



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, December 12, 2019

9:00 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 Clerk of the Board at (415) 820-7913.

Location

**Bay Area Metro Center, 375 Beale Street, 8th Floor, Golden Gate Conference Room, 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

Information

3. Executive Committee Announcements

Information

4. Chair's Report

Information

5. Consent Calendar

- 5.a. [20-0001](#) Approval of ABAG FAN Executive Committee Minutes of November 7, 2019

Action: Approval

Presenter: Secretary

Attachments: [Item 05a Minutes 20191107 Draft.pdf](#)

6. ABAG FAN Successor Agency

- 6.a. [20-0004](#) Report on ABAG FAN Successor Agency Phase II Review and Authorization to Conduct Phase III Implementation

Staff will report on the ABAG FAN Successor Agency Phase II Review and will seek approval of a contract amendment with Nixon Peabody for Phase III Implementation in an amount not to exceed \$200,000.

Action: Approval

Presenter: Brian Mayhew

Attachments: [Item 06a 0 Summary Sheet FAN Successor Agency v3.pdf](#)
[Item 06a 1 Memo NP Successor Agency Phase II Review 4836-8952-9515 v3.p](#)
[Item 06a 2 Summary Approval Phase III.pdf](#)
[Item 06a 3 Presentation FAN Successor Agency 4822-9860-4461 v1.pdf](#)

7. Adjournment / Next Meeting

The next meeting of the ABAG FAN Executive Committee is on January 9, 2020.

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) 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.



Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

File #: 20-0001 **Version:** 1 **Name:**
Type: Report **Status:** Committee Approval
File created: 11/22/2019 **In control:** ABAG FAN Executive Committee
On agenda: 12/12/2019 **Final action:**
Title: Approval of ABAG FAN Executive Committee Minutes of November 7, 2019
Sponsors:
Indexes:
Code sections:
Attachments: [Item 05a Minutes 20191107 Draft.pdf](#)

Date	Ver.	Action By	Action	Result
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Approval of ABAG FAN Executive Committee Minutes of November 7, 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, November 7, 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 Clerk of the Board at (415) 820-7913.

Location

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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

Chair Lomeli called the meeting to order at about 10:03 a.m. The following members participated by teleconference: Lomeli, Kadlec, McDonough, Watts. Quorum was present.

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

2. Public Comment

There was no public comment.

3. Executive Committee Announcements

There were no Executive Committee member announcements.

4. Chair's Report

There was no Chair's Report.

5. Consent Calendar

- 5.a. [19-1207](#) Approval of ABAG FAN Executive Committee Minutes of September 5, 2019

Upon the motion by Watts and second by McDonough, the Consent Calendar, including the minutes of September 5, 2019, was approved. The motion passed unanimously by the following roll call vote:

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

6. Conflict of Interest Code

- 6.a. [19-1208](#) Amendment of ABAG FAN Conflict of Interest Code

Consider proposed revisions to ABAG FAN's Conflict of Interest Code (COIC), authorize public comment period regarding same, and authorize submission of proposed amended COIC to the Fair Political Practices Commission for formal approval if no comments are received.

Upon the motion by McDonough and second by Watts, the ABAG FAN Executive Committee authorized staff to circulate the proposed changes to the Conflict of Interest Code for public comment and to schedule a public hearing if there is a request from the public to do so; and, assuming no comments are received, authorized staff to submit the proposed amended COIC to the Fair Political Practices Commission for formal approval. The motion passed unanimously by the following roll call vote:

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

7. Financial Statements

- 7.a. [19-1209](#) Approval of ABAG FAN Financial Statements from July to August 2019 (Unaudited)

Upon the motion by Kadlec and second by McDonough, the ABAG FAN Executive Committee approved the ABAG FAN Financial Statements from July to August 2019 (Unaudited). The motion passed unanimously by the following roll call vote:

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

8. Financial Audit

8.a. [19-1226](#) Approval of ABAG FAN Financial Audit for Fiscal Year 2018-19

Upon the motion by Watts and second by McDonough, the ABAG FAN Executive Committee accepted and approved the ABAG FAN Financial Audit for Fiscal year 2018-19. The motion passed unanimously by the following roll call vote:

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

9. Adjournment / Next Meeting

Chair Lomeli adjourned the meeting at about 10:41 a.m. The next meeting of the ABAG FAN Executive Committee is on December 12, 2019.



