



375 Beale Street  
Suite 700  
San Francisco, California  
94105

## Meeting Agenda - Final

### ABAG FAN Executive Committee

*Chair, Charles Lomeli, Treasurer-Tax Collector-County Clerk,  
County of Solano*

---

Thursday, September 5, 2019

10:00 AM

Golden Gate CR 8102

---

#### ABAG Finance Authority for Nonprofit Corporations Executive Committee

The ABAG FAN Executive Committee may act on any item on the agenda.

The meeting is scheduled to begin at 10:00 a.m.

Agenda, roster, and webcast available at <https://abag.ca.gov>

For information, contact Secretary at (415) 820-7913.

#### Location

Bay Area Metro Center, 375 Beale Street, 8th Floor, Golden Gate Conference Room 8102, San Francisco, California

#### Teleconference Locations

County of Contra Costa, 625 Court Street, Room B-001, Martinez, California

County of Santa Clara, County Government Center, 70 West Hedding Street, E. Wing, 2nd Floor, San Jose, California

County of Solano, County Government Center, 675 Texas Street, Suite 1900, Fairfield, California

County of Sonoma, County Fiscal Building, 585 Fiscal Drive, Suite 100, Santa Rosa, California

#### Roster

Charles Lomeli, Treasurer-Tax Collector-County Clerk, County of Solano

Jonathan Kadlec, Assistant Auditor-Controller-Treasurer-Tax Collector,  
County of Sonoma

Paul McDonough, Debt Management Officer, County of Santa Clara

Russell Watts, Treasurer-Tax Collector, County of Contra Costa

1. Call to Order / Roll Call / Confirm Quorum
2. Public Comment
3. Executive Committee Announcements
4. Chair's Report
5. Consent Calendar

- 5.a. [19-0939](#) Approval of ABAG FAN Executive Committee Minutes of June 6, 2019

**Action:** Approval

**Presenter:** Secretary

**Attachments:** [FAN EC 20190905 Item 05 Minutes 20190606 Draft.pdf](#)

## 6. Year End Financial Statements (Unaudited)

6. [19-0940](#) Report on ABAG FAN Financial Statements from July 2018 to June 2019 (Unaudited)

**Action:** Approval

**Presenter:** Brian Mayhew

**Attachments:** [Item 06 Summary Sheet Financial Statements.pdf](#)  
[Item 06 Attachment Budget to Actual as of 6 30 19.pdf](#)

## 7. Annual Portfolio Update

7. [19-0941](#) Report on Annual Portfolio Update

**Action:** Approval

**Presenter:** Brian Mayhew

**Attachments:** [Item 07 Summary Sheet Annual Portfolio Update v3.pdf](#)

## 8. ABAG FAN Successor Agency

8. [19-0942](#) Report on ABAG FAN Successor Agency Phase I

**Action:** Approval

**Presenter:** Brian Mayhew

**Attachments:** [Item 08 Summary Sheet Successor Agency v2.pdf](#)  
[Item 08 Attachment Nixon Peabody Update Successor Agency Review 4835-35](#)

## 9. Adjournment / Next Meeting

*The next meeting of the ABAG FAN Executive Committee is on October 3, 2019.*

**Public Comment:** The public is encouraged to comment on agenda items at Committee meetings by completing a request-to-speak card (available from staff) and passing it to the Committee secretary. Public comment may be limited by any of the procedures set forth in Section 3.09 of MTC's Procedures Manual (Resolution No. 1058, Revised) if, in the chair's judgment, it is necessary to maintain the orderly flow of business.

**Meeting Conduct:** If this meeting is willfully interrupted or disrupted by one or more persons rendering orderly conduct of the meeting unfeasible, the Chair may order the removal of individuals who are willfully disrupting the meeting. Such individuals may be arrested. If order cannot be restored by such removal, the members of the Committee may direct that the meeting room be cleared (except for representatives of the press or other news media not participating in the disturbance), and the session may continue.

**Record of Meeting:** Committee meetings are recorded. Copies of recordings are available at a nominal charge, or recordings may be listened to at MTC offices by appointment. Audiocasts are maintained on MTC's Web site ([mtc.ca.gov](http://mtc.ca.gov)) for public review for at least one year.

