STAFF REPORT
CITY OF SOLANA BEACH
AND REDEVELOPMENT AGENCY

TO: Honorable Mayor and City Councilmembers / Honorable Chairperson and Board of Directors
FROM: David Ott, City Manager / Executive Director
MEETING DATE: January 26, 2011
ORIGINATING DEPT: City Manager’s Office
SUBJECT: Approving and Authorizing the City Manager/Executive Director to Execute Public Improvements and Affordable Housing Grant and Cooperation Agreement between the City of Solana Beach and Solana Beach Redevelopment Agency

BACKGROUND:
The City of Solana Beach (City) adopted its Redevelopment Plan and the Solana Beach Redevelopment Agency (Agency) adopted its Five-Year Implementation Plan which establishes goals to support economic development, commercial, community and institutional revitalization as well as the creation and preservation of affordable housing. To implement the programs, activities and projects associated with each goal, the Agency made redevelopment fund commitments based on estimated available tax increment revenue and debt financing structures.

In the current budget environment, the Agency’s ability to carry out these objectives may be limited. Staff recommends for the City Council and Agency Board to approve a Public Improvements and Affordable Housing Grant and Cooperation Agreement (the “Agreement”) and authorize the City Manager/Executive Director to execute the Agreement.

DISCUSSION:
Under the proposed Agreement, the Agency will enter into a contract with the City for the purposes of providing that, among other things, the City will perform certain eligible activities on behalf of the Agency including installation of publicly-owned capital improvements, new, enhanced or increased public improvements, the creation and preservation of affordable housing projects and other redevelopment projects located throughout the Agency’s Project Area, as identified and adopted in the Redevelopment Plan and the Five Year Implementation Plan, and listed in the Agreement.

CITY COUNCIL ACTION:

AGENDA ITEM C.9.
The contemplated activities, in compliance with Section 33445 of the Health and Safety Code, are of benefit to the Project Area by helping eliminate blight within the Project Area or providing housing for low- or moderate-income persons and are beyond those the normally provided by the City. They are specifically intended to assist the Agency in addressing the removal of blight by reversing conditions of impaired investments and prevention of the recurrence of blight. The identified projects and activities are consistent with the Agency’s Redevelopment Plan and Five-Year Implementation Plan.

In compliance with Section 33334.2(g) of the Health and Safety Code, the assistance to the affordable housing projects described in the Agreement and located outside the Redevelopment Plan area will be of benefit to the Redevelopment Plan, in that all parts of the City are in close proximity to the area included within the Redevelopment Plan. The findings made by the City Council are based in part on evidence in the record of the July 2004 Redevelopment Plan, reports, and January 2010 Five-Year Implementation. These projects were identified by the City, Agency and community through public meetings and hearings for adoption of the Redevelopment Plan, Five-Year Implementation Plan and annual budgets and work plans as priorities that are of benefit to the Project Area and the community at large. The City does not have the financial means to fund these projects as it continues to provide for essential services and projects under its budget constraints, thereby requiring the contemplated redevelopment funding.

The obligation to pay increment, as set forth in the Agreement, shall constitute indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan for the Project Area.

CEQA COMPLIANCE STATEMENT:
Pursuant to State CEQA Guidelines Section 15378(b)(4), approval of the Agreement is not a project subject to the California Environmental Quality Act ("CEQA"), because the Agreement consists of the creation of a governmental funding mechanism for various public improvements, but does not commit funds to any specific public improvement, in that environmental review required by CEQA shall be completed prior to the commencement of any public improvement listed in the Agreement.

FISCAL IMPACT:
The sources of the Grant from the Agency to the City consists of: (1) all funds currently held by the Agency and not previously budgeted or appropriated for other activities, projects, or programs and (2) (b) All future tax increment revenue allocated to the Agency pursuant to the Redevelopment Plan and the Redevelopment Law and available to the Agency after the Agency: (1) makes all necessary annual payments with respect to then existing debt obligations of the Agency, 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, and any other statutorily required payment obligations of the Agency; and (2) sets aside a reasonable amount for Agency administration as mutually determined by the City and the Agency.
**WORKPLAN:**
Fiscal Sustainability
   A. Redevelopment and
   B. Economic Development
Community Character
   A. Land Use & Planning
      7. Affordable Housing Program

**OPTIONS:**
- Approve Staff recommendation.
- Approve Staff recommendation with modifications.
- Provide direction.

**DEPARTMENT RECOMMENDATION:**
Staff recommends that the City Council/Board of Directors:

1. Adopt Resolution 2011-026
   a. Approving and Authorizing the City Manager to Execute the Public Improvement and Affordable Housing Grant and Cooperative Agreement between the City of Solana Beach and Solana Beach Redevelopment Agency.

2. Adopt Resolution RDA 2011-046
   a. Approving and Authorizing the Executive Manager to Execute the Public Improvement and Affordable Housing Grant and Cooperative Agreement between the City of Solana Beach and Solana Beach Redevelopment Agency.

**CITY MANAGER'S / EXECUTIVE DIRECTOR'S RECOMMENDATION:**
Approve Department Recommendation

David Ott, City Manager / Executive Director

**Attachments:**
1. Public Improvements and Affordable Housing Grant and Cooperation Agreement
2. Resolution 2011-026
3. Resolution RDA-046
PUBLIC IMPROVEMENTS AND AFFORDABLE HOUSING GRANT
AND COOPERATION AGREEMENT FOR THE
SOLANA BEACH REDEVELOPMENT PROJECT AREA

This Public Improvements and Affordable Housing Grant and Cooperation
Agreement (the "Agreement") is for purposes of funding: 1) affordable housing projects
and programs to be developed and/or administered by the City of Solana Beach, a
municipal corporation (the "City"); and 2) acquisition, design, and construction of various
public improvements owned or to be owned by the City, and is entered into as of
January __, 2011 by and between the City and the Solana Beach Redevelopment
Agency, a public body, corporate and public (the "Agency"), on the basis of the following
facts, understandings and intentions of the 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. To assist in implementing the Redevelopment Plan, the Agency has
adopted a five (5)-year implementation plan (the "Implementation Plan") pursuant to
Section 33490 of the Redevelopment Law.

