



December 18, 2012

Mr. Steve Duran, City Manager
City of Hercules
111 Civic Drive
Hercules, CA 94547

Dear Mr. Duran:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated November 9, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Hercules Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on September 26, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on November 9, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more of the items denied by Finance. The Meet and Confer session was held on November 29, 2012.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific items being disputed.

- Item No. 6 – AMBAC Settlement in the amount of \$6.5 million. Finance continues to deny this item for the reasons previously provided; the judgment provided to support this item is a Writ of Attachment (Writ) against City property. Per the judgment, this item is secured by property valued at \$6.5 million, but there is no obligation due. Therefore, this item is not eligible for Redevelopment Property Tax Trust Fund (RPTTF).
- Item Nos. 7 and 8—Owner Participation Agreements (OPA) totaling \$327,953. Finance continues to deny these items. As previously determined, the financing terms of the OPAs, sections 5.2 for item 7 and 5.3 for item 8, stated they shall expire upon the dissolution of the Redevelopment Agency (RDA). Since the RDA was dissolved as of February 1, 2012, the OPAs are no longer in effect, and these items are not eligible for RPTTF.
- Item No. 9—OPA with East Group in the amount of \$130,338. Finance continues to deny this item for the reason previously provided; according to the OPA, the payments to East Group are legally required under HSC section 33670. Since HSC section 34189(a) has suspended HSC section 33670, the OPA is no longer valid. In addition, the Agency

no longer receives Annual Property Tax. Therefore, this line item is not an enforceable obligation and not eligible for RPTTF.

- Item No. 10—OPA for Hercules Senior Housing Project in the amount of \$1.4 million. Finance continues to deny this item for the reasons previously determined; the OPA states the agreement shall terminate on the date when the RDA no longer receives Housing Set-Aside Revenues. HSC section 34163 (c) (4) prohibits an agency from making any future deposits into the Low and Moderate Income Housing Fund. Therefore, this line item is not an enforceable obligation and not eligible for RPTTF.
- Item No. 11 – Lewis Development Agreement in the amount of \$4 million. Finance continues to deny this item for the reasons previously stated; the Development Agreement is silent on Agency Assistance as well as placing the obligation to pay property tax with Lewis-Hercules LLC, not the former RDA. Specifically, section 3.7.1 of the Development Agreement provided indicates the developer shall be responsible for paying Community Development Tax. Therefore, this item is not an enforceable obligation and not eligible for RPTTF.
- Item No. 14 – City Loan in the amount of \$2.3 million. Finance continues to deny this item. As previously determined, HSC Section 34171 (d) (2) states that the agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable. Therefore, this line item is not an enforceable obligation and not eligible for RPTTF.
- Item No. 15 – Employee Separation Agreement in the amount of \$56,250. Finance continues to deny this item. Finance previously denied this item because the agreement identifies the City as the responsible party, and not the former RDA. We also note, this item was claimed for the “Total Outstanding Balance” and was approved by Finance on May 17, 2012. Therefore, this line item is not an enforceable obligation and not eligible for RPTTF.
- Item No. 16 – Cooperative Agreement in the amount of \$10.8 million. Finance continues to deny this item for the reasons previously provided; HSC Section 34171 (d) (2) states that the agreements, contracts, or arrangements between the city that created the redevelopment agency (RDA and the former RDA are not enforceable. Therefore, this line item is not an enforceable obligation and not eligible for RPTTF at this time.

In addition, per Finance’s ROPS letter dated November 9, 2012, the following items continue to be denied and were not contested by the Agency:

- Item No. 17 – BART Park-n-Ride Lot in the amount of \$108,240. The documentation provided states funding for the obligation listed is derived from revenue received from the parking program. Therefore, this line item is not an enforceable obligation and not eligible for RPTTF.
- Item No. 19 – Various Homeowner Association fees in the amount of \$11,380. Grant deeds provided for 5 out of 8 properties indicate the City as the owner, and not the former RDA. Therefore, only \$7,340 is considered an enforceable obligation and not eligible for RPTTF.

- Item No. 23 – County Admin Fees in the amount of \$102,686. HSC section 34182(e) allows the county auditor-controller to deduct from the RPTTF for the administration costs prior to distributing property tax increment funds. Therefore, these costs are not allowed.

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is \$9,605,544 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2013	
Total RPTTF funding requested for obligations	\$ 18,680,240
Less: Six-month total for items denied	
Item No. 6	6,500,000
Item No. 7	17,917
Item No. 8	53,677
Item No. 9	32,191
Item No. 10	130,000
Item No. 11	170,000
Item No. 14	2,253,058
Item No. 15	56,250
Item No. 16*	0
Item No. 17	108,240
Item No. 19	18,720
Total approved RPTTF for enforceable obligations	\$ 9,340,187
Plus: Allowable RPTTF distribution for administrative cost for ROPS III**	265,357
Total RPTTF approved:	\$ 9,605,544

*No RPTTF requested for the reporting period

**The figure reflects the denied Item No. 23 – County Admin Fees of \$102,686.

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account for differences between actual payments and past estimated obligations. Additionally, these estimates and accounts are subject to audit by the county auditor-controller and the State Controller.

The amount available from the RPTTF is the same as the property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

Except for items disallowed as noted above, Finance is not objecting to the remaining items listed in your ROPS III. Obligations deemed not to be enforceable shall be removed from your ROPS. This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed

Mr. Steve Duran
December 18, 2012
Page 4

on a future ROPS are subject to a subsequent review and may be denied even if it was or was not questioned on this ROPS or a preceding ROPS.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a stylized flourish at the end.

STEVE SZALAY
Local Government Consultant

cc: Ms. Nickie Mastay, Finance Director, City of Hercules
Mr. Bob Campbell, Auditor Controller, Contra Costa County
California State Controller's Office