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**CITY ATTORNEY DENNIS J. HERRERA
CITY AND COUNTY OF SAN FRANCISCO**

In the matter of:

FLORENCE KONG, an individual,
SFR RECOVERY INC., a California
corporation, and KWAN WO
IRONWORKS INC., a California
corporation

**ORDER OF SUSPENSION BY THE CITY
ATTORNEY UNDER SAN FRANCISCO
ADMINISTRATIVE CODE CHAPTER 28**

Dennis J. Herrera, City Attorney of the City and County of San Francisco (“San Francisco” or “City”), issues this **Order of Suspension** to Florence Kong, SFR Recovery Inc., and Kwan Wo Ironworks Inc.

The Federal Bureau of Investigation (“FBI”) filed charges against Florence Kong, on June 1, 2020, in a federal criminal complaint (“Criminal Complaint”) alleging a violation of 18 U.S.C. 1001(a)(2), False Statement to a Government Agency, a felony. (**Exhibit 1.**) The Criminal Complaint was supported by the sworn affidavit of Tyler Nave, Special Agent, FBI (“Federal Affidavit”). (*Id.*) The Federal Affidavit contains the following statement in support of a criminal complaint against Florence Kong:

[Florence Kong] owns a construction company, Kwan Wo Ironworks, that does business with the City of San Francisco, directly at times, and also as a subcontractor for other construction companies who hold the primary contract with the city. [Florence Kong] also owns a construction debris recycling company, SFR Recovery Inc., that also does business directly with the City of San Francisco.

(Federal Affidavit at ¶ 1.)

City Attorney Dennis J. Herrera is an authorized Charging Official who can issue this Order of Suspension on Florence Kong, SFR Recovery Inc., and Kwan Wo Ironworks Inc. (San Francisco Administrative Code §§ 28.1, 28.2.)

1 A Suspension is the ineligibility of a contractor to participate in the procurement process
2 for contracts or from entering into contracts or grants at any tier, directly or indirectly, with or
3 for San Francisco. (San Francisco Administrative Code §§ 28.1, 28.11(c).)

4 Until this Order of Suspension is lifted, amended, or terminated, Florence Kong, SFR
5 Recovery Inc., and Kwan Wo Ironworks Inc. are Suspended.

6 **Factual Background**

7 **Parties to be Suspended**

8 Florence Kong is an individual who at all times relevant to this Order of Suspension was
9 the owner, responsible managing corporate officer, or responsible managing employee of two
10 California corporations that held contracts (directly or indirectly) with San Francisco.

11 SFR Recovery Inc. is California corporation number C4029688. It registered with the
12 California Secretary of State on May 31, 2017. From registration through at least the date of the
13 filing of the Federal Complaint, Florence Kong was the Chief Executive Officer, the sole
14 Director, and the Agent for Service of Process for SFR Recovery Inc. (**Exhibit 2.**) SFR
15 Recovery Inc. was a San Francisco vendor who participated in the procurement process and
16 obtained, direct or indirect, contracts with San Francisco. According to the Federal Complaint,
17 Florence Kong owns SFR Recovery Inc. (Exhibit 1 at ¶ 1.)

18 Kwan Wo Ironworks Inc. is California corporation number C1522456. It registered with
19 the California Secretary of State on February 28, 1992. Florence Kong was the registered agent
20 for service of process for Kwan Wo Ironworks Inc. from its incorporation until at least date of
21 the filing of the Federal Complaint. (**Exhibit 3.**) Prior to and up until at least the filing of the
22 Federal Complaint, Florence Kong was the Chief Executive Officer, Secretary, Chief Financial
23 Officer and sole Director for Kwan Wo Ironworks Inc. (*Id.*) Kwan Wo Ironworks Inc. was a
24 San Francisco vendor who participated in the procurement process and obtained, direct or
25 indirect, contracts with San Francisco. According to the Federal Complaint, Florence Kong
26 owns Kwan Wo Ironworks Inc. (Exhibit 1 at ¶ 1.)

1 **The Criminal Complaint**

2 On June 1, 2020 the Criminal Complaint in the matter of *United States of America v.*
3 *Florence Kong*, United States District Court for the Northern District of California, Case No.
4 3:20-cr-00354 was filed. (Exhibit 1.) It was furnished by an Assistant United States Attorney,
5 charging the offense of 18 U.S.C. § 1001(a)(2) – False Statement to a Government Agency, a
6 felony. (*Id.* at p. 2.)

7 Florence Kong was interviewed by the FBI on March 4, 2020. (Federal Affidavit ¶ 13.)
8 The interview related to the FBI’s ongoing investigation of former Department of Public Works
9 (“DPW”) Director, Mohamed Nuru (“Nuru”). (*Id.* at ¶ 14.) “At the time of the interview, the
10 FBI suspected that [Florence Kong] was providing gifts to Nuru, and in return, Nuru was helping
11 her companies’ obtain and increase their business with the City of San Francisco.” (*Id.*)

12 At first Florence Kong denied knowing Nuru, but then said they were friends. (*Id.* ¶ 16.)
13 Kong said she did not discuss business with Nuru, but “the FBI intercepted over a dozen
14 conversations between Nuru and [Florence Kong] in 2018 and 2019 discussing [Florence
15 Kong’s] business.” (*Id.* at ¶ 17.) The FBI also reviewed emails between Nuru and Kong relating
16 to permitting at SFR Recovery’s solid waste and construction debris recycling facility, the
17 volume of business DPW was giving to SFR Recovery, and Florence Kong’s efforts to win
18 subcontracts for her company, Kwan Wo Ironworks, including a City contract for the San
19 Francisco Animal Care and Control Facility. (*Id.* at ¶ 17-19.) The FBI intercepted phone calls
20 and emails in which “Nuru on multiple occasions did in fact help [Florence Kong] with contracts
21 [her] companies had with the City of San Francisco.” (*Id.* at ¶ 20.)

22 The FBI set out an intercepted phone call in which Nuru agreed to extend a date for an
23 upcoming application deadline for a City contract. (*Id.* at ¶ 22.) Later, Nuru confirmed he got
24 the extension for her. (*Id.* at ¶ 23.)

25 During the time period in which Florence Kong was seeking and obtaining help from
26 Nuru in getting City contracts, she gave Nuru \$3,000 to \$4,000 in cash for his daughter, some of
27 which he kept for himself, installed a gate at Nuru’s vacation home which he did not pay for, and
28

1 bought thousands of dollars of meals for Nuru, and a Rolex watch that cost about \$41,000. (*Id.*
2 at ¶ 30, 30(a)-(c).)

3 **Legal Basis for Suspension**

4 San Francisco Administrative Code Chapter 28 sets forth the grounds and procedures for
5 administrative Suspension. (**Exhibit 4.**)

6 Suspension is defined as the “Ineligibility of a Contractor that is the subject of an arrest,
7 indictment, or other criminal civil charge by a governmental entity (federal, state, or local), as
8 specified in greater detail in Section 28.3(b) from participating in the procurement process for
9 contracts or from entering into contracts directly or indirectly with, applying for or receiving
10 grants from, the City.” (San Francisco Administrative Code § 28.1.)

