

1 DAVID CHIU, State Bar #189542
City Attorney
2 KESLIE STEWART, State Bar #184090
Chief of Public Integrity and Investigations
3 RICHARD E. ROBINSON, State Bar #280529
Deputy City Attorney
4 Fox Plaza
1390 Market Street, Suite 425
5 San Francisco, CA 94102-5408
Telephone: (415) 554-3954
6 Facsimile: (415) 255-0733
E-Mail: richard.e.robinson@sfcityatty.org

7 Attorneys for the Charging Official and the City & County of San Francisco
8

9 CITY ATTORNEY DAVID CHIU
10 CITY AND COUNTY OF SAN FRANCISCO

11
12 In the matter of:

13 ALAN VARELA, an individual,
14 WILLIAM GILMARTIN III, an
15 individual, and PROVEN
16 MANAGEMENT INC., a California
corporation

17 *Affiliates:* BAYLANDS SOIL
18 PROCESSING LLC, a California
19 limited liability company, COMSA
EMTE USA, Inc., a California
20 Corporation, EGBERT
ENTERPRISES, LLC, a California
21 limited liability company, PROVEN
COMSA JV, a joint venture,

**ORDER DEBARRING ALAN VARELA, WILLIAM
GILMARTIN III, PROVEN MANAGEMENT INC.,
BAYLANDS SOIL PROCESSING LLC, COMSA
EMTE USA, INC., EGBERT ENTERPRISES, LLC,
AND PROVEN COMSA JV**

1 David Chiu, City Attorney of the City and County of San Francisco (“**San Francisco**” or
2 “**City**”), acting as Charging Official under Sections 28.1 and 28.2 of the San Francisco Administrative
3 Code, hereby issues this ORDER OF DEBARMENT.

4 WHEREAS, on or about September 17, 2020, the Federal Bureau of Investigation filed charges
5 against Alan Varela and William Gilmartin III in a federal criminal complaint (“**Criminal Complaint**”)
6 in the United States District Court for the Northern District of California, alleging bribery of a local
7 official, in a case captioned *United States of America v. Alan Varela and William Gilmartin III*, Case
8 No. 3-20-71327 TSH;

9 WHEREAS, on or about March 1, 2021, then-City Attorney Dennis J. Herrera issued an order
10 suspending Alan Varela, William Gilmartin III and ProVen Management, Inc. (“**Respondents**”)
11 pursuant to Chapter 28 of the San Francisco Administrative Code;

12 WHEREAS, on or about March 22, 2023, City Attorney David Chiu served an Amended
13 Suspension Order and Counts and Allegations (“**Counts and Allegations**”) seeking debarment of
14 Respondents and alleged affiliates of Respondents Baylands Soil Processing, LLC, Comsa Emte USA
15 Inc., Egbert Enterprises, LLC, and ProVen Comsa JV (the alleged affiliates of Respondents are
16 referred to herein as “**Alleged Affiliates**”);

17 WHEREAS, the Counts and Allegations sought an order debarring Respondents and the
18 Alleged Affiliates for the statutory maximum of five years, with credit for time that Respondents were
19 suspended;

20 WHEREAS, Respondents, through their attorney, requested an administrative hearing pursuant
21 to Section 28.6 of the San Francisco Administrative Code;

22 WHEREAS, Counsel for Respondents did not represent the Alleged Affiliates and did not
23 request a hearing on behalf of the Alleged Affiliates;

24 WHEREAS, the Alleged Affiliates have not responded to the Counts and Allegations and,
25 pursuant to Section 28.7, are deemed to have admitted them;

26 WHEREAS, on or about April 12, 2023, pursuant to Administrative Code Section 28.8, the
27 City Controller appointed Elizabeth Zareh as the Hearing Officer in this matter;

28

1 WHEREAS, neither the Charging Official nor Respondents filed objections to the appointment
2 of Hearing Office Zareh;

3 WHEREAS, the City Attorney and Respondents jointly submitted a stipulation and proposed
4 findings and decision debaring Respondents and the Alleged Affiliates;

5 WHEREAS, on May 31, 2023, Hearing Officer Zareh issued her Findings and Decision
6 debaring Respondents and the Alleged Affiliates;

7 WHEREAS, a true and correct copy of Hearing Officer Zareh's Findings and Decision are
8 attached as **Exhibit A** to this Order;

9 THEREFORE, the City Attorney, pursuant to Section 28.10(d) of the San Francisco
10 Administrative Code, hereby ORDERS:

11 A. Pursuant to Hearing Officer Zareh's Findings and Decision, Respondents **Alan Varela,**
12 **William Gilmartin III** and **ProVen Management, Inc.** are DEBARRED. Pursuant to Section
13 28.11(c) of the San Francisco Administrative Code, Respondents and their affiliates are prohibited
14 from participating in any contract or grant at any tier, directly or indirectly, with or for the City and
15 County of San Francisco. Respondents shall be deemed irresponsible and disqualified for the purposes
16 of all City and County of San Francisco contracts and grants. Any department head, board, or
17 commission may cancel any existing contract or grant with Respondents or direct the cancellation of
18 an existing subcontract to which a Respondent is a party. In the event of such cancellation,
19 Respondents' recovery under the contract or grant shall be limited to compensation for work
20 satisfactorily completed as of the date of cancellation. Pursuant to Section 28.10 of the San Francisco
21 Administrative Code, the period of debarment shall begin upon issuance by the City Attorney of an
22 Order of Debarment consistent with this Decision, and expire on March 1, 2026.

23 B. Pursuant to Hearing Officer Zareh's Findings and Decision, the Alleged Affiliates
24 named in the March 22, 2023 Counts and Allegations, **Baylands Soil Processing, LLC, Comsa Emte**
25 **USA Inc., Egbert Enterprises, LLC,** and **ProVen Comsa JV,** did not request an administrative
26 hearing. Pursuant to Section 28.7, said failure to request a hearing is deemed an admission by said
27 Alleged Affiliates to the Counts and Allegations. Therefore, said Alleged Affiliates are DEBARRED.
28 Pursuant to Section 28.11(c) of the San Francisco Administrative Code, the Alleged Affiliates are

1 prohibited from participating in any contract or grant at any tier, directly or indirectly, with or for the
2 City and County of San Francisco. The Alleged Affiliates shall be deemed irresponsible and
3 disqualified for the purposes of all City and County of San Francisco contracts and grants. Any
4 department head, board, or commission may cancel any existing contract or grant with any of the
5 Alleged Affiliates or direct the cancellation of an existing subcontract to which an Alleged Affiliate is
6 a party. In the event of such cancellation, the Alleged Affiliates' recovery under the contract or grant
7 shall be limited to compensation for work satisfactorily completed as of the date of cancellation.
8 Pursuant to Section 28.10 of the San Francisco Administrative Code, the period of debarment shall
9 begin upon issuance by the City Attorney of an Order of Debarment consistent with this Decision, and
10 expire on March 1, 2026.

