

DATE: May 24, 1989

TO: Bob Lawrence, Auditors Office
FROM: City Attorney
SUBJECT: Clairemont Friendship Center Stop Notice from
San Diego Climate

This is in regards to your request for an opinion from Jack Katz on the validity of the Stop Notice filed by San Diego Climate against the prime contractor, NET Enterprises. I have been requested to respond. While we cannot give a judicial determination of the validity of the specific Stop Notice, the procedure for releasing a Stop Notice is attached hereto and discussed hereinafter.

If an original or prime contractor disputes the validity of a stop claim, he is to notify the public entity with an affidavit stating his reasons, per California Civil Code section 3198.

In turn, the public entity, per California Civil Code section 3100 shall send a copy of such affidavit and demand for release to the Stop Notice Claimant with a written notice stating that such money shall be released unless the claimant files a counteraffidavit within a designated time - not less than 10, nor more than 20 days after service of the copy of the prime contractor's affidavit upon the claimant. If no counterclaim is received by the public entity, the money shall be released to the contractor and the public entity shall not be liable. If the claimant desires to contest the demand for release, his counteraffidavit shall explain in detail his reasons for rebutting the prime contractor's claim, per California Civil Code section 3200. After the counterclaim is filed with the public entity, either the prime contractor or the claimant may file an action in superior court for a hearing regarding the parties' rights that must be heard within 15 days, per California Civil Code section 3201.

Although NET Enterprises has sent a letter requesting release of funds, it was not in the form of an affidavit. An affidavit

is defined as "a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation." Black's Law Dictionary, 5th Ed. 1979. An affidavit in this case may include a notarized letter from the prime contractor.

My suggestion to you would be that you advise NET Enterprises to consult with their attorney about these California Civil Code sections as to exactly what is required for them to properly

proceed in this matter. The City should not release withheld funds unless and until proper legal procedures are followed by the parties involved.

Please let me know if I can be of further assistance.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

MKJ:jrl:823.1(x043.2)

Attachment

cc W.Q. Divinagracia

Lori Etherington

ML-89-51