11 Contractor is defined as

12 Any individual person, business entity, or organization that submits a
13 qualification statement, proposal, bid, or grant request, or that contracts
14 directly or indirectly with the City for the purpose of providing any goods
15 or services or construction work to or for, or applies for or receives a grant
16 from, the City including without limitation any Contractor, subcontractor,
17 consultant, subconsultant or supplier at any tier, or grantee. The term
“Contractor” shall include any responsible managing corporate officer, or
responsible managing employee, or other owner or officer of a Contractor
who has personal involvement and/or responsibility in seeking or
obtaining a contract with the City or in supervising and/or performing the
work prescribed by the contract or grant.”

18 (*Id.*) Here, Florence Kong is an individual who had the following relevant roles with her
19 companies:

- 20 • SFR Recovery Inc.: The Chief Executive Officer and the sole Director for SFR
21 Recovery Inc. (Exhibit 2.)
- 22 • Kwan Wo Ironworks Inc: The Chief Executive Offer, the Secretary, the Chief
23 Financial Officer and the Director for Kwan Wo Iron Works Inc. (Exhibit 3.)

24 In addition, according to the Federal Compliant, Florence Kong is an owner of SFR
25 Recovery Inc. and Kwan Wo Ironworks Inc. (Exhibit 1 at ¶ 1.) SFR Recovery Inc. and Kwan
26 Wo Ironworks Inc. are business entities that contract directly and indirectly with San Francisco,
27 and Florence Kong’s criminal charge is attributable to them because she was an owner and an
28 officer of the companies who has personal involvement and/or responsibility in seeking or

1 obtaining a contract with the City. Moreover, according to the criminal complaint, Florence
2 Kong's conduct was connected to efforts to procure contracts with the City for SFR Recovery
3 Inc. and Kwan Wo Ironworks Inc. (Federal Affidavit ¶¶ 17-20).

4 Florence Kong's criminal charge for 18 U.S.C. § 1001(a)(2) qualifies as a basis for a
5 suspension of SFR Recovery Inc., Kwan Wo Ironworks Inc. and Florence Kwan.

6 Any Charging Official may issue an Order of Suspension to a Contractor
7 on the basis that the Contractor has been arrested or indicted, or become
8 the subject of a criminal, civil or administrative complaint issued by a
9 government entity, where the arrest or indictment, criminal, civil, or
10 administrative complaint alleges that the Contractor has violated a civil or
11 criminal law or regulation against any government entity relevant to the
12 Contractor's ability or capacity honestly to perform under or comply with
13 the terms and conditions of a City contract or grant including, but not
14 limited to, the grounds for Debarment set forth in Section 28.3(a).

11 (San Francisco Administrative Code § 28.3(b).) The charge is a criminal complaint by the
12 Federal Government relevant to Florence Kong and her companies' ability or capacity honestly
13 to perform under a City contract, and if the charges are true, would provide grounds for
14 Debarment.

15 The Administrative Code provides in pertinent part that a contractor shall be debarred
16 upon a finding of:

17 any willful misconduct with respect to any City bid, request for
18 qualifications, request for proposals, grant request, purchase order and/or
19 contract or grant award. Such willful misconduct may include, but need
20 not be limited to the following: (1) submission of false information in
21 response to an advertisement or invitation for bids or quotes, a request for
22 qualifications or a request for proposals; (2) failure to comply with the
23 terms of a contract or with provisions of the Municipal Code; (3) a pattern
24 and practice of disregarding or repudiating terms or conditions of City
25 contracts, including without limitation repeated unexcused delays and
26 poor performance; (4) failure to abide by any rules and/or regulations
27 adopted pursuant to the San Francisco Municipal Code; (5) submission of
28 false claims as defined in this Administrative Code, Chapter 6, Article V,
or Chapter 21, Section 21.35, or other applicable federal, state, or
municipal false claims laws; (6) a verdict, judgment, settlement,
stipulation or plea agreement establishing the Contractor's violation of any
civil or criminal law against any government entity relevant to the
Contractor's ability or capacity honestly to perform under or comply with
the terms and conditions of a City contract or grant; (7) collusion in
obtaining award of any City contract or grant, or payment or approval
thereunder; and/or (8) the offer or provision of any gift or money to a
public official, if that public official is prohibited from accepting the gift
or money by any law or regulation.

1 (San Francisco Administrative Code § 28.3 (a).)

2 This is a non-exclusive list which requires only that Florence Kong, SFR Recovery Inc.
3 and Kwan Wo Ironworks Inc. fall under one of the prongs. But their unlawful actions fall under
4 at least three prongs:

- 5 • subdivision (2) “failure to comply with the terms of a contract or with provisions
6 of the Municipal Code,”
- 7 • subdivision (7) “collusion in obtaining award of any City contract or grant, or
8 payment or approval thereunder,” and,
- 9 • subdivision (8) “the offer or provision of any gift or money to a public official, if
10 that public official is prohibited from accepting the gift or money by any law or
11 regulation.”

12 **Ground 1: Failure to Abide by San Francisco’s Municipal Code**

13 Florence Kong’s gifts would violate the San Francisco Municipal Code and its
14 regulations, as well as the terms of its contracts. The Campaign & Governmental Conduct Code
15 is part of the San Francisco Municipal Code. It contains a “Prohibition on Bribery. No person
16 shall offer or make, and no officer or employee shall accept, any gift with the intent that the City
17 officer or employee will be influenced thereby in the performance of any official act.”

18 Campaign & Governmental Conduct Code § 3.216(a). “The phrase “intent to influence” means
19 any communication made for the purpose of supporting, promoting, influencing, modifying,
20 opposing, delaying or advancing a governmental decision.” Regulation 3.216(b)-2. The City
21 contracts require that vendors comply with the laws of San Francisco. If the allegations in the
22 Federal Affidavit are true, Florence Kong gave gifts to Nuru worth at least in excess of \$45,000
23 with the intent to win more work for SFR Recovery Inc. and Kwan Wo Ironworks, Inc.

24 That would violate the San Francisco Municipal Codes and breach City contracts, which
25 would be a ground for Debarment. It is therefore a basis for Suspension.

26 **Ground 2: Unlawful Collusion in the Award of a City Contract**

27 Florence Kong’s conduct also constitutes unlawful collusion to obtain the benefits of
28 publicly funded contracts.

1 Collusion has been variously defined as (1) “a deceitful agreement or
2 compact between two or more persons, for the one party to bring an action
3 against the other for some evil purpose, as to defraud a third party of his
4 right”; (2) “a secret arrangement between two or more persons, whose
5 interests are apparently conflicting, to make use of the forms and
6 proceedings of law in order to defraud a third person, or to obtain that
7 which justice would not give them, by deceiving a court or its officers”;
8 and (3) “a secret combination, conspiracy, or concert of action between
9 two or more persons for fraudulent or deceitful purposes.

6 (*Andrade v. Jennings*, 54 Cal. App. 4th 307, 327 (1997).) If the allegations are true, Florence
7 Kong and Nuru engaged in an ongoing scheme to provide favors: for Nuru to provide favors to
8 SFR Recovery Inc. and Kwan Wo Ironworks Inc., and for Kong to provide favors to Nuru. As a
9 public contractor, Florence Kong had no legal basis to provide tens of thousands of dollars’
10 worth of secret gifts for the personal benefit of Nuru. If true, this collusion undermines public
11 trust in City contracting, is unfair to the taxpayers, and unfair to legitimate contractors competing
12 for public contracts, and would be the ground for Debarment. It is therefore the basis for
13 Suspension.

