

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 3/25/04
Department Name: General Services
Department No.: 063
Agenda Date: 4/6/04
Placement: Administrative
Estimate Time:
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Ron Cortez
Director of General Services

STAFF CONTACT: Tom Alvarez, Assistant Director of General Services
568-2628

SUBJECT: APCD and SBCAG Promissory Notes for Construction Costs of Casa Nueva

Recommendation(s):

That the Board of Supervisors:

1. Approve the attached Promissory Notes allowing for the loan of \$220,000 from the County of Santa Barbara to APCD (\$154,000) and SBCAG (\$66,000). The notes will be repaid over eight years and require monthly payments of \$2,722.77.
2. Approve the attached budget revisions to transfer funds from General Services to APCD and SBCAG.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal number 1, "An efficient government able to respond effectively to the needs of the community" and goal number 3, "A strong, professionally managed County organization".

Executive Summary and Discussion:

The County recently completed the construction of the Casa Nueva facility for use by SBCAG/APCD and the Social Services Department. This project was primarily funded through Certificates of Participation. When the construction contract was originally awarded, (subsequent to the COP funding) the contingency for the building was under funded by \$473,000; therefore, APCD and SBCAG committed to fund their unfunded portion of the contingency (~\$336,000) through Memorandums of Understanding executed in March 2002. The Department of Social Services agreed to pay for the remaining portion. After the completion of the project, through diligent project management, it is now estimated that the actual/final amount under funded

was lower than expected and will be approximately \$430,000. (APCD/SBCAG is responsible for approximately \$303,000 and Social Services is responsible for approximately \$127,000) APCD/SBCAG will pay the County of Santa Barbara \$83,000 in FY 03/04, and is seeking to pay the remaining \$220,000 balance via the proposed loan.

Staff is recommending the provision of a loan to APCD/SBCAG to be repaid to the County of Santa Barbara over an eight year period at an interest rate of 4.4%. In the first year of occupancy, rents received from APCD and SBCAG will exceed the associated share of COP payments by approximately \$220,000. It is proposed that these “year 1 excess rents” be loaned to APCD and SBCAG to reduce their payment for under funded contingency and provide additional funding to the County in subsequent years when needed for COP repayments.

In subsequent years, the COP payments will exceed rental income received. The repayment of these Promissory Notes will provide additional funding, principal and interest, towards the annual COP payments. COP payments will run for 20 years and the General Fund will subsidize approximately \$37,000 per year in Fiscal Years 2012/2013 through 2020/2021. In FY 2021/2022 the General Fund will be repaid with the release of COP retention funds.

The County Debt Advisory Committee met on December 1, 2003 and approved this proposed loan. In addition, the APCD/SBCAG Board’s approved these Promissory Notes in December 2003.

Mandates and Service Levels:

Fiscal and Facilities Impacts:

The notes will be funded from “year 1 excess rents”; thus, there is no impact to the General Fund due to the approval of the Promissory Note. In addition, General Services/General Fund will receive approximately \$41,000 of interest income to be used towards COP payments. COP payments will run for 20 years and the General Fund will subsidize approximately \$37,000 per year in Fiscal Years 2012/2013 through 2020/2021. In FY 2021/2022 the General Fund will be repaid with the release of COP retention funds.

Special Instructions:

One original APCD and SBCAG Promissory Notes returned to General Services

Concurrence:

PROMISSORY NOTE

Santa Barbara, California

\$66,000.00

January 1, 2004

FOR VALUE RECEIVED, the Santa Barbara County Association of Governments, hereinafter referred to as "SBCAG", (the "Borrower"), whose address is 260 North San Antonio Road, hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California, (the "Lender"), whose address is 105 E. Anapamu Street, Room 105, Santa Barbara, California 93101, the principal amount equal to Sixty Six Thousand Dollars (\$66,000.00), or so much thereof as may be advanced by the Lender to the Borrower, as set forth below.

1. **BORROWER'S OBLIGATION.** This promissory note (the "Note") evidences the Borrower's obligation to pay the Lender the principal amount of Sixty Six Thousand Dollars (\$66,000.00) (the "Loan") for the funds loaned to the Borrower by the Lender to finance Borrowers payment of unfunded contingency costs of the building Borrower leases from Lender located at 260 North San Antonio Road, Santa Barbara, California .

2. **INTEREST.** This Note shall bear interest at the rate of four and four-tenths percent (4.4%) per annum.

3. **PAYMENT.** Monthly payments of principal and interest on this Note shall be payable on the first day of each month, commencing January 1, 2004, in an amount equal to Eight Hundred Sixteen Dollars and 83 cents (\$816.83), based upon a level 8-year amortization of the principal of this Note.

Each installment payment received by the Lender shall be credited as of its due date without regard to its date of receipt by the Lender, first to interest then due and the remainder to principal, and interest shall cease upon the principal so credited as of the date that such credit is made. For the purposes of allocation of any monthly installment payment as between principal and interest, interest shall consist of the product of the outstanding principal balance on this Note immediately prior to allocation of the monthly installment payment times the applicable interest rate of this Note divided by twelve. Borrower will pay Lender at Lender's address shown in the first paragraph above or at such other place as Lender may designate in writing.

