



City Attorney Dennis Herrera Statement

For Immediate Release:
February 3, 2015
Contact: Matt Dorsey
(415) 554-4662

Herrera grateful to ABAG for fully restoring \$1.3 million to SOMA Improvement Fund

*Unanimous decision follows demand from Controller and City Attorney last week,
will enable SOMA committee to continue making neighborhood improvements*

SAN FRANCISCO (Feb. 3, 2015)—The Association of Bay Area Governments’ financing authority today approved using its own reserve funds to fully restore \$1.3 million to San Francisco for a dedicated fund intended for public infrastructure improvements in the South of Market neighborhood. A former senior ABAG official is a suspect in an embezzlement scheme that depleted the account, which law enforcement authorities are currently investigating.

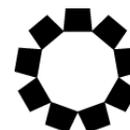
The unanimous decision by the executive committee of ABAG’s Finance Authority for Nonprofit Corporations follows a Jan. 28 letter from City Attorney Dennis Herrera and City Controller Ben Rosenfield demanding the immediate return of \$1,296,340.66, which was withdrawn without the knowledge or approval of San Francisco city officials. The withdrawal violated terms of an indenture agreement governing ABAG’s administration of the funds.

“The misuse of public funds for private gain is among the worst betrayals of public trust in government, and I applaud ABAG for doing the right thing by acting quickly to restore funds that were apparently embezzled from the City’s account,” said Herrera. “This decisive step will enable the South of Market Community Stabilization Committee to continue its work to improve neighborhood infrastructure. My office will continue to cooperate with ABAG to rectify the wrongdoing, and with the law enforcement agencies working to bring the perpetrator to justice.”

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ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



ABAG

Statement

FOR IMMEDIATE RELEASE

February 3, 2015

Contact: Brad Paul, 510/464-7955, BradP@abag.ca.gov

Finance Authority for Nonprofit Corporations (FAN) Votes to Restore Embezzled San Francisco Funds

OAKLAND, CA – The Executive Committee of the Finance Authority for Nonprofit Corporations (FAN) today voted unanimously to use approximately \$1.3 million from FAN reserve funds to make San Francisco whole, in the wake of an apparent embezzlement of that amount by a senior manager at FAN. The money will be returned to the account from which it was stolen, restoring control of these funds to San Francisco and the South of Market Community Stabilization Committee. It is expected that legal documents effectuating the transfer of funds will be finalized by early next week.

The money was apparently embezzled by Clarke Howatt, a senior manager who had access to FAN accounts. Howatt's current whereabouts are unknown.

After the vote, FAN Executive Committee Chair Charles A. Lomeli stated: "The Finance Authority for Nonprofit Corporations acted quickly today to make San Francisco whole. We are deeply shocked that FAN's longtime Director, Clarke Howatt, appears to have embezzled \$1.3 million from funds designated for public improvements in San Francisco. While we work with law enforcement to recover these misappropriated funds, we will ensure that the South of Market Community Stabilization Committee can continue its important work without delay. In addition, we have begun the process of conducting a comprehensive forensic audit of all FAN transactions in which Mr. Howatt was engaged."

Association of Bay Area Governments (ABAG) Executive Director Ezra Rapport commented, "We support the quick actions of the FAN Board. We will coordinate with FAN, law enforcement, and local government agencies to recover the embezzled funds. All of the hard-working employees of ABAG and FAN feel betrayed by the corrupt and reckless actions of this one man."

Representatives from FAN and ABAG have already met and shared information with the Federal Bureau of Investigation.

As has been reported in the media over the past week, it appears that Clarke Howatt engaged in a complex, multi-layered effort to defraud. He created false bank accounts with an entity name similar to a real party of interest in the One Rincon project. He created falsified documents, misleading bond counsel, bank trustees, and the Executive Committee of FAN in a sophisticated scheme to authorize the wiring of these funds to an illicit bank account under Howatt's control.

Howatt's current whereabouts are unknown.

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CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

BEN ROSENFELD
Controller

January 28, 2015

Herbert Pike, Chief Financial Officer
Ezra Rapport, Executive Director
Brad Paul, Deputy Director
Clarke J. Howatt, Secretary
ABAG Finance Authority for Nonprofit Corporations
101 Eighth Street
Oakland, California 94607-4756

Re: Demand for Reimbursement of Unauthorized Disbursement of Funds
from MUFG Union Bank, N.A. Account #6711784407 (Improvement Fund) and
Account #6711784410 (City Subaccount) (collectively, the "Accounts")

Gentlemen:

We write to demand the immediate return of \$1,296,340.66 in funds withdrawn on August 12, 2014 from the above-referenced accounts (the "Accounts"). The Funds were withdrawn without the knowledge or approval of the City and County of San Francisco (the "City"), violating the terms of that Indenture dated as of June 1, 2006 (the "Original Indenture"), between the ABAG Finance Authority for Nonprofit Corporations (the "Authority") and Union Bank of California, as trustee (the "Trustee"). The Original Indenture is attached to this letter as Exhibit A.