14 **Ground 3: The Provision of Gift or Money to a Public Official, Where That Public
15 Official is Prohibiting from Accepting the Gifts or Money**

16 San Francisco law requires that “no officer or employee of the City and County shall
17 solicit or accept any gift or loan from a person who the officer or employee knows or has reason
18 to know is a restricted source.” Campaign & Governmental Conduct Code § 3.216(b). The
19 definition of a “restricted source” includes “a person doing business with or seeking to do
20 business with the department of the officer or employee.” Campaign & Governmental Conduct
21 Code § 3.216(b)(1). “The phrase ‘doing business’ with the department of the officer or
22 employee means entering into or performing pursuant to a contract with the department of the
23 officer or employee.” Regulation 3.216(b)-1. At all relevant times, under the Campaign &
24 Governmental Conduct Code and regulations adopted thereunder, Florence Kong, SFR Recovery
25 Inc. and Kwan Wo Ironworks Inc were a restricted source for Nuru. It was unlawful for Nuru to
26 accept any gift worth more than \$25 from them. But Florence Kong is alleged to have given
27 gifts worth at least in excess of \$45,000. Because it would be unlawful for Nuru to have
28 accepted those gifts, the provision of those gifts would be a ground for Debarment. It is
therefore a basis for Suspension.

1 **Order of Suspension**

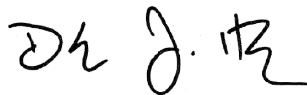
2 For all of these reasons, Dennis J. Herrera, as the Charging Official, hereby issues this
3 Order of Suspension on Florence Kong, SFR Recovery Inc., and Kwan Wo Ironworks Inc.

4 This Order of Suspension is self-executing; it is in effect from today’s date until the
5 Charging Official lifts the Order of Suspension under Section 28.6(b), or a hearing officer
6 terminates the Order of Suspension under Section 28.10(e).

7 Further, Section 28.7 in which the failure to request a hearing constitutes an admission of
8 the facts in counts and allegations *not does apply* to this Order of Suspension. The failure to
9 seek a hearing of an Order of Suspension does not at any time constitute an admission of the
10 facts in an Order of Suspension. Instead, at any time during the term of Suspension, Florence
11 Kong, SFR Recovery Inc. or Kwon Wo Ironworks Inc. may together or separately submit a
12 written request of the Charging Officer to lift the Order of Suspension. (San Francisco
13 Administrative Code § 28.6(b).) Finally, at any time the Charging Official may move to debar
14 Florence Kong, SFR Recovery Inc. or Kwon Wo Ironworks Inc, and if they are so debarred, the
15 period of Suspension shall count towards the period of Debarment. (San Francisco
16 Administrative Code § 28.11(b).)

17 Pursuant to this Order of Suspension SFR Recovery Inc., Kwan Wo Ironworks Inc. and
18 Florence Kong are ineligible to participate in the procurement process for contracts or from
19 entering into contracts or grants at any tier, directly or indirectly, with or for San Francisco. (San
20 Francisco Administrative Code §§ 28.1, 28.11(c).)

21 Dated: March 1, 2021

22 

23 _____
24 Dennis J. Herrera
25 City Attorney
26 City and County of San Francisco
27
28

EXHIBIT 1

FILED

Jun 01 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT
for the
Northern District of California

United States of America
v.
Florence KONG

Case No. 3:20-mj-70684 JCS

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of March 4, 2020 in the county of San Mateo in the
Northern District of California, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. 1001(a)(2)	False Statement to a Government Agency

This criminal complaint is based on these facts:

See attached Affidavit

Continued on the attached sheet.

Approved as to form David J. Ward
AUSA David J. Ward

Sworn to before me and signed in my presence
by telephone

Date: June 1, 2020

City and state: San Francisco, CA

s/

Complainant's signature

Tyler Nave, Special Agent, FBI

Printed name and title



Judge's signature

Hon. Joseph C. Spero, Magistrate Judge

Printed name and title

Print

Save As...

Attach

Reset

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

18 U.S.C. § 1001(a)(2) - False Statement to a Government Agency Petty
 Minor
 Misdemeanor
 Felony

PENALTY: 5 Years Imprisonment
\$250,000 fine
3 Years Supervised Release
\$100 Special Assessment

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEFENDANT - U.S.

▶ KONG, Florence
DISTRICT COURT NUMBER

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Federal Bureau of Investigation

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:
 U.S. ATTORNEY DEFENSE } SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant } MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under }

Name and Office of Person Furnishing Information on this form David L. Anderson
 U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) David J. Ward

DEFENDANT

IS NOT IN CUSTODY

- Has not been arrested, pending outcome this proceeding.
- 1) If not detained give date any prior summons was served on above charges ▶
 - 2) Is a Fugitive
 - 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
- 5) On another conviction } Federal State
- 6) Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No } If "Yes" give date filed

DATE OF ARREST ▶ Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY ▶ Month/Day/Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

Bail Amount: _____

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____ Before Judge: _____

Comments:

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Tyler Nave, Special Agent with the Federal Bureau of Investigation (FBI), being duly sworn, hereby depose and state the following:

I. INTRODUCTION AND AGENT QUALIFICATIONS

A. Count One

1. I submit this affidavit in support of a criminal complaint against Florence KONG. KONG owns a construction company, Kwan Wo Ironworks, that does business with the City of San Francisco, directly at times, and also at times as a subcontractor for other construction companies who hold the primary contract with the city. KONG also owns a construction debris recycling company, SFR Recovery Inc., that also does business directly with the City of San Francisco.

2. As set forth below, there is probable cause to believe that on or about March 4, 2020, KONG made materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the government of the United States, in violation of 18 U.S.C. § 1001(a)(2). Specifically, KONG made the following false statements to Special Agents of the FBI, related to her communications with Mohammed Nuru, then the Director of the San Francisco Department of Public Works:

- a. KONG said that she and Nuru were friends but they do not discuss business;
- b. KONG said Nuru did not help her with contracts, whether the contracts were directly with the city or if she was a subcontractor for a city contract;
- c. KONG said Nuru did not extend contract application deadlines for contracts KONG wanted;
- d. KONG said Nuru did not help KONG obtain work as part of a contract with Clark Construction to do work at the San Francisco Animal Care and Control Facility, and said she never talked to Nuru about that contract;

e. KONG said she did not talk to Nuru about the construction debris contract she had with the City;

f. KONG said she never gave Nuru money.

3. The statements and representations were false because, as will be described in further detail below, the FBI has obtained recorded wire communications, statements, and documents that prove her statements were false.

B. Qualifications and Background

4. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code; that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in Section 2516 of Title 18, United States Code. I am a Special Agent of the FBI and have been so employed since March 2009. I am sworn and empowered to investigate criminal activity involving violations of federal law.

5. I am currently assigned to FBI's San Francisco Division Public Corruption Squad, which investigates abuse of public office in violation of criminal law, which includes fraud, bribery, extortion, conflicts of interest, and embezzlement. My investigative experience includes, but is not limited to: conducting wire communication interceptions; interviewing subjects, targets and witnesses; executing search and arrest warrants; handling and supervising confidential human sources; conducting surveillance; and analyzing phone records and financial records.