**Accessibility and Title VI:** MTC provides services/accommodations upon request to persons with disabilities and individuals who are limited-English proficient who wish to address Commission matters. For accommodations or translations assistance, please call 415.778.6757 or 415.778.6769 for TDD/TTY. We require three working days' notice to accommodate your request.

**可及性和法令第六章:** MTC 根據要求向希望來委員會討論有關事宜的殘疾人士及英語有限者提供服務/方便。需要便利設施或翻譯協助者，請致電 415.778.6757 或 415.778.6769 TDD / TTY。我們要求您在三個工作日前告知，以滿足您的要求。

**Acceso y el Titulo VI:** La MTC puede proveer asistencia/facilitar la comunicación a las personas discapacitadas y los individuos con conocimiento limitado del inglés quienes quieran dirigirse a la Comisión. Para solicitar asistencia, por favor llame al número 415.778.6757 o al 415.778.6769 para TDD/TTY. Requerimos que solicite asistencia con tres días hábiles de anticipación para poderle proveer asistencia.

---

Attachments are sent to Committee members, key staff and others as appropriate. Copies will be available at the meeting.

All items on the agenda are subject to action and/or change by the Committee. Actions recommended by staff are subject to change by the Committee.



ABAG

# Metropolitan Transportation Commission

375 Beale Street, Suite 800  
San Francisco, CA 94105

## Legislation Details (With Text)

**File #:** 19-0939      **Version:** 1      **Name:**

**Type:** Report      **Status:** Consent

**File created:** 8/14/2019      **In control:** ABAG FAN Executive Committee

**On agenda:** 9/5/2019      **Final action:**

**Title:** Approval of ABAG FAN Executive Committee Minutes of June 6, 2019

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** [FAN EC 20190905 Item 05 Minutes 20190606 Draft.pdf](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Approval of ABAG FAN Executive Committee Minutes of June 6, 2019

Secretary

Approval



375 Beale Street  
Suite 700  
San Francisco, California  
94105

## Meeting Minutes - Draft

### ABAG FAN Executive Committee

*Chair, Charles Lomeli, Treasurer-Tax Collector-County Clerk,  
County of Solano*

---

Thursday, June 6, 2019

3:00 PM

Golden Gate CR 8102

---

#### ABAG Finance Authority for Nonprofit Corporations Executive Committee

The ABAG FAN Executive Committee may act on any item on the agenda.

The meeting is scheduled to begin at 3:00 p.m.

Agenda, roster, and webcast available at <http://abag.ca.gov>

For information, contact Clerk of the Board at (415) 820-7913.

#### Executive Committee Roster

Charles Lomeli, Treasurer-Tax Collector-County Clerk, County of Solano

Jonathan Kadlec, Assistant Auditor-Controller-Treasurer-Tax Collector,  
County of Sonoma

Paul McDonough, Debt Management Officer, County of Santa Clara

Russell Watts, Treasurer-Tax Collector, County of Contra Costa

#### Location

Bay Area Metro Center, 375 Beale Street, Golden Gate Conference Room 8102, San Francisco,  
California

#### Teleconference Locations

County of Contra Costa, 625 Court Street, Room 100/102, Martinez, California

County of Santa Clara, County Government Center, 70 West Hedding Street, E. Wing, 2nd  
Floor, San Jose, California

County of Solano, County Government Center, 675 Texas Street, Suite 1900, Fairfield,  
California

County of Sonoma, County Fiscal Building, 585 Fiscal Drive, Suite 100, Santa Rosa, California

### 1. Call to Order / Roll Call / Confirm Quorum

Chair Lomeli called the meeting to order at about 3:00 p.m. Quorum was present. The following members participated by teleconference: Kadlec, Lomeli, McDonough, Watts.

**Present:** 4 - Kadlec, Lomeli, McDonough, and Watts

### 2. Public Comment

There was no public comment.

### 3. Executive Committee Announcements

There were no committee member announcements.

### 4. Consent Calendar

Chair Lomeli directed the Secretary to conduct a roll call vote.

