

Agenda Date: August 17, 2017
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: Software License Agreement with Ventura County APCD

RECOMMENDATION:

Approve and authorize the Chair to execute the attached “*License Agreement for Database System Software*”.

DISCUSSION:

Pursuant to a request from the Ventura County Air Pollution Control District (Ventura County APCD), the District proposes to provide a license to use of our permitting, compliance and inventory program database software (“Permit Compliance program”) to them at no charge. Providing the Permit Compliance program to our sister agency will allow them to replace their outdated database systems. Additionally, both air districts will be able to share ideas and further develop the program. Collaboration in developing system enhancements and new modules will improve the performance and operating efficiencies of the Permit Compliance program for both agencies.

The District expects to assist Ventura County APCD staff in the initial setup of the software on their network system. We will be reimbursed for any time spent on this initial setup effort. Beyond this initial period, the District will not provide any direct services to the Ventura County APCD for the maintenance, support or updates to this software. Ventura County APCD will have the ability to use the software for the purpose it was designed and may enhance, alter or modify the code for their internal needs. Although not required by the License Agreement, both agencies expect to mutually collaborate on enhancements and updates to the software. Per the Agreement, Ventura County APCD may not share this software with other parties without first obtaining your Board’s formal approval.

BACKGROUND:

The Permit Compliance program is the District's computer software used for our permitting, compliance and inventory programs. The system was developed internally by our programmers and services of a private contractor. This software plays a key role in the District's ability to provide quality, cost effective services for our regulatory programs. Our software is custom-built and meets the specific needs for implementing and enforcing air quality programs. Our agency's original efforts began around 1995. Since then, with experience and technical advancements to the underlying development tools, we have made significant upgrades to our Permit Compliance program.

The permitting part of the program handles numerous functions. This includes tracking facility level information (e.g., company name, contact information, physical address, permitted emissions) and permit level information (e.g., permit number, type, device details, fees). We also automated the permit generation process for gasoline stations, dry cleaners, auto body shops, small, diesel emergency standby engines and agricultural engines. The program has management tools that track the progress of a permit application as it is processed.

Our compliance part of the program allows all inspection reports to be created and saved directly in the database. Information related to breakdowns, nuisance complaints, enforcements, mutual settlement, source testing and annual reports are tracked. The program has a robust inspection caseload assignment and tracking function that allows for effective program management.

The inventory part of the program is used by our Planning Section to track actual reported emissions from our permitted sources. This information is tracked at the device and facility level and is integrated with both our permitting and compliance databases. Actual emissions are reported to the California Air Resources Board through this program. The data is also an important part of our Ozone Plan process.

Unfortunately, there are no off-the-shelf database program packages available to air agencies to perform these important tasks. Every air agency takes a different approach, each with differing levels of successes (and failures). Ventura County APCD's current system is decades old and is in need of replacement. Staff from Ventura County APCD met with the District to review our database's capabilities. Their evaluation concluded that our database program met many of the criteria they were seeking in a replacement. This includes items such as core design philosophy, similar industries regulated, similar ways that both agencies operate (i.e., business rules) and the history of both agencies working together.

The proposed approach is to provide Ventura County APCD a license to use the Permit Compliance program code. All Santa Barbara County facility data will be removed before a copy of it is made. We will provide Ventura County APCD's programming staff assistance during the initial setup period. Our costs for staff time and any contractor expenses will be reimbursed. Their staff may then customize the software for their particular needs.

Future forward, both agencies will maintain their own systems. No user data will ever be shared. Technical staff from both agencies may meet regularly and work collaboratively on sharing ideas and programming code for enhancements and/or new modules. This is a positive and cost effective approach for both agencies to keep the software up to date and useful for the users.

FISCAL IMPACT:

Expected future cost savings due to collaborative efforts in enhancements and updates to the software.

ATTACHMENT:

License Agreement for Database System Software

LICENSE AGREEMENT FOR DATABASE SYSTEM SOFTWARE

THIS LICENSE AGREEMENT (hereafter Agreement) is made by and between the Santa Barbara County Air Pollution Control District, a political subdivision of the State of California, (hereafter SBCAPCD) and the Ventura County Air Pollution Control District, a political subdivision of the State of California (hereafter VCAPCD).

WHEREAS, the SBCAPCD would like to provide the VCAPCD with a copy of SBCAPCD's permit, compliance and inventory database software, (hereafter the "Permit Compliance program"), at no charge. Providing the Permit Compliance program software to the VCAPCD is of public benefit to SBCAPCD because of efficiencies and cost savings that both agencies may obtain from our future collaborative efforts in furthering the software's capabilities.