6. During my employment with the FBI, I have received formal classroom and field training at the FBI Academy in Quantico, Virginia and graduated from the New Agent Training program. My training and experience includes, but is not limited to, public corruption, hate crimes, human trafficking, and foreign counter-intelligence. I have also received additional formal and on-the-job training from the FBI, as well as from the United States Attorney's office and other federal agents who have done extensive work in the areas of financial crimes and public corruption. I have participated in investigations involving public corruption, bribery, and fraud, and I have been the lead agent on several of those cases. I have worked on multiple

wiretaps while investigating public corruption, white-collar crime, and national security cases. I have received formal training in wiretaps at the FBI academy in Quantico, Virginia as well as on the job training while working on wiretaps in active investigations in multiple field offices.

7. To successfully conduct these investigations, I have utilized a variety of investigative techniques and resources including, but not limited to, physical and electronic surveillance, witness interviews, various types of infiltration to include confidential human sources, and cooperating sources. I have utilized pen register and trap and trace devices, mail covers, pole cameras, stationary video recording vehicles, undercover operations, and audio and audio/video recording devices.

8. I make this Affidavit based upon personal knowledge derived from my participation in this investigation, my experience investigating honest services wire fraud and other illegal activity relating to public corruption; as well as upon information I believe to be reliable from the following sources, among others:

- a. oral and written reports about this investigation that I have received from members of the FBI;
- b. physical surveillance conducted by the FBI, the results of which have been reported to me, either directly or indirectly;
- c. a review of KONG and Nuru's emails;
- d. recorded conversations; and
- e. confidential human sources.

9. Because this affidavit is being submitted for the purpose of establishing probable cause in support of the requested Complaint, it does not set forth each and every fact that I, or others, have learned during the course of the investigation. Rather, I have set forth only those facts that I believe are necessary to establish probable cause for the requested Complaint.

10. Unless otherwise indicated, where actions, conversations, and statements of others are described below, they are related in substance and in part. In addition, unless otherwise noted, wherever in this Affidavit I assert that a statement was made, the information was

provided by another FBI agent, law enforcement officer, recording, or witness who may have had either direct or hearsay knowledge of that statement and to whom I or others have spoken, or whose reports I have reviewed.

11. The telephone conversations transcribed in part below were derived from recorded communications. Collectively, these communications were documented in FBI reports and summaries. The reports are summarized based on agents' interpretations of the conversations. Some of these reports and summaries contain interpretations of coded words, cryptic language, and vague identifiers. It may be that subsequent review of the recorded conversations and verbatim transcripts may show changes from the summaries initially prepared. Quotations from the recordings are based on informal transcriptions of portions of certain key recordings, which may not be exactly the same as formal transcriptions that are later prepared.

II. RELEVANT LAW

12. Title 18, United States Code, Section 1001(a)(2), prohibits false statements or representations to a department or agency of the United States. The elements of the offense are as follows:

- a. The defendant made a false statement or representation;
- b. The statement was made within a matter within the jurisdiction of a department or agency of the United States;
- c. The statement or representation was material; that is, it had a natural tendency to influence, or was capable of influencing, the agency' decisions or activities.
- d. The defendant acted knowingly and willfully.

III. PROBABLE CAUSE

13. Florence KONG was interviewed by FBI Special Agents Tyler Nave and James Folger on March 4, 2020 at her home in Hillsborough, California. KONG invited the agents into the living room where the interview was conducted.

14. Before the interview began, both agents identified themselves as agents of the Federal Bureau of Investigation, and stated that they were there to ask her questions related to the FBI's investigation of Mohammed Nuru, and the arrest of Nuru on public corruption charges. At the time of the interview, the FBI suspected that Kong was providing gifts to Nuru, and in return, Nuru was helping her companies' obtain and increase their business with the City of San Francisco. The questions to KONG during the interview, and her answers, were material to that investigation.

15. The Agents advised KONG that they were only seeking the truth from her. At the end of the interview, KONG was told that lying to the FBI was a felony and illegal, and she was asked whether she wanted to change any of her answers. KONG said that she did not want to change any of her answers, and said she was truthful.

16. When asked about her relationship with Nuru at the beginning of the interview, KONG initially said she had trouble recalling who Nuru was. Shortly thereafter, when Agents explained that Nuru was the Director of Public Works for the City of San Francisco and had been recently arrested by the FBI, KONG said they were friends.

a. KONG Claims She and Nuru Do Not Discuss Business

17. When asked about if she had ever talked with Nuru regarding her construction business KONG stated that they do not discuss business. I believe this statement is knowingly false because the FBI has intercepted over a dozen conversations between Nuru and KONG in 2018 and 2019 discussing KONG's business. In fact, the majority of their discussions revolved around business. In addition, I have reviewed multiple emails where Nuru and KONG discuss issues related to KONG's businesses, including communications regarding permitting at KONG's solid waste and construction debris recycling facility (SFR Recovery), the volume of business that the San Francisco Department of Public Works (DPW) was giving to SFR Recovery, KONG's efforts to win subcontract work for her company, Kwan Wo Ironworks, on the U.C. Hastings New Academic Center and the San Francisco Animal Care and Control Facility, as well as discussions involving Nuru and KONG working together with KONG's

investors to open a Bay Area casino. For example:

18. On December 6, 2018, Nuru called KONG. In the recorded call, KONG pressed Nuru for help increasing the amount of construction debris sent by DPW to SFR Recovery.

19. On March 20, 2019, Nuru and KONG spoke by phone. In the recorded conversation, KONG complained to Nuru that she was not getting enough volume from DPW at SFR Recovery, and Nuru said that he had talked to another DPW employee about giving SFR Recovery more volume.¹

b. KONG States That Nuru Never Helped Her With Contracts

20. KONG was asked multiple times if Nuru ever helped her with contracts, whether the contracts were hers directly, or if she was acting as a subcontractor for another company. KONG repeatedly said that Nuru had not helped her and occasionally said that it was impossible for him to help. I believe these statements to be knowingly false because I have learned, from intercepted phone calls between Nuru and KONG, as well as emails between Nuru and KONG, that Nuru on multiple occasions did in fact help KONG with contracts KONG's companies had with the City of San Francisco. This includes KONG's efforts to have Nuru help her obtain business with Clark Construction working on the San Francisco Animal Care and Control Facility, and to increase the volume of debris and solid waste KONG's business SFR Recovery was receiving from the City of San Francisco.

c. KONG Says Nuru Never Extended a Contract Application Deadline For Her

21. KONG was also asked multiple times if Nuru had ever extended a contract application deadline for contracts KONG wanted, and each time, KONG said Nuru never helped her. I believe these statements to be knowingly false because of previously intercepted telephone calls between Nuru and KONG, and from emails between Nuru and KONG, in which KONG asked Nuru to extend a contract application deadline for her, and Nuru was able to do this for

¹ As of May 19, 2020, publicly available data on the city government's website shows that SFR Recovery was paid \$42,000 by DPW for various contracts in FY 2018-2019 and \$21,000 so far in FY 2019-2020. The same website indicates that SFR Recovery has a remaining balance of \$246,726 on its contract with DPW for road construction disposal. See <http://openbook.sfgov.org/openbooks/cgi-bin/cognosisapi.dll>.

her. For example:

22. On November 11, 2018, Nuru called KONG to discuss extending an application deadline for a contract to provide construction work on the San Francisco Animal Care and Control Facility so that KONG would have time to bid on it. The conversation was recorded and included the following exchange:

NURU: So I saw your thing about the bid, so when is the bid due?

