

Attachment A
LOAN AGREEMENT

THIS LOAN AGREEMENT (hereinafter the "Agreement") is made by and between:

THE COUNTY OF SANTA BARBARA, hereinafter called "COUNTY",
and
VENTUCOPA WATER COMPANY,
A nonprofit corporation, hereinafter called "VENTUCOPA WATER COMPANY"

WHEREAS, the County and the State Department of Housing and Community Development (herein referred to as "HCD") entered into a Grant Agreement for the distribution and use of Community Development Block Grant (hereinafter referred to as "CDBG") funds awarded to the County, as Grantee under the provisions of Title I of the Federal Housing and Community Development Act of 1974 (hereinafter referred to as the "Act") under Grant Number 04-PTAA-0792; and

WHEREAS, under the terms of the Grant Agreement, \$33,250 of these CDBG funds are to be used to perform a study of the existing water supply and to analyze the feasibility of repairing and upgrading the existing water system for the township of Ventucopa (the "Feasibility Study").

WHEREAS, the Ventucopa Water Company is required to provide a consistent and sanitary supply of water to the township of Ventucopa. The Feasibility Study is necessary to determine the what aspects of the Ventucopa water supply system need to be repaired and what improvements need to be made to to it to bring it up to applicable health and safety standards (the "Project");

WHEREAS, the township has a high percentage of low income households and one of the main objectives of the CDBG program is to serve low income households; and

NOW, THEREFORE, COUNTY AND VENTUCOPA WATER COMPANY HEREBY AGREE AS FOLLOWS:

1. PROVISION AND USE OF FUNDS

1.1 Loan Agreement. Subject to the terms and conditions contained in this Agreement, the COUNTY hereby agrees to provide a loan to VENTUCOPA WATER COMPANY to assist VENTUCOPA WATER COMPANY in meeting its costs associated with the Feasibility Study (the "Loan").

1.2 Use of Loan Funds. Funds provided to VENTUCOPA WATER COMPANY pursuant to this Agreement will be used exclusively as described in the Project Budget (Exhibit A) for the Feasibility Study. Any budget reallocation or revision must be requested by VENTUCOPA WATER COMPANY and approved by the COUNTY in writing.

2. TERMS OF LOANS

2.1 Amount. The principal amount of the Loan shall be an amount not to exceed Thirty Three Thousand Two Hundred Fifty Dollars (\$33,250.00) and shall be evidenced by a Note in substantially the form attached hereto as Exhibit B. (the “Note”)

2.2 Interest. Subject to the provisions of Section 2.4, the Loan shall bear three percent (3%) interest.

2.3 Term of Loan. The principal of the Loan shall be due and payable on the earlier of (a) ten (10) years from the date of the Note, (b) the VENTUCOPA WATER COMPANY is sold or an event of Default by VENTUCOPA WATER COMPANY which has not been cured as provided for in this Loan Agreement.

2.4 Forgiveness. This loan shall be forgiven by County if it determines in its sole and absolute discretion that the Feasibility Study has been completed, is acceptable by the County and that VENTUCOPA WATER COMPANY is able to proceed with its water system improvements.

3. METHODS AND CONDITIONS FOR DISBURSEMENT OF LOAN PROCEEDS

Disbursements to VENTUCOPA WATER COMPANY of the loan funds provided for in Section 1, above, shall be made in installments in conformance with the budget in Exhibit A, and upon completion of the milestones set forth in Exhibit A. Disbursements shall be in accordance with the following procedures and subject to the following conditions.

3.1 Claim. For each requested disbursement, VENTUCOPA WATER COMPANY shall file with the COUNTY a written claim for said funds on COUNTY’s standard claim form (AC-FIN-3001).

3.2 Disbursement. Upon COUNTY’s approval of said claim, a warrant for said loan funds payable to VENTUCOPA WATER COMPANY shall be issued by COUNTY to VENTUCOPA WATER COMPANY.

4. PROJECT USE

4.1 Project Use. The Feasibility Study will be owned by VENTUCOPA WATER COMPANY and used exclusively for the improvement of a water supply system serving the township of Ventucopa.

4.2 Remedies Not Exclusive. VENTUCOPA WATER COMPANY agrees that any action at law may be inadequate to achieve the objectives of COUNTY in entering into this Loan Agreement, and that COUNTY shall be entitled to specific enforcement in equity of the provisions of this Loan Agreement.

