

RESOLUTION NO. _____

RESOLUTION AMENDING THE BETTER BUSINESS ACT
(RESOLUTION NO. 2009-118) TO ADD AN EXCEPTION
WHEN THE CITY SERVES AS CO-APPLICANT FOR
CERTAIN STATE AND FEDERAL FUNDS

WHEREAS, by Resolution No. 2009-118, the City adopted the Better Business Act ("Act"), effective May 28, 2009; and

WHEREAS, the Council adopted an amendment to the Act by Resolution 2014-191, allowing certain exemptions for affordable housing and mixed use projects; and

WHEREAS, the Council now wishes to amend the Act to allow an exemption when City is serving as a co-applicant for State and Federal funds, and the risk to the City is mitigated by certain contractual provisions between City and Applicant.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Section 2 of the Act, as amended by Resolution 2014-191, shall be further amended by adding language as follows:

This Act shall not apply to projects where all the following conditions are met via a contractual obligation between the City and Applicant:

(a) In addition to any other indemnity that may be required by City, Applicant agrees to indemnify City for any loss, liability, fines, penalties, forfeitures, costs or damages

incurred by City arising from Applicant's failure to complete the Project.

(b) Applicant will obtain and deliver labor and material bonds, payment, and performance bonds. The bonds will each contain a penal sum at least equal to one hundred ten percent (110%) of Applicant's estimated construction costs of any particular Phase of the Project then under construction and shall remain in full force until all construction costs are paid, plus Applicant has obtained the issuance of a "Safe to Occupy" Certificate or Certificate of Occupancy, or the recording of a Certificate of Completion for that Phase, whichever is earlier. The bonds will name City as a co-obligee. The bonds shall expressly provide that, for purposes of the bonds, Applicant is solely responsible for completion of the Project and payment of all costs, and is solely responsible to the surety in the event the Project is not completed; City has in no way waived that obligation by becoming a co-applicant with Applicant for grant funding. Instead of requiring performance and payment bonds, City may consider and accept other evidence of Applicant's ability to complete the Project.

(c) City shall serve as fiscal agent for any grant funds and shall disburse progress payments to Applicant.

Applicant agrees to pay City's actual cost of contract administration.

2. This resolution shall take effect upon its adoption.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2016.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2016
Mayor Approval/No Return: _____, 2016
Mayor Veto: _____, 2016
Council Override Vote: _____, 2016

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Katie Doerr, Assistant