Metropolitan Transportation Commission

375 Beale Street, Suite 800
San Francisco, CA 94105

Legislation Details (With Text)

File #: 20-0004 **Version:** 1 **Name:**
Type: Report **Status:** Committee Approval
File created: 11/22/2019 **In control:** ABAG FAN Executive Committee
On agenda: 12/12/2019 **Final action:**
Title: Report on ABAG FAN Successor Agency Phase II Review and Authorization to Conduct Phase III Implementation

Staff will report on the ABAG FAN Successor Agency Phase II Review and will seek approval of a contract amendment with Nixon Peabody for Phase III Implementation in an amount not to exceed \$200,000.

Sponsors:

Indexes:

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Attachments: [Item 06a 0 Summary Sheet FAN Successor Agency v3.pdf](#)
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Date	Ver.	Action By	Action	Result
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Report on ABAG FAN Successor Agency Phase II Review and Authorization to Conduct Phase III Implementation

Staff will report on the ABAG FAN Successor Agency Phase II Review and will seek approval of a contract amendment with Nixon Peabody for Phase III Implementation in an amount not to exceed \$200,000.

Brian Mayhew

Approval

ABAG Finance Authority for Nonprofit Corporations

Executive Committee

December 12, 2019

Agenda Item 6.a.

ABAG FAN Successor Agency

Subject: Report on ABAG FAN Successor Agency Phase II Review and Authorization to Conduct Phase III Implementation

Background: Staff requests that the Executive Committee of ABAG Finance Authority for Nonprofit Corporations (FAN) accept the report from Nixon Peabody on the ABAG FAN Successor Agency Phase II Review. The memo from Nixon Peabody is attached.

For the Phase I Review, 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 the Phase I preliminary document review, Nixon Peabody confirmed that the primary debt documents of the transactions reviewed had existing language authorizing assignment to a successor.

During the Phase II Review, Nixon Peabody analyzed the Authority's revised and amended Joint Powers Agreement (JPA), reviewed a larger sample of transaction documents, and conducted legal analysis to determine whether the Advancing California Finance Authority (ACFA) could be appointed as successor agency.

1. Analysis of JPA Agreement. JPA allows the appointment of a third party to perform Board duties, including acting as administrator.
2. Financing Documents. Nixon Peabody reviewed the Community Facilities Districts, insured credit enhanced transactions, direct purchase transactions, and any other transactions involving swaps. The Phase II Review substantiated that the assignment to a successor agency is also achievable. The process involved depends on the type of transaction as well as certain provisions specific to each transaction.
3. Community Facilities District. The Board is generally the legislative body that acts on behalf of the community facilities districts. Any obligations that FAN has with respect to the CFDs must be managed by the appointed successor. Nixon Peabody recommends providing advance notice to each borrower and relevant parties that ACFA will be acting as the successor administrator.

ABAG Finance Authority for Nonprofit Corporations

Executive Committee

December 12, 2019

Agenda Item 6.a.

ABAG FAN Successor Agency

4. SWAP Agreements. Although FAN is not a party to any swap documents, certain incorporated provisions in the swap documents could affect whether FAN needs to obtain consent from other swap counterparties. Nixon Peabody believes that the appointment of ACFA as the successor administrator should have no material effect on the underlying provisions.
5. US Bank Direct Purchases. Drew School and Santa Cruz Montessori were two transactions that contained language restricting FAN's ability to assign its rights and obligations under the Loan Agreement and Indenture. Nixon Peabody suggests amending the documents though they will require borrower consent.
6. Additional Transactions. Nixon Peabody pointed out some inconsistencies in the language where some directly addressed successors and other transaction documents remained silent. For transactions with a letter of credit, Nixon Peabody recommends obtaining the current termination dates for the Letter of Credit (LOC) since some of the transactions are quite old in addition to providing adequate notice.

Nixon Peabody proposes a cap of \$200,000 for costs associated with Phase III along with an estimated completion date no later than June 30, 2020. Staff is currently working out the means to transfer the assignment to ACFA. The work is listed in the steps below:

- Obtaining borrower consent. All parties must consent to the ACFA successorship.
- Draft amendments along with any prerequisite notices.
- Draft notices to rating agencies, swap counterparties, and credit enhancement providers. There are currently no issues that cannot be addressed through either an amendment or consent from necessary parties.

