STAFF REPORT
CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers/
    Honorable Chairperson and Board of Directors
    David Ott, City Manager/Executive Director

FROM: City Manager's Office

MEETING DATE: January 26, 2011

ORIGINATING DEPT: City Manager's Office

SUBJECT: Approving and Authorizing the City Manager/Executive
          Director to Execute the First Amended and Restated
          Cooperation and Repayment Agreement between the City
          of Solana Beach and Solana Beach Redevelopment
          Agency

STAFF REPORT UPDATE
Item # C.8.

DISCUSSION:

Attachment 4: First Amended and Restated Cooperation Agreement by and between
the City of Solana Beach and the Solana Beach Redevelopment Agency.
FIRST AMENDED AND RESTATED COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF SOLANA BEACH AND THE SOLANA BEACH REDEVELOPMENT AGENCY

This FIRST AMENDED AND RESTATED COOPERATION AGREEMENT ("Agreement") is effective as of January 26, 2011, by and between the CITY OF SOLANA BEACH ("City") and the SOLANA BEACH REDEVELOPMENT AGENCY, a public body corporate and politic, duly organized and existing under the laws of the State of California ("Agency") (collectively as "Parties").

RECITALS

A. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council of the City has adopted, and the Agency is responsible for implementing, the Solana Beach Redevelopment Agency Project Plan (the "Redevelopment Plan").

B. Chapter 6, Article 1 of the California Community Redevelopment Law (Health and Safety Code section 33000 et seq.) (CRL) authorizes the Agency to accept financial assistance from any public agency, including but not limited to the City, to assist the Agency in the fulfillment, generally, of the Agency's duties under the CRL. In particular, pursuant to Health and Safety Code Section 33125, the Agency has authority to execute contracts necessary or convenient to the exercise of its powers.

C. Pursuant to Health and Safety Code Section 33220(e), the City is authorized to enter into this Agreement to assist the Agency in performing powers and obligations under the Redevelopment Law.

D. City entered into a Cooperation Agreement with Agency on January 20, 2004 (Original Cooperation Agreement) for the purposes described therein and herein in implementation of the Original Cooperation Agreement.

E. Parties now wish to amend and restate the Original Cooperation Agreement in its entirety.

F. City has administrative personnel and necessary facilities required for operation of the Agency and its projects and programs.

G. Agency desires to utilize City's personnel and facilities in order to more effectively control Agency's costs of the administration of Agency's redevelopment activities.

H. By approving and entering into this Agreement, the Agency has pledged a portion of the tax increment revenue from the Redevelopment Area. The obligations set forth in this Agreement are contractual obligations that, if breached, will subject the parties to damages or other liabilities or remedies.
NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the Agency and City hereby agree, as follows:

DEFINITIONS

“Administrative Costs” means all reasonable amounts needed to pay for the Agency’s overhead, payroll and benefits, insurance, supplies, telephone, copying, fixtures, furniture, equipment, legal accounting, and other professional fees and costs, and other reasonable customary, and lawful administrative expense of the Agency during any Fiscal Year in which the Agency services were provided.

“Available Junior Tax Revenues” means all Tax Revenues received in any Fiscal Year allocated to, made available to, or otherwise received by the Agency or any Successor pursuant to the Redevelopment Plan and the Redevelopment Law, to the extent such Tax Revenues would be required to be provided to the Agency pursuant to the Redevelopment Plan and the Redevelopment Law in effect as of the date of this Agreement, less all necessary annual payments with respect to then existing debt obligations of the Agency or Successor, including, without limitation, bonded indebtedness, pass-through payments owed to affected taxing entities under agreement or Sections 33607.5 or 33607.7 of the Redevelopment Law, written agreements with other persons or entities, deposits to the Agency’s or Successor’s Housing Fund pursuant to the Redevelopment Law, and any other statutorily required payment obligations of the Agency.

“Fiscal Year” means any twelve (12) month period beginning on July 1st and ending on the following June 30th.

“Successor” means any lawful successor of the Agency, and/or any lawful successor to any powers and rights of the Agency, pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future.

“Tax Revenues” means and includes taxes allocated to, or made available to, or otherwise received by the Agency or a Successor pursuant to Health and Safety Code Section 33670 et seq. or other provision of the Redevelopment Law, or pursuant to any applicable constitutional provision, statute, or other provision of law now existing or adopted in the future to pay the debts and obligations of the Agency.