11 Pursuant to Section 28.10(d) of the San Francisco Administrative Code, this Order represents
12 the final administrative determination by the City in the matter.

13 IT IS SO ORDERED

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15 Date: June 26, 2023


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18 DAVID CHIU
19 City Attorney
20 City and County of San Francisco
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EXHIBIT A
to Debarment Order

Hearing Officer's Findings and Decision.

1 DAVID CHIU, State Bar #189542
City Attorney
2 KESLIE STEWART, State Bar #184090
Chief of Public Integrity and Investigations
3 RICHARD E. ROBINSON, State Bar #280529
Deputy City Attorney
4 Fox Plaza
1390 Market Street, Suite 425
5 San Francisco, CA 94102-5408
Telephone: (415) 554-3954
6 Facsimile: (415) 255-0733
E-Mail: richard.e.robinson@sfcityatty.org

7 Attorneys for Charging Official
8 CITY AND COUNTY OF SAN FRANCISCO

9
10 **CITY ATTORNEY DAVID CHIU**
11 **CITY AND COUNTY OF SAN FRANCISCO**

12 In the matter of:
13
14 ALAN VARELA, an individual,
15 WILLIAM GILMARTIN III, an
individual, and PROVEN
16 MANAGEMENT INC., a California
corporation
17
18 *Affiliates:* BAYLANDS SOIL
PROCESSING LLC, a California
19 limited liability company, COMSA
EMTE USA, Inc., a California
20 Corporation, EGBERT
ENTERPRISES, LLC, a California
21 limited liability company, PROVEN
COMSA JV, a joint venture,

**STIPULATION AND [PROPOSED] FINDINGS AND
DECISION DEBARRING RESPONDENTS ALAN
VARELA, WILLIAM GILMARTIN III, PROVEN
MANAGEMENT INC., BAYLANDS SOIL
PROCESSING LLC, COMSA EMTE USA, INC.,
EGBERT ENTERPRISES, LLC, AND PROVEN
COMSA JV**

1 The City Attorney, as the charging official, on the one hand, and Respondents Alan Varela,
2 William Gilmartin III, and ProVen Management Inc. (collectively, “Respondents”), on the other,
3 hereby stipulate and agree to the following:

4 WHEREAS, on or about September 17, 2020, the Federal Bureau of Investigation filed charges
5 against Alan Varela and William Gilmartin III in a federal criminal complaint (“Criminal Complaint”)
6 in the United States District Court for the Northern District of California, alleging bribery of a local
7 official, in a case captioned *United States of America v. Alan Varela and William Gilmartin III*, Case
8 No. 3-20-71327 TSH;

9 WHEREAS, on or about March 1, 2021, then-City Attorney Dennis J. Herrera issued an order
10 suspending Respondents pursuant to Chapter 28 of the San Francisco Administrative Code;

11 WHEREAS, on or about March 22, 2023, City Attorney David Chiu served an Amended
12 Suspension Order and Counts and Allegations Seeking Debarment of Respondents (“Counts and
13 Allegations”) and alleged affiliates of Respondents Baylands Soil Processing, LLC, Comsa Emte
14 USA Inc., Egbert Enterprises, LLC, and ProVen Comsa JV (the alleged affiliates of Respondents are
15 referred to herein as “Alleged Affiliates”);

16 WHEREAS, the Counts and Allegations sought an order debarring Respondents and the
17 Alleged Affiliates for the statutory maximum of five years, with credit for time that Respondents were
18 suspended;

19 WHEREAS, Respondents, through their attorney, requested an administrative hearing pursuant
20 to Section 28.6 of the San Francisco Administrative Code;

21 WHEREAS, Counsel for Respondents does not represent the Alleged Affiliates and did not
22 request a hearing on behalf of the Alleged Affiliates;

23 WHEREAS, on or about April 12, 2023, pursuant to Administrative Code Section 28.8, the
24 City Controller appointed Elizabeth Zareh as the Hearing Officer in this matter;


25 WHEREAS, neither the Charging Official nor Respondents filed objections to the appointment
26 of Hearing Office Zareh;

27 WHEREAS, the City Attorney and Respondents have reached an agreement that would forego
28 the need for a hearing in this matter;

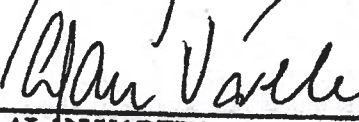
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Dated: 5/26/23

PROVEN MANAGEMENT INC.

By:  JOSEPH GILMARTIN
Its: Secretary

Dated: 5/24/23

By: 
ALAN VARELA

Dated: _____

By: _____
WILLIAM GILMARTIN III

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Dated: _____

PROVEN MANAGEMENT INC.

By: _____

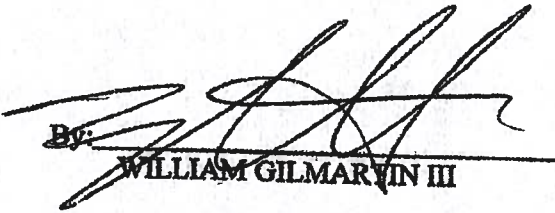
Its: _____

Dated: _____

By: _____

ALAN VARELA

Dated: 5/26/23

By: 

WILLIAM GILMARIN III

1 **[PROPOSED] FINDINGS AND DECISION**

2 Upon stipulation of the Alan Varela, William Gilmartin III, and ProVen Management, Inc.
3 (“Respondents”) and City Attorney David Chiu, acting as Charing Official (collectively, with
4 Respondents, the “Parties”) and pursuant to Section 28.10 of the San Francisco Administrative Code,
5 the Hearing Officer hereby makes the following FINDINGS:

6 1. On or about March 22, 2023, pursuant to Chapter 28 of the San Francisco
7 Administrative Code, San Francisco City Attorney David Chiu served an Amended Suspension Order
8 and Counts and Allegations Seeking Debarment of Alan Varela, William Gilmartin III, and ProVen
9 Management, Inc. and their alleged affiliates, Baylands Soil Processing, LLC, Comsa Emte USA Inc.,
10 Egbert Enterprises, LLC, and ProVen Comsa JV (“Alleged Affiliates”). A true and correct copy of
11 these Counts and Allegations is attached as **Exhibit A** to these Findings and Decision.