Issues:

None

ABAG Finance Authority for Nonprofit Corporations

Executive Committee

December 12, 2019

Agenda Item 6.a.

ABAG FAN Successor Agency

Recommended Action: The ABAG FAN Executive Committee is requested to accept and approve the report from Nixon Peabody on the ABAG FAN Successor Agency Phase II Review and to authorize a contract amendment to conduct the Phase III Implementation in an amount not to exceed \$200,000.

Attachments:

- A. Memo Nixon Peabody Successor Agency Phase II Review
- B. Summary Approval
- C. Presentation

Reviewed:



Brad Paul



MEMORANDUM

TO: Brian Mayhew, Susan Woo, Catherine Cam and Nicholas Mar **FROM:** Rudy Salo and Angelica Valencia

RE: ABAG FAN – Successor Agency Phase II Review **DATE:** November 1, 2019

Summary

Pursuant to your request to assist you with determining whether there are any legal or transaction-based impediments to ABAG Finance Authority for Nonprofit Corporations (the “Authority”) appointing Advancing California Finance Authority (the “ACFA”) as a successor agency, we have taken a multi-step approach to review outstanding Authority obligations and address potential issues.

In Phase I, we reviewed ten initial transactions to determine whether there were any provisions prohibiting the Authority from consummating any assignments. On August 12, 2019, we submitted a memorandum with respect to the review of the initial ten transactions (“August 12 Memo”). Within the August 12 Memo we summarized the general results of the initial review and outlined the next step of the review (“Phase II”).

During our Phase II review, we analyzed the Authority’s Joint Powers Agreement, dated as of the April 1, 1990, as revised and amended (the “JPA Agreement”), reviewed a larger sample of transaction documents, and conducted legal analysis to determine whether the ACFA can be appointed as a successor agency.

We are happy to report that so far through two phases of review, we have reviewed the primary documentation for 65 transactions and we have not found any transactions or issues that cannot be addressed either through an amendment, a consent or a discussion with necessary parties.

Below please find an update on the analysis with respect to the possibility of appointing ACFA and our recommendations for implementing the appointment of ACFA (i.e., Phase III).

Phase II Review

1. Analysis of the JPA Agreement

The Authority is a joint exercise of powers authority organized and operating under the provisions of Chapter 5 of Division 7 of Title (commencing with Section 6500) of the Government Code of the State of California (the “Act”) and created pursuant to the JPA Agreement.

While the Act codifies the rules of creation, administration and powers of joint powers authorities, it leaves a substantial portion of the powers and rules of joint powers authorities to be established within a joint powers authority agreement. Article VI, clause L of the JPA Agreement provides that the Board of Directors of the Authority (the “Board”) has the power to assign, delegate or contract with a Member Entity (as defined in the JPA Agreement) or *a third party* (emphasis added) to perform any of the duties of the Board, including but not limited to, acting as an administrator for the Authority. This provision will serve as our ultimate guide in the appointment of ACFA as the successor to the Board’s duties and to act as an administrator of the Authority.

In Phase III, we will prepare a resolution of the Board whereby it will appoint ACFA to take on the responsibilities, duties and obligations of the Authority’s Board and as administrator of the Authority pursuant to Article VI, clause L of the JPA Agreement.

We note, however, that the Authority itself will not be dissolved, but its responsibilities (including its Board responsibilities) will be transferred to the ACFA. This is because Article XXI of the JPA Agreement provides that the JPA Agreement cannot be terminated until all the principal of and interest on the Authority’s revenue bonds and other evidence of indebtedness have been paid in full, and two-thirds of the Member Entities have consented in writing to its termination. If the Authority is concerned with whether it will ever obtain the two-thirds consent of its Member Entities, perhaps it should explore getting an advance consent of such Member Entities now so that once all debt has been paid in full, the Authority can then terminate.