C. Pursuant to Health and Safety Code Section 33125, the Agency has
authority to execute contracts necessary or convenient to the exercise of its powers.
Further, 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. The Agency and the City desire that the Agency will fund and the City will
acquire any necessary land for, and design and construct various elements of public
improvements and facilities owned or to be owned by the City, as more fully set forth in
Exhibit A attached to and incorporated in this Agreement by this reference. Exhibit A in
its entirety is referred to in this Agreement as the "Improvement Plan," and the
improvements listed in the Improvement Plan are referred to individually as a "Public
Improvement Project" and collectively as the "Public Improvement Projects." The
Improvement Plan set forth in Exhibit A includes the currently estimated costs of
implementing the Public Improvement Projects.

E. The Public Improvement Projects are provided for in the Redevelopment
Plan, and are consistent with the Implementation Plan. Implementation of the Public
Improvement Projects will benefit the Project Area and will assist in the elimination of blight in the Project Area and the provision of affordable housing in the community. The Agency's use of funds as provided in this Agreement is authorized by the
Redevelopment Law, and the Agency and City Council have made all findings required under the Redevelopment Law for such use.

F. Pursuant to Health and Safety Code Sections 33334.2 and 33334.3, the Agency has the obligation to establish a Low and Moderate Income Housing Fund (the "Housing Fund") and to expend monies in the Housing Fund for the purposes of increasing, improving, and preserving the community's supply of housing available at affordable housing cost to low and moderate income households, lower income households, very low income households, and extremely low income households.

G. The Housing Element of the City's General Plan (the "Housing Element") includes an assessment of the existing and projected housing needs of the community, including the City's regional fair share allocation of the regional housing need. The housing needs assessment in the Housing Element indicates a need in the City for 37 housing units affordable to very low income households (half affordable to extremely low income households), 30 housing units affordable to lower income households, and 25 housing units affordable to moderate income households.

H. The Agency and the City desire that the Agency will contract with the City to provide Housing Fund monies to the City for the City to utilize to finance Housing Fund-eligible activities to increase, improve, and preserve the supply of affordable housing within the area included in the Redevelopment Plan and the territorial jurisdiction of the City, consistent with the Redevelopment Plan, the Implementation Plan, and the Housing Element, as they currently exist or as they may be amended from time to time. The Agency and the City have further determined, based on their analysis of affordable housing costs, the amount of Housing Fund subsidy necessary to cause housing units to be available at affordable housing cost to very low, lower, and moderate income households within the City and, as more fully set forth in Exhibit B attached to and incorporated in this Agreement by this reference, have calculated the total amount of Housing Fund monies necessary to provide for the housing needs of very low income households, lower income households, and moderate income households indicated in the Housing Element. As required by Health & Safety Code Section 33334.2(g), the Agency hereby finds that assistance to low and moderate income housing located outside the area included in the Redevelopment Plan will be of benefit to the Redevelopment Plan, in that all parts of the City are in close proximity to the area included within the Redevelopment Plan.

I. The Agency and the City have set forth in Exhibit B attached to and incorporated in this Agreement by this reference, a list of potential projects and programs that the City may undertake utilizing funds provided pursuant to this Agreement. Exhibit B in its entirety is referred to in this Agreement as the "Affordable Housing Plan" and the projects and programs listed in the Affordable Housing Plan are referred to individually as an "Affordable Housing Project." The Affordable Housing Plan set forth in Exhibit B includes the currently estimated costs of implementing the Affordable Housing Projects.
J. The Affordable Housing Projects are consistent with the Redevelopment Plan and the Implementation Plan. Implementation of the Affordable Housing Projects will benefit the Project Area and will assist in the elimination of blight in the Project Area and the provision of affordable housing in the community. The Agency’s and City’s use of funds as provided in this Agreement is authorized by the Redevelopment Law, and the Agency and City Council have made all findings required under the Redevelopment Law for such use.

K. Pursuant to State CEQA Guidelines Section 15378(b)(4), approval of the Agreement is not a project subject to the California Environmental Quality Act (“CEQA”), because this Agreement consists of the creation of a governmental funding mechanism for various public improvements and affordable housing projects, but does not commit funds to any specific public improvement or affordable housing project, in that environmental review required by CEQA shall be completed prior to the commencement of any Public Improvement Project listed in the Improvement Plan contained in Exhibit A and any Affordable Housing Project listed in the Affordable Housing Plan contained in Exhibit B.

L. By approving and entering into this Agreement, the Agency has pledged a portion of the tax increment revenue from the Redevelopment Area to fund the Affordable Housing Plan. 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, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Agency agree as follows:

ARTICLE 1
AGENCY GRANT

Section 1.1 Agency Grant. Subject to the terms and conditions of this Agreement, the Agency hereby grants to the City, and the City hereby accepts from the Agency, a grant (the "Grant") in an amount not to exceed the total amount shown for: 1) all Public Improvement Projects in the Improvement Plan attached to this Agreement as Exhibit A (the "Improvement Grant"); and 2) all Affordable Housing Projects in the Affordable Housing Plan attached to this Agreement as Exhibit B (the "Housing Grant"), at the time of execution of this Agreement. The Improvement Grant and the Housing Grant together constitute the "Maximum Grant Amount," for use by the City to complete the Public Improvement Projects, as further provided in Article 2 and to complete the Affordable Housing Projects, as further provided in Article 3.

