costa Mesa, Huntington Beach, Westminster, and Fountain Valley and authorize the Mayor and City Clerk to execute the document; and
2. Authorize the CEO to execute any subsequent documents approved as to form by the City Attorney necessary to advance, manage and complete the projects.

BACKGROUND:

The Cities of Costa Mesa, Huntington Beach, Westminster and Fountain Valley have been members of the Orange County Cities Energy Leader Partnership (The Partnership) with Southern California Edison (SCE) and Southern California Gas since 2009. This partnership provides resources to help the cities eliminate energy waste. One of the benefits of this partnership is eligibility for additional project funding in support of Public Utilities Commission (PUC) policies.

In late 2010, The Partnership applied for grant funding supported by the PUC and SCE. The grant funding was designed to conduct strategic plan activities centered on energy efficiency and address the strategies and related local government goals found in the PUC's California Long-Term Energy Efficiency Strategic Plan. The application submittal resulted in the Partnership receiving roughly \$1.1 million dollars to proceed with energy saving endeavors. A stipulation of the application was that the awarded partnerships designate a lead agency for the administration of the grant funding. The OC Partnership members recommend that the City of Huntington Beach serve as the lead agency.

ANALYSIS:

The California Energy Efficiency Strategic Plan describes the big and bold goals for energy efficiency in California and includes a local government chapter with five goals. The Orange County Cities partnership has focused their efforts on the following three goals:

1. Local governments lead by example with their own facilities;
2. Local governments lead their communities with innovative programs for energy efficiency and sustainability; and
3. Local government energy efficiency expertise becomes widespread and typical.

The funding to achieve these goals was provided by the Public Utilities Commission (PUC) through a competitive SCE administered grant.

The partnership members responded to this solicitation proposing numerous tasks appropriate for Orange County local governments. SCE and the cities agreed to implement three tasks through this solicitation; 1) Establish a utility bill manager software commonly referred to as an Enterprise Energy Management Information System (EEMIS) to organize and manage utility bill information for government facilities, 2) Develop local government facility energy policies appropriate for Orange County to support the elimination of energy waste and reduce operating costs, 3) Develop the Local Government Energy Management Services Program to make top notch public sector energy management expertise available to more local governments.

The benefits to the partner cities for accepting and implementing these tasks are as follows:

1. The partner cities have over 1,000 electric accounts and several thousand natural gas, water, waste and fuel accounts. Historically, due to the payment terms, very little investigation can be completed prior to payment of the utility bill. The software will provide staff quick insight into the accuracy of the billing and energy use at these various sites and support the development of projects that reduce energy waste and measure and verify the energy savings realized by projects.
2. The state and most agencies have policies regarding energy and resource conservation in capital programs, operations and maintenance and occupant service levels for government facilities. Local governments typically do not have similar policies. This task will hire a firm to develop appropriate, stream-lined energy policies for local government facilities to be presented to City Councils and Executives to consider for adoption. This task will support the goal of eliminating energy waste and reducing operating costs in government facilities.
3. Not all local government can afford top notch energy management talent in-house. The local government energy management services program presents an opportunity for the Partnership to participate in a shared services model that would pay for staff salaries from non-general fund revenue by sharing energy management expertise with other local governments and agencies.

Per the grant conditions, The Partnership members agreed that the City of Huntington Beach would be the lead agency regarding the coordination of the grant activities. Costa Mesa will need to sign the attached MOU (Attachment 1) in order to access the grant funding. If the City does not enter the MOU than the remaining grant dollars will be redistributed to the participating partnership members.

ALTERNATIVES CONSIDERED:

An alternative would be to not enter into the MOU and direct staff on how to proceed.

FISCAL REVIEW:

The activities listed in the MOU totaling approximately \$1.1 million will be completely paid for via a grant from Southern California Edison. Therefore, no City costs will be incurred.

LEGAL REVIEW:

The attached MOU has been reviewed by the City Attorney.

CONCLUSION:

Staff recommends that the City Council approve the attached Memorandum of Understanding, authorize the Mayor and City Clerk to execute it and authorize the CEO to execute any subsequent documents approved as to form by the City Attorney necessary to advance, manage and complete the projects.



DANIEL K. BAKER
Management Analyst



THOMAS R. HATCH
Chief Executive Officer

ATTACHMENTS: 1 Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BY AND AMONG
PARTICIPATING ENTITIES IN THE ORANGE COUNTY CITIES
SOUTHERN CALIFORNIA EDISON ENERGY EFFICIENCY
STRATEGIC PLAN GRANT

This Memorandum of Understanding (“MOU”) is made and entered into on _____, 2011, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California, and the cities of Fountain Valley, Westminster, Costa Mesa and Irvine. The foregoing entities may sometimes be referred to as “the Parties.”

WHEREAS, the Parties jointly applied for Orange County Cities Southern California Edison Energy Efficiency Strategic Plan Grant (OCC SCE EESPG) funding to support the State Level Energy Policy Goals; and

The Grant required that a single city take the lead role in securing these grant funds and contracting with Southern California Edison (“SCE”); and

The parties desire to enter into this MOU to describe the relationships between the participating cities to achieve the goals and objectives proposed by the cities to Southern California Edison in support of the California Efficiency Strategic Plan.

NOW, THEREFORE, the Parties do hereby agree as follows:

1. PURPOSE. The purpose of this Agreement is to guide the procurement, deliverables and reimbursement activities between the Parties.

2. TERM. This MOU will become effective when any two local public entities have (1) duly approved and executed the Agreement, and (2) delivered their first annual membership dues to the fiscal sponsor.