2. Phase II Document Review

During Phase II, we reviewed 54 transactions, of which 3¹ transactions were community facilities districts, 5 contained swap documentation (but three had terminations), 7² deals involved US Bank as a direct purchaser and 24³ of deals had credit enhancement. We also reviewed California case law for any cases addressing the appointment of a successor to joint powers authority. We can report that the California case law we researched did not result in any divergence of our current plan to appointment ACFA as a successor agency. We also conferred with our tax counsel, Travis Gibbs, and based on the authority that is provided in the JPA Agreement to appoint a successor administrator, he doesn’t expect any issues from a tax perspective. Below is a brief summary of our findings from the transactions we reviewed during Phase II.

¹ There are five community facilities districts (see footnote 4), however, two of the community facilities districts transactions were reviewed as part of Phase I.

² There are twelve transactions that had U.S. Bank as the original holder, however, three of those transactions are expected to get paid this year (Tara Village Apartments, Tracy Village Apartments and Unity Estates) and two were reviewed as part of Phase I. For purposes of the review, we did not include the three transactions that will be repaid this year. During the repayment of those transactions, we need to make sure that the Regulatory Agreement amendments, which will continue to be outstanding, reflect the language of successors and assigns.

³ There were 27 transactions with some form of credit enhancement or insurance. Two were reviewed as part of Phase I and we were unable to track documents on the Insured Nonprofit Program Financing #2 Big Valley Medical Services. The Windemere Ranch Infrastructure Financing Program that took place in 2017 isn’t included in the count of 27, since we were already including it as part of the community facilities districts.

a. Community Facilities Districts⁴

Generally, the Board is the legislative body of the community facilities districts which it has established and acts on behalf of the community facilities districts. Any obligations (including obligations of the Board) that the Authority has with respect to the community facilities districts it created must also be managed by ACFA as the appointed successor pursuant to Article VI, clause L.

Additionally, several of the establishing documents (such as the community facilities district agreements) include provisions providing that the agreements are binding on the Authority and its successors and assigns. Therefore, we believe such provision already put bondholders on notice that the Authority may appoint a successor in the future, which was always contemplated in Article VI, clause L of the JPA Agreement.

Also, the indentures of the community facilities districts generally included a provision that addressed the issue of a successor to the Authority. The successor provision provides that references to the Authority in the respective indenture are deemed to include the Authority's successor. Certain documents also included references to successors and assigns when defining the Authority. While such use was not consistent in all the documents, we would argue that the language in the primary documents provided sufficient notice to the bondholders.

As a part of the Phase III implementation, we recommend providing notice to each of the parties to the respective community facilities district agreements⁵, borrowers and other relevant parties with respect to the appointment of ACFA as a successor to the Board pursuant to Article VI, clause L of the JPA Agreement and that ACFA will be acting as an administrator on behalf of the Board.

⁴ The community facilities districts include: (i) the ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2006-1 (San Francisco Rincon Hill), (ii) ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2004-1 (Seismic Safety Improvements – 690 and 942 Market Street Project), (iii) ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2006-2 (San Francisco Mint Plaza Area), (iv) and 2 transaction that were Windemere Ranch Infrastructure Financing Program (one in 2014 and another in 2017). On May 24, 2014, the Board of Directors adopted a resolution creating the ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2004-2 (Windemere Ranch). Association of Bay Area Governments also established a Windemere Ranch Reassessment District on May 20, 1999. In the Windemere Ranch transaction that closed in August 2014 (the “2014 Windemere Transaction”), the Authority issued bonds to refund a portion of Windemere bonds issued in 2007. The 2007 Windemere Ranch bonds were issued to finance the acquisition of certain Association of Bay Area Governments Windemere Ranch Reassessment District bonds and ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2004-2 (Windemere Ranch) bonds. Revenues used for the payment of the 2014 Windemere Ranch Transaction bonds is primarily the amounts received as payments of debt service on the certain Association of Bay Area Governments Windemere Ranch Reassessment District bonds and ABAG Finance Authority for Nonprofit Corporations Community Facilities District No. 2004-2 (Windemere Ranch) bonds. The 2017 Windemere Ranch bonds were issued to refund certain 2007 Windemere Ranch bonds. The security for the 2017 Windemere Ranch bonds was the debt service payment on certain Windemere Ranch Reassessment District bonds and Community Facilities District No. 2004-2 (Windemere Ranch) bonds.

