

SEE PAGE 11 OF EXHIBIT A – REVISED LANGUAGE PER ATTORNEY  
**PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) is made as of (December 8, 2014) by and between the South Bay Cities Council of Governments, a California joint powers authority ("SBCCOG") and (GSE Solutions, LLC) ("Consultant").

**RECITALS**

A. SBCCOG desires to utilize the services of Consultant as an independent contractor to provide specified professional services to SBCCOG as set forth in Exhibit A, to assist the SBCCOG’s member agencies to promote energy efficiency.

B. The goal of this program is to achieve kWh and therm savings through local government and community energy efficiency measures.

C. Consultant represents that it is fully qualified to perform consulting services by virtue of its experience and the training, education, and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

**1. Services.**

**1.1** The nature and scope of the specific services to be performed by Consultant are as described in Exhibit A, attached hereto and incorporated herein by reference.

**1.2** SBCCOG agrees to conduct its best effort to assist with the success of the program and understands that the Consultant assumes full responsibility to manage and produce the program.

**1.3** SBCCOG and participating agencies shall provide all relevant documentation in their possession to the Consultant upon request in order to minimize duplication of efforts. The SBCCOG staff shall work with the Consultant as necessary to facilitate performance of the services.

**2. Term of Agreement.** This Contract shall take effect January 1, 2015 and shall continue until December 31, 2015 unless earlier terminated pursuant to the provisions of paragraph 13 herein. The term of this Agreement may be extended by mutual agreement of the parties as may be necessary or desirable to carry out its purposes.

**3. Compensation.** SBCCOG shall pay for services not to exceed \$165,000 based on the budget as described in Exhibit A.

**4. Terms of Payment.** Consultant shall submit monthly invoices for services rendered and for reimbursable expenses incurred by the fifth (5th) of each month. The invoice should include: an invoice number, the dates covered by the invoice, the hours expended and a summary of the work performed. SBCCOG shall pay the invoices with sixty (60) days of receipt.

**5. Parties’ Representatives.** The Executive Director or Deputy as assigned shall serve as the SBCCOG’s representative for the administration of the project. All activities performed by the

Consultant shall be coordinated with this person. Greg Stevens shall be in charge of the project for the Consultant on all matters relating to this Agreement and any agreement or approval made by him shall be binding on the Consultant. This person shall not be replaced without the written consent of the SBCCOG.

**6. Addresses.**

SBCCOG:  
South Bay Cities Council of Governments  
20285 S. Western Ave, #100  
Torrance, CA 90501  
Attention: Jacki Bacharach, Executive Director

GSE Solutions, LLC  
800 Grand Ave, Suite B8B  
Carlsbad, CA 92008  
Attention: Greg Stevens

**7. Status as Independent Contractor.**

A. Consultant is, and shall at all times remain as to SBCCOG, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of SBCCOG or any participating agency or otherwise act on behalf of SBCCOG or any participating agency as an agent except as specifically provided in the Scope of Services. Neither SBCCOG nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner employees of SBCCOG.

B. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold SBCCOG harmless from any failure of Consultant to comply with applicable worker's compensation laws.

**8. Standard of Performance.** Consultant shall perform all work at the standard of care and skill ordinarily exercised by members of the profession under similar conditions.

**9. Indemnification.** Consultant agrees to indemnify the SBCCOG and participating public agencies, their respective officers, staff consultants, agents, volunteers, employees, and attorneys against, and will hold and save them and each of them harmless from, and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the acts, errors or omissions of Consultant, its agents, employees, subcontractors, or invitees, including each person or entity responsible for the provision of services hereunder, except for liability resulting from the sole negligence or wrongful acts of the SBCCOG or a participating agency.

**10. Insurance.** Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, with an insurance company admitted to do business in California and approved by the SBCCOG (1) a policy or policies of broad-form comprehensive general liability insurance with minimum limits of \$1,000,000.00 combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts by Consultant, its officers,

employees, agents, and independent contractors in performance of services under this Agreement; (2) property damage insurance with a minimum limit of \$1,000,000.00; (3) automotive liability insurance, with minimum combined single limits coverage of \$500,000.00; and (4) worker's compensation insurance with a minimum limit of \$500,000.00 or the amount required by law, whichever is greater. SBCCOG and participating public agencies, their respective officers, employees, attorneys, staff consultants, and volunteers shall be named as additional insureds on the policy (ies) as to comprehensive general liability, property damage, and automotive liability. The policy (ies) as to comprehensive general liability, property damage, and automobile liability shall provide that they are primary, and that any insurance maintained by the SBCCOG shall be excess insurance only.

A. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving SBCCOG thirty (30) day's prior written notice thereof. Consultant agrees that it will not cancel, reduce or otherwise modify the insurance coverage.

B. All policies of insurance shall cover the obligations of Consultant pursuant to the terms of this Agreement; shall be issued by an insurance company which is admitted to do business in the State of California or which is approved in writing by the SBCCOG; and shall be placed with a current A.M. Best's rating of no less than A VII.

C. Consultant shall submit to SBCCOG (1) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (2) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on SBCCOG's appropriate standard forms entitled "Additional Insured Endorsement", or a substantially similar form which the SBCCOG has agreed in writing to accept.

**11. Confidentiality.** Parties agree to preserve as confidential all Confidential Information that has been or will be provided to each other.

**12. Ownership of Materials.** All materials provided by Consultant in the performance of this Agreement shall be and remain the property of SBCCOG and its partner organizations without restriction or limitation upon their use or dissemination by SBCCOG. The consultant will retain non-exclusive perpetual rights to the use of material developed under this contract.

**13. Conflict of Interest.** It is understood and acknowledged that Consultant will serve as an agent of the SBCCOG and the participating agencies for the limited purpose of implementation of this project.

**14. Termination.** Either party may terminate this Agreement without cause upon fifteen (15) days' written notice to the other party. The effective date of termination shall be upon the date specified in the notice of termination, or, in the event no date is specified, upon the fifteenth (15th) day following delivery of the notice. Immediately upon receiving written notice of termination, Consultant shall discontinue performing services. Should the Agreement be breached in any manner, the non-breaching party may, at its option, terminate the Agreement not less than five (5) days after written notification is received by the breaching party to remedy the violation within the stated time or within any other time period agreed to by the parties.

**15. Personnel.** Consultant represents that it has, or will secure at its own expense, all

personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but SBCCOG reserves the right, for good cause, to require Consultant to exclude any employee from performing services on SBCCOG's premises.

**16. Non-Discrimination and Equal Employment Opportunity.**

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of SBCCOG relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

**17. Assignment.** Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without the prior written consent of SBCCOG, and any attempt by Consultant to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

**18. Compliance with Laws.** Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments. Each party is responsible for paying its own all federal and state income taxes, including estimated taxes, and all other government taxes, assessments and fees incurred as a result of his/her performance under this Agreement and the compensation paid by or through this Agreement

**19. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by SBCCOG of any payment to Consultant constitute or be construed as a waiver by SBCCOG of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by SBCCOG shall in no way impair or prejudice any right or remedy available to SBCCOG with regard to such breach or default.

**20. Resolving Disputes.** If a dispute arises under this Agreement, prior to instituting litigation the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in California. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties.

**21. Severability.** If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in effect provided that the principal purposes of the parties are not thereby

frustrated.

**22. Notices.** Any notices required to be given under this Agreement by either party to the other may be affected by any of the following means: by electronic correspondence (email), by personal delivery in writing by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices must be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by giving written or electronic notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first. Electronic notices are deemed communicated as of actual time and date of receipt. Any electronic notices must specify an automated reply function that the email was received. The email addresses for each party are as follows:

Jacki Bacharach – jacki@southbaycities.org  
Greg Stevens - gwstevens1@yahoo.com

**23. Governing Law.** This Contract shall be interpreted, construed and enforced in accordance with the laws of the State of California.

**24. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

**25. Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and SBCCOG. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement. Amendments on behalf of the SBCCOG will only be valid if signed by the SBCCOG Executive Director or the Chairman of the Board and attested by the SBCCOG Secretary.