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

1. Product

The Permit Compliance program is SBCAPCD computer software used for air quality regulatory permitting, compliance and inventory programs.

2. License

Subject to the terms of this Agreement, SBCAPCD grants to VCAPCD a non-exclusive, non-transferable, revocable license to use the Permit Compliance program for implementing the air quality regulatory programs by the VCAPCD within Ventura County. VCAPCD may use the Permit Compliance program for its own purposes, and may modify the application to meet its internal business requirements. VCAPCD may not however, transfer or sublicense the Permit Compliance program to any third party, in whole or in part, in any form, whether modified or unmodified.

The Permit Compliance program was created by the SBCAPCD. SBCAPCD owns all rights to the Permit Compliance program.

Ventura County APCD may:

- a. install the Permit Compliance program on one or more computers;
- b. allow employees of the VCAPCD to use the Permit Compliance program, solely for the purpose it was designed;
- c. make a reasonable number of copies of the Permit Compliance program, solely for backup or archival purposes; and
- d. enhance, alter or modify the code to best augment the internal business needs of the VCAPCD.

Restrictions: VCAPCD may not (and may not allow anyone else to):

- a. copy or use any piece of the Permit Compliance program in any manner that is not expressly allowed by the license rights stated above;
- b. distribute any copy of the Permit Compliance program (or documentation) except as expressly allowed by the license rights stated above, or allow anyone other than VCAPCD's employees or hired contractors to have access to or use the Permit Compliance program;
- c. use the Permit Compliance program in the development of any third party product or software;
- d. claim title to or ownership of the intellectual property and core logic used in the creation of the Permit Compliance program. Title and ownership shall remain with SBCAPCD and VCAPCD agrees to preserve the same. It is understood that nothing in this Agreement shall constitute, by implication or otherwise, an assignment of any intellectual property right or interest; or
- e. sell, license or use the Permit Compliance program for commercial purposes or applications.

3. Services

Support Services for Initial Setup: If requested, SBCAPCD will assist Ventura County APCD staff in the initial setup of the Permit Compliance program on their network servers. VCAPCD will reimburse SBCAPCD for any time spent on this initial setup effort, including costs for District staff and outside consultants/contractors. Beyond this initial setup period, SBCAPCD is not obligated to provide any direct services to the Ventura County APCD for the maintenance, support or updates to this software.

No Implementation Services: Beyond the initial setup services described above, SBCAPCD is not obligated to provide VCAPCD with any implementation, planning, development, design, data modification, or testing related to the Permit Compliance program.

No Maintenance Services: SBCAPCD is not obligated to provide VCAPCD with any maintenance services for the Permit Compliance program. SBCAPCD will have no obligation to provide maintenance services for any third party products that are damaged, modified or incorporated into the Permit Compliance program; or for any version of the Permit Compliance program; or for any problems caused by negligence, abuse, misuse, or by any other causes.

No Support: SBCAPCD is not obligated to provide support services for the Permit Compliance program and its associated code to VCAPCD.

No Software Updates: SBCAPCD is not obligated to make available any updates, enhancements or improvements to the Permit Compliance program.

4. No Warranty

VCAPCD acknowledges that the Permit Compliance program is being supplied as is without any accompanying services (except for support services for initial setup), warranties or improvements from SBCAPCD. All risk as to quality and performance of the Permit Compliance program is with VCAPCD. In no event will SBCAPCD be liable for damages arising out of the use or inability to use the Permit Compliance program, including but not limited to loss of data or data being rendered inaccurate or financial losses sustained by VCAPCD. SBCAPCD makes no warranties of any kind either expressed or

implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. SBCAPCD makes no warranty as to title or to the accuracy, completeness, or reliability of the Permit Compliance program. SBCAPCD makes no representations that use of the Permit Compliance program will be uninterrupted or error-free.

5. Limitation of Liability

The cumulative liability of SBCAPCD and its employees and officials related to this agreement shall not exceed the amount paid by VCAPCD to SBCAPCD under this agreement, which amount is \$0.00. In no event shall SBCAPCD or its employees or officials be liable for any direct, indirect, special, incidental, consequential or exemplary damages (including lost profits, revenue, date or use), whether in contract, tort, or otherwise, even if SBCAPCD has been advised of the possibility of such damages. The parties acknowledge and agree that this limitation of liability is an essential element of the agreement and that without it, the economic terms of this agreement would be substantially different.