Section 1.2 Grant Source. The sources of the Grant from the Agency to the City consist of:

(a) For the Public Improvement Projects:
(1) all funds currently held by the Agency (other than in the Agency’s Housing Fund) and not previously encumbered by binding contract for other activities, projects, or programs (the "Available Improvement Funds"); and

(2) all future tax increment revenue 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 increment revenue (A) is or 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 (except for those tax increment revenues to be deposited in the Housing Fund), and (B) is available to the Agency or Successor after the Agency or Successor 1) makes all necessary annual payments with respect to then existing debt obligations of the Agency, 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, payments required under that 'First Amended and Restated Cooperation Agreement by and between the City of Solana Beach and the Solana Beach Redevelopment Agency, dated January 26, 2011, and any other statutorily required payment obligations of the Agency; and 2) sets aside a reasonable amount for Agency or Successor administration as mutually determined by the City and the Agency or Successor (collectively, the "Pledged Improvement Funds"); and

(3) All net proceeds of bonded indebtedness or other indebtedness secured by the Agency’s tax increment revenue, except those net proceeds that are required by the Redevelopment Law to be deposited in the Housing Fund (the "Improvement Bond Proceeds"); and

(4) All program income received from any source by the Agency or Successor, including, without limitation, land sale proceeds, lease revenues, loan repayments, except that which is required by the Redevelopment Law in effect as of the date of this Agreement to be deposited in the Housing Fund (the "Improvement Program Income").

(5) The Available Improvement Funds, Pledged Improvement Funds, Improvement Bond Proceeds, and Improvement Program Income together constitute the Maximum Improvement Grant Amount.

(b) For the Affordable Housing Projects:

(1) All funds currently held by the Agency in the Agency’s Housing Fund and not previously encumbered by binding contract for other activities, projects, or programs (the "Available Housing Funds"); and

(2) All future tax increment revenue allocated to, made available to, or otherwise received by the Agency or any Successor, to the extent such tax increment revenue (1) is or would be required pursuant to the Redevelopment Plan and the
Redevelopment Law in effect as of the date of this Agreement to be deposited in the Housing Fund, and (2) is available to the Agency or Successor after the Agency or Successor makes all necessary annual payments required to be made with Housing Fund monies with respect to then existing debt obligations of the Agency, including, without limitation, bonded indebtedness and written agreements with other persons or entities (the "Pledged Housing Funds"); and

(3) All net proceeds of bonded indebtedness or other indebtedness that are required by the Redevelopment Law to be deposited in the Housing Fund (the "Housing Bond Proceeds"); and

(4) All program income received from any source by the Agency or Successor that is required by the Redevelopment Law in effect as of the date of this Agreement to be deposited in the Housing Fund, including, without limitation, land sale proceeds, lease revenues, loan repayments, repayment of funds suspended pursuant to Health and Safety Code Section 33334.2(k) or borrowed from the Housing Fund pursuant to Health and Safety Code Section 33690(c) or 33690.5(c), and amounts paid to eliminate a deficit in Housing Fund deposits pursuant to the plan described in Health and Safety Code Section 33334.6(g) (the "Housing Program Income").

(5) The Available Housing Funds, Pledged Housing Funds, Housing Bond Proceeds, and Housing Program Income together constitute the Maximum Housing Grant Amount.

In no event shall the sum of the Maximum Improvement Grant Amount and the Maximum Housing Grant Amount exceed the Maximum Grant Amount.

As used in this Agreement, "tax increment revenue" 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.

As used in this Agreement, "Successor" includes 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. All provisions of this Agreement that are applicable to the Agency are applicable to any Successor.

Section 1.3 Payment Procedure. The Agency shall pay the Available Improvement Funds and the Available Housing Funds to the City within ten (10) days of the date of this Agreement. The Agency shall pay the Pledged Improvement Funds and Pledged Housing Funds to the City within ten (10) days after receipt of each installment of tax increment revenue in an amount equal to the portion of such tax increment revenue constituting Pledged Improvement Funds and Pledged Housing Funds, respectively. The Agency shall pay the Improvement Bond Proceec, Improvement
Program Income, Housing Bond Proceeds, and Housing Program Income to the City within ten (10) days after receipt of any such funds. Until needed to fund a Public Improvement Project or Affordable Housing Project, the City shall invest all Grant funds received from the Agency in the Local Agency Investment Fund or other comparable investment vehicle, and shall apply all interest earned thereon toward the cost of the Public Improvement Projects and Affordable Housing Projects, as appropriate. Any Grant funds held by or for the benefit of the City at the earlier of (a) completion of and payment for all of the Public Improvement Projects; or (b) completion of and payment for all of the Affordable Housing Projects; or (c) the Plan Effectiveness Deadline (as defined in Section 2.1) shall be promptly reimbursed by the City to the Agency, and may thereafter be used by the Agency free of any obligation under this Agreement.

Section 1.4 Indebtedness of the Agency. The obligation of the Agency to pay the Grant funds from the sources set forth in Section 1.2 to the City 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.

Section 1.5 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 increment revenue generated by the Agency in the area included in the Redevelopment Plan; and (b) any pass-through payment obligation to affected taxing entities.