TERMS AND CONDITIONS

1. Recitals and Definitions. The Recitals and Definitions, above, are adopted as true and incorporated herein by this reference.

2. Administrative Costs. The Agency’s annual Administrative Costs shall be separately identified in the Agency’s Annual Budget for each Fiscal Year until termination of this Agreement.
3. **City Advancement.** On or before July 1st of each Fiscal Year, the City shall advance the Agency’s annual Administrative Costs up to an amount not to exceed ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS ($175,000.00) to the Agency in the exact amounts identified in the Agency’s Annual Budget, as adopted by the Agency Board and City Council for each respective Fiscal Year (“City’s Advancement”). The amount advanced to the Agency may be increased annually by the greater of: three percent (3%); or an amount equal to any increase in the Consumer Price Index (“CPI”). The “Consumer Price Index” is the index for all urban consumers, San Diego Area, as published by the United States Bureau of Labor Statistics, or in the event that index is discontinued, any comparable index.

4. **Agency Reimbursement.** On or before June 30th of each Fiscal Year (“Reimbursement Payment Date”) in which the City’s Advancement has been made, the Agency shall reimburse the entire amount of the City’s Advancement for that Fiscal Year (“Reimbursement Payment”); provided, however, that the Agency shall have the sole and exclusive right to pledge any Available Junior Tax Revenues to the repayment of other indebtedness incurred by the Agency in carrying out the Agency’s duties under the CRL.

5. **Interest.** Any Reimbursement Payment made to the City after the Reimbursement Payment Date applicable to that Reimbursement Payment shall accrue interest compounded annually at the average portfolio earnings rate of the City of Solana Beach from the Local Agency Invest Fund (LAIF), on June 30th of each Fiscal Year until paid in full (“Interest”). Reimbursement Payments made to the City pursuant to the terms of this Agreement shall be applied first to the payment of any Interest accrued hereunder, then to reduce the principal balance due.

6. **Indebtedness of the Agency.** The obligation of the Agency to repay the City Advancement from Available Junior Tax Revenues pursuant to this Agreement shall constitute an indebtedness of the Agency incurred in carrying out the Redevelopment Plan and a pledge of tax increment revenue received by the Agency or Successor from the area of the Redevelopment Plan to repay such indebtedness under the provisions of Article XVI, Section 16 of the Constitution of the State of California, the Redevelopment Law, and the Redevelopment Plan, or under any applicable constitutional provision, statute, or other provision of law now existing or adopted in the future.

7. **Termination of Services and Reimbursement Obligation.** City’s obligation to advance the Agency’s annual Administrative Costs and the Agency’s obligation to make any Reimbursement Payment shall terminate upon the expiration and/or termination of the Agency’s powers to administer its duties under the CRL, but no later than the deadline for effectiveness of the Redevelopment Plan (the “Plan Effectiveness Deadline”) as set forth in the Redevelopment Plan. However, if such expiration or termination occurs prior to the date the Reimbursement Payment for that Fiscal Year has been paid to the City by the Agency, the total Reimbursement Payment for such Fiscal Year shall be immediately due and owing prior to the final expiration or termination date of the Agency’s powers to administer its duties under the CRL.
8. **Subordination.** The parties agree that the obligation of the Agency to make payments pursuant to this Agreement is subordinate to: (a) any obligation of the Agency to pay debt service on tax increment bonds, or any other loans or agreements, heretofore or hereafter issued and secured by a pledge of and a lien upon Tax Revenues generated by the Agency in the area included in the Redevelopment Plan; and (b) any pass-through payment obligation to affected taxing entities.

9. **Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties to this Agreement, whether by agreement or operation of law, and including, without limitation, any Successor to the Agency. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SOLANA BEACH

By: ______________________________

Its: City Manager

ATTEST:

______________________________

Angela Ivey, City Clerk of the City of Solana Beach

SIGNATURES CONTINUE ON NEXT PAGE
APPROVED AS TO FORM
AND LEGALITY

City Attorney

By: ________________________
    Johanna N. Canlas

SOLANA BEACH REDEVELOPMENT
AGENCY

Dated: ____________          By: ________________________
                           David Ott
                           Executive Director

ATTEST:

____________________________________
Angela Ivey, Secretary of the Solana Beach Redevelopment Agency

APPROVED AS TO FORM
AND LEGALITY

Agency General Counsel

By: ________________________
    Johanna N. Canlas

Goldfarb & Lippman
Agency Special Counsel

By: ________________________