SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME:	**: 10:00 a.m. April 19, 2013**	**DEPT. NO**	**: 14**
JUDGE	**: HON. EUGENE L. BALONON**	**CLERK**	**: MERCADO**

CITY OF UNION CITY, a general law city; and SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF UNION CITY, a public entity, **Petitioners and Plaintiffs,** **v.** **ANA MATOSANTOS, in her official capacity as Director of Finance for the State of California; PATRICK O'CONNELL, in his official capacity as Auditor-Controller of the County of Alameda; JOHN CHIANG, in his official capacity as State Controller for the State of California, and DOES 1-100, inclusive,** **Respondents and Defendants.**	**Case No.: 34-2013-80001377**

Nature of Proceedings:	**Petition for Writ of Mandate—Bifurcated Proceedings on BART Phase 2 Project**

TENTATIVE RULING

The following is the Court's tentative ruling on the sole issue to be resolved in the first phase of these bifurcated proceedings in Petitioners' petition for writ of mandate and complaint for injunctive and declaratory relief — whether Respondent Department of Finance (DOF) abused its discretion in determining that Recognized Obligation Payment Schedule for January through June 2013 (ROPS III) items 11-13, related to the BART Phase 2 Project, were not enforceable obligations under the Redevelopment Agency Dissolution Law. This matter is set for hearing in Department 14 on Friday, April 19, 2013, at 10:00 a.m. The tentative ruling shall become the final ruling of the Court on this issue, unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

If a hearing is requested, oral argument shall be no more than 20 minutes per side.

Petitioners are the City of Union City (City), and the successor agency to the Community Redevelopment Agency of the City of Union City (Successor Agency). Petitioners filed a petition for writ of mandate and a complaint for declaratory and injunctive relief

(Petition) against Respondents, which generally challenges: (1) DOF's determination that certain items on the ROPS III schedule are not enforceable obligations; (2) DOF's determination that certain housing assets of the former Redevelopment Agency may not be properly transferred to the City, and (3) the Alameda County Auditor-Controller's calculation of the "true-up" payment due from the Successor Agency.

Petitioners seek a "bifurcated writ of mandate regarding…the BART Phase 2 funding obligation in advance of the other matters at issue in this action." Petitioner and Respondents DOF and the Alameda County Auditor-Controller have also stipulated to approve bifurcated judicial review of this issue. Accordingly, the Court grants Petitioner's request to bifurcate these proceedings and rules on this item.

BACKGROUND

On March 1, 2011, the City, the former Community Redevelopment Agency of the City of Union City (RDA), and the San Francisco Bay Area Rapid Transit District (BART) entered into a Cooperative Agreement (Agreement) for the design, construction and funding of the BART Phase 2 Project (Project). The Project will create an entrance at the Union City BART station and pedestrian walkway.

Under the Agreement, the City and RDA were "responsible for funding the Project." (Petition, Exh. A, § 2.01.) The City's and RDA's funding obligations were contingent upon these entities securing necessary funds, but the Agreement directed that these entities make good faith and diligent efforts to obtain funding. (*Id.*, at §§ 2.02, 2.04.) The Agreement identified the proposed funding sources, including grants, that were to be used for the Project. (*Id.*, at § 2.03; Exh. H to Agreement.)

That same day, on March 1, 2011, the RDA issued Subordinate Lien Tax Allocation Bonds, Series 2011, in the amount of $29,500,000. (Petition, Exh. B, § 5.04.) The bond indenture provided that these bonds were to be used for aiding and financing 14 improvement projects, collectively referred to as "the Project." The indenture listed the BART Phase 2 Project as one of these improvements, with an estimated cost of $30.4 million. The other improvements were estimated to cost approximately $181 million. (*Id.*, at §§ 5.03-5.04; Appendix, A-1 — A-5.)

On February 1, 2012, the RDA ceased to exist by operation of law. (Health & Saf. Code, § 34170(a).) The City assumed status as the Successor Agency for the RDA, and was charged with winding down the RDA's affairs. (Health & Saf. Code, § 34177(h).) As required by law, the Successor Agency began to submit ROPS to DOF for approval. These ROPS listed what the Successor Agency considered to be the enforceable obligations made by the RDA, which obligations must now be paid by the Successor Agency.

On August 8, 2012, the Successor Agency submitted to DOF ROPS III for the period of January to June 2013.[1] (*See*, Petition, Exh. V.) ROPS III items 11-13[2] requested to use bond funds for various components of the BART Phase 2 project. The ROPS III submittal indicated that approximately $17.9 million was outstanding for items 11-13. (*Ibid.*) On September 21, 2012, DOF rejected ROPS items 11-13 because the $17.9 million amount listed in the ROPS submission did not match the $1,629,220 amount of RDA funds committed in Exhibit H to the Agreement. (Petition, Exh. W.)