⁵ The Windemere Ranch and Communities Facilities District No. 2004-1 (Seismic Safety Improvements – 690 and 942 Market Street Project) transactions contain some of the formation documents. We would like to request a copy of the all the formation documents if they are available.

b. Swaps

In connection with certain bonds that the Authority issued on behalf of various borrowers, interest rate swap agreements and related documentation were executed for the purpose of hedging interest rate risk (the “Swap Documents”). The Authority is not a party to any Swap Documents; however, there are provisions in the Swap Documents that could affect whether we need to obtain consent from the swap parties.

For example, the California Alumni Association Swap Documents contain a provision that if there is any amendment, supplement or modification or waiver of any of the “Incorporated Provisions” without the prior consent of the other swap party, then such amendment, supplement, modification or waiver will have no force or effect with respect to the Swap Documents. As defined in the Swap Documents, “Incorporated Provisions” includes each provision in the letter of credit reimbursement agreement and the security agreement. The Authority is not a party to the letter of credit reimbursement agreement or the security agreement. We believe that the appointment of ACFA as the administrator of the Authority’s Board has no effect on the underlying documents or any “Incorporated Provisions,” though we will want to confirm this by conferring with the swap parties, and if any amendments are necessary in Phase III for any transactions that have Swap Documents to obtain any consents from the swap parties, if necessary. As an aside, Rudy Salo represents Bank of America, N.A. in connection with the California Alumni Association, and he will be able to confer with them quickly during Phase III.

The California Alumni Association Swap Documents also contain a termination event for a modification to the letter of credit and reimbursement agreement and the security agreement in such a way as to adversely affect any of Bank of America’s rights or obligations or impact the ability of the California Alumni Association to perform its obligation without the consent of Bank of America. We believe that the appointment of a successor to the Authority’s Board of Directors should not materially adversely affect Bank of America’s rights or the California Alumni Association’s ability to perform its obligations.

During Phase III, we recommend (as a courtesy and for administrative purposes going forward) that the Authority provide notice to the parties of all Swap Documents with regards to the appointment of ACFA pursuant to Article VI, clause L of the JPA Agreement.

c. U.S. Bank Direct Purchases

As mentioned in the August 12 Memo, the Drew School transactions contained language that restricted the Authority’s ability to assign its rights and obligations under the Indenture and Loan Agreement. Specifically, the Loan Agreement in the Drew School transactions (both 2014 and 2015) prohibits the Authority from assigning its rights under the documents. Santa Cruz Montessori also contains similar restrictions on the assignment by the Authority of its rights.⁶ However, as discussed in the August 12 Memo, we recommend amending the affected loan agreements pursuant to the amendment

⁶ The language reflected in Drew School and Santa Cruz Montessori provides that the Authority cannot assign the Loan Agreement except to the Trustee pursuant to the indenture or as may be necessary to enforce or secure the payment of bond service charges.

provisions set forth in the applicable Indenture and Loan Agreement for those transactions. Such amendments will require the consent of the respective borrower. We believe we should be able to amend the documents to provide for ACFA to become a successor by working with the respective borrowers. From our review thus far, only the Drew School transactions and Santa Cruz Montessori are the only two US Bank transactions that contain these prohibitions on assignment. We further note that we have already had preliminary discussions with the Borrower and Bond Counsel on the Santa Cruz Montessori transaction.

For the U.S. Bank transactions that do not contain the restrictive provision or that otherwise does not address an assignment by the Authority,⁷ we recommend providing a simple notice regarding appointment of ACFA pursuant to Article VI, clause L of the JPA Agreement.

*d. Additional Transactions*⁸

Generally, the primary issuing documents of transactions include successor or assigns or is silent on the issue. The primary issuing documents may define Authority to include successor or assigns or contain a provision that addresses the issue of successors by clarifying that the agreements bind and inure to the benefit of the successors and assigns. As previously discussed in the August 12 Memo, inconsistencies exist with respect to some transactions including language that directly addressed successors while other transaction documents are silent. For example, some transactions specifically included “successor and assigns” language within the definition of the Authority or language that clarified that any references to the Authority will inure to a successor or assign. While the documents within each transaction were not consistent with the treatment of successor language or provisions, we believe most of the “primary” documents included “assignment/successor” language to have provided sufficient notice to the bondholders in the extremely unlikely scenario that any bondholders complain about the assignment.

With respect to the transactions that have letter of credits, we need the current termination dates. For example, the Pathways Home Health and Hospice transactions has a letter of credit that was set to expire in October 2009, with the possibility for extensions. However, it isn’t clear what the current expiration date of the letter of credit is.