ARTICLE 2
COMPLETION OF PUBLIC IMPROVEMENT PROJECTS

Section 2.1 Use of Improvement Grant. The City shall use the Improvement Grant exclusively for the completion of the Public Improvement Projects in accordance with the terms and conditions of this Agreement. Among other activities, the City may use the Improvement Grant to pay costs of land acquisition, relocation, demolition, site preparation and remediation, design, and construction of the Public Improvement Projects, and reasonable staff, consultant, and other administrative costs in connection therewith. The City shall undertake the Public Improvement Projects in accordance with all applicable laws and regulations, including without limitation, laws and regulations related to competitive bidding of public works projects, payment of prevailing wages, non-discrimination, and the use of tax-exempt bond proceeds, if and to the extent such tax-exempt bond proceeds constitute a portion of the Improvement Grant funds. The City shall use the Improvement Grant funds for completion of the various Public Improvement Projects by not later than the deadline for effectiveness of the
Redevelopment Plan (the "Plan Effectiveness Deadline"), as set forth in the Redevelopment Plan.

Section 2.2 Consultation; Modification of Improvement Plan. The Agency and the City shall confer periodically to establish priorities and timing for funding and completion of the various Public Improvement Projects, to review the scope and design of each Public Improvement Project, and to determine any mutually acceptable modifications in the cost estimates and budgets for the various Public Improvement Projects. The City and Agency may modify the Improvement Plan from time to time: to provide for the use of additional federal, state and local funds; to account for unexpected revenues, whether greater or lesser; to modify, add, or delete a Public Improvement Project from the Improvement Plan; to modify the cost estimate for individual Public Improvement Projects; to maintain consistency with the City's General Plan or the Redevelopment Plan; or to take into consideration unforeseen circumstances, including without limitation circumstances that may come to light as a result of subsequent environmental review required by CEQA, as further described in Section 4.1. The Improvement Plan may be modified by the City Manager on behalf of the City and the Executive Director on behalf of the Agency; provided, however, in no event shall the total Improvement Grant to be paid by the Agency to the City exceed the Maximum Improvement Grant Amount without a formal amendment of this Agreement approved by the City Council and the Agency Board; and, provided further, however, that any addition of a Public Improvement Project to the Improvement Plan shall be conditioned upon the making of all required Redevelopment Law findings and CEQA findings by the City Council and the Agency Board in their policy discretion.

Section 2.3 Ongoing City Obligations. Following completion, the City shall be responsible for causing the operation and maintenance of each Public Improvement Project in accordance with City policies and standards for such improvements then in effect and as amended from time to time. The Agency's grant and the City's acceptance of the Improvement Grant shall not imply any ownership or responsibility for the Public Improvement Projects by the Agency, and the City shall retain any and all responsibility and liability for them.

ARTICLE 3
COMPLETION OF AFFORDABLE HOUSING PROJECTS

Section 3.1 Use of Housing Grant. The City shall use the Housing Grant exclusively for the purposes of increasing, improving, and preserving the community's supply of housing available at affordable housing cost to low and moderate income households, lower income households, very low income households, and extremely low income households in accordance with the requirements of the Redevelopment Law and the Affordable Housing Plan and the terms and conditions of this Agreement. The City may use the Housing Grant to pay any costs which are eligible Housing Fund costs pursuant to Health and Safety Code Section 33334.2 et seq, including without limitation eligible costs of the Affordable Housing Projects shown in the Affordable Housing Plan and reasonable staff, consultant and other administrative costs in connection therewith.
The City shall expend the Housing Grant funds and undertake the Affordable Housing Plan in accordance with all applicable laws and regulations, including without limitation, laws and regulations related to the permissible uses of Housing Fund monies, monitoring of housing assisted with Housing Funds, statutorily required findings by the Agency Board and City Council, where applicable, prior to expenditures of Housing Funds, payment of prevailing wages (to the extent applicable), non-discrimination, and all applicable requirements of the Redevelopment Law. The City shall use the Housing Grant funds for the various Affordable Housing Projects by not later than the Plan Effectiveness Deadline as set forth in the Redevelopment Plan.

Section 3.2 Consultation; Modification of Improvement Plan. The Agency and the City shall confer periodically to establish priorities and timing for funding and completion of the various Affordable Housing Projects, to review the scope and design of each Affordable Housing Project, and to determine any mutually acceptable modifications in the cost estimates and budgets for the various Affordable Housing Projects. The City and Agency may modify the Affordable Housing Plan from time to time: to provide for the use of additional federal, state and local funds; to account for unexpected revenues, whether greater or lesser; to modify, add, or delete an Affordable Housing Project from the Affordable Housing Plan; to modify the cost estimate for individual Affordable Housing Projects; to maintain consistency with the City's General Plan or the Redevelopment Plan; or to take into consideration unforeseen circumstances, including without limitation circumstances that may come to light as a result of subsequent environmental review required by CEQA, as further described in Section 4.1. The Affordable Housing Plan may be modified by the City Manager on behalf of the City and the Executive Director on behalf of the Agency; provided, however, in no event shall the total Housing Grant to be paid by the Agency to the City exceed the Maximum Housing Grant Amount without a formal amendment of this Agreement approved by the City Council the Agency Board; and, provided further, however, that any addition of any Affordable Housing Project to the Affordable Housing Plan shall be conditioned upon the making of all required Redevelopment Law findings and CEQA findings by the City Council and the Agency Board in their policy discretion.

Section 3.3 Ongoing City Obligations. The City shall be responsible for ongoing administration of the Housing Funds comprising the Housing Grant, including any required monitoring of Affordable Housing Projects and required reporting to the State of California. The Agency's grant and the City's acceptance of the Housing Grant shall not imply any ownership or responsibility for the Affordable Housing Projects by the Agency, and the City shall retain any and all responsibility and liability for them.