KONG: Uh the bids due let me check hold on a sec. (ui) yeah uh (ui)

NURU: Yeah because I can extend it if you want me to, only if you want me to

KONG: Ohhh. that would be good. uh let me check uh, actually they say it's 6 months I'm sure. (ui) can extend for like a week or uh, then they (UI) able to make it happen.

NURU: Ok so let me know if

KONG: I can write you, He's checking I don't want to hold you up.

NURU: Yeah but I

KONG: (ui) one more week something

NURU: yeah yeah, no I could if you want if you need that I will definitely see what I can do. I'm sure

KONG: That would be wonderful and uh I I uh Michael told me that um if you're waiting for Carlo for (ui)

NURU: Yeah we're gonna take care of that, no Carlo's gonna extend everything, everything is very good I didn't know, I didn't know that you know Michael needs to you know I I when I (ui) he needs to just yeah, he just needs to tell me so because its easy for me you know, yeah yeah yeah, we will take care of that.

KONG: Um the big day is November 15th.

NURU: Ok.

KONG: If you have like ten day then um

NURU: Let me try, let me try,

KONG: Great great great

NURU: So we can extend it right now and uh

KONG: ok.

23. In a subsequent call on November 14, 2018, Nuru called KONG and said that he helped her get an extension for bidding for this work at the San Francisco Animal Care and Control facility.

24. Based on my training and experience, and the intercepted calls made after the above call, I know that the contract was in fact extended and KONG was awarded the contract. This happened because Nuru extended the application deadline for her, which is why I believe KONG made false statements when she told Agents that Nuru never helped her with any contracts, that it was impossible to help, and that he never extended any contract application deadlines for her.

d. KONG Says She Never Talked to Nuru About San Francisco Animal Care and Control Facility Contract With Clark Construction

25. KONG was asked if she had ever discussed with Nuru a contract to provide work for Clark Construction on its renovation of the San Francisco Animal Care and Control Facility, and she said she had not. I believe this statement to be knowingly false, based on my review of recorded telephone conversations and emails between KONG and Nuru.

26. As described in Section C above, on two dates in November 2018, KONG and Nuru discussed extending the deadline for KONG's company to bid on the SF Animal Care and Control Facility contract.

27. In addition, a month earlier, on October 1, 2018, KONG emailed Nuru. The subject line reads: "San Francisco Animal Care and Control Facility." KONG writes to Nuru: "Mohammed – Clark Construction is looking for subcontractors for the above project. I am looking forward to working with them."²

² According to documents produced pursuant to a subpoena to Kwan Wo Ironworks, Kwan Wo estimates the value of the San Francisco Animal Care and Control Facility contract work at \$3.68 million.

e. KONG Says She and Nuru Never Discussed KONG's Construction Debris Recycling Contract

28. KONG was also asked if she ever discussed her debris recycling contract with Nuru. KONG said she had never talked to Nuru regarding the debris recycling contract. I believe this statement is knowingly false because I have learned, from intercepted phone calls between Nuru and KONG, as well as emails between Nuru and KONG, that on multiple occasions Nuru and KONG did in fact discuss KONG's recycling contract with the City. For example:

- a. On a March 20, 2019 recorded call, KONG complained to Nuru that SFR Recovery was not getting enough volume (ie: shipments of solid wastes) from DPW.
- b. On a December 6, 2018 recorded call, KONG told Nuru she needed to increase her revenue at SFR Recovery, saying; "So now, uh, we really need, uh, your help in, uh increasing our revenue."
- c. On a August 17, 2018 recorded call, KONG told Nuru that she needed more volume at SFR Recovery, and Nuru told KONG that he would work to get more volume from DPW.

f. Cash and Other Items of Value Provided to Nuru

29. KONG told agents that she never gave Nuru money. I believe this is another example of KONG's deceit. In a recorded interview, Nuru admitted that on at least one occasion, at his daughter's graduation party in 2019, KONG gave Nuru an envelope with \$3,000 or \$4,000 cash for his daughter, and that he kept some of it.

30. Based on the recorded telephone conversations and my review of emails and documents, I further believe that during the time period in which KONG was seeking Nuru's help with SFR Recovery and Kwan Wo Ironworks' business with the City of San Francisco and prime contractors doing business with and in the City, KONG was providing monetary benefits to Nuru, including:

- a. KONG bought and installed a gate at Nuru's vacation home in Lodoga, California, which Nuru did not pay for;
- b. KONG was buying Nuru thousands of dollars in expensive meals, including a \$1,152.28 meal at The Sea by Alexander's Steakhouse on July 10, 2018, and a \$594 meal at Alexander's Steakhouse on April 22, 2019 that included \$250 for a dry-aged steak trio, along with lamp chops, Truffle Mac and Cheese, and a \$50 corkage fee.
- c. KONG purchased a Rolex watch for Nuru costing 291,935 Chinese Yuan (approx. \$41,000). I have reviewed a receipt produced by Kwan Wo Iron Works for the purchase of this Rolex, and the receipt contains the serial number. On January 27, 2020, agents executed a search warrant at Nuru's home in San Francisco. During the search agents seized a Rolex watch, and a tag attached to the Rolex contained a serial number that matches the serial number on the receipt.



Rolex Seized From Nuru Home (01/27/2020)

31. Based on my training and experience, and my review of the emails, documents,

and telephone conversations noted above, I believe KONG was trying to hide her illegal activity with Nuru, specifically, her payments to him in return for his help and influence in obtaining business with the City of San Francisco, and that she made false statements to the FBI to conceal her participation in the scheme.

g. Additional Evidence of Intent to Deceive

32. Agents asked KONG if she ever discussed with Nuru getting one of her family members a job with the city. KONG told the agents she never discussed this topic with Nuru. I believe this to be false because of recorded calls and emails I have reviewed. For example:

33. Agents intercepted a call between Nuru and KONG on April 6, 2019 where they discussed Nuru helping KONG's soon to be daughter-in-law get a job with City Department 1:

KONG: And also about my daughter, um, my daughter in-law to be..

NURU: Yah, nobody has called right?

KONG: She did not, no no - not yet.

NURU: I talked to [redacted] so he told me, you know he was still looking at it.

KONG: Oh.

NURU: Yeah, sent him the resume. Let me follow up with him and see. Yeah.

KONG: Yah that would be really helpful. that would be good. That would be good.

NURU: Yah, my other guy he is in Spain for uh, for uh, I think he went to Spain for a few weeks, but when he come back, he is my guy in there. See what he can do.

34. On April 19, 2019, Nuru forwarded to KONG an email from him to an official of City Department 1, where Nuru wrote: "Please see the attached resume for my good friend [redacted] She is looking to relocate permanently to San Francisco. Any assistance or guidance you can provide would be much appreciated. Best regards, Mohammed." On the same day, KONG responded to Nuru by email, stating: "Brother, Thank you very much! Florence Kong."

35. On June 10, 2019, KONG emailed Nuru. The subject line was "Resume –

[Redacted]” and KONG writes: “Mohammed, Thank you for helping [redacted] in her pursuing some job opportunities. She is a very passionate, hardworking, helpful and considerate person. I know that she can use her knowledge to help more patients. Florence.” She attached a resume and cover letter.

IV. CONCLUSION AND REQUEST FOR SEALING

36. Based on the foregoing facts, and my training and experience, I believe probable cause exists for the issuance of a criminal complaint and arrest warrant for KONG for making materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the government of the United States, in violation of 18 U.S.C. § 1001(a)(2).