**Upon the motion by Watts and second by Kadlec, the ABAG FAN Executive Committee Consent Calendar was approved. The motion passed unanimously by the following vote:**

**Aye:** 4 - Kadlec, Lomeli, McDonough, and Watts

- 4.a. [19-0654](#) Approval of ABAG FAN Executive Committee Minutes of April 4, 2019

### 5. Adoption of Resolution No. 2019-001

5. [19-0655](#) Adoption of Resolution No. 2019-001 Authorizing the Reissuance of the ABAG Finance Authority for Nonprofit Corporations Variable Rate Revenue Bonds (Institute for Defense Analyses Project) Series 2005 Reissuance

Chair Lomeli directed the Secretary to conduct a roll call vote.

**Upon the motion by Kadlec and second by McDonough, the ABAG FAN Executive Committee adopted Resolution No. 2019-001. The motion passed unanimously by the following vote:**

**Aye:** 4 - Kadlec, Lomeli, McDonough, and Watts

### 6 Report on ABAG FAN Successor Agency and Authorization to Conduct Initial Transactions Review

- 6 [19-0659](#) Report on ABAG FAN Successor Agency and Authorization to Conduct Initial Transactions Review

Chair Lomeli directed the Secretary to conduct a roll call vote.

**Upon the motion by Lomeli and second by Kadlec, the ABAG FAN Executive Committee authorized the Executive Director of the Metropolitan Transportation Commission, or her designee, to direct Nixon Peabody to conduct an initial review of ABAG FAN transactions to determine the feasibility of appointing a successor agency to ABAG FAN, in the amount of \$30,000.**

**Aye:** 4 - Kadlec, Lomeli, McDonough, and Watts

### 7. Adjournment / Next Meeting

Chair Lomeli adjourned the meeting at about 3:24 p.m. The next regular meeting of the ABAG FAN Executive Committee is on September 5, 2019.



**ABAG**

# Metropolitan Transportation Commission

375 Beale Street, Suite 800  
San Francisco, CA 94105

## Legislation Details (With Text)

**File #:** 19-0940      **Version:** 1      **Name:**

**Type:** Report      **Status:** Committee Approval

**File created:** 8/14/2019      **In control:** ABAG FAN Executive Committee

**On agenda:** 9/5/2019      **Final action:**

**Title:** Report on ABAG FAN Financial Statements from July 2018 to June 2019 (Unaudited)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** [Item 06 Summary Sheet Financial Statements.pdf](#)  
[Item 06 Attachment Budget to Actual as of 6 30 19.pdf](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Report on ABAG FAN Financial Statements from July 2018 to June 2019 (Unaudited)

Brian Mayhew

Approval

**ABAG Finance Authority for Nonprofit Corporations**

**Executive Committee**

---

**September 5, 2019**

**Agenda Item 6**

---

**Year End Financial Statements (Unaudited)**

---

**Subject:** Report on ABAG FAN Financial Statements from July 2018 to June 2019 (Unaudited)

**Background:** Attached for your information is the budget-to-actual report for ABAG Finance Authority for Nonprofit Corporations (ABAG FAN) for the year ending June 30, 2019. The report is unaudited and subject to change based on closing and final audit adjustments.

Fiscal Year 2018-19 was a second operational year for ABAG FAN after the program transitioned to Metropolitan Transportation Commission (MTC) administration. ABAG FAN ended the fiscal year with an operating deficit of \$60,000 as a result of startup costs for the new Advancing California Finance Authority (ACFA) conduit borrower.

On the revenue basis, ABAG FAN recognized revenue of \$1.3 million, approximately 76% of the adopted budget, which indicates that ABAG FAN maintains a stable financial position. The main source of revenue was financial services fees which totaled \$1.1 million, about 65% of the total budgeted revenue and 85% of the budget estimate for fee revenue.

On the expense side, the year-end expenses were \$342,000 under budget. The expense level is significant given the considerable startup expenses for ACFA. The year-end encumbrances represent the second year of the approved contracts and will be rolled over with the fiscal 2020 operating budget.

If you have any questions about this report, please contact Brian Mayhew at (415) 778-6730.