ARTICLE 4
GENERAL PROVISIONS

Section 4.1 CEQA Review. Prior to the approval of, use of Grant funds for, and commencement of work on any Public Improvement Project listed in the Improvement Plan, or any Affordable Housing Project listed in the Affordable Housing Plan (other than preliminary feasibility work that is exempt from the requirements of CEQA), all
necessary environmental review required by CEQA shall be completed. All Public Improvement Projects and Affordable Housing Projects to be funded with Grant funds from the Agency pursuant to this Agreement must be consistent with CEQA. This Agreement in no way limits the discretion of the Planning Commission, the Agency, and City Council in completing environmental review of the Public Improvement Projects and Affordable Housing Projects.

Section 4.2 Indemnity. The City shall indemnify, defend, and hold the Agency, its officers, agents, and employees, harmless against all claims, demands, damages, losses, costs, expenses, including without limitation, attorneys' fees and costs of litigation, or liabilities made against them which arise out of, or in connection with, the construction or failure of the Public Improvement Projects and Affordable Housing Projects; provided, however, that this indemnity shall not extend to any claim arising solely from the Agency's negligence or the Agency's negligent failure to perform its obligations under this Agreement.

Section 4.3 Non-Liability of Officials. No member, official, employee or agent of the Agency shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Agency for any amount which may become due to the City or successor or on any obligation under the terms of this Agreement. No member, official, employee or agent of the City shall be personally liable to Agency, or any successor in interest, in the event of any default or breach by the City for any amount which may become due to the Agency or successor or on any obligation under the terms of this Agreement.

Section 4.4 Actions of the Parties. Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits a party's approval, consent, or waiver, the written approval, consent, or waiver of the Agency's Executive Director and the City's City Manager (or their respective designees) shall constitute the approval, consent, or waiver of the Agency and the City, respectively, without further authorization required from the governing board of the party; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board when she/he deems it appropriate.

Section 4.5 Nondiscrimination.

(a) In Performance of Agreement. The City and its contractors, subcontractors, agents, and employees shall not, because of the race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, or disability of any person, refuse to hire or employ the person, or refuse to select the person for a training program leading to employment, or bar or discharge the person from employment or from a training program leading to employment, or discriminate against the person in compensation or in terms, conditions or privileges of employment with respect to performance of this Agreement.

(b) With Respect to Use of the Public Improvements Projects and Affordable Housing Projects. The City covenants by and for itself and its successors
and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Public Improvement Projects and the Affordable Housing Projects.

Section 4.6 No Third Party Beneficiaries. No person or entity other than the Agency, the City and their permitted successors and assigns, shall have any right of action under this Agreement.

Section 4.7 State Law. This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 4.8 Records. The City shall maintain complete and accurate financial accounts, documents and records with respect to the performance of its obligations under this Agreement, and shall make same available to the Agency's authorized agents for copying and auditing upon reasonable prior notice. Such accounts, documents and records shall be retained by the City for the longer of two (2) years following completion of the applicable Public Improvement Project or Affordable Housing Project, or for whatever retention period the City has designated for such documents.

Section 4.9 Inspection of Documents. During the regular office hours and upon reasonable prior notice, the City and the Agency, by their duly authorized representatives, shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement.

Section 4.10 Additional Acts. The parties each agree to take such other and additional actions and execute and deliver such other and additional documents as may be reasonably requested by the other party for purposes of consummating the transactions contemplated in this Agreement.

Section 4.11 Litigation Regarding Agreement Validity. In the event litigation is initiated attacking the validity of this Agreement, each party shall in good faith defend and seek to uphold the Agreement.

Section 4.12 Validity of Agreement. If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions, or circumstances, shall not be affected thereby.

Section 4.13 Entire Agreement; Modification and Amendment. This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the parties. Except as otherwise provided in Section 2.2 and Section 3.2, this Agreement cannot be amended or modified except by written agreement of the parties.
Section 4.14 Defaults and Remedies. If either party breaches any other material provision of this Agreement, the other party shall first notify the breaching party in writing of the purported breach or failure, giving the breaching party thirty (30) days from receipt of such notice to cure or, if cure cannot be accomplished within thirty (30) days, to commence to cure such breach, failure, or act. In the event the breaching party does not then so cure within such thirty (30) days, or if the breach or failure is of such a nature that it cannot be cured within thirty (30) days, the breaching party fails to commence to cure within such thirty (30) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the non-breaching party shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (a) terminating in writing this Agreement (provided, however, that the indemnification provisions of this Agreement shall survive such termination); and (b) prosecuting an action for damages or specific performance.

Section 4.15 Attorneys' Fees. In any action which a party brings to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.

Section 4.16 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.

Section 4.18 Time Of The Essence. Time is of the essence in the performance of all duties and obligations under this Agreement.

**********
IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

Approved as to Form:

__________________________
Agency Counsel

SOLANA BEACH REDEVELOPMENT AGENCY, a public body, corporate and public

By: ________________________
David Ott, Executive Director

Approved as to Form:

__________________________
City Attorney

CITY OF SOLANA BEACH

By: ________________________
David Ott, City Manager

Attest:

__________________________
City Clerk
EXHIBIT A

IMPROVEMENT PLAN

The Improvement Plan consists of the acquisition and improvement of land for, design, construction, and related activities to complete the following Public Improvement Projects:

