



Legislation Text

File #: 15-003SA, **Version:** 1

Recommendation to authorize City Manager to execute an agreement exempting the Small Business Administration or its approved lenders from the indemnity obligation contained in the Parking Easement Agreement related to the property at 834 East Fourth Street. (District 1)

Lara Solutions, a woman-owned small business, has purchased and recently renovated Suite D at 834 East 4th Street, a development commonly known as the 4th Street Lofts. As an owner in the 4th Street Lofts, Lara Solutions is a party to a Parking Easement Agreement which benefits the Successor Agency. The Parking Easement Agreement requires the property owners within the 4th Street Lofts, including Lara Solutions, to provide parking for the public. The Parking Easement Agreement provides that each of the 4th Street Lofts property owners indemnify the Successor Agency against any liability resulting from the use of the public parking spaces.

Lara Solutions has applied for a 504 Loan from the U.S. Small Business Administration (SBA) for long-term financing, using the property as security. The SBA requires that any open-ended indemnity in the chain of title on a property to be used as collateral for a 504 Loan must be waived with respect to the SBA and its lenders, as it represents an unfunded liability under the Federal Antideficiency Act. As a result, the SBA has required 504 Loan borrowers to obtain waivers of indemnities.

Lara Solutions owns one of the 41 properties at the 4th Street Lofts, and would remain obligated to indemnify the Successor Agency in accordance with the Parking Easement Agreement for so long as Lara Solutions owns its property. In the event that the SBA or its lender becomes owner of the subject property through a foreclosure or loan work-out, then the SBA or its lender would not be required to indemnify the Successor Agency against potential liability arising from the public parking spaces. The requested action will not affect the indemnity obligations of the remaining property owners at the 4th Street Lofts and their respective successors and assigns.

The proposed Administrative Budget from January 1 through June 30, 2015, is approximately \$337,348, or 2.6 percent of the \$12,827,074 in RPTTF funds requested in the Recognized Obligation Payment Schedule. Challenges to the validity of any of the enforceable obligations by the Oversight Board or Department of Finance could reduce the amount of the administrative allowance paid by the Auditor-Controller.

Successor Agency action is requested on January 20, 2015 so the exemption may be considered by the Oversight Board on February 2, 2015 and promptly submitted to the State

of California Department of Finance for review.

The fiscal impact to the Successor Agency cannot be determined at this time. A fiscal impact would only occur if the two following conditions occur: (1) the SBA or its approved lender become the owner of 834 E. Fourth Street, Suite D, and (2) someone wins damages arising from the use of the public parking. If such conditions both occurred, the Successor Agency's share of the damages is estimated to be less than 2.5 percent of the total.

Approve recommendation.

AMY J. BODEK, AICP
DIRECTOR OF DEVELOPMENT SERVICES

APPROVED:

PATRICK H. WEST
CITY MANAGER