5. REPORT TO COUNTY

Upon satisfactory completion of all Milestones, VENTUCOPA WATER COMPANY agrees to submit to the COUNTY a final feasibility study report prior to final loan disbursement.

6. EVENTS OF DEFAULT

6.1 Events of Default. During the term of this Agreement VENTUCOPA WATER COMPANY will be in default upon the happening of any of the following events which shall constitute an Event of Default under this Agreement:

A. Default Under Loan Agreement. Noncompliance with the terms of the Loan Agreement including but not limited to schedule set forth in Exhibit A.

B. Transfer. Transfer of VENTUCOPA WATER COMPANY's interest, other than to an affiliated corporation approved by COUNTY, in the water delivery system or any portion thereof.

C. Bankruptcy. The filing by VENTUCOPA WATER COMPANY of BANKRUPTCY or reorganization or receivership or has filed any other petition under the Bankruptcy Act or has taken or committed any act preparatory to the filing of any such petition or has become or is insolvent or has committed any other act of bankruptcy or insolvency.

7. RIGHTS AND OBLIGATIONS UPON DEFAULT

Upon the occurrence of an Event of Default and subject to the cure provisions set forth below, all amounts hereunder shall be due and payable.

7.1 Notice of Default. Upon the occurrence of an Event of Default, COUNTY shall notify VENTUCOPA WATER COMPANY in writing of such occurrence, including a description of the Event of Default.

7.2 Cure VENTUCOPA WATER COMPANY shall be entitled to cure such default at any time within one (1) month from the date on which the notice described in Section 7.1 is delivered to VENTUCOPA WATER COMPANY provided in order to cure a default, VENTUCOPA WATER COMPANY shall be required to reimburse County, within such one-month period, for all reasonable expenses incurred by County in exercising its rights in connection with any such default. If VENTUCOPA WATER COMPANY so cures any default, then the Loan shall be reinstated and shall remain in full force and effect as if such Event of Default had not occurred.

8. MAINTENANCE OF RECORDS

8.1 Maintenance of Project Records. VENTUCOPA WATER COMPANY shall maintain books, accounts, payroll records, accurate minutes of its Board of Directors meetings, correspondence and other records and information relating to performance of its obligations under this Agreement which shall adequately and correctly reflect expenses incurred by VENTUCOPA WATER COMPANY in the performance thereof, on file at VENTUCOPA WATER COMPANY's office. Said books, accounts, records and information shall be available and open to inspection by the COUNTY, and at COUNTY's request, VENTUCOPA WATER

COMPANY shall furnish COUNTY with a copy of any record maintained by VENTUCOPA WATER COMPANY pursuant to the terms of this Agreement. VENTUCOPA WATER COMPANY shall retain said records on file for three (3) years following final completion of the Feasibility Study.

8.2 Audit of Project Records. COUNTY shall have the right to audit and review all records maintained by VENTUCOPA WATER COMPANY pertaining to the Feasibility Study. Any such audit and review may be conducted at any time during regular business hours, upon reasonable advance written notice by COUNTY to VENTUCOPA WATER COMPANY.

9. NO ASSIGNMENT

VENTUCOPA WATER COMPANY or an affiliate thereof shall not sell, convey, or alienate its interest in the water delivery system or any part thereof or whether voluntarily or involuntarily, without the prior written consent of COUNTY. In the event VENTUCOPA WATER COMPANY wishes to assign its interest in the water delivery system to a qualified entity, VENTUCOPA WATER COMPANY shall provide the COUNTY a copy of the organizational documents of the assignee, and written procedures governing the transfer of its interest in the water delivery system. Such assignment and organization documents shall include provisions ensuring that the assignee will assume the obligations of this Agreement.

10. COMPLIANCE WITH LAWS AND REGULATIONS

VENTUCOPA WATER COMPANY agrees that it shall comply with all the provisions of all local, State and Federal laws and regulations applicable to the project to be carried out hereunder. Without limiting the generality of the foregoing, VENTUCOPA WATER COMPANY:

A. Shall obtain and maintain, at VENTUCOPA WATER COMPANY's own expense, any and all licenses necessary to perform the Feasibility Study.

