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October 19, 2020

VIA E-MAIL AND U.S. MAIL

Sheri Hartz
City Clerk
City of Emeryville City Council
1333 Park Ave.
Emeryville, CA 94608
city_council@emeryville.org
shartz@emeryville.org

**Re: Comments Regarding Action Item 7.1 of October 20, 2020 Meeting of
Emeryville Successor Agency - Loan from City to Successor Agency**

Dear Ms. Hartz:

We represent Catherine Lennon Lozick, former property owner of the Marchant/Whitney Site at 5679 Horton Street in Emeryville. We wish to submit comments regarding Action Item 7.1 of the upcoming meeting of the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") scheduled for October 20, 2020.

Regarding the loan the City is considering making to the Successor Agency, page 5 of the staff report for Action Item 7.1 indicates that, while no initial interest will be assessed, "any funds advanced by the City and expended by the Successor Agency and not repaid by July 31, 2021, interest would accrue from the actual date of the advance at the rate of 10%/year, which is the legal rate of interest set forth in Code of Civil Procedure §685.010, until paid in full."

However, California Health and Safety Code section 34173, subdivision (h)(1) specifically limits the interest rate that may be assessed on a loan from a City to a Successor Agency. Section 34173(h)(1) provides, in part: "The interest payable on any loan created pursuant to this subdivision shall be calculated on a fixed annual simple basis and applied to the outstanding principal amount until fully paid, at a rate not to exceed the most recently published interest rate earned by funds deposited into the Local Agency Investment Fund [LAIF] during the previous fiscal quarter. . . ." For fiscal quarter 2 of 2020, the most recent quarter published by the State Treasurer, the published LAIF interest rate was 1.47%.¹ Therefore, a 10% annual

¹ See LAIF Quarterly Apportionment Rates at <https://www.treasurer.ca.gov/pmia-laif/historical/quarterly.asp>.

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interest rate on this loan is impermissible under section 34173(h)(1), and any annual interest rate on this loan from the City to the Successor Agency must not exceed 1.47%.

Enclosed is a copy of Health and Safety Code section 34173 in its entirety. We ask that this letter and the copy of section 34173 be included in the packet provided to the City Council in advance of the Successor Agency meeting on October 20, 2020.

Please do not hesitate to contact me at cnoma@wendel.com or by phone at 510-622-7634 if you have any questions regarding these comments.

Sincerely,

WENDEL ROSEN LLP

A handwritten signature in black ink, appearing to read 'CNoma', with a long horizontal stroke extending to the right.

Christine K. Noma

Enclosure: Health & Safety Code section 34173

cc: Catherine Lennon Lozick
Robert Doty
Jeff Embleton
Sam Martillotta
John Parker
Joelle Berle

State of California

HEALTH AND SAFETY CODE

Section 34173

34173. (a) Successor agencies, as defined in this part, are hereby designated as successor entities to the former redevelopment agencies.

(b) Except for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to the act adding this part, all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.

(c) (1) If the redevelopment agency was in the form of a joint powers authority, and if the joint powers agreement governing the formation of the joint powers authority addresses the allocation of assets and liabilities upon dissolution of the joint powers authority, then each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part and each shall have a share of assets and liabilities based on the provisions of the joint powers agreement.

(2) If the redevelopment agency was in the form of a joint powers authority, and if the joint powers agreement governing the formation of the joint powers authority does not address the allocation of assets and liabilities upon dissolution of the joint powers authority, then each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part, a proportionate share of the assets and liabilities shall be based on the assessed value in the project areas within each entity's jurisdiction, as determined by the county assessor, in its jurisdiction as compared to the assessed value of land within the boundaries of the project areas of the former redevelopment agency.

(d) (1) A city, county, city and county, or the entities forming the joint powers authority that authorized the creation of each redevelopment agency may elect not to serve as a successor agency under this part. A city, county, city and county, or any member of a joint powers authority that elects not to serve as a successor agency under this part must file a copy of a duly authorized resolution of its governing board to that effect with the county auditor-controller no later than January 13, 2012.

(2) The determination of the first local agency that elects to become the successor agency shall be made by the county auditor-controller based on the earliest receipt by the county auditor-controller of a copy of a duly adopted resolution of the local agency's governing board authorizing such an election. As used in this section, "local agency" means any city, county, city and county, or special district in the county of the former redevelopment agency.