<table>
<thead>
<tr>
<th>Public Improvement Project</th>
<th>Estimated Cost</th>
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<tbody>
<tr>
<td>Streets and Circulation</td>
<td></td>
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<tr>
<td>• Repair/replace streets, curbs, gutters, sidewalks</td>
<td>$5,000,000.00</td>
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<tr>
<td>• Upgrade streetlights</td>
<td>$1,250,000.00</td>
</tr>
<tr>
<td>Traffic Calming Measures on Highway 101</td>
<td>$9,000,000.00</td>
</tr>
<tr>
<td>• Pedestrian signal at Cliff Street</td>
<td></td>
</tr>
<tr>
<td>• Pedestrian signal at Train Station</td>
<td></td>
</tr>
<tr>
<td>• General landscaping</td>
<td></td>
</tr>
<tr>
<td>• City Entrance archways</td>
<td></td>
</tr>
<tr>
<td>• Median extensions</td>
<td></td>
</tr>
<tr>
<td>• Painted bike lanes</td>
<td></td>
</tr>
<tr>
<td>• Pop-outs and sidewalk improvements – Ocean Street to Lomas</td>
<td></td>
</tr>
<tr>
<td>Santa Fe Drive</td>
<td></td>
</tr>
<tr>
<td>Street and Circulation Improvements per Eden Gardens Streetsc</td>
<td></td>
</tr>
<tr>
<td>Street Improvement Plan</td>
<td></td>
</tr>
<tr>
<td>• Intersection treatment at Camino de Genevieve and Avenida Va</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>le A43</td>
<td></td>
</tr>
<tr>
<td>• Intersection treatment at Avenida Valle and Avenida Hernandez</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>• Entry treatment at Stevens Avenue and Avenida Valle</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>Drainage</td>
<td></td>
</tr>
<tr>
<td>• Upgrade drainage system</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>• Storm drains and inlets at Ida Avenue and Highland Drive</td>
<td>$75,000.00</td>
</tr>
<tr>
<td>• Viva Court storm sewer detention facility</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>• Storm drain inlets on Hernandez Street and Gonzales Street</td>
<td>$65,000.00</td>
</tr>
<tr>
<td>(including connections)</td>
<td></td>
</tr>
<tr>
<td>Public Improvement Project</td>
<td>Estimated Cost</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>• Storm drain connection from Ida Avenue to storm drain on Genevieve Street</td>
<td>$70,000.00</td>
</tr>
<tr>
<td><strong>Sewer</strong></td>
<td></td>
</tr>
<tr>
<td>• Eden Gardens sewer line rehabilitation along Stevens Creek at north end, south of Genevieve Street and near Silverado Apartments st south end</td>
<td>$150,000.00</td>
</tr>
<tr>
<td><strong>Parks and Recreation</strong></td>
<td></td>
</tr>
<tr>
<td>La Colonia Park improvements</td>
<td>$4,276,000</td>
</tr>
<tr>
<td><strong>Miscellaneous Public Improvements</strong></td>
<td></td>
</tr>
<tr>
<td>• Underground utility lines</td>
<td>$500,000.00</td>
</tr>
<tr>
<td><strong>Solana Beach Train Station Phase III Development</strong></td>
<td>$10,000,000.00</td>
</tr>
<tr>
<td>• Pedestrian bridge crossing the railroad tracks at the foot of Cliff Street</td>
<td></td>
</tr>
<tr>
<td>• Underground parking structure</td>
<td></td>
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<tr>
<td>• Mixed-use component</td>
<td></td>
</tr>
<tr>
<td><strong>Fletcher Cove</strong></td>
<td></td>
</tr>
<tr>
<td>• Community center and park</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>• Beach access ramps</td>
<td>$400,000.00</td>
</tr>
<tr>
<td>• Stairway connecting upper and lower park</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>• Marine Safety Center</td>
<td>$3,000,000.00</td>
</tr>
<tr>
<td><strong>IMPROVEMENT GRANT</strong></td>
<td>$35,546,000.00</td>
</tr>
</tbody>
</table>
## EXHIBIT B

### AFFORDABLE HOUSING PLAN

<table>
<thead>
<tr>
<th>Affordable Housing Project</th>
<th>Estimated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Affordable Housing Assistance</strong></td>
<td></td>
</tr>
<tr>
<td>• Sierra Avenue Site (est. 10 very low income units)</td>
<td>$3,200,000</td>
</tr>
<tr>
<td>• Assistance to new rental construction</td>
<td></td>
</tr>
<tr>
<td>Extremely low income units (18 units)</td>
<td>$4,300,000</td>
</tr>
<tr>
<td>Very low income units (9 remaining units)</td>
<td>$1,700,000</td>
</tr>
<tr>
<td>Low income units (30 units)</td>
<td>$3,270,000</td>
</tr>
<tr>
<td>• Acquisition of affordable housing covenants</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>• Acquisition and rehabilitation of existing multifamily housing</td>
<td>$1,000,000</td>
</tr>
<tr>
<td><strong>Affordable Housing Programs</strong></td>
<td></td>
</tr>
<tr>
<td>• First-time homebuyer and down payment assistance (moderate income units)</td>
<td>$500,000</td>
</tr>
<tr>
<td>• Housing rehabilitation assistance</td>
<td>$500,000</td>
</tr>
<tr>
<td><strong>HOUSING GRANT</strong></td>
<td>$15,470,000</td>
</tr>
</tbody>
</table>
RESOLUTION 2011-026

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, APPROVING A PUBLIC IMPROVEMENTS AND AFFORDABLE HOUSING GRANT AND COOPERATION AGREEMENT AND MAKING CERTAIN FINDINGS RELATED THERETO

WHEREAS, the City Council ("City Council") of the City of Solana Beach ("City") has adopted the Solana Beach Redevelopment Plan ("Redevelopment Plan"); and

WHEREAS, the Solana Beach Redevelopment Agency ("Agency") is engaged in various activities in its efforts to provide affordable housing and to remove the blighting conditions that still remain in the Redevelopment Plan area; and