6. Indemnification

Since SBCAPCD is agreeing to license the Permit Compliance program to VCAPCD at no cost, pursuant to Govt. Code Section 895.4, and in lieu of the provisions of Govt. Code section 895.6, VCAPCD agrees to indemnify, defend (with counsel reasonably approved by SBCAPCD) and hold harmless SBCAPCD and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by SBCAPCD on account of any claim except where such indemnification is prohibited by law. VCAPCD's indemnification obligation applies to SBCAPCD's active as well as passive negligence but does not apply to SBCAPCD's sole negligence or willful misconduct. VCAPCD shall notify SBCAPCD immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

7. Designated Representatives

Kristina Aguilar at phone number 805-961-8813 is the designated representative of SBCAPCD and will administer this Agreement for and on behalf of SBCAPCD. Juli Cromer at phone number 805-645-1484 is the representative of VCAPCD. Changes in designated representatives shall be made only after advance written notice to the other party.

8. Notices

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To Santa Barbara County APCD: Aeron Arlin Genet, Air Pollution Control Officer, 260 N. San Antonio Road, Suite A, Santa Barbara, CA, 93110,

To Ventura County APD: Michael Villegas, Air Pollution Control Officer, 669 County Square Drive, Ventura, CA, 93003,

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section 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.

9. Nonexclusive Agreement

VCAPCD's understands that this is not an exclusive Agreement and that SBCAPCD shall have the right to negotiate with and enter into contracts with others regarding the Permit Compliance program.

10. Non-Assignment

VCAPCD shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of SBCAPCD and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

11. Termination

a. For Cause. Should VCAPCD default in the performance of this Agreement or materially breach any of its provisions, SBCAPCD may, at SBCAPCD's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, VCAPCD shall have 60 days to discontinue use of the Permit Compliance program (unless the notice directs otherwise) and notify SBCAPCD that it has done so. The date of termination shall be 60 days after the date the notice is received by VCAPCD, unless the notice directs otherwise. In addition, in the event that SBCAPCD receives any claim or notice that the Permit Compliance program infringes upon any intellectual property or legal rights of any third party, SBCAPCD may notify VCAPCD of such occurrence and VCAPCD shall suspend or terminate its use of the Permit Compliance program, as directed by SBCAPCD.

b. Upon termination, VCAPCD shall deliver to SBCAPCD all copies of the Permit Compliance program, documentation, and other SBCAPCD property, records, documents and papers, except such items as SBCAPCD may, by written permission, permit VCAPCD to retain.

12. Section Headings

The headings of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

13. 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.

14. Remedies Not Exclusive

No remedy herein conferred upon or reserved to SBCAPCD 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.

15. No Waiver of Default

No delay or omission of SBCAPCD 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 SBCAPCD shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of SBCAPCD.

16. 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.

17. 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.

18. Compliance with Law

VCAPCD shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes 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 VCAPCD in any action or proceeding against VCAPCD, whether SBCAPCD is a party thereto or not, that VCAPCD has violated any such ordinance or statute, shall be conclusive of that fact as between VCAPCD and SBCAPCD.

19. 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.

20. 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.

21. 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.

License Agreement for Database System Software between the Santa Barbara County Air Pollution Control District and the Ventura County Air Pollution Control District.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by both parties.

SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT

By _____
Chair

Date _____

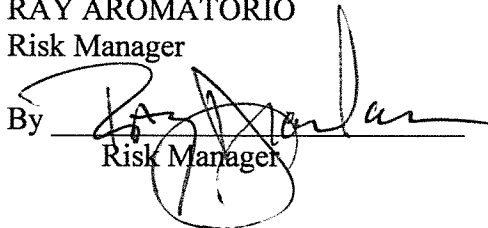
ATTEST:

AERON ARLIN GENET
Santa Barbara County APCD
Clerk of the Board

By _____
Deputy

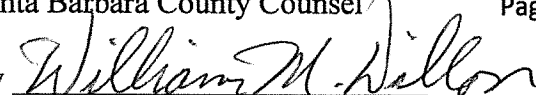
APPROVED AS TO FORM:

RAY AROMATORIO
Risk Manager

By  _____
Risk Manager

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
Santa Barbara County Counsel

By  _____
Deputy

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT

By _____
Chair

Date _____

ATTEST:

Ventura County APCD
Clerk of the Board

By _____
Deputy

APPROVED AS TO FORM:

Ventura County Counsel

By _____
Deputy