**26. Exhibits.** All exhibits referred to in this Agreement are incorporated herein by this reference.

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

"SBCCOG"

"SBCCOG"  
South Bay Cities Council of Governments

By: \_\_\_\_\_

Title: Chair

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

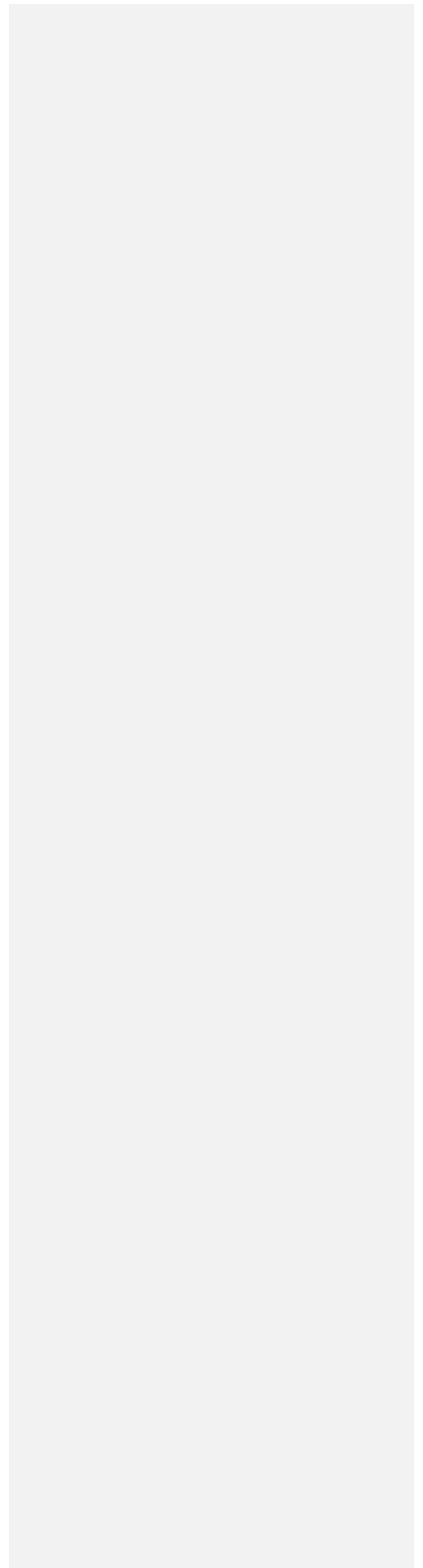
SBCCOG Secretary

Contractor

By: \_\_\_\_\_  
Greg Stevens (Signature)

Title: Principal Engineer

Date: \_\_\_\_\_



## Exhibit A

# ENERGY ENGINEERING & PROFESSIONAL SERVICES SOUTH BAY ENERGY EFFICIENCY PROGRAM

### **Work to be Performed**

GSE's engineering team has the expertise to adequately address each task in the following scope of work.

### **Task 1. Technical Support Activities - Coordination & Project Management**

Meet with SBCCOG Project Manager and key personnel to establish coordination of technical support activities related to the following Tasks.

- a. Participate in meetings at least weekly to report on status of project identification and completion. These meetings may be in person or via conference call as required. A standard reporting format will be utilized.
- b. Conduct routine job walks or site visits as needed and follow-up with participating government agencies (cities, schools, districts, county, state) to ensure that project activities are progressing towards completion.
- c. Provide quarterly At A Glance reports of each city's energy efficiency activities and potential projects to SBCCOG for distribution to the cities. Be available to answer any questions.
- d. Make a quarterly presentation to the SBCCOG Board of Directors on the energy efficiency activities of each of the cities and the subregion as a whole including a progress report on meeting the SBCCOG's goals as set by Southern California Edison and the Gas Company.
- e. Be available to the SBCCOG staff and to the South Bay cities as needed.

f. At the direction of SBCCOG, be available to present project findings to utility customers, and governing boards.

g. Participate in regional collaborative programs as directed.

It is anticipated that additional services may be identified through the course of this contract. If additional services are identified, work may be authorized by the SBCCOG on a task order basis.

*For this task, GSE will continuously work with SBCCOG to ensure that program goals and client expectations are consistently exceeded. GSE recognizes the importance in developing and maintaining good working relationships with SBCCOG staff, COG members, and utility companies, and is fully committed to delivering the highest quality product. GSE's engineering team has collectively worked with thousands of utility customers involving calculation assistance, energy audits and system design projects. This experience ensures that GSE's engineering team will treat each customer with respect and work through any issues with the customer that may arise.*

*GSE is strongly in favor of having a weekly project status meeting with SBCCOG program manager, utility program managers and account executives. In the past year, this has been extremely beneficial to staying on top of projects and moving them expeditiously through the incentive review process. Additionally, GSE will be available for monthly Partnership meetings and strongly recommends instituting a quarterly planning meeting to identify high priority cities and projects for the following quarter.*