37. I further request that the Court order that all papers in support of this application, including this affidavit, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to the target or other subjects of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation, giving the target an opportunity to destroy or tamper with evidence, change patterns of behavior, notify confederates, and flee from prosecution.

s/

TYLER NAVE
Special Agent, Federal Bureau of Investigation

Sworn to and subscribed before
me this 1st day of ~~May~~, 2020.

June



HON. JOSEPH C. SPERO
United States Chief Magistrate Judge

EXHIBIT 2



State of California Secretary of State

S

Statement of Information

(Domestic Stock and Agricultural Cooperative Corporations)

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see instructions.

IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

GB87749

FILED

In the office of the Secretary of State
of the State of California

JAN-03 2020

1. CORPORATE NAME

SFR RECOVERY INC.

2. CALIFORNIA CORPORATE NUMBER

C4029688

This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.

If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to **Item 17**.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
2401 INGALLS STREET, SAN FRANCISCO, CA 94124			
5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
2401 INGALLS STREET, SAN FRANCISCO, CA 94124			
6. MAILING ADDRESS OF CORPORATION, IF DIFFERENT THAN ITEM 4	CITY	STATE	ZIP CODE
FLORENCE KONG 31628 HAYMAN STREET, HAYWARD, CA 94544			

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/ FLORENCE KONG	ADDRESS 2401 INGALLS ST, SAN FRANCISCO, CA 94124	CITY	STATE	ZIP CODE
8. SECRETARY ERIC MAO	ADDRESS 2401 INGALLS ST, SAN FRANCISCO, CA 94124	CITY	STATE	ZIP CODE
9. CHIEF FINANCIAL OFFICER/ ERIC MAO	ADDRESS 2401 INGALLS ST, SAN FRANCISCO, CA 94124	CITY	STATE	ZIP CODE

Names and Complete Addresses of All Directors, Including Directors Who are Also Officers (The corporation must have at least one director. Attach additional pages, if necessary.)

10. NAME FLORENCE KONG	ADDRESS 2401 INGALLS ST, SAN FRANCISCO, CA 94124	CITY	STATE	ZIP CODE
11. NAME	ADDRESS	CITY	STATE	ZIP CODE
12. NAME	ADDRESS	CITY	STATE	ZIP CODE

13. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 15 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 15 must be left blank.

14. NAME OF AGENT FOR SERVICE OF PROCESS FLORENCE KONG				
15. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE	
2401 INGALLS ST, SAN FRANCISCO, CA 94124				

Type of Business

16. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION
RECYCLING

17. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

01/03/2020 FLORENCE KONG CEO

DATE TYPE/PRINT NAME OF PERSON COMPLETING FORM TITLE SIGNATURE

EXHIBIT 3



State of California Secretary of State

S

Statement of Information

(Domestic Stock and Agricultural Cooperative Corporations)

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see instructions.

IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

GC25153

FILED

In the office of the Secretary of State
of the State of California

JAN-15 2020

1. CORPORATE NAME

KWAN WO IRONWORKS INC.

2. CALIFORNIA CORPORATE NUMBER

C1522456

This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.

If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to **Item 17**.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
31628 HAYMAN STREET, HAYWARD, CA 94544			
5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
31628 HAYMAN STREET, HAYWARD, CA 94544			
6. MAILING ADDRESS OF CORPORATION, IF DIFFERENT THAN ITEM 4	CITY	STATE	ZIP CODE

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/ FLORENCE KONG	ADDRESS 510 CHELMSFORD RD, HILLSBOROUGH, CA 94010	CITY	STATE	ZIP CODE
8. SECRETARY FLORENCE KONG	ADDRESS 510 CHELMSFORD RD, HILLSBOROUGH, CA 94010	CITY	STATE	ZIP CODE
9. CHIEF FINANCIAL OFFICER/ FLORENCE KONG	ADDRESS 510 CHELMSFORD RD, HILLSBOROUGH, CA 94010	CITY	STATE	ZIP CODE

Names and Complete Addresses of All Directors, Including Directors Who are Also Officers (The corporation must have at least one director. Attach additional pages, if necessary.)

10. NAME FLORENCE KONG	ADDRESS 510 CHELMSFORD RD, HILLSBOROUGH, CA 94010	CITY	STATE	ZIP CODE
11. NAME	ADDRESS	CITY	STATE	ZIP CODE
12. NAME	ADDRESS	CITY	STATE	ZIP CODE

13. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 15 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 15 must be left blank.

14. NAME OF AGENT FOR SERVICE OF PROCESS FLORENCE KONG				
15. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE	
510 CHELMSFORD RD, HILLSBOROUGH, CA 94010				

Type of Business

16. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION
CONSTRUCTION

17. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

01/15/2020 CHEYENNE CHUI ADMINISTRATIVE ASSISTANT
DATE TYPE/PRINT NAME OF PERSON COMPLETING FORM TITLE SIGNATURE

EXHIBIT 4

CHAPTER 28:

ADMINISTRATIVE DEBARMENT PROCEDURE

- Sec. 28.0. Findings.
- Sec. 28.1. Definitions.
- Sec. 28.2. Debarment and Suspension Authority.
- Sec. 28.3. Grounds for Debarment and Suspension.
- Sec. 28.4. Initiating Debarment Proceedings; Counts and Allegations.
- Sec. 28.5. Service of the Counts and Allegations or Suspension Order.
- Sec. 28.6. Request for a Hearing.
- Sec. 28.7. Failure to Request a Hearing or to Appear.
- Sec. 28.8. Appointment of the Hearing Officer.
- Sec. 28.9. Pre-Hearing Procedure.
- Sec. 28.10. Hearings and Determinations.
- Sec. 28.11. Term and Effect of Administrative Debarment or Order of Suspension; Violation of Order.
- Sec. 28.12. Publication and Reports of Debarment or Suspension.

SEC. 28.0. FINDINGS.

(a) The Board of Supervisors finds that: (1) contracting with the City is an important municipal affair, and that the award of contracts to Contractors who fail to deal with the City in good faith compromises the integrity of the contracting process and results in the improper expenditure of public funds, and (2) the public contracting process is for the benefit of the public, not Contractors, and it serves the public interest to empower the City to Debar or Suspend a Contractor that has engaged in conduct that undermines the integrity of the public contracting process.

(b) The Board of Supervisors recognizes that the City must afford Contractors due process in any determination that precludes any individual or business entity from participating in the contracting process. This Chapter 28 does not apply to a determination of nonresponsibility for a single contract or identifiable group of contracts, but rather to the broader determination of irresponsibility of a Contractor for the general purpose of contracting with the City for a specified period. The Board of Supervisors therefore adopts this Chapter to prescribe standard procedures for the prosecution, determination, and implementation of administrative Debarments and Suspensions.

■ (Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

SEC. 28.1. DEFINITIONS.

The following definitions apply for only the purposes of this Chapter 28:

Affiliate. Any individual person or business entity related to a Contractor where such individual or business entity, directly or indirectly, controls or has the power to control the other, or where a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees or a business entity organized following the Suspension, Debarment, bankruptcy, dissolution or reorganization of a person which has the same or similar management; and/or ownership or principal employee as the Contractor.

Charging Official. Any City department head or the President of any board or commission authorized to award or execute a contract under the Charter or the Administrative Code, the Mayor, the Controller, the City Administrator, the Director of Administrative Services, or the City Attorney. All Charging Officials are authorized to act on behalf of the City in prosecuting any administrative Debarment proceeding and in issuing an Order of Debarment or issuing an Order of Suspension under this Chapter 28.