**Issues:** None

**Recommended Action:** The ABAG FAN Executive Committee is requested to approve the staff report.

**Attachments:** Financial Statements

**Reviewed:**



Therese W. McMillan



Ledger: GL  
 Report Date: 06/30/2019  
 Fiscal Year: 2019

**Budget to Actual by Fund**  
**(with Encumbrances)**

Period: 12  
 Budget Version: WK  
 Budget Level: OB

**Fund 481 ABAG FAN**

**REVENUE ACCOUNTS**

<u>Object Description</u>	<u>Object</u>	<u>Budget</u>	<u>Actual</u>	<u>Encumbrance</u>	<u>Balance</u>
Int Income - LAIF	4801	0.00	70,064.11	0.00	-70,064.11
Interest Income - CalTrust	4804	50,000.00	23,385.97	0.00	26,614.03
Interest Income - Other	4846	250,000.00	0.00	0.00	250,000.00
Gain/Loss Revaluation Investmt	4850	0.00	29,207.20	0.00	-29,207.20
Amort of Prem/Disc on Notes	4856	0.00	0.00	0.00	0.00
Financial Services Revenue	4953	1,300,000.00	39,961.00	0.00	1,260,039.00
Administrative fees	4956	0.00	653,837.78	0.00	-653,837.78
Project monitoring fees	4957	0.00	305,584.63	0.00	-305,584.63
Closing/Application fees	4958	0.00	129,450.00	0.00	-129,450.00
Transfers In	8002	100,000.00	0.00	0.00	100,000.00

**EXPENSE ACCOUNTS**

<u>Object Description</u>	<u>Object</u>	<u>Budget</u>	<u>Actual</u>	<u>Encumbrance</u>	<u>Balance</u>
Salaries	5000	274,944.00	230,390.72	0.00	44,553.28
Temporary Agency	5046	0.00	0.00	0.00	0.00
Benefits	5099	140,056.00	189,040.24	0.00	-48,984.24
Travel Expense	5100	0.00	4,204.66	0.00	-4,204.66
Meals	5105	0.00	700.27	0.00	-700.27
Conference/Trning Exps & Fees	5130	0.00	1,151.79	0.00	-1,151.79
Advertising/Public Awareness	5142	0.00	3,169.18	0.00	-3,169.18
Storage Rental	5184	0.00	3,282.90	2,418.20	-5,701.10
Mailing/Postage	5265	0.00	0.00	0.00	0.00
Subscriptions	5280	0.00	349.95	0.00	-349.95
Consultant/Professional Fees	5300	420,000.00	205,136.31	570,196.00	-355,332.31
Legal Fees	5340	100,000.00	10,141.00	85,180.34	4,678.66
Passthru/Contrib-Othr Agncies	5600	0.00	350,000.00	0.00	-350,000.00
Commtee Member's Stipend	5703	0.00	2,650.00	0.00	-2,650.00
Audit	5717	85,000.00	82,035.27	44,448.00	-41,483.27
Bank Service Charges	5750	50,000.00	7,735.94	0.00	42,264.06
Miscellaneous	5755	25,000.00	19.75	0.00	24,980.25
Indirect Costs	5763	208,000.00	221,333.77	0.00	-13,333.77
Transfers out	8000	350,000.00	0.00	0.00	350,000.00
<b>Revenue:</b>		1,700,000.00	1,251,490.69	0.00	448,509.31
<b>Expenses:</b>		1,653,000.00	1,311,341.75	702,242.54	-360,584.29
<b>Net:</b>		47,000.00	-59,851.06	-702,242.54	809,093.60



**ABAG**

# Metropolitan Transportation Commission

375 Beale Street, Suite 800  
San Francisco, CA 94105

## Legislation Details (With Text)

**File #:** 19-0941      **Version:** 1      **Name:**

**Type:** Report      **Status:** Committee Approval

**File created:** 8/14/2019      **In control:** ABAG FAN Executive Committee

**On agenda:** 9/5/2019      **Final action:**

**Title:** Report on Annual Portfolio Update

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** [Item 07 Summary Sheet Annual Portfolio Update v3.pdf](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Report on Annual Portfolio Update

Brian Mayhew

Approval

# ABAG Finance Authority for Nonprofit Corporations

## Executive Committee

---

September 5, 2019

Agenda Item 7

---

### Annual Portfolio Update

---

**Subject:** Report on Annual Portfolio Update

**Background:** This report provides a summary of all activities for Fiscal Year 2018-19 in the ABAG Finance Authority for Nonprofit Corporation's (ABAG FAN) existing debt portfolio. All activities are summarized into the following categories:

