

City of Sacramento

Legislation Text

File #: 2019-00781, **Version:** 1

Title:

Third Amendment to the Arena Financing and Funding Agreement (AFFA)

File ID: 2019-00781

Location: Citywide

Recommendation:

Pass a Motion authorizing the City Manager or City Manager's designee to execute the Third Amendment to the Arena Finance and Funding Agreement (AFFA), which permits the release of excess retainage and which sets forth the process for the City's final release of retainage for the Entertainment and Sports Project (Golden1 Center).

Contact: John Dangberg, Economic Development Advisor to the City Manager, (916) 808-1222, Office of the City Manager

Presenter: None

Attachments:

1-Description/Analysis

2-Third Amendment to the Arena Financing and Funding Agreement

Description/Analysis

Issue Detail: Staff is requesting that the City Council authorize the amendment of the AFFA to reduce the construction retainage held for the Golden 1 Center and release excess retainage.

The purpose of the Golden 1 Center construction retainage is to provide the City with funds to ensure that ArenaCo fulfills its development and construction obligations set forth in the Arena Design and Construction Agreement (ADACA). Further, under state regulations governing public works projects, the City is required to retain five percent of progress payments until completion and acceptance of the project. Once 50 percent of the work has been completed, the City Council can reduce or waive the five percent retainage requirement per Section 9203(a) of the Public Contracts Code. The Council approved such a waiver in the second amendment to the AFFA and reduced the amount

retained to no less than two percent (\$4,462,602). As set forth in the second amendment, the final release of City retainage would be made upon completion of the project and subject to the following conditions:

- Construction punch list items have been satisfactorily addressed;
- All relevant conditions of project approval have been satisfied;
- All EIR conditions and Mitigation Monitoring Plan measures have been completed;
- All quality control issues have been addressed;
- All outstanding debts have been paid or satisfactory arrangements made for payment;
- All insurance required to remain in force after final payment is currently in effect;
- All labor compliance requirements have been satisfied and all payrolls for the work have been submitted and certified;
- The surety responsible for the payment and performance bonds has consented to the release;
- Lien waivers have been received from the Arena Contractor, subcontractors and suppliers, and
- No outstanding unpaid change orders or claims from the Arena Contractor or any subcontractors or suppliers;

The project has been substantially complete since September 2016 and all the above stated conditions for the final release have been met except for those associated with a dispute over a relatively small contract (small in relation to the scale of the project). That dispute is currently in arbitration with a projected resolution within twelve months.

Staff recommend that the retainage be reduced to an amount no less than the outstanding liabilities associated with the dispute. After consultation with attorney's in the City Attorney's Office that are familiar with the litigation, staff are recommending a minimum retainage of \$300,000 and the release of the balance of retained funds. Upon resolution of the dispute, the remainder of the retainage would be released.

Policy Considerations: The recommendation in this report is consistent with the project goals adopted by Council on October 29, 2013. The recommendation protects the City interests while appropriately distributing excess construction retainage to ArenaCo.

Economic Impacts: Not Applicable

Environmental Considerations: The actions in this report do not have any potential for significant

effect on the environment and are exempt under CEQA Guidelines section 15061(b)(3).

Sustainability: Not Applicable

Commission/Committee Action: Not Applicable

Rationale for Recommendation: Given that the work for the construction of the Golden1 Center has been completed by ArenaCo and retainage amounts far exceed any outstanding construction related risk or liabilities, the City Council can reduce or waive the retainage requirement.

Financial Considerations: There is no impact to the General Fund and no new funding is involved.

Local Business Enterprise (LBE): Not Applicable