*GSE will face-to-face meetings with COG members and special districts (i.e., schools) to ascertain what current projects are underway and what they have planned for the rest of the year. These meetings will help GSE and the SBCCOG understand the needs of each member and establish GSE's role with the SBCCOG, as well as help with developing accurate energy savings projections for the current year.*

*For additional services that may be identified through the course of the contract, the GSE project manager will work with the SBCCOG program manager to establish expectations and requirements of services. Once expectations are set, the project manager will then select the appropriate team member to complete the work. The project manager will be completely responsible for quality control, meeting client expectations and tracking budget and timeline.*

*It is anticipated that GSE's team will also be involved in other SBCCOG programs, such as, Green Task Force, Municipal Training Workshops, Climate Action, and Energy Action Planning, EEMIS, and LA County Regional Energy Office, etc. In Mr. Steven's past experience, there have been great synergies between these programs and energy efficiency. These other events are also a great opportunity to meet face-to-face with COG members and discuss energy efficiency projects and other needs that may arise. To facilitate more effective coordination and collaboration between GSE and SBCCOG, GSE's project manager will be available to work out of the SBCCOG's office at a minimum of two days a week.*

## **Task 2. Identify Candidate Energy Projects**

a. Upon direction of SBCCOG, collect and assess existing energy audit reports, energy evaluation studies, lists of identified projects, and other related documentation and determine validity and applicability to current conditions at each facility.



b. After the screening process is complete, establish a prioritized list of candidate projects from the information that is deemed applicable for each member agency.

c. When needed, identify and collect necessary additional data to finalize energy analysis.

*Under this task, GSE and SBCCOG Project Manager will primarily rely on using the EEMIS benchmarking tool to identify candidate facilities higher than normal energy consumption and are possibly in need of energy audit. In parallel with using EEMIS and manual benchmarking, GSE will collect and assess existing energy audit reports, energy evaluation studies and other related documentation and determine its validity and applicability to current conditions at each facility. After the screening process is complete, GSE will establish a prioritized list of candidate projects from the information that is deemed acceptable. When needed, we will identify necessary additional data to finalize energy analysis and provide recommendations on how to best accomplish this work.*

### **Task 3. Comprehensive and Targeted Audit Services**

Upon direction of SBCCOG, investigate other energy opportunities outside of what has been identified in Task 2 and provide the following energy audit services for other facilities as needed for each member agency:

- a. Prepare technical audit services for facilities and processes.
- b. Identify energy efficiency, demand response, and renewable energy opportunities.
- c. Provide a detailed inventory of facilities' equipment and energy savings and recommendations, incentives, life cycle costs and other evaluation analysis.
- d. Provide information on potential funding sources

Once projects are identified, make recommendations to make the improvements necessary to realize the energy savings.

*GSE will conduct comprehensive and targeted audits for municipal facilities. A standard audit will include developing a facility equipment inventory, assessing the facility's operating practices and constraints, identifying savings opportunities, evaluating gas and electric savings and quantifying the economic and environmental benefits. Energy and cost savings measures will typically involve HVAC, process heating, domestic hot water, solar thermal, lighting, EMS, RCx, demand response and renewable energy.*

*GSE anticipates the following steps in the audit process: audit preparation/coordination, initial customer meeting, detailed site audit, audit data analysis and reporting. The final report will present the level of detail and clarity sufficient for the cities to make a well informed decision on project implementation and prioritization. Additionally, the report findings and backup documentation will meet the rigorous utility incentive application review process.*

*Evaluation of the opportunities will utilize a combination of modeling and engineering calculations. Projected energy savings, project cost, measure life and available incentives will be included in the economic evaluation.*

*Utility approved models that may be used for this analysis include, but are not limited to:*

- *eQuest, Energy Pro & Energy Plus – for building simulations*
- *CA IOU CCT Software – for analysis of standard Customized measures*
- *BOA Tool – for Retrocommissioning projects*

- Custom spreadsheet models – for projects where commercially available models do not exist.
- DOE Energy Smart Pools

GSE's project manager will be responsible for the following tasks:

- Establish audit objectives, scope, deliverables and budget.
- Attend audit kick-off meetings.
- Manage audit schedule, deliverables, budget and internal technical resources.
- Provide weekly status reports on audit progress.