Under the Original Indenture, the bond proceeds allocated to the Improvement Fund were deposited into the Accounts (see Section 4.02 of the Original Indenture), and such Accounts were to be held in trust for the City's benefit. The Original Indenture requires prior written approval by the Mayor's Office of Public Finance of the City (the "Office of Public Finance") or other authorized representative of the City for all disbursements from the Accounts. To our knowledge, all disbursements before August 12, 2014 from the Accounts were authorized through written request forms executed by the Office of Public Finance or an authorized City representative.

The City has recently become aware that the Authority, without the City's knowledge or approval, entered into a First Supplemental Indenture of Trust (the "First Supplemental Indenture"), dated as of July 1, 2014. That document unlawfully divested the City of its authority to approve disbursements from the Accounts. The First Supplemental Indenture was executed by the Authority, over the signatures of Herbert Pike, Chief Financial Officer, and Clarke J. Howatt, Secretary of the Authority, on the basis that it was curing a defect or ambiguity under the Original Indenture. But no such ambiguity or defect existed, so there was no legitimate basis for that document. Section 10.01 of the Original Indenture states that the City has a beneficial interest in the funds created under Section 4.02 of the Original Indenture. Also, Section 4.02 of the Original Indenture states that the funds in the Accounts are to be held by the Trustee in trust for the City's benefit. Nonetheless, no one in the Office of Public Finance, the Mayor's Office of Housing and Community Development ("MOHCD"), the City's Planning

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Department, the Controller's Office or the City Attorney's Office was notified of, or consulted, with respect to execution of the First Supplemental Indenture or the disbursement of funds purportedly made under it.

Under the First Supplemental Indenture, on August 12, 2014 the Authority requested that the Trustee wire \$1,296,340.66 to an entity named "Urban West for Rincon Developers, LLC, the Developer of the San Francisco Rincon Hill Project". The transmittal to the Trustee is attached hereto as Exhibit B. That entity is not the developer that would have been entitled to the money, and it is unclear who now has the funds. And again, no one at the Office of Public Finance, MOHCD, the City's Planning Department, the Controller's Office or the City Attorney's Office was notified about, or approved, the requisition for this disbursement. Also, contrary to a statement made in the San Francisco Chronicle (dated January 27, 2014), the City Attorney's Office did not consult with the Authority or the Trustee about the propriety of this disbursement before it was made, and if it were consulted the City Attorney's Office would have advised that the disbursement was not permitted. Like all other City officials, the City Attorney's Office only recently learned of this disbursement.

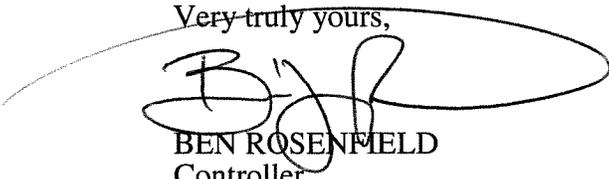
Because the disbursement was not authorized under the terms of the Original Indenture, and the First Supplemental Indenture is not legitimate and therefore void, the City demands an immediate return of all funds disbursed under the August 12, 2014 requisition. Also, the City demands a full accounting of all funds and accounts under the Original Indenture. Finally, the City demands that the Authority immediately take or cause to be taken such actions to formally rescind the First Supplemental Indenture as that document was not executed in accordance with the terms of the Original Indenture.

We demand return of the funds no later than Friday, January 30, 2015. The funds must be wired to the Trustee.

We also demand a completion of the audit with respect to the Accounts no later than February 13, 2015.

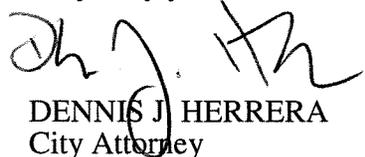
Should you have any questions, please feel free to contact Ben Rosenfield at (415) 554-7500 or Jesse Smith at (415) 554-4700.

Very truly yours,



BEN ROSENFIELD
Controller

Very truly yours,



DENNIS J. HERRERA
City Attorney

Attachments

cc: (w/o attachments)
Olson Lee, Director, Mayor's Office of Housing
John Rahaim, Director, Planning Department
Nadia Sesay, Director of the Office of Public Finance
Michael Kriozere, Urban West Associates of San Diego
Steve Vettel, Farella Braun & Martel LLP
Julie Wunderlich, Jones Hall
Steve Melikian, Jones Hall
Chris Lynch, Jones Hall

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Keith Sevigny, MUFG Union Bank N.A.