Petitioners met and conferred with DOF. Petitioners explained that, although the Agreement indicated that only a small portion of the Project would be funded with RDA monies, the RDA was responsible for funding the entire Project if it could not obtain funding from other sources. (Petition, Exhs. X, Y.) On December 18, 2012, DOF issued a final decision letter. DOF rejected ROPS items 11-13, but now on different grounds. DOF rejected these items because the Agreement made the City directly liable for funding the Project if the RDA dissolved. As such, DOF concluded that ROPS III items 11-13 were not enforceable obligations. (Petitioner, Exh. Y.)

DISCUSSION

Respondent Matosantos' unopposed request for judicial notice is **GRANTED**.

The Court **OVERRULES** Respondent Matosantos' objections to the entire declarations of James Gravesande and Steve Sprotte, and the portion of the declaration of Mark Evanoff.

Standard of Review

Petitioners seek a writ of mandate pursuant to Code of Civil Procedure section 1085 to review DOF's determination that ROPS items 11-13 are not enforceable obligations. The applicable standard of review is whether DOF abused its discretion in making these determinations. (*See Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cap.App.4th 986, 1003.) The Court "exercise[s] limited review in ordinary mandamus proceedings. [It] may not reweigh the evidence or substitute [its] judgment for that of the agency. [It] uphold[s] an agency action unless it is arbitrary, capricious, lacking in evidentiary support, or was made without due regard for the petitioner's rights. However, courts must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." (*Ibid.* (quoting *Sequoia Union High School District v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, 195).)

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[1] The Successor Agency also submitted earlier ROPS to DOF for the periods of January to June 2012 and July through December 2012, seeking recognition of the BART Phase 2 Project funding obligations as enforceable obligations. (Respondent Matosantos' Request for Judicial Notice ("RJN"), Exh. 1, 2.) DOF rejected these items as enforceable obligations. (RJN, Exh. 4.)

[2] The Court observes that ROPS III item 10 also requested $300,000 funding for the BART Phase 2 Project, for the ROPS III period. The parties do not discuss this item in the briefing, and it is not at issue in this litigation.

Background Law

In June 2011, the Legislature enacted Assembly Bill X1 26 (AB 26) to eliminate redevelopment agencies. (*See also, California Development Association v. Matosantos* (2011) 53 Cal.4th 231.) In June 2012, the Legislature adopted Assembly Bill 1484 to modify provisions in AB 26. The Court refers to AB 26 and AB 1484 collectively as the Dissolution Law.

The Dissolution Law eliminated redevelopment agencies, but not the enforceable obligations they made. Under the Dissolution Law an entity may become a "successor agency" and assume the rights and obligations of the former redevelopment agency. The successor agency is charged with winding down the operations of the RDA and must make payments on the enforceable obligations incurred by the RDA. (Health & Saf. Code, § 34177(a), (d)(1).) Each successor agency must prepare a ROPS schedule listing the proposed enforceable obligations for the upcoming six-month period. The ROPS schedule must be approved by the successor agency's Oversight Board and DOF. (Health & Saf. Code, §§ 34171; 34177; 34179(h), 34180.) If the ROPS items are approved as enforceable obligations, the successor agency may receive funding to pay for those items from the Redevelopment Property Tax Trust Fund. (Health & Saf. Code, §, 34183.)

Whether DOF Abused Its Discretion in Determining that ROPS III Items 11-13 Were Not Enforceable Obligations

Health and Safety Code section 34171(d)[3] defines seven categories of enforceable obligations. An enforceable obligation includes "[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy" entered into prior to the effective date of AB 26. (Health & Saf. Code, §§ 34167(d); 34171(d)(1)(E).) Petitioner argues that the Agreement created an enforceable obligation of the RDA, for which the Successor Agency may receive funding.

DOF reiterates its basis for denying ROPS III items 11-13. It argues that they are not enforceable obligations, because when the RDA dissolved, the Agreement provided that the City succeeded to the RDA's obligations. This eliminated any enforceable obligation made by the RDA. In its final December 18, 2012 rejection letter (Petition, Exh. Y, p. 2), DOF cited Agreement section 5.07. This section provides in full:

> Section 5.07 Binding on Successors; City as Successor to Agency. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law. If the Agency ceases to exist, the City shall automatically succeed to the interests of Agency under this Agreement.

[3] Unless otherwise specified, all future references shall be to the Health and Safety Code.

According to DOF, the Agreement provided that the RDA's obligations under the Agreement would end if the RDA ceased to exist. The RDA dissolved on February 1, 2012. DOF argues that the Agreement made the City, (not the entity that chose to become the Successor Agency) assume the RDA's obligations when it dissolved. Thus, DOF contends that the City's assumption of the RDA's obligations under the Agreement is entirely separate from the Successor Agency's (also the City) assumption of the RDA's obligations under the Dissolution Law.

To illustrate, DOF cites Section 34173. Subdivision (d) of this statute exempts the local entity that created the redevelopment agency from becoming the successor agency, if that local entity so chooses. Thus, another entity besides the City could have become the successor agency to the RDA. However, even if this occurred, DOF notes that the City would nonetheless have assumed the RDA's funding obligations for the Project under the Agreement.

DOF argues that the City cannot now "transfer" these obligations that it assumed under the Agreement to the Successor Agency as an "enforceable obligation" incurred by the RDA.