- Fiscal Year 2018-2019 Revenues and Collections
- IRS Audits
- Financing Activities
- Defaulted Bonds
- Housing Compliance Reporting
- Housing Compliance and Financial Services Software
- Portfolio Update

#### Fiscal Year 2018-2019 Revenues and Collections

ABAG FAN earned approximately \$655,000 in fee revenue for FY 2018-19. The majority of the revenue was generated from annual administrative and monitoring fees. Payments on all billings were received in a timely manner with no major issues regarding payment collectability or past due invoices.

Additionally, ABAG FAN earned approximately \$250,000 in transaction and amendment fees for FY 2018-19. This amount included revenue from application fees, issuance fees, and transaction amendment fees.

- 690/942 Market—approximately \$103,000 earned through application and issuance fee.
- Bryte Gardens—approximately \$63,000 earned through prepayment of monitoring fee and transaction amendment fee.
- Mountain View (Shorebreeze)—approximately \$39,000 earned through prepayment of monitoring fee and transaction amendment fee.
- Heritage Plaza—approximately \$10,000 earned through amendment of regulatory agreement.

# ABAG Finance Authority for Nonprofit Corporations

## Executive Committee

September 5, 2019

Agenda Item 7

### Annual Portfolio Update

- Institute for Defense Analysis—approximately \$36,000 earned through the application and reissuance of the 2019 bonds along with an amendment to the Modification Agreement.

#### IRS Audits

There were no IRS audit inquiries.

#### Financing Activities

In April 2019, there was a surge in refinancing inquiries due to the uncertainty of proposed federal tax law changes. Most of the inquiries did not materialize. Only one transaction came through with amendments to interest rate language. Below is the amended transaction:

- Institute for Defense Analysis—Amended documents to reflect change in interest rate mode. In doing so, it extended the Bank Holder Rate which caused a reissuance for federal tax purposes.

#### Defaulted Bonds

Air Force Village West, Inc. Bonds went into default in January 2017 and was brought to staff's attention in January 2018. It was also reported that the facility is in the process of being liquidated pursuant to the bankruptcy case. At the present time, the bonds are bank owned.

#### Housing Compliance Reporting

Housing Compliance was engaged to serve as administrator for all housing transactions that involve compliance monitoring and reporting. They are primarily responsible for submitting project status reports and continuing program compliance. The Authority still continues to monitor projects within their defined Qualified Project Period. To date, all projects have submitted their compliance documents with minimal to no issues other than timing.

#### Housing Compliance and Financial Services Software

In 2018, the ABAG FAN Executive Committee approved staff's request to enter into a contract with Compliance Services, LLC to

**ABAG Finance Authority for Nonprofit Corporations**

**Executive Committee**

---

**September 5, 2019**

**Agenda Item 7**

---

**Annual Portfolio Update**

---

utilize its customized bond program management software. The software was intended to assist with monthly billing for administrative and monitoring fees. However, staff decided that the work would be better performed internally. As such, this portion of the contract terminated at the end of the fiscal year resulting in an overall cost savings of \$50,000 annually.

Portfolio Update

As of June 30, 2019, nine (9) transactions have been paid off. There are currently 103 remaining transactions in the ABAG FAN debt portfolio. The portfolio will continue to remain in run-off mode as we explore possible options for appointing a successor agency. Staff will continue to administer the portfolio to ensure all requirements are fulfilled.

**Issues:**

None

**Recommended Action:**

The ABAG FAN Executive Committee is requested to approve the staff report.