The Authority generally is not a party to the reimbursement agreements, so there are no restrictions as to the role of the Authority. However, credit providers generally request to receive notices that are provided to other parties, we would recommend that we provide notices to the credit enhancement providers of the appointment of ACFA.

⁷ The transactions include: Hayward Senior Apartments, Kings Garden, Lincoln Court, Terracina at Springlake, Vintage at Laguna and Vintage Square at Westpark.

⁸ Includes the review of 24 transactions that have credit enhancement. We were unable to track documents on the Insured Nonprofit Program Financing #2 Big Valley Medical Services.

And should there be any pushback from any party, we will argue that Article VI, clause L of the JPA Agreement provided notice to holders of the Authority's obligations that a successor or administrator can be appointed to take over the Board duties.

Recommendations for Phase III Implementation

The first step with respect to the implementation of the appointment of ACFA will be working the borrowers of the transactions that require consent. Before the Board can act to appoint ACFA, we must ensure we have consent of the required parties, including U.S. Bank. Since Rudy Salo works with U.S. Bank, he will take the lead in conferring with them.

At the same time, we will work on amendments for those transactions that require amendments. Once we have received the consent and the amendments, we will draft a resolution for the Board to make the official appointment of ACFA pursuant to Article VI, clause L of the JPA Agreement. The Board must hold a meeting in order to adopt the appointment resolution. After the appointment, we will draft notices, including those required pursuant to the continuing disclosure requirements for all publicly-issued transactions to post on EMMA. We will also draft a notice to the rating agencies, swap parties and credit enhancement providers. For the transactions that were privately-placed and don't require consent/amendments, we will prepare notices to deliver to those parties. We also note that the transactions that include regulatory agreements require written notice to the borrowers regarding the appointment of a new administrator.

Cost

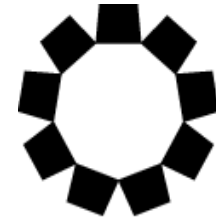
For Phase III, we will continue to use a blended rate of \$600 per hour. We will draft a resolution appointing ACFA, prepare notices with respect to the appointment of ACFA to the rating agencies, swap parties, insurance and credit enhancement providers, trustees and other parties, correspond with and address any issues of the respective borrowers/direct purchasers (as necessary), draft amendments for those transactions that require amendments and draft and navigate the necessary consents. We are proposing a cap of \$200,000 for Phase III.



**ABAG FAN EXECUTIVE COMMITTEE
SUMMARY APPROVAL**

Work Item No.:	1711
Consultant:	Nixon Peabody, LLP
Work Project Title:	Successor Agency Phase III
Purpose of Project:	To provide legal and advisory services related to the appointment of a successor agency with respect to ABAG FAN.
Brief Scope of Work:	Obtain borrower consent, draft amendments, and draft notices to rating agencies, swap counterparties, and credit enhancement providers.
Project Cost Not to Exceed:	\$200,000 for Phase III <i>Any unspent funds will carry forward to the following fiscal year.</i>
Funding Source:	ABAG Finance Authority for Nonprofit Corporations (FAN)
Fiscal Impact:	Funds are included in the FY19-20 FAN Budget.
Motion by Committee:	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 III in an amount not to exceed \$250,000.
Approval:	Charles Lomeli, Chair
Approval Date:	

ASSOCIATION OF BAY AREA GOVERNMENTS
ABAG Finance Authority for Nonprofit Corporations



ABAG

Authority Successor

- Request was to determine whether it would be possible to appoint Advancing California Finance Authority (“ACFA”) as the successor authority to the ABAG Finance Authority for Nonprofit Corporations (“Authority”).
- Multi-step process
 - Phase I involved a preliminary review of about 10 transactions
 - Phase II included a larger transaction sample, including community facilities districts, direct purchases with U.S. Bank, and swaps
 - Phase III will be the execution of the plan

Outstanding Transactions

- As of June 30, 2019, the Authority had 96 outstanding transactions.
- Of the 96 transactions:
 - 5 were classified as community facilities and assessments districts
 - 18 were for educational purposes
 - 23 were for health care purposes
 - 41 were for housing purposes
 - 9 were for other purposes
- Some of the transactions have an associated swap. Currently, we estimate that there is approximately 6 outstanding swaps.