#### **Task 4. Calculation and Incentive Application Assistance**

Upon direction of SBCCOG, provide detailed calculations (using SCE's software) and information needed for incentive applications. For energy projects identified in Tasks 2 and 3, work closely with SBCCOG and participating agencies to produce defensible calculations and supporting assumption documentation.

*Under this task, GSE's engineering team will develop detailed calculations and collect information needed for a utility incentive application. For energy projects identified in Tasks 2 and 3, GSE will work closely with the SBCCOG, utility account executives and the municipality to produce defensible calculations and supporting documentation. Engineering calculations will be developed to the same level as described for Task 3.*

#### **Task 5. Energy Efficiency Building Commissioning for Existing Buildings**

Upon direction of SBCCOG, perform building commissioning for existing buildings (EBCx) utilizing a systematic process for investigating, analyzing, and optimizing the performance of building systems. The EBCx process should include: screening, investigation, measure selection, implementation, verification, and operator training as needed.

*Under this task, GSE's engineering team will perform building commissioning for existing buildings (EBCx). Our team is well versed in the RCx process. Mr. Stevens has been a technical reviewer for SCE's Commercial RCx program. He is also a member of the California Commissioning Collaborative (CCC) Advisory Board (<http://www.cacx.org/about/leadership.html>), which is a non-profit organization that provides direction and information to the CCC to help improve and advance the commissioning industry in California. Mr. Stevens was involved in development of the Building Optimization Analysis (BOA) Tool for SCE. This tool is an accepted calculation methodology for SCE's RCx program.*

*SCE has created an RCx program specifically for local government partnerships, titled "RCx". It is our understanding that this program will utilize the same systematic process for investigating, analyzing, and optimizing the performance of building systems. As such, GSE will shepherd identified projects through each phase of the RCx process: screening, investigation, measure selection, implementation, verification, and operator training.*

#### **Task 6. General Energy Efficiency Engineering Consulting Services**

Provide general technical support services as needed including, but not limited to, the following activities:

- a. Answer energy related technical questions similar to a "help desk" process for member agencies and SBCCOG staff
- b. Monitor and report short-term and long-term end-use energy and environmental conditions
- c. Develop and execute measurement and verification plans

- d. Conduct site inspections
- e. Perform building energy computer simulation
- f. Perform cost and measure lifetime analysis
- g. Generate reports and presentation material

*Under this task, GSE will provide general energy engineering services, such as the ones listed above. From time to time, the SBCCOG or one of its COG members may be in need of additional engineering services to assist in various aspects of an energy efficient project, beyond what has been described in Tasks 1 – 5. Additional engineering services may also include, but not limited to: developing HVAC and lighting system design drawings, creating bid documents, performing measurement and verification of project savings, assessing impact of latest building standards (i.e., CA Green Building), offering personalized technical assistance to account executives and COG members, performing internal technical studies, analyzing the technical impact of regulatory policy, assessing new technologies and facilitating training workshops (i.e., best O&M practices, RCx, advanced lighting controls, etc.).*

*GSE's team has extensive fieldwork experience having collectively conducted thousands of customer site visits. Mr. Stevens is an AEE Certified Measurement and Verification Professional (CMVP) and is well versed in the International Performance Measurement and Verification Protocol (IPMVP) and development and execution of numerous M&V plans for various types of projects.*

#### **Budget and Schedule**

The not-to-exceed budget for Tasks 1 – 6 is \$165,000 from January 1, 2015 to December 31, 2015. The specific budgets for SCE and SCG are \$150,000 and \$15,000, respectively. All invoices must be submitted on a time and materials basis. The agreed upon hourly rate for Greg Stevens, Principal Engineer, is \$100/hour. SBCCOG must be notified in writing prior to any sub-contracted work by GSE Solutions. Rates for such services must be pre-approved prior to work commencing. Mileage expenses will be reimbursed at the current Federal rate. Additional work will be performed as needed on a Task Order basis.

The proposed budget was based on Mr. Stevens past experience with the South Bay Energy Efficiency Program, where emphasis in services was placed on calculation and application assistance, energy audits, identify projects, project management followed by general engineering services. Portions of the budget are also set by SCE.

The proposed budget and tasks may be modified based on the actual needs of the SBCCOG, the SBCCOG members, and special districts.

Suzanne Charles 12/2/14 10:17 AM

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