WHEREAS, in keeping with the goals of the Agency to eliminate and reduce physical and economic blight in accordance with the Redevelopment Plan and Agency's current Implementation Plan ("Implementation Plan"), the City and Agency have been working cooperatively regarding the development of affordable housing and certain public improvements in the Redevelopment Plan area; and

WHEREAS, due to the complexity of the projects and the varying funding sources, the Agency and the City mutually desire to enter into a Public Improvements and Affordable Housing Grant and Cooperation Agreement (the "Agreement"), a copy of which is on file with the City Clerk and Agency Secretary, through which the Agency shall pay for designated portions of, and the City shall conduct: 1) public improvement projects to alleviate blighting conditions in the Redevelopment Plan area as set forth in the proposed Agreement; and 2) projects to increase, improve, and preserve the supply of affordable housing within the area included in the Redevelopment Plan and the territorial jurisdiction of the City, to be funded by the Agency's Low and Moderate Income Housing Fund (the "Housing Fund"); and

WHEREAS, implementation of the Agreement will assist the Agency to accomplish the stated goals in the Redevelopment Plan and its current Implementation Plan as described in the staff report accompanying this Resolution (the "Staff Report"); and

WHEREAS, under the California Redevelopment Law (Health and Safety code Section 33100 et seq.; the "Law"), before the Agency can expend money for public improvements, the Agency and the City must make specified findings pursuant to Health and Safety Code Section 33445; and

WHEREAS, pursuant to the Law, the Agency is authorized, with the consent of the City Council to pay for part, or all, of the costs of public improvements that are of benefit to the Redevelopment Plan area; and

ATTACHMENT 2
WHEREAS, no other reasonable means of financing the estimated cost of the public improvements are available to the City or the community; and

WHEREAS, under the Law, before the Agency can expend money from its Housing Fund outside of the Redevelopment Plan, the Agency and the City must make specified findings pursuant to Health and Safety Code Section 33334.2(g); and

WHEREAS, pursuant to State CEQA Guidelines Section 15378(b)(4), approval of the Agreement is not a project subject to the California Environmental Quality Act ("CEQA"), because the Agreement consists of the creation of a governmental funding mechanism for various public improvements and affordable housing projects, but does not commit funds to any specific public improvement or affordable housing project, in that environmental review required by CEQA shall be completed prior to the commencement of any public improvement listed in the Agreement; and

WHEREAS, the Staff Report, the Redevelopment Plan, the report to City Council accompanying the Redevelopment Plan, and the Implementation Plan provide additional information upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, the City Council of the City of Solana Beach, California, does resolve as follows:

1. That the above recitations are true and correct and incorporated herein.

2. That in compliance with Section 33445 of the Law, the City Council hereby finds that: (a) the acquisition of the land or the installation or construction of the public improvements listed in the Agreement that are publicly owned are of benefit to the Predevelopment Plan area by helping to eliminate blight within the Redevelopment Plan area or providing housing for low- or moderate-income persons; (b) no other reasonable means of financing the acquisition of land or the installation or construction of the public improvements listed in the Agreement that are publicly owned are available to the community; and (c) the appropriation and payment of funds by the Agency for the acquisition of land or the cost of the public improvements listed in the Agreement that are publicly owned is consistent with the Agency's current Implementation Plan. These findings are based on the facts and analysis in the Staff Report incorporated in this Resolution.

3. In compliance with Section 33334.2(g) of the Law, the City hereby finds that: assistance to affordable housing projects described in the Agreement and located outside the Redevelopment Plan area will be of benefit to the Redevelopment
Plan, in that all parts of the City are in close proximity to the area included within the Redevelopment Plan. This finding is further based on the facts and analysis in the Staff Report incorporated in this Resolution.

4. The City Council consents to the Agency expenditures as called for in the Agreement for the public improvement projects listed in the Agreement, subject to completion of any environmental review required by CEQA prior to the commencement of any improvement listed in the Agreement.

5. The City Council hereby approves the Agreement and authorizes the City Manager to enter into and execute the Agreement on behalf of the City for the funding and completion of the projects listed in the Agreement, substantially in the form on file with the Agency Secretary and the City Clerk, with such revisions as are reasonably determined necessary by the City signatory, such determination to be conclusively deemed to have been made by the execution of the Agreement by the City signatory. The City Manager is authorized to implement the Agreement and take all further actions and execute all other documents which are necessary or appropriate to carry out the Agreement.

6. The City Manager is hereby authorized and directed to file Notices of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA.

7. The City Manager is hereby authorized to take such further actions as may be necessary or appropriate to carry out the City’s obligations pursuant to this Resolution and the Agreement.

8. The City Clerk shall certify to the adoption of this Resolution.
9. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this ____ day of _________, 2011, at a regularly scheduled meeting of the City Council of the City of Solana Beach, California by the following vote:

AYES:  Councilmembers –
NOES:  Councilmembers –
ABSTAIN:  Councilmembers –
ABSENT:  Councilmembers –

______________________________
LESA HEEBNER, Mayor

APPROVED AS TO FORM:  ATTEST:

______________________________
JOHANNA N. CANLAS, City Attorney  ANGELA IVEY, City Clerk
RESOLUTION RDA-046

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SOLANA BEACH REDEVELOPMENT AGENCY APPROVING A PUBLIC IMPROVEMENTS AND AFFORDABLE HOUSING GRANT AND COOPERATION AGREEMENT AND MAKING CERTAIN FINDINGS THERETO

WHEREAS, the City Council ("City Council") of the City of Solana Beach ("City") has adopted the Solana Beach Redevelopment Plan ("Redevelopment Plan"); and