City. The City and County of San Francisco.

Contractor. Any individual person, business entity, or organization that submits a qualification statement, proposal, bid, or grant request, or that contracts directly or indirectly with the City for the purpose of providing any goods or services or construction work to or for, or applies for or receives a grant from, the City including without limitation any Contractor, subcontractor, consultant, subconsultant or supplier at any tier, or grantee. The term “Contractor” shall include any responsible managing corporate officer, or responsible managing employee, or other owner or officer of a Contractor who has personal involvement and/or responsibility in seeking or obtaining a contract with the City or in supervising and/or performing the work prescribed by the contract or grant.

Day. A calendar day unless otherwise specified.

Debarment. The administrative determination against a Contractor declaring such Contractor irresponsible and disqualified from participating in the procurement process for contracts, or from entering into contracts, directly or indirectly, with or applying for or receiving grants or other benefits from the City for a period specified in the Debarment order.

Suspension. Ineligibility of a Contractor that is the subject of an arrest, indictment, or other criminal or civil charge by a governmental entity (federal, state or local), as specified in greater detail in Section 28.3(b) from participating in the procurement process for contracts or from entering into contracts directly or indirectly with, or applying for or receiving grants from, the City.

– (Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

SEC. 28.2. DEBARMENT AND SUSPENSION AUTHORITY.

Notwithstanding any other provision of the Administrative Code, any Charging Official shall have authority to issue Orders of Debarment or Suspension against any Contractor in accordance with the procedures set forth in this Chapter 28.

– (Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

SEC. 28.3. GROUNDS FOR DEBARMENT AND SUSPENSION.

(a) **Debarment.** A Charging Official shall issue an Order of Debarment for any Contractor who the hearing officer, based on evidence presented, finds to have engaged in any willful misconduct with respect to any City bid, request for qualifications, request for proposals, grant request, purchase order and/or contract,

or grant award. Such willful misconduct may include, but need not be limited to the following: (1) submission of false information in response to an advertisement or invitation for bids or quotes, a request for qualifications, or a request for proposals; (2) failure to comply with the terms of a contract or with provisions of the Municipal Code; (3) a pattern and practice of disregarding or repudiating terms or conditions of City contracts or grants, including without limitation repeated unexcused delays and poor performance; (4) failure to abide by any rules and/or regulations adopted pursuant to the Municipal Code; (5) submission of false claims as defined in this Administrative Code, Chapter 6, Article V, or Chapter 21, Section 21.35, or other applicable federal, state, or municipal false claims laws; (6) a verdict, judgment, settlement, stipulation, or plea agreement establishing the Contractor's violation of any civil or criminal law or regulation against any government entity relevant to the Contractor's ability or capacity honestly to perform under or comply with the terms and conditions of a City contract or grant; (7) collusion in obtaining award of any City contract or grant, or payment or approval thereunder; and/or (8) the offer or provision of any gift or money to a public official, if that public official is prohibited from accepting the gift or money by any law or regulation.

(b) **Suspension.** Any Charging Official may issue an Order of Suspension to a Contractor on the basis that the Contractor has been arrested or indicted, or become the subject of a criminal, civil or administrative complaint issued by a government entity, where the arrest or indictment, criminal, civil, or administrative complaint alleges that the Contractor has violated a civil or criminal law or regulation against any government entity relevant to the Contractor's ability or capacity honestly to perform under or comply with the terms and conditions of a City contract or grant including, but not limited to, the grounds for Debarment set forth in Section 28.3(a).

■ (Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

SEC. 28.4. INITIATING DEBARMENT PROCEEDINGS; COUNTS AND ALLEGATIONS.

(a) Any Charging Official may initiate an administrative Debarment proceeding by issuing Counts and Allegations. A Charging Official may issue Counts and Allegations against any Contractor relating to any matter consistent with the grounds for debarment as stated in Section 28.3(a). A Charging Official may issue Counts and Allegations regardless whether such Charging Official awarded, was responsible for, or was involved in any way with the underlying contract or circumstances leading to the Counts and Allegations.

(b) The Charging Official shall append to the Counts and Allegations a photocopy of this Chapter 28 of the Administrative Code. Failure to append this Chapter 28, however, shall not affect the force or validity of the Counts and Allegations.

■ (Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

SEC. 28.5. SERVICE OF THE COUNTS AND ALLEGATIONS OR SUSPENSION ORDER.

(a) **Debarment Counts and Allegations.** The Charging Official shall serve the Counts and Allegations on each named individual person or business entity in a manner ensuring confirmation of delivery. For example, the Charging Officer may achieve service by United States Postal Service certified mail, return receipt requested or with other delivery confirmation, hand delivery (messenger service), or other commercial delivery service that provides written confirmation of delivery.

The Charging Official shall also serve the Counts and Allegations on the Controller, City Administrator and the City Attorney.

(b) **Suspension Order.** The Charging Official shall serve the Suspension Order on the named Contractor in a manner ensuring confirmation of delivery. For example, the Charging Officer may achieve service by United States Postal Service certified mail, return receipt requested or with other delivery confirmation, hand delivery (messenger service), or other commercial delivery service that provides written confirmation of delivery.

The Charging Official shall also serve the Suspension Order on the Controller, City Administrator and the City Attorney.

- (Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

SEC. 28.6. REQUEST FOR A HEARING.

(a) **Debarment Counts and Allegations.** Within 15 business days after receipt of the Counts and Allegations, the Contractor may submit a written request for an administrative hearing. The Contractor may make such request through counsel or other authorized representative. The Contractor shall file any such request with the Controller with copies to the Charging Official, the City Attorney, and the City Administrator.

(b) **Order of Suspension.** At any time during a period of Suspension, a suspended Contractor may submit a written request to the Charging Official requesting the official to lift the Order of Suspension on the grounds that the Contractor's alleged conduct does not meet the legal requirement for Suspension, or based on facts or circumstances unknown to the Charging Official, or based on new facts, circumstances, or law. The Charging Official shall provide a written response within 14 Days. If the Charging Official's written response declines to lift the Order of Suspension, or the Charging Official fails to provide a written response within 14 Days, the suspended Contractor may submit in writing within 7 Days a request for an administrative hearing. The suspended Contractor may make such request through counsel or other authorized representative. The suspended Contractor shall file any such request with the Controller with copies to the Charging Official, the City Administrator, and the City Attorney.

- (Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

SEC. 28.7. FAILURE TO REQUEST A HEARING OR TO APPEAR.

Failure of the Contractor to submit to the City a written request to be heard within the time required by this Chapter 28, or failure of the Contractor or the Contractor's representative to appear for a requested hearing that has been duly noticed, shall be deemed admission by the Contractor to the Counts and Allegations.

- (Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

SEC. 28.8. APPOINTMENT OF THE HEARING OFFICER.

(a) A Charging Official shall request either the Controller or the City Administrator ("City Representative") to appoint a hearing officer for any Debarment or Suspension proceeding. If either the Controller or the City Administrator is the Charging Official, then that City Representative shall request the other to appoint the hearing officer.