**Attachments:**

None

**Reviewed:**



Therese W. McMillan



**ABAG**

# Metropolitan Transportation Commission

375 Beale Street, Suite 800  
San Francisco, CA 94105

## Legislation Details (With Text)

**File #:** 19-0942      **Version:** 1      **Name:**

**Type:** Report      **Status:** Committee Approval

**File created:** 8/14/2019      **In control:** ABAG FAN Executive Committee

**On agenda:** 9/5/2019      **Final action:**

**Title:** Report on ABAG FAN Successor Agency Phase I

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** [Item 08 Summary Sheet Successor Agency v2.pdf](#)  
[Item 08 Attachment Nixon Peabody Update Successor Agency Review 4835-3527-4911 v 4.pdf](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Report on ABAG FAN Successor Agency Phase I

Brian Mayhew

Approval

**ABAG Finance Authority for Nonprofit Corporations**

**Executive Committee**

---

**September 5, 2019**

**Agenda Item 8**

---

**ABAG FAN Successor Agency**

---

**Subject:** Report on ABAG FAN Successor Agency Phase I

**Background:** With the approval of the Executive Committee, staff engaged Nixon Peabody to begin a preliminary document review process to explore the possible options of appointing a successor agency to administer the ABAG FAN portfolio.

Nixon Peabody started by reviewing documents to see if there was any specific language prohibiting the assignment to a successor agency. For Phase I, Nixon Peabody placed the transactions into three main categories based on publicly traded or privately placed transactions and whether they were issued pursuant to a Loan Agreement or Trust Indenture. Based on Phase I preliminary document review, Nixon Peabody believes that there is no language preventing the transfer of the portfolio to a successor agency.

For Phase II, Nixon Peabody recommends reviewing the community facilities district (CFD) transactions, insured credit enhanced transactions, direct purchase transactions, and any other transactions involving swaps. In addition, Nixon Peabody recommends expanding the sample to include an additional 15% of the remaining transactions. Additional document review may be necessary based on the mechanics of each individual transaction. Finally, Nixon Peabody will confer with tax counsel to ensure that there are no adverse tax issues or continuing disclosure issues. Nixon Peabody's proposed fee is capped at \$250,000. Once Phase II is completed, Nixon Peabody will work with the staff to prepare and provide the requisite amendments, notices and obtain consent as necessary based on the review.

Staff suggests utilizing the cost savings from prior year unused encumbrances. The sum of these savings will be sufficient to cover the legal costs associated with the completion of Phase II.

**Issues:** None

**ABAG Finance Authority for Nonprofit Corporations**

**Executive Committee**

---

**September 5, 2019**

**Agenda Item 8**

---

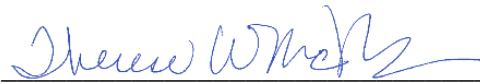
**ABAG FAN Successor Agency**

---

**Recommended Action:** The ABAG FAN Executive Committee is requested to authorize the Executive Director of the Metropolitan Transportation Commission, or her designee, to authorize Nixon Peabody to conduct ABAG Finance Authority for Nonprofit Corporations Successor Agency Phase II in an amount not to exceed \$250,000.

**Attachments:** Nixon Peabody Memo

**Reviewed:**



---

Therese W. McMillan





## MEMORANDUM

---

**TO:** Brian Mayhew, Susan Woo, Catherine Cam and Nicholas Mar      **FROM:** Rudy Salo and Angelica Valencia  
**RE:** ABAG FAN – Successor Agency      **DATE:** August 12, 2019

---

You asked us to prepare an update on the Phase I review of documentation as to the possibility of appointing a successor agency for ABAG Finance Authority for Nonprofit Corporations (the “Authority”). Additionally, you also asked us to provide a plan for Phase II of the review. Below please find an update on Phase I and a plan for Phase II.

### **Phase I**

Phase I involved the review of 10 transactions, which included community facilities districts, private placements and public offerings. The transactions reviewed generally fell into 3 categories. The publicly traded bonds issued pursuant to an indenture, privately placed loans issued pursuant to a loan agreement and the privately placed loans evidenced by bonds issued pursuant to an indenture.

#### *Publicly traded bonds issued pursuant to an indenture*

The transactions with publicly traded bonds issued pursuant to an indenture generally included a provision in the indenture that addressed the issue of a successor to the Authority. The successor provision provides that references to the Authority in the Indenture (typically Section 9.4) are deemed to include the Authority’s successor. Therefore, we believe we can argue that such provision already put bondholders on notice that there may someday be a successor or assign to the Authority. The loan agreements relating to the publicly-traded transactions we reviewed included “successors or assigns” in the definition of Authority. An issue in these transactions, however, is that such language was not consistently used in every single bond document. We would argue that since most of the “primary” documents included “successor or assign” language such language was sufficient to provide notice to the bondholder.

