

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

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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