

Agenda Date: March 15, 2018
Agenda Placement: Admin.
Estimated Time: N/A
Continued Item: No

Board Agenda Item

TO: Air Pollution Control District Board

FROM: Aeron Arlin Genet, Air Pollution Control Officer

CONTACT: Kristina Aguilar, Administrative Manager (961-8813)

SUBJECT: Contract with Bob Van Beveren for Information Technology Services

RECOMMENDATION:

- A) Approve and authorize the Chair to execute an agreement for Information Technology (IT) Services for up to \$200,000 for 16 months, through June 30, 2019, with Robert Van Beveren; and
- B) Delegate authority to the Air Pollution Control Officer to extend the contract up to two times for one-year for each term, on same terms and conditions for an amount not to exceed \$150,000 for each year.

DISCUSSION:

The District maintains a network of servers and workstations to ensure that district staff, contractors and SBCAG staff have full access to systems and services to perform their jobs. The District's systems include a computing network providing engineering and office automation, an integrated database system, and a data acquisition system to manage real-time air monitoring data.

Last fiscal year, two full-time employees from the IT section left the District. As a stopgap measure, the District executed a contract with Robert Van Beveren, a contractor, to provide IT services. At the start of this fiscal year, that contract was renewed with a contract price not-to-exceed \$100,000 to provide IT services until which time the District could fill the vacant positions. The contract was funded with salary savings. The FY 2017–18 budget your Board approved at the June 15, 2017 board meeting, included an additional \$60,000 for IT Network support, which was typically used for support from another vendor. The District desires to continue to use this contractor (Robert Van Beveren) to provide the additional IT Network support and needs to increase the contract to be able to cover the last four months in FY17-18 to maintain support for the rest of this fiscal year. However, the \$100,000 purchase threshold for contracts precludes the continued use of this consultant's services without Board approval.

The execution of this contract will authorize payment of an additional \$50,000 over the purchase threshold up to \$150,000 for FY 2017–18 and an additional \$150,000 for FY18-19. It will also authorize the Control Officer to extend the term of this Agreement by two, one-year terms, with payment for services not to exceed \$150,000 per year. This extension would be for FY 2019–20 and FY 2020-21 pending your Board approval of those year’s annual budgets. Payments will only occur if services are provided.

As the District may wish to continue future IT support agreements with Robert Van Beveren, rather than bringing an annual contract back to your Board for signature, we are asking that the authority to extend the term of this agreement be delegated to the Control Officer for two, one-year terms. This will help streamline the signature process and ensure no gap in IT maintenance support due to the length of time between District Board meetings. Your Board will have overall authority to continue the program, as the cost of IT support will be included in future budget cycles to be considered by your Board.

FISCAL IMPACT:

The fiscal impact to enter into this agreement is based on the time and material contract not to exceed \$150,000 for FY 2017-18 and was included in the FY 2017-18 budget that your Board approved at the June 15, 2017 board meeting. The time and material costs are not to exceed \$150,000 for FY 2018-19 will be included in the future budget cycle.

ATTACHMENT:

- Robert Van Beveren contract for services.

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT (hereafter "DISTRICT") and ROBERT VAN BEVEREN having its principal place of business at 1190 Cuesta St, Santa Ynez, California 93460 (hereafter CONTRACTOR), wherein CONTRACTOR agrees to provide and DISTRICT agrees to accept the services specified herein.

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by DISTRICT and DISTRICT desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

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

1. **DESIGNATED REPRESENTATIVES.** Kristina Aguilar, Administrative Division Manager; at phone number 805-961-8813 is the representative of DISTRICT and will administer this Agreement for and on behalf of DISTRICT. Robert Van Beveren at phone number (805) 618-2346 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To DISTRICT: Santa Barbara County Air Pollution Control District
Attention: Kristina Aguilar, Administrative Division Manager
260 N. San Antonio Rd. Ste A
Santa Barbara, CA 93110

To CONTRACTOR: Attn: Robert Van Beveren
SBCTek
1190 Cuesta St
Santa Ynez, CA 93460

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notice section. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to DISTRICT in accordance with Exhibit A, attached hereto and incorporated herein by reference.

4. **TERM.**

A. CONTRACTOR shall commence performance after this Agreement has been executed and notice to proceed has been issued to CONTRACTOR by DISTRICT. All work described herein shall be completed as directed by DISTRICT. The term of this Agreement shall be from March 15, 2018 through to and including June 30, 2019 for an amount not to exceed \$200,000.

