DEPARTMENT OF FINANCE

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December 18, 2012

Mr. Steve Lantsberger, Economic Development Director
City of Hesperia
9700 Seventh Ave
Hesperia, CA 92345

Dear Mr. Lantsberger:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 12, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Hesperia Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 30, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 12, 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 6, 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 item being disputed.

- Item No. 25 – Contract for Litigation for $125,000. Finance no longer objects to the item; however, the funding source is changed from Low and Moderate Income Housing Fund (LMIHF) to Redevelopment Property Tax Trust Fund (RPTTF). Finance denied the item as the use of the LMIHF is restricted to encumbered balances and the litigation contract does not specifically address using LMIHF as the sole funding source nor does the contract call for services only for the former RDA. The Agency contends the item is an enforceable obligation because invoices are allocated to each entity for which the City is responsible for paying and LMIHF is the funding source because of an on-going legal dispute. However, the use of the LMIHF is restricted to encumbered balances and the complaint against the former RDA was filed November 4, 2011; therefore, the litigation costs were not encumbered prior to June 27, 2011. HSC section 34171 (b) allows litigation expenses related to assets or obligations to be funded with property tax outside the administrative cap. Therefore, the item is an enforceable obligation to be funded using RPTTF.

- Item No. 26 – Escrow Title in the amount of $50,000 LMIHF funding. Finance continues to deny the item. Finance denied the item as HSC 34163 (b) prohibits new or amended contracts after June 27, 2011. It is our understanding there is no contract for the item. The Agency contends the item is an enforceable obligation because the former RDA had a valid contract with Chicago Title for title and escrow services through June 30, 2012. The

contracts provided are between the City and Chicago Title and not the former RDA or the Agency. Since the former RDA or the Agency are not parties to the contract or responsible for payment of the contract, this is not an enforceable obligation.

- Item No. 28 – Inclusionary Housing for $5.7 million LMIHF funding. Finance continues to deny the item. Finance denied the item as HSC 34163 (b) prohibits new or amended contracts after June 27, 2011. It is our understanding there is no contract for the item. The Agency contends the item is an enforceable obligation because prior to June 27, 2011, the RDA had a deficiency of 137 affordable units for which it was required to make affordable. However, obligations associated with the former RDA's previous statutory housing obligations are not enforceable obligations. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that "all rights, powers, duties, obligations and housing assets...shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of statutory obligations; to the extent any continue to be applicable. To conclude that such costs should be on-going enforceable obligations of the Agency could require a transfer of tax increment for life – directly contrary to the wind down directive in ABx1-26/AB1484. Therefore, the item is not an enforceable obligation.

- Item No. 36 – Monitoring Services in the amount of $681,000 LMIHF funding. Finance continues to deny the item. Finance denied the item as HSC section 34176 (a) (1) states if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a redevelopment agency, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. Since the Hesperia Housing Authority assumed all the housing functions, this item shall be the obligation of Hesperia Housing Authority. The Agency contends the item is an enforceable obligation because the successor housing agency did not agree to assume the monitoring obligation without a documented source of funding. However, the Agency did not have contracts in place for the services prior to June 27, 2011; the agreements provided were between the City and third parties and not the former RDA. Furthermore, per HSC section 34176 (a) (1), if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets, excluding any amounts on deposit in the LMIHF and enforceable obligations retained by the successor agency, shall be transferred to the city, county, or city and county. So, any costs associated with assets transferred to the housing successor agency are now the obligation of the housing successor agency and not the Agency. Therefore, this item is not an enforceable obligation.

- Item No. 49 – Excess Housing Indebtedness Obligations for $8 million; no funding source identified. Finance continues to deny the item at this time. Finance denied the item as HSC 34163 (b) prohibits new or amended contracts after June 27, 2011. It is our understanding there is no contract for the item. The Agency contends the item is an enforceable obligation because they are requesting the use of excess housing bonds proceeds. However, there were no contracts in place prior to June 27, 2011. Therefore, the item is not eligible for bond funding at this time. The housing successor can follow the process set forth in HSC section 34176 (g), which authorizes the housing successor to designate the use of and commit bond proceeds that remain after the satisfaction of enforceable obligations that have been approved in a ROPS and that are consistent with the bond covenants. The proceeds must have been derived from bonds that were issued for the purposes of affordable housing and issued prior to January 1, 2011. To initiate this

process, the housing successor is required to provide notice to the successor agency of any designations of use or commitments of funds that it wishes to make at least 20 days before the deadline for submission of the ROPS to the Oversight Board. Although the housing successor did provide notice to the Agency of the designations of use or commitments of funds that it wishes, the letter did not provide enough information as to the specific uses or the remaining balances available from the housing bonds. These commitments and designations will not be considered valid or binding until they are included in an approved and valid ROPS. The review of the designations and commitments by the Agency, Oversight Board, and Finance is limited to a determination that the designations and commitments are consistent with bond covenants and that there are sufficient funds available. To assist with and help expedite Finance's review, it would be helpful if the Housing Successors that utilize this process have bond counsel provide Finance a written determination that using the bond proceeds fits within the scope of the bond covenants. However, successor agencies will be eligible to expend bonds issued prior to January 1, 2011, once a finding of completion is received per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

- Item No. 50 – Inclusionary Housing Obligations in the amount of $3.9 million other funding sources. Finance continues to deny the item. Finance denied the item as HSC 34163 (b) prohibits new or amended contracts after June 27, 2011. It is our understanding there is no contract for the item. The Agency contends the item is an enforceable obligation because prior to June 27, 2011, the RDA had a deficiency of 137 affordable units for which it was required to make affordable. However, obligations associated with the former RDA's previous statutory housing obligations are not enforceable obligations. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that "all rights, powers, duties, obligations and housing assets...shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of statutory obligations; to the extent any continue to be applicable. To conclude that such costs should be on-going enforceable obligations of the successor agency could require a transfer of tax increment for life – directly contrary to the wind down directive in ABx1-26/AB1484. Therefore, the item is not an enforceable obligation.

In addition, per Finance's ROPS letter dated October 12, 2012, the following item not disputed by the Agency continues to be denied:

- Item No. 46 – J&R Owner Participation Agreement in the amount of $175,000; no funding source identified. HSC 34163(b) prohibits new or amended contracts after June 27, 2011. It is our understanding there is no contract for the item.

The Agency's maximum approved RPTTF distribution for the reporting period is $5,996,596 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2013		
Total RPTTF funding requested for obligations	$	5,921,596
Less: Six-month total for item(s) denied or reclassified as administrative cost		0
Total approved RPTTF for enforceable obligations	$	5,921,596
Plus: Allowable RPTTF distribution for administrative cost for ROPS III		75,000
Total RPTTF approved:	$	5,996,596

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 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 Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Anne M Duke, Deputy Finance Director
Ms. Linda Santillano, Supervising Accountant, County of San Bernardino
California State Controller's Office