

1 [Settlement of Unlitigated Claim - Association of Bay Area Governments and ABAG Financing  
2 Authority for Nonprofit Corporations - City to Receive \$1,296,340.66 Plus Interest and Other  
3 Costs]

3

4 **Resolution approving the settlement of the unlitigated claim in favor of the City against**  
5 **the Association of Bay Area Governments and the ABAG Financing Authority for**  
6 **Nonprofit Corporations for \$1,296,340.66 plus interest and other costs; the City’s claim**  
7 **sought recovery following the embezzlement of certain Rincon Hill Community Facility**  
8 **District bond funds under the jurisdiction of the Mayor’s Office of Housing and**  
9 **Community Development.**

10

11 WHEREAS, On June 8, 2006, the Association of Bay Area Governments (“ABAG”),  
12 though its ABAG Finance Authority for Nonprofit Corporations, a joint exercise of powers  
13 authority organized and existing under and by virtue of the laws of the State of California  
14 (“FAN”), caused to be issued \$5,825,000 of Community Facilities District No. 2006-1 (San  
15 Francisco Rincon Hill) Special Tax Bonds, Series 2006A (the “Bonds”) to finance the  
16 acquisition and construction of certain infrastructure improvements within the Rincon Hill  
17 Communities Facilities District (the “District”); and

18 WHEREAS, The Bonds were issued pursuant to the terms of Indenture, dated as of  
19 June 1, 2006 (the “Original Indenture”), between FAN and Union Bank of California, as trustee  
20 (the “Trustee”), and a portion of the proceeds of the Bonds were deposited into Rincon Hill  
21 Community Improvements Account and the SOMA Community Stabilization Account  
22 (collectively, the “City Accounts”), as established under the terms of that Original Indenture,  
23 for the benefit of the City and administered by the Mayor’s Office of Housing and Community  
24 Development (“MOHCD”); and

25

1           WHEREAS, Under the terms of the Original Indenture, all funds withdrawn from the  
2 City Accounts required the approval of the then Mayor’s Office of Public Finance or other  
3 appropriate City official; and

4           WHEREAS, In July 2014, FAN, without the City’s knowledge or approval, entered into  
5 a First Supplemental Indenture of Trust (the “First Supplemental Indenture”), dated as of July  
6 1, 2014, by and between FAN and the Trustee, to eliminate City approval of any withdrawal of  
7 funds from the City Accounts as set forth under the Original Indenture; and

8           WHEREAS, On the basis of the First Supplemental Indenture and a memorandum  
9 authored by then FAN Secretary Clark Howatt (“Howatt”), the Executive Committee of FAN,  
10 on July 14, 2014, adopted Resolution No. 14-15 authorizing the transfer, without City approval  
11 or notice, of the remaining funds in the City Accounts; and

12           WHEREAS, On or about August 12, 2014, Howatt and Herbert Pike, an ABAG  
13 employee and Chief Financial Officer of FAN, delivered instructions to the Trustee to wire  
14 \$1,296,340.66 into a Citibank Account in La Jolla, California for an entity denoted “Urban  
15 West for Rincon Developers, LLC”; and

16           WHEREAS, Urban West for Rincon Developers, LLC was not an entity entitled to the  
17 funds, and it now understood that the transfer was the result of an embezzlement scheme  
18 orchestrated by Howatt; and

19           WHEREAS, On March 17, 2015, the ABAG Administrative Board and the Executive  
20 Committee of FAN approved the payment of restitution, together with other costs, to the City;  
21 and

22           WHEREAS, MOHCD, the Controller and the City Attorney’s Office have recommended  
23 settlement of such claim by payment by ABAG and/or FAN of \$1,296,340.66, plus interest,  
24 and an amount of up to \$30,000 estimated to cover certain City costs, and the approval of the  
25 Settlement and Release Agreement to be executed by and among ABAG, FAN and the City,

1 including rescission of the First Supplemental Indenture, all intended to restore the City to the  
2 situation it was in before the unauthorized distribution of the bond funds; now, therefore, be it

3 RESOLVED, That pursuant to Administrative Code, Section 10.24, the Board of  
4 Supervisors hereby authorizes the City Attorney to settle and compromise the claim by  
5 payment of \$1,296,340.66, plus interest, and up to \$30,000 to cover certain City costs relating  
6 to uncovering the embezzlement scheme and alerting ABAG and FAN; and, be it

7 FURTHER RESOLVED, That the form of Settlement Agreement and Release a copy of  
8 which is on file with the Clerk of the Board of Supervisors in File No. 150423 proposed to be  
9 executed by and among ABAG, FAN and the City is hereby approved with such final  
10 modifications and clarifications therein as the Department and the City Attorney shall finally  
11 approve consistent with this Resolution.

12  
13 APPROVED:

RECOMMENDED:

14 DENNIS J. HERRERA  
15 City Attorney

MAYOR'S OFFICE OF HOUSING AND  
COMMUNITY DEVELOPMENT

16  
17 \_\_\_\_\_  
18 Mark D. Blake  
19 Deputy City Attorney

OLSON LEE  
Director

20 RECOMMENDED:

21 OFFICE OF THE CONTROLLER

22 \_\_\_\_\_  
23 BEN ROSENFELD  
24 Controller