WHEREAS, the Solana Beach Redevelopment Agency ("Agency") is engaged in various activities in its efforts to provide affordable housing and to remove the blighting conditions that still remain in the Redevelopment Plan area; and

WHEREAS, in keeping with the goals of the Agency to eliminate and reduce physical and economic blight and to provide affordable housing in accordance with the Redevelopment Plan and Agency's current Implementation Plan ("Implementation Plan"), the City and Agency have been working cooperatively regarding the development of affordable housing and certain public improvements in the Redevelopment Plan area; and

WHEREAS, due to the complexity of the projects and the varying funding sources, the Agency and the City mutually desire to enter into a Public Improvements and Affordable Housing Grant and Cooperation Agreement (the "Agreement"), a copy of which is on file with the City Clerk and Agency Secretary, through which the Agency shall pay for designated portions of, and the City shall conduct: 1) public improvement projects to alleviate blighting conditions in the Redevelopment Plan area as set forth in the proposed Agreement; and 2) projects to increase, improve, and preserve the supply of affordable housing within the area included in the Redevelopment Plan and the territorial jurisdiction of the city, to be funded by the Agency's Low and Moderate Income Housing Fund (the "Housing Fund"); and

WHEREAS, implementation of the Agreement will assist the Agency to accomplish the stated goals in the Redevelopment Plan and its current Implementation Plan as described in the staff report accompanying this Resolution (the "Staff Report"); and

WHEREAS, under the California Redevelopment Law (Health and Safety code Section 33100 et seq.; the "Law"), before the Agency can expend money for public improvements, the Agency and the City must make specified findings pursuant to Health and Safety Code Section 33445; and

WHEREAS, pursuant to the Law, the Agency is authorized, with the consent of the City Council to pay for part, or all, of the costs of public improvements that are of
benefit to the Redevelopment Plan area; and

WHEREAS, no other reasonable means of financing the estimated cost of the public improvements are available to the City or the community; and

WHEREAS, under the Law, before the Agency can expend money from its Housing Fund outside the area of the Redevelopment Plan, the Agency and the City must make specified findings pursuant to Health and Safety Code Section 33334.2(g); and

WHEREAS, pursuant to State CEQA Guidelines Section 15378(b)(4), approval of the Agreement is not a project subject to the California Environmental Quality Act ("CEQA"), because the Agreement consists of the creation of a governmental funding mechanism for various public improvements, but does not commit funds to any specific public improvement, in that environmental review required by CEQA shall be completed prior to the commencement of any public improvement listed in the Agreement; and

WHEREAS, the Staff Report, the Redevelopment Plan, the report to City Council accompanying the Redevelopment Plan, and the Implementation Plan provide additional information upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, the Board of Directors of the Solana Beach Redevelopment Agency does resolve as follows:

1. That the above recitations are true, correct and incorporated herein.

2. In compliance with Section 33445 of the Law, the Agency hereby finds that: (a) the acquisition of the land or the installation or construction of the public improvements listed in the Agreement that are publicly owned are of benefit to the Redevelopment Plan area by helping to eliminate blight within the Redevelopment Plan area or providing housing for low- or moderate-income persons; (b) no other reasonable means of financing the acquisition of land or the installation or construction of the public improvements listed in the Agreement that are publicly owned are available to the community; and (c) the appropriation and payment of funds by the Agency for the acquisition of land or the cost of the public improvements listed in the Agreement that are publicly owned is consistent with the Agency's current Implementation Plan. These findings are based on the facts and analysis in the Staff Report incorporated in this Resolution.

3. In compliance with Section 33334.2(g) of the Law, the Agency hereby finds that: assistance to the affordable housing projects described in the agreement and located outside of the Redevelopment Plan area will be of benefit to the Redevelopment Plan, in that all parts of the City are in close proximity to the area included within the Redevelopment Plan. This finding is further based on the facts and
analysis in the Staff Report incorporated in this Resolution.

4. The Agency agrees to make the expenditures as called for in the Agreement for the public improvement and affordable housing projects listed in the Agreement, subject to completion of any environmental review required by CEQA prior to the commencement of any improvement or project listed in the Agreement.

5. The Agency hereby approves the Agreement and authorizes the Agency Executive Director to enter into and execute the Agreement on behalf of the Agency for the funding and completion of the projects listed in the Agreement, substantially in the form on file with the Agency Secretary and the City Clerk, with such revisions as are reasonably determined necessary by the Agency signatory, such determination to be conclusively deemed to have been made by the execution of the Agreement by the Agency signatory. The Agency Executive Director is authorized to implement the Agreement and take all further actions and execute all other documents which are necessary or appropriate to carry out the Agreement.

6. The Agency hereby approves and appropriates (to the extent not already appropriated) the amounts necessary to fund the Agency's obligations under the Agreement as a lawful expenditure of Agency funds under the Law. The Agency's current fiscal year budget is hereby amended to the extent necessary to implement the foregoing appropriation.

7. The Agency Executive Director is hereby authorized and directed to file Notices of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA.

8. The Agency Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the Agency's obligations pursuant to this Resolution and the Agreement.

9. The Agency Secretary shall certify to the adoption of this Resolution.
10. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 26th day of January, 2011, at a regularly scheduled meeting of the Board of Directors of the Solana Beach Redevelopment Agency by the following vote:

AYES: Boardmembers –
NOES: Boardmembers –
ABSTAIN: Boardmembers –
ABSENT: Boardmembers –

LESA HEEBNER, Chairperson

APPROVED AS TO FORM: ATTEST:

JOHANNA N. CANLAS, Agency Counsel ANGELA IVEY, Secretary