B. The Control Officer may extend the term of this Agreement up to two times for a period of one-year for each term, by giving written notice of extension to CONTRACTOR at least 30 days prior to expiration of the Agreement. Such extension shall be on the same terms and conditions for an amount not to exceed \$150,000 per each year.

5. **COMPENSATION OF CONTRACTOR.** In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of Exhibit B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by DISTRICT and which is delivered to the address given in Section 2, **NOTICES**, above, following completion of the increments identified in Exhibit B. Unless otherwise specified in Exhibit B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that CONTRACTOR, (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to DISTRICT and not as an officer, agent, servant, employee, joint venturer, partner, or associate of DISTRICT. Furthermore, DISTRICT shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, DISTRICT shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a DISTRICT employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save DISTRICT harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the DISTRICT or to this Agreement.

7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to DISTRICT pursuant to this Agreement shall be prepared in a professional and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions at DISTRICT's request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. **DEBARMENT AND SUSPENSION.** CONTRACTOR certifies to DISTRICT that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state or local government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. **TAXES.** CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. DISTRICT shall not be responsible for paying any taxes on CONTRACTOR's behalf and, should DISTRICT be required to do so by State, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse DISTRICT for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance. CONTRACTOR shall provide its social security number or tax identification number to DISTRICT, which DISTRICT shall keep on file at its offices.

10. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. DISTRICT retains the right to waive a conflict of interest disclosed by CONTRACTOR if DISTRICT determines it to be immaterial, and such waiver is only effective if provided by DISTRICT to CONTRACTOR in writing.

10. **RESPONSIBILITIES OF DISTRICT.** DISTRICT shall provide all information reasonably necessary for CONTRACTOR to perform the services provided herein.

11. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** DISTRICT shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties, except after prior written approval of DISTRICT.

Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to the District all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to herein as "Copyrightable Works and Inventions").

DISTRICT shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions reports, data, documents or other materials prepared under this Agreement. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless DISTRICT against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon any intellectual property or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by DISTRICT in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of the Agreement.

12. **NO PUBLICITY OR ENDORSEMENT.** CONTRACTOR shall not use DISTRICT's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use DISTRICT's name or logo in any manner that would give the appearance that the DISTRICT is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of DISTRICT. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the DISTRICT or its projects without obtaining the prior written approval of DISTRICT.

13. **DISTRICT PROPERTY AND INFORMATION.** All of DISTRICT property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain DISTRICT's property, and CONTRACTOR shall return any such items whenever requested by DISTRICT and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any DISTRICT property, documents, or information without DISTRICT prior written consent.

14. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. DISTRICT shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00) CONTRACTOR shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and review, whether by DISTRICT or the State, at no charge to DISTRICT.

15. **INDEMNIFICATION AND INSURANCE.** CONTRACTOR agrees to defend, indemnify and hold harmless the DISTRICT and to procure and maintain insurance in accordance with the provisions of Exhibit C, attached hereto and incorporated herein by reference.

16. **NONDISCRIMINATION.** CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in 49 CFR 21 through Appendix C and 23 CFR 710.405(b). During the performance of this Agreement, the CONTRACTOR, for itself, its assignees and successors in interest agrees as follows:

A. Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

B. Nondiscrimination: The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate. CONTRACTOR, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection or retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the regulations.

C. Solicitations for Subcontractors, including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under the subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligations under this agreement, and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.

D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by DISTRICT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to DISTRICT, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this Agreement, DISTRICT shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies, and/or
2. Cancellation, termination or suspension of the Agreement in whole or in part.

17. **NON-EXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive agreement and that DISTRICT shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the DISTRICT desires.

18. **NON-ASSIGNMENT.** CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of DISTRICT and any attempt to so assign or so subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. **TERMINATION.**

A. **By DISTRICT.** DISTRICT may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part, whether for DISTRICT's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.

1. **For Convenience.** DISTRICT may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by DISTRICT, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on DISTRICT from such winding down and cessation of services.

2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or local governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then DISTRICT will notify CONTRACTOR of such occurrence and DISTRICT may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, DISTRICT shall have no obligation to make payments with regard to the remainder of the term.

3. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, DISTRICT may, at DISTRICT's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify DISTRICT as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.