12 2. Respondents Alan Varela, William Gilmartin III, and ProVen Management, Inc.,
13 through their attorney, requested an administrative hearing pursuant to Section 28.6 of the San
14 Francisco Administrative Code.

15 3. The Alleged Affiliates Baylands Soil Processing, LLC, Comsa Emte USA Inc., Egbert
16 Enterprises, LLC, and ProVen Comsa JV did not request an administrative hearing.

17 4. Respondents do not contest the City Attorney’s request for an order of debarment set
18 forth in the Counts and Allegations, and they have withdrawn their request for an administrative
19 hearing.

20 Therefore, upon stipulation of the Parties and good cause appearing, the Hearing Officer
21 hereby issues the following DECISION:

22 A. Respondents Alan Varela, William Gilmartin III and ProVen Management, Inc. are
23 hereby DEBARRED. Pursuant to Section 28.11(c) of the San Francisco Administrative Code,
24 Respondents and their affiliates are prohibited from participating in any contract or grant at any tier,
25 directly or indirectly, with or for the City and County of San Francisco. Respondents shall be deemed
26 irresponsible and disqualified for the purposes of all City and County of San Francisco contracts and
27 grants. Any department head, board, or commission may cancel any existing contract or grant with
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1 Respondents or direct the cancellation of an existing subcontract to which a Respondent is a party. In
2 the event of such cancellation, Respondents' recovery under the contract or grant shall be limited to
3 compensation for work satisfactorily completed as of the date of cancellation. Pursuant to Section
4 28.10 of the San Francisco Administrative Code, the period of debarment shall begin upon issuance by
5 the City Attorney of an Order of Debarment consistent with this Decision, and expire on March 1,
6 2026.

7 B. The Alleged Affiliates named in the March 22, 2023 Counts and Allegations, Baylands
8 Soil Processing, LLC, Comsa Emte USA Inc., Egbert Enterprises, LLC, and ProVen Comsa JV, did
9 not request an administrative hearing. Pursuant to Section 28.7, said failure to request a hearing is
10 deemed an admission by said Alleged Affiliates to the Counts and Allegations. Therefore, said
11 Alleged Affiliates are hereby DEBARRED. Pursuant to Section 28.11(c) of the San Francisco
12 Administrative Code, the Alleged Affiliates are prohibited from participating in any contract or grant
13 at any tier, directly or indirectly, with or for the City and County of San Francisco. The Alleged
14 Affiliates shall be deemed irresponsible and disqualified for the purposes of all City and County of
15 San Francisco contracts and grants. Any department head, board, or commission may cancel any
16 existing contract or grant with any of the Alleged Affiliates or direct the cancellation of an existing
17 subcontract to which an Alleged Affiliate is a party. In the event of such cancellation, the Alleged
18 Affiliates' recovery under the contract or grant shall be limited to compensation for work satisfactorily
19 completed as of the date of cancellation. Pursuant to Section 28.10 of the San Francisco
20 Administrative Code, the period of debarment shall begin upon issuance by the City Attorney of an
21 Order of Debarment consistent with this Decision, and expire on March 1, 2026.

22 IT IS SO ORDERED

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24 Date: 5/31/23



25 Elizabeth Zareh
26 HEARING OFFICER
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Exhibit A

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CITY ATTORNEY DAVID CHIU
CITY AND COUNTY OF SAN FRANCISCO

In the matter of:

ALAN VARELA, an individual,
WILLIAM GILMARTIN III, an
individual, and PROVEN
MANAGEMENT INC., a California
corporation

Affiliates: BAYLANDS SOIL
PROCESSING LLC, a California
limited liability company, COMSA
EMTE USA, Inc., a California
Corporation, EGBERT
ENTERPRISES, LLC, a California
limited liability company, PROVEN
COMSA JV, a joint venture,

**AMENDED SUSPENSION ORDER AND COUNTS
AND ALLEGATIONS SEEKING DEBARMENT
UNDER SAN FRANCISCO ADMINISTRATIVE
CODE CHAPTER 28**

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1 David Chiu, City Attorney of the City and County of San Francisco (“**San Francisco**” or
2 “**City**”), acting as Charging Official under Sections 28.1 and 28.2 of the San Francisco Administrative
3 Code, requests that the Controller of San Francisco appoint a hearing officer for debarment
4 proceedings against the following contractors: Alan Varela, William Gilmartin III, ProVen
5 Management Inc., Baylands Soil Processing, LLC, Comsa Emte USA Inc., Egbert Enterprises, LLC,
6 and ProVen Comsa JV. The City Attorney requests that said hearing officer issue an ORDER OF
7 DEBARMENT finding these contractors irresponsible bidders and disqualified from participating in
8 the competitive process for contracts with San Francisco, or from entering into contracts with San
9 Francisco directly or indirectly, for a period of five years beginning March 1, 2021.

10 While these debarment proceedings are conducted, Baylands Soil Processing, LLC, Comsa
11 Emte USA Inc., Egbert Enterprises, LLC, and ProVen Comsa JV are hereby SUSPENDED, and
12 prohibited from participating in the competitive process for contracts with San Francisco. Alan
13 Varela, William Gilmartin III, and ProVen Management Inc. remain suspended.

