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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 3[1] transactions were community facilities districts, 5 contained swap documentation (but three had terminations), 7[2] deals involved US Bank as a direct purchaser and 24[3] 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.

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[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 Districts[4]

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 agreements[5], 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.

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[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 inures 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.