(b) Within 14 Days of the Charging Official's request, the City Representative shall appoint a hearing officer and notify the Contractor and the Charging Official of the appointment. The appointed hearing officer shall be an attorney licensed to practice in California, with not less than five years experience. The notice of

appointment shall include the name of the hearing officer. The Contractor or the Charging Official may object to the appointed hearing officer within five business days of the notification. If the City Representative, at the City Representative's sole discretion, appoints a new hearing officer, then the City Representative shall notify the Contractor and the Charging Official as soon as practicable but not more than 14 Days after receipt of the objection.

– (Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

SEC. 28.9. PRE-HEARING PROCEDURE.

(a) Within 14 Days of appointment, the hearing officer shall notify each Contractor named in the Counts and Allegations or Suspension Order and the Charging Official, the Controller, the City Administrator and the City Attorney of the scheduled hearing date. The hearing date shall be set at the hearing officer's sole discretion except, for a Debarment hearing, the hearing must commence within 120 Days of the date the Charging Official served the Counts and Allegations; a Suspension hearing must commence within 30 Days of the date the Suspended Contractor requested a hearing pursuant to Section 28.6(b) ¹ The hearing officer may extend the deadline for holding a hearing only upon good cause shown; proceeding as expeditiously as possible is in the public's best interests.

(b) Discovery pursuant to the California Code of Civil Procedure is not applicable to this administrative debarment or suspension procedure.

(c) The hearing officer shall have the sole discretionary authority to direct any named Contractor and the Charging Official to submit in advance of the hearing statements, legal analyses, lists of witnesses, exhibits, documents or any other information the hearing officer deems pertinent. The hearing officer may request the respective parties to submit rebuttals to such information. The hearing officer may limit the length, scope, or content of any such statement, analysis, list, rebuttal, document, or other requested information. The hearing officer shall set firm due dates for all written presentations.

(d) If the hearing officer determines, with the written agreement of each named Contractor and the Charging Official, that the hearing shall be by written presentation, all final writings shall be due no later than 120 Days of the date the Charging Official served the Counts and Allegations or Order of Suspension.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

CODIFICATION NOTE

– 1. So in Ord. [239-20](#).

SEC. 28.10. HEARINGS AND DETERMINATIONS.

(a) Hearings may occur in person, on an electronic meeting platform if deemed necessary by the hearing officer, or in writing, as set forth in the foregoing Section 28.09. ¹ If the hearing is to occur in person or on an electronic meeting platform, the hearing officer shall specify the time and place for the Charging Official to present the case and for the Contractor to rebut the charges. The hearing officer shall have the sole discretion to allow offers of proof, set time limitations, and limit the scope of evidence presented based on relevancy.

(b) The Charging Official shall present evidence in support of the Debarment or Suspension to the hearing officer. The Contractor may present evidence in defense and/or mitigation. Each side shall be entitled to call witnesses, and the hearing officer may allow cross-examination of witnesses. The hearing officer may ask questions of any party.

(c) The hearing officer shall consider the evidence submitted by the Charging Official and the Contractor. Within 14 Days of the hearing, or of the date final written presentations are due, the hearing officer shall issue Findings and a Decision. The hearing officer shall serve the Findings and Decision on the Charging Official, the named Contractor(s), and/or their respective counsels or authorized representatives, and shall submit the same to the Controller, City Administrator, and City Attorney.

(d) If the hearing officer finds that the named Contractor has committed willful misconduct as described in Section 28.3 and orders a term of Debarment, the Charging Official shall issue an Order of Debarment consistent with the hearing officer's decision. The Charging Official shall serve the Order on each named Contractor, their counsel or authorized representative, if any, the City Attorney, the City Administrator, and the Controller. An Order of Debarment under this Chapter 28 shall be the final administrative determination by the City in the matter.

(e) For a Suspended Contractor, the hearing officer may consider evidence and argument by the Contractor to support its assertion that the City should terminate the Order of Suspension, provided that the Charging Official shall be entitled to offer evidence and argument in opposition to the Contractor's assertion. If the Contractor establishes that the underlying basis of the Order of Suspension has been finally resolved without a verdict, judgment, settlement agreement or plea agreement against the Contractor, the hearing officer shall terminate the Order of Suspension. An Order of Suspension upheld by a hearing officer under this Chapter shall be the final administrative determination by the City in the matter. Any termination of an Order of Suspension shall not preclude a Charging Officer from initiating Debarment proceedings against the Contractor based on the underlying conduct of the Suspension Order pursuant to section 28.4 following termination of the Order of Suspension.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004; amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

CODIFICATION NOTE

- 1. So in Ord. [239-20](#).

SEC. 28.11. TERM AND EFFECT OF ADMINISTRATIVE DEBARMENT OR ORDER OF SUSPENSION; VIOLATION OF ORDER.

(a) An Order of Debarment shall provide for a term of Debarment not to exceed five years from the date of the Order. An Order of Suspension shall remain in effect until the Contractor establishes to the Charging Officer or the City Administrator that the underlying basis of the Order of Suspension has been finally resolved without a verdict, judgment, or plea agreement against Contractor.

(b) At any time during the pendency of an Order of Suspension, the City may initiate debarment proceedings against the Contractor. If the City suspends and later debar a Contractor for the same underlying conduct, the period of Suspension shall count towards the period of Debarment.

(c) An Order of Debarment or Suspension shall prohibit any named Contractor and the Contractor's affiliates from participating in any contract or grant at any tier, directly or indirectly, with or for the City; any Contractor and the Contractor's affiliates named in an Order of Debarment shall be deemed irresponsible and disqualified for the purposes of all City contracts and grants. Upon such Order, any department head, board, or commission may cancel any existing contract or grant with a Suspended or Debarred Contractor or direct the cancellation of an existing subcontract to which a Suspended Debarred Contractor¹ is a party. In the event of such cancellation, the Suspended or Debarred Contractor's recovery under the contract or grant shall be limited to compensation for work satisfactorily completed as of the date of cancellation.

(d) Administrative Debarment shall neither exclude nor preclude any other administrative or legal action taken by the City against the Contractor.

(e) Violation of an Order of Suspension or Debarment, such as by submission of a proposal, bid or sub-bid or grant request, during the Suspension or Debarment period, may be considered a false claim as provided in this Administrative Code and the California Government Code.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004; redesignated and amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

CODIFICATION NOTE

- 1. So in Ord. [239-20](#).

SEC. 28.12. PUBLICATION AND REPORTS OF DEBARMENT OR SUSPENSION.

Any Order of Debarment or Suspension issued under this Chapter 28 shall be a public record. The Controller shall maintain and publish on the City's Internet website a current list of Contractors subject to Orders of Debarment or Suspension and the expiration dates for the respective debarment terms. The Controller shall submit a semi-annual report to the Clerk of the Board of Supervisors that includes (a) the Contractors then subject to an Order of Debarment or Suspension and the expiration dates for the respective debarment terms; (b) the status of any pending debarment or suspension matters; and (c) any Order of Debarment or Suspension received by the Controller since the date of the last report.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004; redesignated and amended by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)

- (Former Sec. 28.12 added by Ord. 8-04, File No. 031503, App. 1/16/2004; redesignated as Sec. 28.11 by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)
- 1. 11/25/2020, Eff. 12/26/2020)

SEC. 28.13. [REDESIGNATED.]

(Former Sec. 28.13 added by Ord. 8-04, File No. 031503, App. 1/16/2004; redesignated as Sec. 28.12 by Ord. [239-20](#), File No. 200896, App. 11/25/2020, Eff. 12/26/2020)