14 **I. INTRODUCTION**

15 This proceeding arises out of a Federal Bureau of Investigation (“**FBI**”) criminal investigation
16 of Alan Varela’s and William Gilmartin III’s bribery of former San Francisco Department of Public
17 Works Director Mohammed Nuru. Evidence collected by the FBI and the City Attorney shows that
18 this bribery, as well as the related corrupt and illegal conduct described herein, was committed in an
19 attempt to secure certain contracts with the City on behalf of ProVen Management Inc. (“**ProVen**”).
20 The details of Alan Varela and William Gilmartin III’s corrupt conduct on behalf of ProVen are set
21 forth in a September 17, 2020, federal criminal complaint (“**Criminal Complaint**”, attached as
22 **Exhibit 1.**). On March 1, 2021, then-City Attorney Dennis J. Herrera issued an order (the
23 “**Suspension Order**”) suspending Alan Varela, William Gilmartin III, and ProVen (the “**Original**
24 **Suspended Contractors**”). The Suspension Order has not been contested.

25 On May 27, 2021, Alan Varela and William Gilmartin III both pled guilty to conspiracy to
26 commit honest services wire fraud, and were adjudicated guilty. (**Exhibit 2.**) Subsequently, additional
27 facts about the corrupt conduct of the Original Suspended Contractors have been established in related
28 criminal proceedings, including a criminal judgment against Mohammed Nuru. As described in more

1 detail below, the admissions in Alan Varela’s, William Gilmartin III’s, and Mohammed Nuru’s
2 respective guilty pleas establish that the Original Suspended Contractors are subject to debarment
3 under Chapter 28 of the San Francisco Administrative Code. Accordingly, the City Attorney seeks the
4 maximum 5-year period of debarment, to be measured from the date that Alan Varela, William
5 Gilmartin III, and ProVen were first suspended on March 1, 2021, and expiring on March 1, 2026.

6 In addition, following issuance of the Suspension Order, the City Attorney’s Office
7 investigated various entities associated with the Original Suspended Contractors. As described in
8 more detail below, the City Attorney’s Office identified four additional entities – Baylands Soil
9 Processing, LLC, Comsa Emte USA Inc., Egbert Enterprises, LLC, and ProVen Comsa JV,
10 (collectively, the “**Affiliated Contractors**”) – that had close relationships with Alan Varela, William
11 Gilmartin III, and/or ProVen during the times that those contractors were bribing Mr. Nuru. These
12 Affiliated Contractors qualify as “affiliates” under the San Francisco Administrative Code, thus
13 subjecting them to the same suspension and debarment remedies applicable to the Original Suspended
14 Contractors. (See San Francisco Administrative Code § §28.1 and 28.11(c).) Accordingly, the City
15 Attorney seeks an order debaring the Affiliated Contractors for a period expiring on March 1, 2026.

16 During the pendency of these proceedings, the Affiliated Contractors are suspended from
17 participating in any procurement process with the City. The Original Suspended Contractors remain
18 suspended. This Amended Order of Suspension is self-executing.

19 **II. PARTIES TO BE SUSPENDED AND DEBARRED**

20 Alan Varela is an individual who at all times relevant to the bribery giving rise to this
21 Amended Suspension Order and Counts and Allegations was the owner, responsible managing
22 corporate officer, or responsible managing employee of a California corporation that held contracts or
23 sought to hold contracts (directly or indirectly) with San Francisco.

24 William Gilmartin III is an individual who at all times relevant to the bribery giving rise to this
25 Amended Suspension Order and Counts and Allegations was the owner, responsible managing
26 corporate officer, or responsible managing employee of a California corporation that held contracts or
27 sought to hold contracts (directly or indirectly) with San Francisco.

1 ProVen is a California corporation, number C1940071. It registered with the California
2 Secretary of State on May 19, 1995. Alan Varela was the incorporator. (**Exhibit 3.**) From May 9,
3 2017, until at least the date of the filing of the Federal Complaint, Alan Varela was the Chief
4 Executive Officer, the Secretary, the Chief Financial Officer, a Director, and the Agent for Service of
5 Process for ProVen. (*Id.* at p. 2.) From May 9, 2017, through at least the date of the filing of the
6 Federal Complaint, William Gilmartin III was a Director of ProVen. (*Id.* at p. 3.) According to
7 publicly available information from the California State License Board (“CSLB”), Alan Varela was
8 the Responsible Managing Officer for ProVen until April 6, 2021. (*Id.* at p. 4.) ProVen was a San
9 Francisco vendor that participated in the procurement process and obtained direct or indirect contracts
10 with San Francisco. (**Exhibit 1 at ¶ 18.**) Beginning on or around December 8, 2020, less than a year
11 after criminal charges were filed against Mohammed Nuru, and continuing to the present, ProVen’s
12 officers include Joe Gilmartin, brother of William Gilmartin III. ProVen’s directors include Joe
13 Gilmartin and Zachary Varela, son of Alan Varela. (**Exhibit 4.**) The City Attorney is informed and
14 believes that Alan Varela and William Gilmartin III continue to maintain an ownership interest in
15 ProVen.

16 Baylands Soil Processing, LLC (“**Baylands**”), is a California limited liability company,
17 number 200928110140. It registered with the California Secretary of State on October 7, 2009. Alan
18 Varela was listed as the agent for service of process in the initial articles of organization. (**Exhibit 5.**)
19 In 2018, Alan Varela was listed as the managing member for Baylands, and William Gilmartin III was
20 listed as an additional manager or member. (*Id.* at p. 2.) In 2020, William Gilmartin III was listed as a
21 manager or member and agent of service of process. (*Id.* at p. 4.) Alan Varela and William Gilmartin
22 III are each 50% owners of Baylands, (**Exhibit 6**), and public documents show that Baylands’ business
23 address, 225 3rd Street, Oakland, CA, is the same address as ProVen and certain other Affiliated
24 Contractors. (**Exhibit 5.**)

25 Comsa Emte USA Inc. (“**Comsa**”), is a California corporation, number C3340414. It
26 registered with the California Secretary of State on December 15, 2010. California Secretary of State
27 documents list Alan Varela as Chief Executive Officer, Secretary, and Agent for Service of Process
28 and Accounting Manager for Comsa. (**Exhibit 7.**) Public documents also show that Comsa’s business

1 address, 225 3rd Street, Oakland, CA 94607 is the same address as ProVen and certain other Affiliated
2 Contractors. (*Id.* at p. 3.) As described below, Comsa has also entered into a joint venture agreement
3 with ProVen.

