



REVISED

June 25, 2013

Mr. 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 April 27, 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 original OFA DDR determination letter on March 22, 2013. Subsequent to a Meet and Confer process on one or more items adjusted by Finance, Finance issued a final determination letter on April 27, 2013.

Based on a review of additional information and documentation provided to Finance subsequent to the Meet and Confer process, Finance has made the following adjustments:

- 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. Based on recent information, Finance has determined that the OFA balance available will be increased by \$3,840,445, 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.

- o Finance previously determined that a cash transfer in the amount of \$19,267,672 was made to repay loans between the City and the former RDA. It has been determined that the amount stated in the DDR was not actually transferred. Rather, the DDR indicates that a restructuring of three loans between the City and the former RDA occurred, but no actual cash was transferred. Therefore, no adjustment to the OFA balance is necessary.
- o 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.
- o 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. It has been determined that this amount was never actually transferred in cash. Rather, the amount represents a reissuance of previous loans, plus interest, due by the RDA to the City. The loans were satisfied with a combination of the sale of property, the transfer of \$3,563,927 in cash, and releases by the City. As to the cash transferred for partial satisfaction of the loans, \$1,000,000 was 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. As related to the \$2,563,927 of transferred cash, 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. Because the transfer was not made pursuant to an enforceable obligation, the OFA balance available for remittance is increased by \$2,563,927.

- o 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.

- Per the DDR, the Agency requested to retain \$2,116,495 for enforceable obligations for fiscal year 2012-13. Based upon further review, the Agency may retain \$7,643,420. This amount includes the amount of \$7,565,187 approved on ROPS II (\$7,294,044 in Redevelopment Property Tax Trust Fund (RPTTF) funds + \$20,645 in reserves + 250,498 in other funds) and \$78,233 which reflects the CAC adjustment for the January through June 2013 (ROPS III) January 2, 2013 distribution pursuant to HSC section 34186 (a) to adequately fund approved ROPS III expenditures. The Agency may retain the \$7,643,420 (\$7,565,187 + 78,233) in OFA balances to satisfy fiscal year 2012-13 enforceable obligations. Accordingly, the OFA balances will be decreased by \$5,526,925 (\$7,643,420 - \$2,116,495).

The Agency's OFA balance available for distribution to the affected taxing entities is \$3,195,274 (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:	\$ 3,840,445
Adjustment to balance needed to be retained:	(5,526,925)
Total OFA available to be distributed:	\$ 3,195,274

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