B. Shall not, on the grounds of race, color, national origin, sex, religion, age or handicap, when other qualified:

- (1) Deny any service or other benefits provided under the water delivery system;
- (2) Provide any service or other benefit which is different, or is provided in a different form, from that provided to others under the water delivery system;
- (3) Subject to any person to separate treatment in any manner or process related to receipt of any service or benefit;
- (4) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the water delivery system;
- (5) Treat an individual differently from others in determining whether he/she satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit under the water delivery system;

(6) Deny an opportunity to participate in the water delivery system as an employee.

C. Shall maintain such records and enforce and comply with such procedures as COUNTY may specify or require in order to ensure that only persons eligible for services under applicable State and/or Federal laws are provided with such services.

D. Shall not engage in any religious instructions nor use any part of the funds provided hereunder to purchase any religious books, materials or equipment or other property, or to pay the salary of any person as compensation for participation in any such religious instruction, nor shall the funds provided under this Agreement be used for any other religious or sectarian purpose whatsoever.

E. Shall comply with the provisions of COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) attached hereto as Exhibit C and made a part hereof for all purposes.

F. Shall incorporate and follow any procedures, practice, rules, indexes and guidelines required by any local, State or Federal laws and regulations.

12. MISCELLANEOUS

12.1 Indemnification. VENTUCOPA WATER COMPANY, shall abide and be subject to the indemnification and insurance provisions set forth in Exhibit D attached hereto and incorporated by this reference.

12.2 Termination of Agreement. COUNTY shall have the right to terminate this Agreement immediately if COUNTY determines that VENTUCOPA WATER COMPANY has incurred obligations or made expenditures from the grant for purposes which are not permitted or which are prohibited under the terms of this Agreement. COUNTY shall also have the right to terminate this Agreement immediately if COUNTY determines that VENTUCOPA WATER COMPANY has filed a petition in bankruptcy, or for receivership or reorganization, or has filed any other petition under the Bankruptcy Act or has taken or committed any act preparatory to the filing of any such petition or has become or is insolvent or has committed any other act of bankruptcy or insolvency.

12.3 Governing Law. This Agreement shall be governed by the laws of the State of California.

12.4 Attorney's Fees. If either party hereto brings an action to enforce or construe the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the other party or parties reasonable attorney's fees and costs incurred in connection with such action.

12.5 Notices. All notices, requests, demands or other communications permitted or required pursuant to this Agreement shall be effective only if in writing, and shall be deemed to have been given and received (1) when personally delivered, or (2) on the third (3rd) business day after the date on which deposited with a regulated public carrier, return receipt requested or equivalent thereof administered by such regulated public carrier, in a sealed envelope addressed

to the party for whom intended at the address set forth below, or at such other address, notice of which is given as provided herein:

If to COUNTY Housing Finance and Development Division
County of Santa Barbara
Housing and Community Development
105 East Anapamu Street, Room 105
Santa Barbara, CA 93101

If to VENTUCOPA WATER COMPANY Ventucopa Water Company
Ventucopa Water Supply
4009 Highway 33,
Ventucopa, CA 93252

12.6 Further Assurances. Each of the parties agrees to cooperate with the other and to perform such acts and to execute such documents or instruments as may be necessary, proper or desirable to carry out the purposes and intent of this Agreement.

12.8 Entire Agreement. This Agreement, together with the Exhibits hereto, constitutes the entire understanding of the parties with respect to the subject matter hereof. No modifications of this Agreement shall be valid or binding unless executed in writing by each of the parties on or after the date of representation, warranty, promise, statement or information, unless specifically set forth herein.

IN WITNESS WHEREOF, COUNTY and VENTUCOPA WATER COMPANY have caused this Agreement to be executed by their respective duly authorized officers as of this _____ day of _____, 2005

VENTUCOPA WATER COMPANY

SANTA BARBARA COUNTY

By: _____

Its _____

By: _____

Its _____

Ed Moses, Director
Santa Barbara County

APPROVED AS TO FORM:

SHANE STARK
COUNTY COUNSEL

By: _____
Deputy County Counsel

APPROVED AS TO FORM:

BOB GEIS
AUDITOR-CONTROLLER

By: _____
Senior Financial Analyst

EXHIBIT A

<u>PHASE I</u>	\$22,100.00
<ul style="list-style-type: none">• Selection of Consultant• Completion of Substantial Portion of the Study	
<u>PHASE II</u>	\$11,150.00
<ul style="list-style-type: none">• Submittal and approval of feasibility study	

Exhibit B

PROMISSORY NOTE

\$33,250

Santa Barbara, California

_____, 2005

FOR VALUE RECEIVED, Ventucopa Water Company, (“Borrower”), whose address is _____, hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California, (“Lender”), whose address is 105 East Anapamu Street, Room 105, Santa Barbara, California, 93101, the principal amount equal to Thirty-Three Thousand Two Hundred Fifty Dollars (\$33,250), or so much thereof as may be advanced by Lender to Borrower, together with interest thereon, as set forth below.