4 ProVen Comsa JV (“**ProVen-Comsa**”), is a joint venture between ProVen and Comsa.
5 (**Exhibit 8.**) Public documents show ProVen Comsa’s Class A General Engineering License is
6 associated with Proven, and that Comsa’s business address, 225 3rd Street, Oakland, CA 9607, is the
7 same address as ProVen and the other Affiliated Contractors. (*Id.* at p. 1.) In addition, as a joint
8 venture with ProVen, Proven-Comsa was subject to the March 1, 2021 Suspension Order. (San
9 Francisco Administrative Code §§ 28.1, 28.11.)

10 Egbert Enterprises, LLC (“**Egbert**”), is a California limited liability company, number
11 199929910026. It registered with the California Secretary of State on October 21, 1999. Alan Varela
12 was the incorporator. (**Exhibit 9.**) California Secretary of State documents list Mr. Varela as
13 Managing Member, Chief Executive Officer and Agent for Service of Process for Egbert. (*Id.* at p. 3.)

14 **III. FACTUAL BACKGROUND**

15 **A. The FBI and USDOJ Bring Criminal Cases Against Alan Varela and William 16 Gilmartin III Alleging Bribery on Behalf of ProVen**

17 On September 17, 2020, the United States filed the Criminal Complaint in the matter of *United*
18 *States of America v. Alan Varela and William Gilmartin III*, United States District Court for the
19 Northern District of California, Case No. 3:20-mj71327. (**Exhibit 1.**) The Criminal Complaint
20 charged the offense of 18 U.S.C. § 666(a)(2) – Bribery of Local Official, a felony. (*Id.*) The Criminal
21 Complaint alleged, in part:

22 Alan Varela founded ProVen Management (“ProVen”) in 1991, a Bay Area
23 civil engineering and construction firm that specializes in large-scale
24 infrastructure projects. [Alan Varela] is the President of ProVen and [William
25 Gilmartin III] is the Vice President. [Alan Varela and William Gilmartin III]
also share ownership in several construction-related businesses. ProVen has
received a number of public contracts from the City and County of San
Francisco.

26 (*Id.* at ¶ 18.)

27 According to the Affidavit In Support of the Criminal Complaint, FBI agents intercepted
28 and/or reviewed multiple communications regarding a scheme to win contracts through San Francisco

1 Department of Public Works for ProVen to operate an asphalt plant on land owned by the Port of San
2 Francisco. This effort lasted years and was still ongoing until Mr. Nuru's arrest in January 2020. (*Id.*
3 at ¶ 20.) The scheme involved obtaining one or more contracts for ProVen. (*Id.* at ¶¶ 28, 69, 79.)
4 William Gilmartin III paid for extravagant dinners for Mr. Nuru and subsidized material for Mr.
5 Nuru's ranch. (*Id.* at ¶¶ 21, 29, 97, 98, 105, 108.) For example, on or about February 19, 2019, as part
6 of the bribery scheme, Alan Varela and William Gilmartin III arranged to purchase and deliver to Mr.
7 Nuru a tractor and attachments valued at approximately \$40,000. (*Id.* at ¶¶ 22, 112, 115, 119.) On
8 May 6, 2021, an Information was filed against William Gilmartin III and Alan Varela alleging
9 Conspiracy to Commit Honest Services Wire Fraud in violation of 18 U.S.C. §§ 1343, 1346, and 1349.

10 (**Exhibit 10.**) The Information stated, in part:

11 Alan Varela and William Gilmartin III did knowingly and intentionally conspire
12 with Mohammed Nuru and others, known and unknown to the United States
13 Attorney, to commit wire fraud, that is, having devised and intending to devise a
14 material scheme and artifice to defraud the City and County of San Francisco
15 ("City"), and the citizens of San Francisco of their right to the honest and
16 faithful services of Mohammed Nuru through bribery, kickbacks, and the
concealment of material information, to transmit and cause to be transmitted by
means of wire communication in interstate commerce writings, signs, signals,
pictures and sounds for the purpose of executing such scheme and artifice, in
violation of Title 18, United States Code, Sections 1343 and 1346. All in
violation of Title 18, United States Code, Section 1349.

17 (*Id.* at ¶ 1.)

18 **B. Alan Varela and William Gilmartin III Admit to Bribing Mr. Nuru on Behalf of
19 Their Business Ventures.**

20 On May 27, 2021 Alan Varela and William Gilmartin III pled guilty to conspiracy to commit
21 honest services wire fraud in violation of 18 U.S.C. §§ 1343, 1346 and 1349 and were adjudicated
22 guilty. (**Exhibits 2 and 11**). In his signed plea agreement, Alan Varela admitted that he had knowingly
23 engaged in a scheme to defraud the public of its right to the honest services of a public official through
24 bribery or kickbacks, stating:

25 (1) I agreed with one or more people to engage in a scheme or plan to deprive
26 the people of San Francisco of the honest services of a San Francisco public
27 official; and (2) I joined in that agreement knowing of at least one of its objects
28 and intending to help achieve it. The elements of honest services wire fraud, in
violation of 18 U.S.C. §§ 1343 and 1346, are: (1) I knowingly devised or
participated in a scheme to defraud the public of its right to the honest services
of a public official through bribery or kickbacks in breach of the official's
fiduciary duty; (2) I did so knowingly and with an intent to defraud, that is, the

1 intent to deceive and cheat the public of honest services; (3) the scheme or
2 artifice to defraud involved a deception, misrepresentation, false statement, false
3 pretense, or concealment that was material; and (4) I used, or caused to be used,
4 an interstate or foreign wire communication to carry out or attempt to carry out
5 an essential part of the scheme.

6 (Exhibit 11 at ¶1.)

