April 27, 2013

John Meyer, Director of Redevelopment and Housing
City of Vista
200 Civic Center Drive
Vista, CA 92084

Dear Mr. Meyer:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated March 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Vista Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 15, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on March 22, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on April 10, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- Total amount of assets held as June 30, 2012, in the amount of $23,848,643 should be increased to $29,100,159. On DDR Attachment B5, the Agency reported $23,848,643 of assets as of June 30, 2012, including cash, cash with fiscal agent, notes receivable, intergovernmental receivable, and land held for resale. Based on additional information provided by the Agency, Finance determined that the Agency excluded $5,251,876 from the cash balance in order to pay post-June 30, 2012 enforceable obligations. Since these funds were actually held by the Agency as of June 30, 2012, Finance is making an adjustment of $5,251,876 to accurately reflect the June 30, 2012 balance.

- Assets transferred to the City of Vista (City) during the period of January 1, 2011 through June 30, 2012 in the amount of $82,908,069. HSC section 34179.5 requires asset transfers to be supported by an "enforceable obligation" as defined in subdivision (d) of section 34171. During the Meet and Confer process, Finance determined that $23,108,117 of the transfers was from OFA balances and the remaining transfers were from restricted assets or non-cash or cash equivalent assets. Therefore, the OFA balance available will be increased by $23,108,117, as further discussed below.
    - Cash in the amounts of $985,643 and $290,875 was transferred to the City to purchase properties located at 1124 S. Santa Fe Avenue and Monte Vista Drive,

respectively, pursuant to an agreement executed by the City and the former Redevelopment Agency (RDA) on January 2011. Finance also notes the Agency was not a party to the purchase of the properties. Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former RDA or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former RDA prior to June 28, 2011, with a third party other than the city, county, or city and county that created the former RDA. The transfer was not made pursuant to an enforceable obligation and is not permitted. Therefore, the balance available for distribution will be increased by $1,276,518.

- Finance previously determined that a transfer in the amount of $19,267,672 was made to repay loans between the City and the former RDA. The Agency claims that on January 19, 2011, $19.3 million in loans between the former RDA and the City were restructured to include a repayment date of June 30, 2011. The $19.3 million consisted of a set of three loans, which was replaced by a set of four loans. Each of the new loan agreements states that the former RDA made a prepayment representing the full amount of principal and interest due from the previous agreements immediately prior to the new loan agreements. While the $19.3 million repayments to the City in January 2011 were returned to the former RDA under the new loan agreements, the new loan agreements appear to have been repaid by the former RDA to the City in June 2011 pursuant to the new loan terms. As stated above, HSC section 34171 (d) states agreements, contracts, or arrangements between the City and the former RDA are not enforceable obligations. The transfer was not made pursuant to an enforceable obligation and is not permitted. Therefore, the balance available for distribution will be increased by $19,267,672.

- Transfers of unspent bond proceeds in the amount of $15,094,569 were made to the City. The Agency claims the transfer was made pursuant to a cooperation agreement between the City and the former RDA. As previously stated, HSC section 34171 (d) states agreements, contracts, or arrangements between the City and the Agency are not enforceable obligations. The transfer was not made pursuant to an enforceable obligation and is not permitted, and the Agency should recover the bond proceeds. Further, the unspent bond proceeds are restricted assets of the Agency, not the City. It is our understanding these proceeds are not included in Procedure 5 of the OFA DDR, which denotes the Agency's asset balance as of June 30, 2012, but are included in Procedure 6 as a legally restricted asset. Therefore, an offsetting adjustment in Procedure 5 is necessary to account for these funds as part of the Agency's total assets as of June 30, 2012. As these are related to legally restricted bond proceeds, the adjustments do not affect the OFA balance available for distribution to the taxing entities.

- Finance originally made an adjustment related to transfers in the amount of $19,410,280. Finance indicated the transfers were made to repay advances made from the City in prior years. The Agency contends the transfers were made pursuant to a loan release using real estate, non-liquid assets, and cash.

As stated above, HSC section 34171 (d) states agreements, contracts, or arrangements between the City and the former RDA are not enforceable obligations. As such, the loan lease arrangement was not made pursuant to an enforceable obligation and is not permitted. The Agency should reverse the loan release transaction wherein the City received $27 million in real estate from the Agency and in turn, the Agency received $15.8 million in loan releases, $200,000 in cash, and about $11.1 million in lease revenue notes. The Agency should recover the real properties transferred to the City and include those properties in its Long Range Property Management Plan (LRPMP) for disposition pursuant to HSC section 34191.5 (see below for further details related to the property transferred to the City). In addition, the Agency should recover cash payments to the City of $3,563,927, consisting of $1,000,000 paid from tax exempt bond proceeds and $2,563,927 of OFA balances. Because bond proceeds are legally restricted assets of the Agency, the restricted asset balance in the DDR is increased by $1,000,000. Additionally, the OFA balance available for remittance is increased by $2,563,927.

- Transfer of 20 parcels totaling $27,859,030 from the former RDA to the City during 2011. The Agency did not provide documentation to validate the transfers. These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent these assets that transferred are not for a government purpose or pursuant to an enforceable obligation, these assets should be returned to the Agency and disposed of in a manner consistent to the Agency's LRPMP pursuant to HSC section 34191.5.

  Since the properties in the amount of $27,859,030 are illiquid, they are considered a non-cash asset of the Agency. Therefore, another adjustment is being made to increase the non-cash balance by an equal amount. In effect, these adjustments balance out and do not affect the ending OFA available balance.

- The Agency requested to retain $2,116,495 for enforceable obligations for fiscal year 2012-13. Based upon further review during the Meet and Confer process, the Agency may retain $5,494,610 ($5,416,377 +$78,233) for approved enforceable obligations and the OFA balance available will be decreased by $3,378,115 ($2,116,495 - $5,494,610), as further discussed below.

  For the Recognized Obligation Payment Schedule (ROPS) for the July through December 2012 period (ROPS II), Finance approved $7,512,866 and the San Diego County Auditor Controller (CAC) distributed $5,224,263 from the Redevelopment Property Tax Trust Fund (RPTTF). On the July through December 2013 ROPS form, the Agency reported actual expenditures of $5,224,263 and the CAC verified $5,218,486 for enforceable obligations in the ROPS II period. The remaining $5,777 from the RPTTF was expended on an item that had been approved with the Low and Moderate Income Housing Fund as the funding source. The Agency also expended $192,114 from OFA balances on approved enforceable obligations to cover the shortfall in RPTTF funding. Therefore, the Agency may retain $5,416,377 ($5,224,263 + $192,114) for the ROPS II period.

Finance notes that HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the ROPS. In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

Additionally, Finance notes the CAC adjusted the January through June 2013 (ROPS III) January 2, 2013 distribution by $78,233 pursuant to HSC section 34186 (a). Therefore, the Agency may retain $78,233 in order to adequately fund approved ROPS III expenditures.

The Agency's OFA balance available for distribution to the affected taxing entities is $24,611,756 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(370,122)
Finance Adjustments		
Add:		
Adjustment to June 30,2012 balance:	$	5,251,876
Disallowed cash transfers to the City of Vista:	$	23,108,117
Adjustment to balance needed to be retained:		(3,378,115)
Total OFA available to be distributed:	$	24,611,756

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the

Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

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

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Jeff Zinner, Redevelopment and Housing Manager, City of Vista
Mr. Juan Perez, Senior Auditor and Controller Manager, County of San Diego
California State Controller's Office