Phase I Review

- During July 2019, Nixon Peabody LLP reviewed primary documents for 10 transactions.
 - Examples of documents reviewed include indentures, loan agreements, master loan agreements, continuing covenant agreements, security agreements, letter of credit and reimbursement agreements.
- The Phase I Review included a sampling of diverse transactions, including public transactions and privately placed transactions.

Phase I Review - Summary

- There were several takeaways from the initial review of the primary financing documents of approximately 10 transactions.
- Generally, for publicly traded bonds issued pursuant to an indenture, there was language in the indenture that provided that references to the Authority included a successor or assign of the Authority
 - Such language was not used consistently in each transaction document.
- In some documents (but not all), Authority was defined to include a successor or assign.
- The privately placed loans with U.S. Bank in Drew School had restrictions that prohibited the Authority from assigning its rights. However, an amendment is permitted but require consent of the borrower.

Phase II Review

- For Phase II, the following transactions were reviewed by Nixon Peabody:
 - All community facilities district transactions
 - Insured transactions/credit enhanced
 - Direct purchase transactions with U.S. Bank
 - Those transactions that contained swap
 - A portion of the remaining transactions
 - The remaining transactions were randomly selected

Phase II Review - Summary

- JPA Agreement
 - Article VI, clause L of the JPA Agreement: The ABAG Board has the power to assign, delegate or contact with a Member Entity or a *third party* (emphasis added) to perform any of the duties of the Board, including but not limited to, acting as administrator for the Authority.
 - The Authority cannot be dissolved, but its responsibilities will be transferred to ACFA.
 - Article XXI of the JPA Agreement provides that the JPA Agreement cannot be terminated until all the principal of an interest on the Authority's revenue bonds and other evidence of indebtedness has being paid in full and 2/3 of the Member Entities have consented.

Phase II Review - Summary

- Community Facilities Districts
 - Generally, the Authority is the legislative body.
 - Several establishing documents contained provisions that the agreements were binding on the Authority's successor and assigns.
 - The indentures used in community facilities districts generally included language that the references to the Authority included successors.
 - Language served to put bondholders on notice regarding a successor in the future.

Phase II Review - Summary

- Swaps
 - In connection with certain bonds, interest rate swap agreements were executed for purposes for hedging interest rate risks.
 - The Authority was not a party to the swap documentation that was reviewed.
 - While Nixon Peabody believes that the appointment of ACFA as the administrator of the Authority's Board does not materially affect the underlying documents, they would want to do additional research and review on this matter.

Phase II Review - Summary

- U.S. Bank Direct Purchases
 - Both of the Drew School transactions and Santa Cruz Montessori have language that restricts the Authority's assignment right.
 - Nixon Peabody recommends amending the affected transaction documents.
 - Such amendments require consent of the related borrowers.
 - For the U.S Bank direct purchases that do not contain the restrictive language, we recommend providing a notice.

Phase II Review - Summary

- Additional Transactions (including insured and credit enhanced)
 - Generally, the primary issuing documents of transactions include provisions regarding the successor or assigns or are silent.
 - There are inconsistencies in the documents. Some documents include a provision that addresses a successor or assigns or define the Authority to include successors or assigns, while others are silent on the matter.
 - For the transactions that are inconsistent, Nixon Peabody believes that if the “primary” documents included the “assignment/successor” language that should serve as notice that appointing a successor or assign was a possibility.
 - For transactions with letters of credit, it wasn’t clear if the letters of credit had been extended or had expired.
 - Nixon Peabody recommends providing notices to credit providers.

Phase III - Plan

- Obtain consent from any required parties (example, the borrowers on certain U.S. Bank transactions)
- Prepare amendments for the transactions that require amendments
- Draft a resolution for the Board to adopt in order to make the official appointment
- Draft and distribute notices to all rating agencies, trustees, swap counterparties, credit enhancement providers, borrowers and direct purchasers regarding the appointment of ACFA pursuant to the ABAG FAN JPA Agreement
- File all necessary notices pursuant to continuing disclosure agreements for public transactions

Phase III – Timing/Costs

- Nixon Peabody proposed cap of \$200,000 for Phase III
- Estimated completion date no later than June 30, 2020.