7 Mr. Varela's signed plea agreement went into detail about the nature of the scheme, including
8 the following facts:

- 9 • From 2013 through 2020, Alan Varela, William Gilmartin III, Mr. Nuru and others
10 engaged in a scheme to commit fraud and defraud the public of its right to honest services.
11 (*Id.* at ¶ 2a.)
- 12 • Alan Varela paid bribes and kickbacks to Mr. Nuru in order to enrich Alan Varela and
13 William Gilmartin III and ensure the success of their business ventures. (*Id.*)
- 14 • The items provided to Mr. Nuru included free meals and entertainment, cash, and
15 equipment, including a tractor, for Mr. Nuru's ranch. (*Id.* at ¶ 2e.)
- 16 • Alan Varela and William Gilmartin III also promised to provide Nuru with a portion of the
17 proceeds that they expected to earn from City contracts. (*Id.*)
- 18 • Alan Varela and William Gilmartin III's efforts focused on winning a supply contract with
19 the Department of Public Works ("DPW") and a related lease with the Port of San
20 Francisco (the "Port") to operate an asphalt recycling plant and a concrete plant on Port
21 land. (*Id.* at ¶ 2f.)
- 22 • In exchange for bribes and kickbacks, Mr. Nuru assisted Alan Varela and William
23 Gilmartin III in seeking to obtain the DPW contract and Port lease. This assistance
24 included supplying drafts of the City's request for proposals for the asphalt recycling plant
25 so Alan Varela and William Gilmartin III would be better positioned to have their proposal
26 selected. (*Id.* at ¶ 2h.)
- 27 • In September 2015, Alan Varela and William Gilmartin III's joint venture was selected by
28 the Port Commission as the most qualified bidder for the asphalt plant. Following this
selection, Alan Varela and William Gilmartin III continued to receive inside information
from Mr. Nuru in exchange for expensive meals. (*Id.* at ¶ 2i.)

- 1 • Alan Varela and William Gilmartin III's scheme to bribe Mr. Nuru continued until Mr.
2 Nuru was arrested on federal charges in January 2020. (*Id.* at ¶ 2j.)

3 While Alan Varela's plea agreement does not mention ProVen by name, it is clear from the
4 surrounding facts that Alan Varela and William Gilmartin III bribed Mr. Nuru in order to benefit
5 ProVen. For example, the Criminal Complaint giving rise to Alan Varela's plea agreement
6 specifically alleges that Alan Varela and William Gilmartin III bribed Mr. Nuru so that ProVen's joint
7 venture could receive the Port asphalt plant contract. (See, e.g. **Exhibit 1** at ¶¶ 18, 28-109.)
8 Moreover, publicly available documents, including a September 2015 resolution passed by the Port
9 Commission naming ProVen's joint venture as the most qualified proposal for the asphalt plant, shows
10 that ProVen was a member of the joint venture identified in Alan Varela's Plea Agreement. (**Exhibit**
11 **12.**)

12 On September 16, 2021, Alan Varela was adjudicated guilty of Conspiracy to Commit Honest
13 Services Wire Fraud in violation of 18 U.S.C. §§ 1343 and 1349 and was sentenced to Federal Prison
14 for a term of two years. (**Exhibit 2** at p. 6.) William Gilmartin III also pled guilty to Conspiracy to
15 Commit Honest Services Wire Fraud in violation of 18 U.S.C. §§ 1343 and 1349 and was adjudicated
16 guilty. (*Id.* at p. 2.) As of the date of this Amended Suspension, William Gilmartin III is cooperating
17 with the Federal investigation, the terms of his plea are under seal, and he has not been sentenced.

18 **IV. LEGAL BASIS FOR DEBARMENT OF ALAN VARELA, WILLIAM GILMARTIN III, AND PROVEN**

19 **A. Alan Varela, William Gilmartin III, and ProVen are Contractors for the Purposes 20 of Chapter 28 of the Administrative Code.**

21 San Francisco Administrative Code Chapter 28 sets forth the grounds and procedures for
22 administrative Debarment. A copy of Chapter 28 is enclosed as **Exhibit 13**. "Debarment" is defined
23 as "[t]he administrative determination against a Contractor declaring such Contractor irresponsible and
24 disqualified from participating in the procurement process for contracts, or from entering into
25 contracts, directly or indirectly, with or applying for or receiving grants or other benefits from the City
26 for a period specified in the Debarment order."

27 "Contractor" is defined as:
28

1 Any individual person, business entity, or organization that submits a
2 qualification statement, proposal, bid, or grant request, or that contracts directly
3 or indirectly with the City for the purpose of providing any goods or services or
4 construction work to or for, or applies for or receives a grant from, the City
5 including without limitation any Contractor, subcontractor, consultant,
6 subcontractant or supplier at any tier, or grantee. The term "Contractor" shall
7 include any responsible managing corporate officer, or responsible managing
8 employee, or other owner or officer of a Contractor who has personal
9 involvement and/or responsibility in seeking or obtaining a contract with the
10 City or in supervising and/or performing the work prescribed by the contract or
11 grant." (*Id.* at p 2.)

12 Alan Varela, William Gilmartin III, and ProVen are all "contractors" for the purpose of
13 Chapter 28. Alan Varela founded ProVen in the 1990s, and was the President or Chief Executive
14 Officer at the times of the admitted corruption, the filing of the Criminal Complaint, and the execution
15 of his plea agreement. (**Exhibit 1** at ¶ 18; **Exhibit 2**; **Exhibit 3**.) William Gilmartin III was the Vice
16 President of ProVen Management Inc. at the times of the admitted corruption, the filing of the
17 Criminal Complaint, and the execution of his plea agreement. (**Exhibit 1** at ¶ 18; **Exhibit 2**; **Exhibit**
18 **3**.) ProVen has sought to do business with, and received a number of public contracts from, the City
19 and County of San Francisco. (**Exhibit 1** at ¶ 18.) During the times that Alan Varela and William
20 Gilmartin III were bribing Mr. Nuru, ProVen was in the process of submitting a proposal for a contract
21 with the City. (**Exhibit 12**, **Exhibit 1** at ¶¶ 18, 28-109.) Publicly available documents, including a
22 resolution from the Port Commission passed in September 2015 naming ProVen joint venture as the
23 most qualified proposer for a Port contract, show that ProVen was one of the companies that Alan
24 Varela admitted in his plea agreement received favorable treatment from Mr. Nuru. (*Compare*
25 **Exhibit 11** at ¶21 *with* **Exhibit 12**.)