B. **By CONTRACTOR.** Except where DISTRICT withholds payment pursuant to other terms of this Agreement, should DISTRICT fail to pay CONTRACTOR all or any part of the payment set forth in Exhibit B, CONTRACTOR may, at CONTRACTOR's option, terminate this agreement, if such failure is not remedied by DISTRICT within thirty (30) days of written notice to DISTRICT of such late payment.

C. **Upon termination,** CONTRACTOR shall deliver to DISTRICT all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as DISTRICT may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, DISTRICT shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to DISTRICT such financial information as in the judgment of DISTRICT is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of DISTRICT shall be final. The foregoing is cumulative and shall not affect any right or remedy which DISTRICT may have in law or equity.

20. **SECTION HEADINGS.** The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

21. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to DISTRICT is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted

by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. **NO WAIVER OF DEFAULT.** No delay or omission of DISTRICT to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to DISTRICT shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of DISTRICT.

25. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

26. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at its sole cost and expense, comply with all DISTRICT, State and federal ordinances and statutes, including regulations now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether DISTRICT is a party thereto or not, that CONTRACTOR has violated any such ordinance statute, or regulation, shall be conclusive of that fact as between CONTRACTOR and DISTRICT.

28. **CALIFORNIA LAW AND JURISDICTION.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in State court, or in the federal district court nearest to Santa Barbara County, if in federal court.

29. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. **AUTHORITY.** All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any State and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

31. **SURVIVAL.** All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the numbered sections shall prevail over those in the Exhibits.

30. **HANDLING OF CONFIDENTIAL INFORMATION.** CONTRACTOR understands and agrees that certain information which CONTRACTOR may have access to while performing services under this Agreement will be confidential information. This information is to be subject to the following special provisions:

A. CONTRACTOR shall not disclose confidential information to any other persons or entities, except with the express written consent of DISTRICT. DISTRICT will identify information as confidential by any of the following means:

1. marking the information as confidential when it is disclosed to CONTRACTOR;
2. identifying the information as confidential, if the information is resident on equipment being serviced or used by CONTRACTOR and is needed to perform the services contracted for; or
3. if orally disclosed, reduced to a written summary similarly marked and delivered to CONTRACTOR within thirty (30) days after disclosure by DISTRICT.

B. CONTRACTOR will take all steps necessary to prevent disclosure of the information to any person except those personnel of CONTRACTOR working on the project who have a need to have access to the information. No reproduction or duplication of the information shall be made without the express written consent of DISTRICT. CONTRACTOR shall notify DISTRICT promptly by telephone, confirmed in writing, if to CONTRACTOR's knowledge the confidentiality of any information is compromised. CONTRACTOR's obligation under this paragraph shall survive termination of the Agreement.

C. CONTRACTOR will not have any obligation with respect to information that:

1. is already rightfully known to CONTRACTOR;
 2. is or becomes publicly known through no wrongful act of CONTRACTOR; or
 3. is rightfully obtained by CONTRACTOR from a third party without similar restrictions
- and without breach of this Agreement.

D. CONTRACTOR shall return all confidential information to DISTRICT or certify to DISTRICT its destruction upon conclusion of CONTRACTOR's work.

As to this Article, CONTRACTOR understands and agrees that any party who has provided confidential information which is disclosed to CONTRACTOR by DISTRICT and identified by DISTRICT as proprietary information as required by Subsection (a) above, shall be a third party beneficiary to this Agreement and, as such, shall have the benefit of all legal rights to protect any such confidential information it has provided DISTRICT and which DISTRICT has disclosed to CONTRACTOR.

These obligations shall bind CONTRACTOR both during and after the term of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on March 15, 2018.

SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT

ATTEST:

AERON ARLIN GENET
Clerk of the Board

By _____
Deputy

Date: _____

By _____
Chair

Date _____

CONTRACTOR:

ROBERT VAN BEVEREN
Contractor

By _____

Date: _____

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
Santa Barbara County Counsel

By William M. Dillon
Deputy

APPROVED AS TO FORM:

RAY AROMATORIO
Risk Manager

By Ray Aromatorio
Risk Manager

APPROVED AS TO FORM:

THEODORE A. FALLATI, CPA, CPFO
Auditor-Controller

By Biton M. Schall
Deputy

EXHIBIT A
Scope of Services

Robert Van Beveren, contractor

Robert Van Beveren is being retained on an hourly basis to provide IT services to the Santa Barbara Air Pollution Control District.