(3) (A) If no local agency elects to serve as a successor agency for a dissolved redevelopment agency, a public body, referred to herein as a "designated local

authority” shall be immediately formed, pursuant to this part, in the county and shall be vested with all the powers and duties of a successor agency as described in this part. The Governor shall appoint three residents of the county to serve as the governing board of the authority. The designated local authority shall serve as successor agency until a local agency elects to become the successor agency in accordance with this section.

(B) Designated local authority members are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code.

(4) A city, county, or city and county, or the entities forming the joint powers authority that authorized the creation of a redevelopment agency and that elected not to serve as the successor agency under this part, may subsequently reverse this decision and agree to serve as the successor agency pursuant to this section. Any reversal of this decision shall not become effective for 60 days after notice has been given to the current successor agency and the oversight board and shall not invalidate any action of the successor agency or oversight board taken prior to the effective date of the transfer of responsibility.

(e) The liability of any successor agency, acting pursuant to the powers granted under the act adding this part, shall be limited to the extent of the total sum of property tax revenues it receives pursuant to this part and the value of assets transferred to it as a successor agency for a dissolved redevelopment agency.

(f) Any existing cleanup plans and liability limits authorized under the Polanco Redevelopment Act (Article 12.5 (commencing with Section 33459) of Chapter 4 of Part 1) shall be transferred to the successor agency and may be transferred to the successor housing entity at that entity’s request.

(g) A successor agency is a separate public entity from the public agency that provides for its governance and the two entities shall not merge. The liabilities of the former redevelopment agency shall not be transferred to the sponsoring entity and the assets shall not become assets of the sponsoring entity. A successor agency has its own name, can be sued, and can sue. All litigation involving a redevelopment agency shall automatically be transferred to the successor agency. The separate former redevelopment agency employees shall not automatically become sponsoring entity employees of the sponsoring entity and the successor agency shall retain its own collective bargaining status. As successor entities, successor agencies succeed to the organizational status of the former redevelopment agency, but without any legal authority to participate in redevelopment activities, except to complete any work related to an approved enforceable obligation. Each successor agency shall be deemed to be a local entity for purposes of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(h) (1) The city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency for the payment of administrative costs or enforceable obligations excluding loans approved under this subdivision or pursuant to Section 34191.4, or project-related expenses that qualify

as an enforceable obligation, and only to the extent that the successor agency receives an insufficient distribution from the Redevelopment Property Tax Trust Fund, or other approved sources of funding are insufficient, to pay approved enforceable obligations in the recognized obligation payment schedule period. The receipt and use of these funds shall be reflected on the Recognized Obligation Payment Schedule or the administrative budget and therefore are subject to the oversight and approval of the oversight board. An enforceable obligation shall be deemed to be created for the repayment of those loans. A loan made under this subdivision shall be repaid from the source of funds originally approved for payment of the underlying enforceable obligation in the Recognized Obligation Payment Schedule once sufficient funds become available from that source. The interest payable on any loan created pursuant to this subdivision shall be calculated on a fixed annual simple basis and applied to the outstanding principal amount until fully paid, at a rate not to exceed the most recently published interest rate earned by funds deposited into the Local Agency Investment Fund during the previous fiscal quarter. Repayment of loans created under this subdivision shall be applied first to principal, and second to interest, and shall be subordinate to other approved enforceable obligations. Loans created under this subdivision shall be repaid to the extent property tax revenue allocated to the successor agency is available after fulfilling other enforceable obligations approved in the Recognized Obligation Payment Schedule.

(2) This subdivision shall not apply where the successor agency's distribution from the Redevelopment Property Tax Trust Fund has been reduced pursuant to Section 34179.6 or 34186.

(i) At the request of the city, county, or city and county, notwithstanding Section 33205, all land use related plans and functions of the former redevelopment agency are hereby transferred to the city, county, or city and county that authorized the creation of a redevelopment agency; provided, however, that the city, county, or city and county shall not create a new project area, add territory to, or expand or change the boundaries of a project area, or take any action that would increase the amount of obligated property tax (formerly tax increment) necessary to fulfill any existing enforceable obligation beyond what was authorized as of June 27, 2011.

(Amended by Stats. 2015, Ch. 325, Sec. 3. (SB 107) Effective September 22, 2015.)