26 **B. The Admissions of Criminal Conspiracy to Bribe Nuru by Alan Varela and**
27 **William Gilmartin III Support Debarment of Them and Their Affiliates under**
28 **Multiple Prongs of the Administrative Code.**

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

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

1 terms or conditions of City contracts, including without limitation repeated
2 unexcused delays and poor performance; (4) failure to abide by any rules and/or
3 regulations adopted pursuant to the San Francisco Municipal Code; (5)
4 submission of false claims as defined in this Administrative Code, Chapter 6,
5 Article V, or Chapter 21, Section 21.35, or other applicable federal, state, or
6 municipal false claims laws; (6) a verdict, judgment, settlement, stipulation or
7 plea agreement establishing the Contractor's violation of any civil or criminal
8 law against any government entity relevant to the Contractor's ability or
9 capacity honestly to perform under or comply with the terms and conditions of a
10 City contract or grant; (7) collusion in obtaining award of any City contract or
11 grant, or payment or approval thereunder; and/or (8) the offer or provision of
12 any gift or money to a public official, if that public official is prohibited from
13 accepting the gift or money by any law or regulation.

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

9 This is a non-exclusive list which requires only that Alan Varela, William Gilmartin III, and
10 ProVen fall under one of the prongs. But their admitted bribery and corruption on behalf of ProVen,
11 established in the federal criminal case by guilty pleas, fall under at least four prongs:

- 12 • subsection (2) “failure to comply with the terms of a contract or with provisions of the
13 Municipal Code,”
- 14 • subsection (6) “a verdict, judgment, settlement, stipulation or plea agreement
15 establishing the Contractor's violation of any civil or criminal law against any
16 government entity relevant to the Contractor's ability or capacity honestly to perform
17 under or comply with the terms and conditions of a City contract or grant”
- 18 • subsection (7) “collusion in obtaining award of any City contract or grant, or payment
19 or approval thereunder,” and,
- 20 • subsection (8) “the offer or provision of any gift or money to a public official, if that
21 public official is prohibited from accepting the gift or money by any law or regulation.”

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

23 Alan Varela and William Gilmartin III’s gifts violated the San Francisco Municipal Code and
24 its regulations, as well as the terms of their contracts with the City. The Campaign & Governmental
25 Conduct Code is part of the San Francisco Municipal Code. It contains a “Prohibition on Bribery” that
26 provides:

27 No person shall offer or make, and no officer or employee shall accept, any gift
28 with the intent that the City officer or employee will be influenced thereby in
the performance of any official act.”

1 Campaign & Governmental Conduct Code § 3.216(a). “The phrase “intent to influence”
2 means any communication made for the purpose of supporting, promoting, influencing, modifying,
3 opposing, delaying or advancing a governmental decision.” See Regulation 3.216(b)-2 of the
4 Regulations to San Francisco Campaign and Governmental Conduct Code – San Francisco
5 Government Ethics Ordinance Section 3.200 et seq. (“**Ethics Commission Regulations**”).¹ City
6 contracts require that vendors comply with the laws of San Francisco. According to Alan Varela’s
7 signed plea agreement, Alan Varela and William Gilmartin III gave gifts to Mr. Nuru worth thousands
8 of dollars, with the intent to win more work for their companies, including operating an asphalt plant.
9 (**Exhibit 11.**) Public documents confirm that one of those companies was ProVen. (**Exhibit 12.**)

10 This conduct violates the San Francisco Municipal Code and is grounds for Debarment. (San
11 Francisco Administrative Code § 28.3 (a).)

12 **Ground 2: Plea Agreement Establishing Violation of Criminal Law Relevant to Contractor's**
13 **Ability or Capacity to Honestly Perform a City Contract**

14 Alan Varela and William Gilmartin III pled guilty to, and were adjudicated guilty of, violations
15 of 18 U.S.C. §§ 1343, 1346 and 1349. (**Exhibits 2 and 11.**) An individual violates 18 U.S.C. § 1343 if
16 he or she “devise[s] or intend[s] to devise any scheme or artifice to defraud, or for obtaining money or
17 property by means of false or fraudulent pretenses, representations, or promises[.]” For the purposes of
18 Section 1343, the term “‘scheme or artifice to defraud’ includes a scheme or artifice to deprive another
19 of the intangible right of honest services.” (18 U.S.C. § 1346.) It is a violation of 18 U.S.C. § 1349 to
20 attempt or conspire to commit the offense of honest services wire fraud. (*Id* at § 1349.)

21 In his plea agreement, Alan Varela admitted that he violated Section 1349 by agreeing “with
22 one or more people to engage in a scheme or plan to deprive the people of San Francisco of the honest
23 services of a San Francisco public official” and by joining “in that agreement knowing of at least one
24 of its objects and intending to help achieve it.” (**Exhibit 11** at ¶1.) Alan Varela also admitted that he
25 violated Sections 1343 and 1346 by: “knowingly devis[ing] or participat[ing] in a scheme to defraud
26 the public of its right to the honest services of a public official through bribery or kickbacks in breach

27 _____
28 ¹ Available at: <https://sfethics.org/ethics/2011/06/regulations-related-to-conflicts-of-interest.html>

1 of the official's fiduciary duty; [doing] so knowingly and with an intent to defraud, that is, the intent to
2 deceive and cheat the public of honest services[.]” (*Id.*) Alan Varela also admitted that “the scheme or
3 artifice to defraud involved a deception, misrepresentation, false statement, false pretense, or
4 concealment that was material.” (*Id.*) According to Alan Varela’s plea agreement and publicly
5 available documents, the scheme to defraud the public of its right to honest services was concocted to
6 benefit ProVen. (**Exhibits 11-12**)

7 Alan Varela’s and William Gilmartin III’s guilty pleas for criminal corruption are relevant to
8 their and ProVen’s ability or capacity to honestly perform a City contract, and thus constitute grounds
9 for Debarment. (San Francisco Administrative Code § 28.3 (a).)

10 **Ground 3: Unlawful Collusion in the Award of a City Contract**

11 Alan Varela and William Gilmartin III’s conduct also constitutes unlawful collusion to obtain
12 the benefits of publicly funded contracts.

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

18 (*Andrade v. Jennings* (1997) 54 Cal.App.4th 307, 327) According to William Gilmartin III’s plea and
19 Alan Varela’s plea agreement, Alan Varela, William Gilmartin III and Nuru engaged in an ongoing
20 scheme to provide favors for each other; Nuru provided favors to Alan Varela and William Gilmartin
21 III’s companies, including ProVen, and Alan Varela and William Gilmartin III provided favors to
22 Nuru. As public contractors, Alan Varela, William Gilmartin III, and ProVen had no legal basis to
23 provide tens of thousands of dollars’ worth of secret gifts for the personal benefit of Nuru. This
24 collusion undermines public trust in City contracting, is unfair to taxpayers and legitimate contractors
25 competing for public contracts, and is grounds for Debarment. (San Francisco Administrative Code §
26 28.3 (a).)

