

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.

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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

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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