As directed by the District, Contractor shall perform the following Primary tasks :

1. Evaluate Network structure for integrity and security and provide recommendations for ongoing improvements into the future.
2. Provide backup user support. Resolve issues with software and hardware.
3. After Microsoft Patch Tuesday, apply patches to servers and help maintain Windows update server (WUS). Apply patches to pool laptops.
4. Help maintain backup management: Monitor backup tasks and change tapes when SBCAPCD staff are unavailable.
5. Help build and deploy and maintain servers.
6. Assist with software updates and workstation deployment as needed.
7. Provide assistance as needed to monitor and maintain: Internet service, network switches, router/firewalls, Wi-Fi, Servers, Exchange server(s), Skype, and remote access.
8. Provide emergency service upon equipment failure or breakdown

Work will be performed both from the vendor's home office and on-site at the APCD offices.

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation (with attached Schedule of Fees)

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid for IT services performed on an hourly basis, including cost reimbursements, not to exceed \$200,000. If the Control Officer extends the term of this Agreement for one year, CONTRACTOR shall be paid on the same terms and conditions for an amount not to exceed \$ 150,000.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **Exhibit A** as determined by DISTRICT. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined below in **Attachment B1** (Cost Proposal). Invoices submitted for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **Exhibit A**.
- C. CONTRACTOR, shall monthly submit to the DISTRICT Designated Representative an invoice or certified claim for the service performed over the period specified. DISTRICT's Designated Representative shall evaluate the quality of the service performed and, if found to be satisfactory and within the cost basis of **Attachment B1**, shall initiate payment processing. DISTRICT shall pay invoices or claims for satisfactory work within 30 days of presentation.
- D. DISTRICT's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of DISTRICT's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

COST PROPOSAL

Rate(s) :

Remote	\$85 / hour	Work performed from SBCTEK office
Onsite	\$105 / hour	Work performed at SBCAPCD/SBCAG locations
Network	\$125 / hour	Work performed at SBCAPCD/SBCAG locations - Database, Firewall/Router, switch/router (I.E. critical network infrastructure)

EXHIBIT C

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts NOT requiring professional liability insurance and NOT involving construction projects or property rental

INDEMNIFICATION

Indemnification pertaining to other than Professional Services:

CONTRACTOR shall defend, indemnify and save harmless the DISTRICT, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the DISTRICT.

CONTRACTOR shall notify the DISTRICT immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Indemnification pertaining to Professional Services:

CONTRACTOR shall indemnify and save harmless the DISTRICT, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the negligent performance or attempted performance of the provisions hereof; including any willful or negligent act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him to the fullest extent allowable by law.

CONTRACTOR shall notify the DISTRICT immediately in the event of any accident or injury arising out of or in connection with this Agreement.

INSURANCE

Without limiting the CONTRACTOR's indemnification of DISTRICT, the CONTRACTOR shall procure the following required insurance coverage at its sole cost and expense. All insurance coverage is to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the DISTRICT. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the DISTRICT, CONTRACTOR shall provide a certified copy of any insurance policy to the DISTRICT within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the DISTRICT. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the DISTRICT stating that fact. The Workers' Compensation insurance shall include a waiver by the insurer of any rights of subrogation against DISTRICT.

2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between DISTRICT and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTOR shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. DISTRICT, its officers, agents, and employees shall be Additional Insured status on any policy. A cross-liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the DISTRICT.

Said policy or policies shall include a severability of interest, or cross liability clause, or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and if the DISTRICT has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the DISTRICT shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Professional Liability Insurance. Professional liability insurance shall include coverage for the activities of CONTRACTOR's professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Said policy or policies shall provide that DISTRICT shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is a on 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this agreement.

CONTRACTOR shall submit to the office of the designated DISTRICT representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. DISTRICT shall maintain current certificate(s) of insurance at all times in the office of the designated DISTRICT representative as a condition precedent to any payment under this Agreement. Approval of insurance by DISTRICT or acceptance of the certificate of insurance by DISTRICT shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR's services of operation pursuant to the contract, nor shall it be deemed a waiver of DISTRICT's rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the DISTRICT's insurance requirements, DISTRICT may, at its sole discretion and at the CONTRACTOR's expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the DISTRICT. The DISTRICT's Executive Officer is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the DISTRICT or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of DISTRICT's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance

coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.