Petitioner cites to a different subdivision of Section 34173, to argue that the RDA's dissolution *did* transfer the RDA's obligations under the Agreement to the Successor Agency by operation of law. Section 34173(b) provides that "all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies." (Health & Saf. Code, § 34173(b).) In other words, Petitioner contends this provision of the Dissolution Law, not the Agreement, controls: the Project obligations transferred to the Successor Agency by operation of law when the RDA dissolved; they did not transfer to the City under the Agreement.

A contract must be interpreted to give effect to the mutual intent of the parties as it existed at the time of the contract, so long as the intent was ascertainable and lawful. (Civ. Code, § 1636.) The intent must be determined from the language of the contract itself. (Civ. Code, §§ 1638, 1639; *City of Chino v. Jackson* (2002) 97 Cal.App.4th 377, 382.) In ascertaining intent, the Court must view the contract as a whole, and avoid constructions that render that part of the contract surplusage, irrelevant, or meaningless. (Civ. Code, § 1641; *Estate of Petersen* (1994) 28 Cal.App.4th 1742, 1753, fn. 4.)

When the parties entered the Agreement on March 1, 2011, the Dissolution Law, notably AB 26, had not yet been enacted. As conceded by Petitioners, the Agreement makes the City and the RDA "jointly responsible for funding for the [P]roject." (Petitioner's Memorandum of Points and Authorities, 8:2.) The Agreement charges the RDA with reimbursing BART for incurred expenses, but other provisions of the Agreement convey that the RDA and the City must *both* secure Project funding.

For example, the Agreement provides that: "The City and [RDA's] responsibilities under this agreement consist of (i) funding the Phase 2 Project" (Petition, Exh. A, § 2.01); "The City's and [RDA's] obligations under this Agreement…shall be contingent upon the City and [RDA] obtaining the necessary funding for the Phase 2 Project" (*Id.*, § 2.02); "The City or [RDA] shall seek time extensions as necessary to preserve the availability of funds" (*Id.*, 2.03); "The City and [RDA] shall make good faith and diligent efforts to obtain all necessary funds…but nothing in this Agreement shall obligate the City or [RDA] to expend for the Phase 2 Project its general fund or other funds not specifically earmarked for the Phase 2 Project."

Finally, as noted by DOF, Section 5.07 contemplates that the Agreement is binding on the parties' successors and that the City automatically succeeds to the RDA's interests if the RDA dissolves.

The Agreement shows that the parties intended that the City and RDA would be jointly responsible for securing funding. It is reasonable to conclude that the parties intended that, if one entity ceased to exist, the other entity would still be responsible for obtaining (or making efforts to secure) funding under the Agreement. Additionally, Agreement Section 5.07 states that the City shall succeed to the rights of the RDA if it ceased to exist. Thus, the RDA's dissolution did not relieve the City from its responsibilities under the Agreement; rather, the City assumed any funding obligations imposed on the RDA under the Agreement when the RDA dissolved. Petitioner argues that the Dissolution Law overrides the terms of the Agreement. However, Petitioner cites no authority for the proposition that the Dissolution Law overrides any contract where a third party agreed to assume a former redevelopment agency's obligations.

Thus, DOF reasonably interpreted the Agreement to mean that the City automatically assumed whatever funding obligations the RDA made under the Agreement, and that ROPS III items 11-13 were not enforceable obligations. DOF did not abuse its discretion in rejecting these items.

Because the Court concludes that DOF did not abuse its discretion on this ground, it does not consider DOF's argument that the Agreement was not an enforceable obligation because it was a non-binding "agreement to agree."

Petitioners also argue that issuance of $29,500,000 in bonds created an enforceable obligation under Section 34171(d)(1)(A), and that the Successor Agency must use the bond proceeds for the Project.

Section 34171(d)(1)(A) states that enforceable obligations include:

> Bonds, as defined by Section 33602 and bonds issued pursuant to Chapter 10.5 … including the required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds of the former redevelopment agency….

Petitioners argue that use of the bonds for the BART Phase 2 Project is a "payment required under the indenture" and thus, an enforceable obligation. It is not. Petitioners also suggest that the Successor Agency must use the bonds expressly for the BART Phase 2 Project to avoid defeasance. (Health & Saf. Code, § 34177(i).) This is also incorrect.

The total estimated cost of all the improvements listed in the indenture is approximately $211 million. The amount of bonds issued under the indenture is only $29,590,000. The bond indenture does not require that the bond proceeds be used for the BART Phase 2 Project. Rather, it provides that the bonds shall be used for numerous improvements, *including* the BART Phase 2 Project. The Successor Agency could use the bonds to finance other improvements, and *not* the Bart Phase 2 Project, without contravening the bond indenture.

DISPOSITION

The Court finds that DOF did not abuse its discretion in concluding that ROPS III items 11-13, relating to the BART Phase 2 Project, were not enforceable obligations. The Petition's first cause of action, to the extent that it seeks to set aside DOF's decision that ROPS III Items 11-13 are not enforceable obligations, is **DENIED**.

The Court will consider the remaining issues presented by the Petition at a date and time agreed upon by the parties and the Court.