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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ARNTZ BUILDERS,

Plaintiff and Appellant,

v.

CITY OF BERKELEY,

Defendant and Respondent.

A128147

(Alameda County
Super. Ct. No. RG03095394)

This litigation arises out of a contract between Arntz Builders (Arntz) and the City of Berkeley (the City) for the restoration and expansion of the Berkeley Central Library. In the operative complaint, Arntz alleged against the City causes of action for breach of contract, breach of contract due to subcontractor pass-through or indirect claims, and breach of implied duty to provide complete and accurate plans. After prolonged litigation, which included two prior appeals (*Arntz Builders v. City of Berkeley* (2008) 166 Cal.App.4th 276 (*Arntz I*) and *Arntz Builders v. City of Berkeley* (Aug. 25, 2008, A117744 [nonpub. opn.] (*Arntz II*)), the trial court granted the City's motion for summary judgment. Arntz appealed the ensuing judgment, and today, in *Arntz Builders v. City of Berkeley*, case No. A126838 (*Arntz III*), we reverse the trial court's judgment and remand the matter for further proceedings. We incorporate by reference our discussion of the factual and procedural background set forth in *Arntz III*.

Following entry of judgment, the City moved for attorney fees as the prevailing party under Public Contract Code section 7107, subdivision (f), and the trial court granted the motion in part, awarding fees in the amount of \$1,290,063.75. In the matter now

before us, Arntz appeals that award of fees. Our reversal of the trial court's judgment in favor of the City in *Arntz III* eliminates the basis for the award. Accordingly, we must vacate the attorney fee order as well. (*Metropolitan Water Dist. v. Imperial Irrigation Dist.* (2000) 80 Cal.App.4th 1403, 1436-1437.)

DISPOSITION

The order appealed from is reversed.

RIVERA, J.

We concur:

RUVOLO, P.J.

REARDON, J.