4. **NO PREPAYMENT FEE.** Borrower may pre-pay this Loan, in whole or in part, at any time. No prepayment fee shall be charged for whole or partial pre-payments.

5. **LATE CHARGE.** If a payment due under the terms of this Note is 15 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$5.00, whichever is greater.

3. **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.

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

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

6. **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 the Borrower at the principal office of the Borrower set forth above, or at such other place or places as the Borrower shall designate in writing, from time to time, for the receipt of communications from Lender.

7. **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 the Borrower and Lender.

8. **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.

9. **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.

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

11. **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.

12. **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 the Borrower or to pursue any remedy allowed under this Note or applicable law. Any extension of time granted to the Borrower to perform any obligation under this Note shall not operate as a waiver or release from any of its obligations under this Note.

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

14. **NO PERSONAL LIABILITY.** Borrower's directors, officers, employees and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on, this Note.

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement to be effective on the date executed by Lender.

"Lender"
COUNTY OF SANTA BARBARA

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Chair, Board of Supervisors

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: _____

By: _____

APPROVED:

By: _____
John A. Forner, M.B.A., A.R.M.
Supervising Risk Analyst

"Borrower"
SANTA BARBARA COUNTY
ASSOCIATION OF GOVERNMENTS

ATTEST:

JAMES KEMP
SBCAG

By: _____

By: _____
Chair

Date: _____

APPROVED AS TO FORM:
SBCAG COUNSEL

By: _____
Deputy

PROMISSORY NOTE

Santa Barbara, California

\$154,000.00

January 1, 2004

FOR VALUE RECEIVED, the Santa Barbara County Air Pollution Control District, Inc., a special district (the "Borrower"), whose address is 260 North San Antonio Road, hereby promises to pay to the order of the County of Santa Barbara, a political subdivision of the State of California, (the "Lender"), whose address is 105 E. Anapamu Street, Room 105, Santa Barbara, California 93101, the principal amount equal to One Hundred Fifty Four Thousand Dollars (\$154,000.00), or so much thereof as may be advanced by the Lender to the Borrower, as set forth below.

1. **BORROWER'S OBLIGATION.** This promissory note (the "Note") evidences the Borrower's obligation to pay the Lender the principal amount of One Hundred Fifty Four Thousand Dollars (\$154,000.00) (the "Loan") for the funds loaned to the Borrower by the Lender to finance Borrowers payment of unfunded contingency costs of the building Borrower leases from Lender located at 260 North San Antonio Road, Santa Barbara, California .

2. **INTEREST.** This Note shall bear interest at the rate of four and four-tenths percent (4.4%) per annum.

3. **PAYMENT.** Monthly payments of principal and interest on this Note shall be payable on the first day of each month, commencing January 1, 2004, in an amount equal to One Thousand Nine Hundred Five Dollars and 94 cents (\$1,905.94), based upon a level 8-year amortization of the principal of this Note.

Each installment payment received by the Lender shall be credited as of its due date without regard to its date of receipt by the Lender, first to interest then due and the remainder to principal, and interest shall cease upon the principal so credited as of the date that such credit is made. For the purposes of allocation of any monthly installment payment as between principal and interest, interest shall consist of the product of the outstanding principal balance on this Note immediately prior to allocation of the monthly installment payment times the applicable interest rate of this Note divided by twelve. Borrower will pay Lender at Lender's address shown in the first paragraph above or at such other place as Lender may designate in writing.

4. **NO PREPAYMENT FEE.** Borrower may pre-pay this Loan, in whole or in part, at any time. No prepayment fee shall be charged for whole or partial pre-payments.

5. **LATE CHARGE.** If a payment due under the terms of this Note is 15 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$5.00, whichever is greater.

3. **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.

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

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8. **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.

9. **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.

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12. **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 the Borrower or to pursue any remedy allowed under this Note or applicable law. Any extension of time granted to the Borrower to perform any obligation under this Note shall not operate as a waiver or release from any of its obligations under this Note.

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

14. **NO PERSONAL LIABILITY.** Borrower's directors, officers, employees and agents shall not have any direct or indirect personal liability for payment of the principal of, or interest on, this Note.

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement to be effective on the date executed by Lender.

"Lender"
COUNTY OF SANTA BARBARA

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Chair, Board of Supervisors

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: _____

By: _____

APPROVED:
APPROVED:

By: _____
John A. Forner, M.B.A., A.R.M.
Supervising Risk Analyst

"Borrower"
COUNTY OF SANTA BARBARA
AIR POLLUTION CONTROL DISTRICT

ATTEST:

DOUGLAS W. ALLARD
CLERK OF APCD BOARD

By: _____
Chair

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
DISTRICT COUNSEL

By: _____
Deputy