

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is made as of January 1, 2018 by and between the South Bay Cities Council of Governments, a California joint powers authority ("SBCCOG") and Greg Stevens of GSE Solutions, LLC.

RECITALS

A. SBCCOG desires to utilize the services of Greg Stevens, of GSE Solutions, LLC 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 provide Energy Engineering Technical and Professional Services.

B. The goal of this work is to achieve kilowatt hour (kWh), kilowatt (kW) and therm savings through local government and community efficiency measures.

C. GSE Solutions, LLC 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 here to and incorporated herein by reference.

1.2 SBCCOG agrees to conduct its best effort to assist with the success of tasks outlined in Exhibit A and understands that the Consultant assumes full responsibility to manage and produce deliverables therein to meet agreed upon goals.

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, 2018 and shall continue until December 31, 2018 unless earlier terminated pursuant to the provisions of paragraph 14 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 based on the not to exceed budget of \$165,000 as itemized in Exhibit A.

4. **Terms of Payment.** Consultant shall submit monthly invoices for services rendered and for reimbursable expenses incurred. 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 within sixty (60) days of receipt.

5. **Parties' Representatives.** Jacki Bacharach 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., Suite 100
Torrance, CA 90501
Attention: Jacki Bacharach, Executive Director

GSE Solutions, LLC:
800 Grand Avenue, 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 – gstevens@gse-solutions.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"
South Bay Cities Council of Governments

By: _____
Kurt Weideman

Title: SBCCOG Chairman

Date: _____

Attest: _____
SBCCOG Secretary

"Consultant"
GSE Solutions, LLC

By: _____
(Signature)
Greg Stevens

Title: _____

Date: _____

EXHIBIT A – Scope of work

Task 1. Identify Energy Efficiency Projects

The consultant will work with the SBCCOG Project Manager, city staff, and key personnel on the following tasks:

- a) Collect and assess existing energy audit reports, energy evaluation studies, list of identified projects, and other related documentation and determine validity and applicability to current conditions at each facility. This documentation shall be made accessible to SBCCOG staff.
- 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 and review with member agency helping to establish steps to implementation.
- c) Provide a written report for projects that are most likely to be completed within the next year to be presented to the city.
- d) When needed, identify and collect necessary additional data to finalize energy analysis.

Task 2. Comprehensive and Targeted Audit Services

Upon direction of the SBCCOG, the consultant will investigate other energy opportunities outside of what has been identified in Task 1 and provide the following energy audit services for other facilities as-needed:

- a) Working in conjunction with the SBCCOG Project Manager, the consultant will establish audit objectives, scope, deliverables, and budget as directed by the SBCCOG. Conduct comprehensive and targeted audits for public agencies. Prepare technical audit services for facilities and processes to meet rigorous utility incentive application review process. Assist in expediting the utility review and approval process. Any document provided to the public agencies must have notation that the work is being completed on behalf of the SBCCOG.
- b) Identify energy efficiency and demand response opportunities.
- c) Provide a detailed inventory of facilities' equipment and energy savings and recommendations, incentives, life cycle costs, and other evaluation analysis based on the level of audit conducted. Also, include projected energy savings, project costs, measure life, and available incentives in the evaluation.
- d) Provide a final written report for each audit completed with all findings and recommendations in a format mutually agreed upon. Work with the SBCCOG Project Manager to develop a template and add any information as needed.

Task 3. Calculation and Incentive Application Assistance

Conduct calculations and provide incentive application assistance.

- a) Upon direction of the SBCCOG, provide detailed calculations (using SCE's software) and information needed for incentive applications. For energy efficiency projects identified in Tasks 1 and 2, the consultant will work closely with SBCCOG and participating public agencies to produce calculations and supporting assumption documentation.
- b) Submit to the SBCCOG Project Manager the completed invoice reconciliation (IR) form(s) with supporting documentation upon submission to SCE.
- c) Submit to the SBCCOG Project Manager the complete incentive application including supporting documentation upon completion of project for recordkeeping.
- d) Provide training in completing Express incentive applications to SBCCOG staff as directed by the SBCCOG.

Task 4. Building Commissioning for Existing Buildings

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

- a) Provide a written report of all findings once completed for each facility.

Task 5. Technical Support Activities

Work with the SBCCOG Project Manager and key personnel to establish coordination of technical support activities related to the following tasks:

- a) Participate in kickoff meeting in January 2018 with SBCCOG.
- b) Work with the member agencies and Project Manager to discuss project implementation and strategies to meet established goals – financing, scheduling, staffing – and assist with making them happen.
- c) SBCCOG Staff Meetings:
 - 1) Meet at least quarterly with SBCCOG Project Manager and Executive Director to discuss overall project implementation and strategies to meet established goals – financing, scheduling, and staffing.

2) 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.

3) Participate in monthly Program Managers meeting in person.

d) Conduct routine job walks or site visits as needed and follow-up with participating government agencies (cities, schools, districts, county, state) and utilities to ensure that project activities are progressing towards completion. Consultant is to notify SBCCOG Project Manager of scheduled job walks or site visits prior to occurrence and provide a report after the visit (email is sufficient).

e) Provide quarterly "At A Glance" reports of each city's energy efficiency activities and potential projects to SBCCOG as well as a report of the SBCCOG cumulative EE activities for distribution to the cities and be available to answer questions.

f) Make quarterly presentation in conjunction with SBCCOG Project Manager 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 Southern California Gas Company.

g) Participate in face-to-face meetings with SBCCOG member agencies and special districts (i.e. schools) to ascertain what current projects are underway and what they have planned for the rest of the year. Consultant is to notify SBCCOG Project Manager prior to scheduled meetings and provide a report after the visit (e-mail is sufficient).

h) Work with SBCCOG and member cities, to determine what additional information or types of reports members need to move projects forward.

i) Be available to the SBCCOG staff and the SBCCOG member cities as-needed.

j) Be available to present project findings to member cities and their governing boards at the direction of the SBCCOG.

k) Complete reports or provide information for reports to SBCCOG and Southern California Edison and Southern California Gas Company on activities and goals as-needed.

l) Provide SBCCOG with calculations of potentially lost savings for current projects that are not moving forward to be used to encourage cities to complete projects.

m) Provide SBCCOG with any other calculations that can be used to encourage cities to move forward with projects.

n) Participate in regional collaborative programs as directed.

o) If additional services are identified, work may be authorized by the SBCCOG on a task order basis.

Task 6. General Energy Engineering Consulting Services

Upon direction of the SBCCOG, the consultant will provide general technical support services as needed including, but not limited to, the following activities:

- a) Answer energy efficiency related technical questions beyond the SBCCOG in-house expertise similar to a “help desk” process for member public 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.
- H) Provide a full written report on the above using a template developed with the SBCCOG Project Manager.