#### *Privately Placed Loans issued pursuant to a Loan Agreement*

In private bank deal transactions with a master loan agreement rather than an indenture, the Authority is generally defined to include “successors or assigns”. Additionally, the loan agreements contain a “survivability” provision that provides that the limitations of liability, indemnities and waivers shall continue in full force and effect and shall be enforceable by the Authority or its successors or assigns. Several of the other documents in such transactions also included language that the Authority

included any successors and assigns. Therefore, we believe we can argue that such provisions already placed the parties on notice that there may someday be a successor or assign to the Authority. Similar to the issue in publicly traded deals, not all the documents include successor or assign language. However, we would argue once again that since most of the “primary” documents included “successor or assign” language such language was sufficient to provide notice to the bondholder.

#### *Privately Placed Loans evidenced by Bonds issued under an Indenture*

During the course of the review, we discovered that two transactions (with the same documentation) restricts assignment. The Loan Agreement in the Drew School transaction (2014 and 2015) prohibits the Authority from assigning its rights under the documents. However, there is a provision in the indenture that permits an amendment to provide for a successor authority without the consent of US Bank as the Bond Purchaser, but we will need to obtain the consent of the borrower. We believe we should be able to amend the documents to provide for a successor authority by working with the Borrower.

#### *Recommendations*

For the transactions that are publicly traded (and don't have insurance, credit enhancement or swaps) we recommend providing notice of the appointment of a successor for the Authority based upon Section 9.4 of the applicable indentures. The notice can be general as to the appointment and should be provided after we obtain any necessary consents as described in Phase II. The transactions that have insurance, credit enhancement or swaps would be part of the Phase II review. Those transactions would require additional review (see Phase II) since they might require consents from or notices to other parties. We are also recommending review of all loans with US Bank to confirm which US Bank transactions have similar restrictions as Drew School. Such transactions will likely require amendments to the Indenture similar to the Drew School. We believe that the implementation could be relatively straight forward, but will not know for sure until we begin Phase II.

### **Phase II**

For Phase II, we are proposing reviewing the following additional transactions:

- 1) All community facilities district transactions and confirm composition of the community facilities district,
- 2) Insured transactions or transactions that have credit enhancement to confirm whether consent (or notice) is required,
- 3) All US Bank direct purchase deals to confirm whether other transactions contain a similar provision as Drew School,
- 4) All transactions containing swaps, along with swap documentation, and
- 5) Per Brian's suggestion, 15% of the remaining transactions.

The 15% of the remaining transactions will be randomly selected and will include publicly traded transactions and private placement transactions. The expectation is that enough of the transactions will

be reviewed even with the smaller sample that we would be able to address any potential issues from the sample reviewed. However, should new issues be discovered while reviewing the 15%, the number of transactions could be expanded.

Additionally, we will have to confer with tax counsel to ensure that there are no tax issues and discuss any potential continuing disclosure issues due to the appointment of a successor. If any issues arise, we will immediately confer with the Authority and will have a suggested approach. While we did some very preliminary and more global legal research into the successor issue, we would have to do further research into appointment of a successor under California law.

After completing the document review and research, we will discuss the results and the recommendations with the Authority.

### **Phase III**

Once we complete Phase II, we will work with the Agency to prepare and provide the requisite amendments, notices and obtain consent as necessary based on the review, which will be Phase III. Once the necessary amendments are executed, notices are provided and consents obtained, the Authority should have a board meeting and formally appoint its successor. At this point, we will have to provide notice to the publicly traded transactions subject to continuing disclosure requirements. Some notices will be mandatory and some will be voluntary.

### **Cost**

For Phase II, we will continue to use a blended rate of \$600 per hour. The amount of time spent on reviewing the documents depends on the complexity of each underlying transaction, so we expect that on average the document reviewing will be approximately 4.5 hours per transaction. Also, there are 5 outstanding community facilities district transactions, each of which will need to be reviewed and have more documents than other deals. It is still not known how many transactions include insurers, swaps or US Bank as a bond purchaser. However, we are proposing a cap of \$250,000 for Phase II since we will be reviewing a portion of the transactions instead of all the transactions.