1. **PURPOSE.** In order to assist Borrower in performing a creek relocation feasibility study to facilitate development of a low-and very low-income housing project, Lender has agreed to lend the amount of Thirty-Three Thousand Two Hundred Fifty Dollars (\$33,250) to Borrower.

2. **BORROWER’S OBLIGATION.** This promissory note (the “Note”) evidences Borrower’s obligation to pay Lender the principal amount of Thirty-Three Thousand Two Hundred Fifty Dollars (\$33,250).

3. **INTEREST.** This Note shall bear simple interest at the rate of three percent (3%) per annum.

4. **AMOUNT AND TIME OF PAYMENT.** The principal of the Loan shall be due and payable in the event of Default by VENTUCOPA WATER COMPANY which has not been cured as provided for in this Loan Agreement.

5. **FORGIVENESS.** This loan shall be forgiven by County if it determines in its sole and absolute discretion that the Feasibility Study has been completed, is acceptable by the County and that VENTUCOPA WATER COMPANY is able to proceed with its water system improvements.

6. **PLACE AND MANNER OF PAYMENT.** All amounts due and payable under this Note are payable at the office of Lender at the address set forth above, or at such other place as Lender may designate to Borrower in writing from time to time, in any coin or currency of the United States which on the respective dates of payment thereof shall be legal tender for the payment of public and private debts.

7. **DEFAULT AND ACCELERATION.** Borrower agrees that the unpaid balance of the then principal amount of this Note, shall, at the option of Lender, become immediately due and payable upon any Event of Default as defined in the Loan Agreement which has not been

cured pursuant to that Loan Agreement. Upon any Event of Default, Lender may exercise any other right or remedy permitted under the Loan Agreement and this Note.

8. **NO OFFSET.** Borrower hereby waives any rights of offset it now has or may hereafter have against Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

9. **WAIVERS.** Presentment, notice of dishonor, and protest are waived by all makers, sureties, guarantors, and endorsers of this Note, if any.

10. **CONSENTS AND APPROVALS.** Any consent or approval of Lender required under this Note shall not be unreasonably withheld or delayed.

11. **NOTICES.** Except as may be otherwise specifically provided herein, any approval, notice, direction, consent request or other action by Lender shall be in writing and may be communicated to Borrower at the principal office of Borrower set forth above, or at such other place or places as Borrower shall designate in writing, from time to time, for the receipt of communications from Lender.

12. **BINDING UPON SUCCESSORS.** All provisions of this Note shall be binding upon and inure to the benefit of the successors-in interest, transferees, and assigns of Borrower and Lender.

13. **GOVERNING LAW.** This Note shall be interpreted under and governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

14. **SEVERABILITY.** Every provision of this Note is intended to be severable. If any provision of this Note shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. **TIME.** Time is of the essence in this Note.

16. **ATTORNEYS' FEES AND COSTS.** In the event any legal action is commenced to interpret or to enforce the terms of this Note, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

17. **WAIVER.** Any waiver by Lender of any obligation in this Note must be in writing. No waiver shall be implied from any failure of Lender to take, or any delay or failure by Lender to take action on any breach or default by Borrower or to pursue any remedy allowed under this Note or applicable law. Any extension of time granted to Borrower to perform any obligation under this Note shall not operate as a waiver or release from any of its obligations under this Note.

18. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Note must be in writing, and shall be made only if executed by both Borrower and Lender.

19. **LOAN AGREEMENT CONTROLS.** In the event that any provisions of this Note and the Loan Agreement conflict, the terms of the Loan Agreement shall control.

Borrower:
VENTUCOPA WATER COMPANY

By: _____

Its: _____

By: _____

Its: _____