

PROMPT PAYMENT PROVISION

Attachment 4
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PAYMENT DUE TO SUBCONTRACTORS UPON PAYMENT OF PROGRESS PAYMENTS
(proposed contract language for public works contracts - municipal projects)

__ - __.-Contractors' Duty to Make Prompt Payment to Subcontractor:

Unless otherwise agreed in writing by the contractor and the subcontractor to be paid or unless there is a good faith dispute as described in this section, no later than ten calendar days after contractor's receipt of each progress payment from City, the contractor shall pay any subcontractor or subcontractor pay to any subcontractor, the amount due the subcontractor on account of the work performed by the subcontractor reflected in the City's progress payment.

__ - __.- Effect of Good Faith Disputes Between Contractor and Subcontractors

In case of a good faith dispute regarding alleged subcontractor performance deficiencies, the contractor shall provide the subcontractor written notice of any withheld amount, with a copy to the City's Resident Engineer and to the City's Contract Administrator for the Project, at 1010 Second Avenue, Suite 500, San Diego, CA 92101. The contractor's written notice shall specify all of the following:

- a. The amount withheld;
- b. Statement of the specific causes of the withholding under the terms of the subcontract;
- c. Statement of justification for the amount withheld; and,
- d. Proposed remedial actions to be undertaken by the subcontractor to receive payment of the amount withheld.

Within ten calendar days after subcontractor's correction of the deficiency, the contractor shall pay the subcontractor the amount previously withheld.

__ - __.- Sanctions for Contractor's Violation of Duty to Make Prompt Payment

Any contractor who does not comply with section __ - __.- may be subject to one or more of the

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sanctions to be imposed by City.

a. Withholding of future progress payments until final resolution of the matter either by agreement of the contractor and subcontractor or by decision of a hearing body or officer following a hearing on the matter;

b. Fine in the amount of two percent (2 %) per month of the amount due to subcontractor for every month the payment is not made. The fine shall be withheld from the progress payments out of which the prime contractor was to be paid;

c. Debarment.

Before any sanction is imposed on a contractor, the City shall provide the contractor with an opportunity to be heard in front of a hearing officer or body, in accordance with procedures adopted by the City Manager.

__ - __.- Section to be Construed as Additional Remedy

Section __ - __.- through __. __.- shall be in addition to all other remedies available to a subcontractor and shall not be construed to limit or impair any contractual, statutory, administrative, or judicial remedies otherwise available to a subcontractor in the event of a dispute involving a contractor's late payment or nonpayment.

Section __ - __.- through __. __.- shall be in addition to all other remedies available to a contractor and shall not be construed to limit or impair any contractual, statutory, administrative, or judicial remedies otherwise available to a contractor in the event of a dispute involving a subcontractor's deficient performance or nonperformance.