3. PROPOSED ACTIVITIES AND BENEFITS. The Mission of OCC SCE EESPG is to secure and utilize SCE grant funding to create model Orange County-focused state-of-the-art energy policies, programs and procedures. The tasks to be accomplished through the cooperative managing this Grant are:

A. Establish “Utility Bill Manager” software that enables cities to track and control utility costs and energy use.

B. Develop model local government facility energy policies, adapt those policies to participating cities and present them for adoption.

- C. Engage with stakeholders throughout the process.
- D. Establish a Local Government Energy Management Services Program (LGEMSP) to provide as needed a fee for service energy management services to sister agencies in the public sector.

4. STRUCTURE AND GOVERNANCE. For ease of formation and administration, and to maintain flexibility, the Parties to this MOU will be an unincorporated association of local public entities whose membership benefits and responsibilities are governed by the terms of this MOU, including the statement of work set forth in Appendix A and budgets set forth in Exhibit B, both of which are incorporated by reference.

Decision-making will be made by a majority vote of the Grant Management Governing Board, comprised of one representative from each Party to this MOU.

Procurement of the contracted services shall be through group purchasing with funds reserved for each local government for customization of the work products.

Invoicing for staff time and materials shall not exceed the budgeted amounts in Appendix B, and invoices and SCE-required backup documentation will be presented to the City of Huntington Beach for reimbursement. The City of Huntington Beach will then receive reimbursement from SCE.

5. FISCAL RESPONSIBILITY. The City of Huntington Beach is the prime contractor with SCE for the grant funds and is responsible for coordinating all aspects of this Grant at the direction of the Grant Management Governing Board.

6. TERMINATION AND WITHDRAWAL. This MOU may be terminated by a majority vote of the Grant Management Governing Board with or without cause. Any Party to the MOU may withdraw from this Agreement upon thirty (30) days written notice to the other members.

7. ASSIGNING AS BREACH. No Party shall encumber, assign or otherwise transfer this MOU, or any right or interest in this MOU, without the express written consent of all the other Parties. Any encumbrance, assignment or transfer, without the prior written consent of all the other Parties, whether it be voluntary or

involuntary, by operation of law or otherwise, is void and shall, at the option of the other Parties, terminate this MOU.

8. CUMULATIVE REMEDIES. The remedies given to the Parties in this MOU shall not be exclusive, but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this MOU.

9. WAIVER OF BREACH. The waiver by any Party of any breach by any other Party of any of the provisions of this MOU, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such breach or a waiver of any subsequent breach by any Party either of the same or another provision of this MOU.

10. NOTICES. Any written notice, given under the terms of this MOU, shall be either delivered personally or mailed, certified mail, postage prepaid, addressed to the Party concerned, as follows:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92708

City of Irvine
1 Civic Center Plaza
Irvine, CA 92606-5207

City of Westminster
8200 Westminster Blvd.
Westminster, CA 92683

If a Party desires to change the address for notices, such Party will provide 30 days advance written notice to the other Parties of any such change.

11. ATTORNEY'S FEES. In the event suit is brought by any Party to enforce the terms and provisions of this MOU or to secure the performance hereof, each Party shall bear its own attorney's fees. The prevailing Party shall not be entitled to recover its attorney's fees from the non-prevailing Party.

12. CONTROLLING LAW AND VENUE. The rights and liabilities of the Parties, and the interpretation and construction of this MOU, shall be determined in accordance with the laws of the State of California. Any controversy arising out of or under this MOU, if litigated, shall be adjudicated in a court of competent jurisdiction in Orange County, California.

13. HOLD HARMLESS. Each Party to the Agreement shall protect, defend, indemnify and hold harmless each other Party, its officers, officials, employees, and Agents from and against any and all liability, loss, damage, expenses, costs (including without limitation, costs and fees of litigation of every nature) arising out of or in connection with performance of this MOU or its failure to comply with any of its obligations contained in this MOU except such loss or damages which was caused by the sole negligence or willful misconduct of any Party.

14. NONLIABILITY OF CITY OFFICIALS, EMPLOYEES OR AGENTS. No elected or appointed City or City affiliated Board, Commission or members thereof, or officer, official or employee or agent of any city which is a Party to this Agreement shall be personally liable to any other Party for any default or breach by any city which is a Party to this MOU or for any amount which may become due or for any obligation of any city under this MOU.

15. MOU IN WRITING. This MOU contains and embraces the entire Agreement between the Parties hereto and neither it nor any part of it may be changed, altered, modified, limited or extended orally or by any other Agreement between the Parties unless such Agreement be expressed in writing, signed and approved by all other Parties to this MOU.

16. PARTIAL INVALIDITY. Should any provision of this MOU be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this MOU shall remain in full force and effect unimpaired by the holding, so long as the reasonable expectations of the Parties hereto are not materially impaired.

17. COUNTERPARTS. This MOU may be executed in counterparts, each of which is an original and all of which constitutes one and the same instrument.

18. ENTIRETY. The foregoing sets forth the entire Agreement between the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by and through their authorized officers of the day, month and year first written above.

CITY OF HUNTINGTON BEACH

Mayor

ATTEST:

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

City Attorney

CITY OF IRVINE

Mayor

ATTEST:

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

City Attorney

CITY OF COSTA MESA

Mayor

ATTEST:

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

City Attorney

CITY OF FOUNTAIN VALLEY

Mayor

ATTEST:

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

City Attorney

CITY OF WESTMINSTER

Mayor

ATTEST:

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

City Attorney