27 **Ground 4: The Provision of Gift or Money to a Public Official, Where That Public Official is**
28 **Prohibited from Accepting the Gifts or Money**

1 San Francisco law requires that “no officer or employee of the City and County shall solicit or
2 accept any gift or loan from a person who the officer or employee knows or has reason to know is a
3 restricted source.” (Campaign & Governmental Conduct Code § 3.216(b).) The definition of a
4 “restricted source” includes “a person doing business with or seeking to do business with the
5 department of the officer or employee.” (Campaign & Governmental Conduct Code § 3.216(b)(1).)
6 “The phrase ‘doing business’ with the department of the officer or employee means entering into or
7 performing pursuant to a contract with the department of the officer or employee.” (Ethics
8 Commission Regulation 3.216(b)-1.) At all relevant times, under the Campaign & Governmental
9 Conduct Code and regulations adopted thereunder, Alan Varela, William Gilmartin III and ProVen
10 Management Inc. were restricted sources for Nuru. It was unlawful for Nuru to accept any gift worth
11 more than \$25 from them. But William Gilmartin III and Alan Varela admit to giving gifts worth at
12 least tens of thousands of dollars. (**Exhibits 2 and 11.**) These gifts were on behalf of ProVen. (*Id.*)
13 Because it would be unlawful for Nuru to have accepted those gifts, the provision of those gifts is a
14 ground for Debarment.

15 **V. LEGAL BASIS FOR SUSPENSION AND DEBARMENT OF AFFILIATES**

16 Section 28.11 of the San Francisco Administrative Code provides that “An Order of
17 Debarment or Suspension shall prohibit any named Contractor and the Contractor’s affiliates from
18 participating in any contract or grant at any tier, directly or indirectly, with or for the City[.]” (San
19 Francisco Administrative Code § 28.11(c).) Affiliate is defined as:

20 Any individual person or business entity related to a Contractor where such
21 individual or business entity, directly or indirectly, controls or has the power to
22 control the other, or where a third person controls or has the power to control
23 both. Indicia of control include, but are not limited to: interlocking management
24 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.

25 (San Francisco Administrative Code § 28.1)

26 As discussed above, Alan Varela and William Gilmartin III’s corrupt conduct on behalf of
27 ProVen justifies debarment of ProVen. But even if that corrupt conduct did not directly implicate
28 ProVen, ProVen would still be subject to debarment as an affiliate of Alan Varela and William

1 Gilmartin III, because Alan Varela and William Gilmartin III were officers and owners of ProVen at
2 the time the conduct occurred (**Exhibit 3**), and on information and belief remain owners of ProVen
3 now. Current corporate records also show that Alan Varela and William Gilmartin III's family
4 members are now officers and directors of ProVen. (**Exhibit 4**)

5 For the reasons identified below, each of the Affiliated Contractors also qualifies as an affiliate
6 of at least one of Alan Varela, William Gilmartin III and/or ProVen. As a result, each of the Affiliated
7 Contractors is suspended as of the date of this order. Furthermore, following a hearing as required by
8 Chapter 28, the Affiliated Contractors should be debarred.

9 Baylands was registered with the California Secretary of State on October 7, 2009. Alan
10 Varela was listed as the agent for service of process in the initial articles of organization. (**Exhibit 5**.)
11 In 2018, Alan Varela was listed as the managing member for Baylands, and William Gilmartin III was
12 listed as an additional manager or member. (*Id.*) In 2020, William Gilmartin III was listed as a
13 manager or member and agent of service of process. (*Id.*) Alan Varela and William Gilmartin III are
14 each 50% owners of Baylands, (**Exhibit 6**), and public documents show that Baylands' business
15 address, 225 3rd Street, Oakland, CA, is the same address as ProVen and certain other Affiliated
16 Contractors. (**Exhibit 5**.)

17 Comsa registered with the California Secretary of State on December 15, 2010. California
18 Secretary of State documents list Alan Varela as Chief Executive Officer, Secretary, and Agent of
19 Service of Process and Accounting Manager for Comsa. (**Exhibit 7**.) Public documents also show that
20 Comsa's business address, 225 3rd Street, Oakland, CA 94607, is the same address as ProVen and
21 certain other Affiliated Contractors. (*Id.* at p. 3.) As described below, Comsa has also entered into a
22 joint venture agreement with ProVen. The Office of the City Attorney has sent multiple letters to
23 Comsa requesting information regarding Comsa's relationship with the Original Suspended
24 Contractors. (**Exhibit 14**.) The City Attorney's Office has received no written response to these
25 letters.

26 ProVen-Comsa is a joint venture between ProVen and Comsa. (**Exhibit 8**.) Public documents
27 show ProVen-Comsa's Class A General Engineering License is associated with Proven, and that
28 Comsa's business address, 225 3rd Street, Oakland, CA 94607, is the same address as ProVen and the

1 other Affiliated Contractors. (*Id.* at p.1.) In addition, as a joint venture with ProVen, Proven-Comsa
2 was subject to the March 1, 2021 Suspension Order. (San Francisco Administrative Code §§ 28.1,
3 28.11.)

4 Egbert registered with the California Secretary of State on October 21, 1999. Alan Varela was
5 the incorporator. (**Exhibit 9.**) California Secretary of State documents list Mr. Varela as Managing
6 Member, Chief Executive Officer, and Agent for Service of Process for Egbert. (*Id.* at p. 3.) The
7 Office of the City Attorney has sent multiple letters to Egbert requesting information regarding
8 Egbert's relationship with the Original Suspended Contractors. (**Exhibit 15.**) The City Attorney's
9 Office has received no written response to these letters.

10 **VI. AMENDED ORDER OF SUSPENSION**

11 For all of these reasons, City Attorney David Chiu, as the Charging Official, hereby issues this
12 Amended Suspension Order to Alan Varela, William Gilmartin III, ProVen Management, Inc.,
13 Baylands Soil Processing, LLC, Comsa Emte USA Inc., Egbert Enterprises, LLC, and ProVen-Comsa
14 JV. This Amended Suspension Order is self-executing; it is in effect from today's date until the
15 Charging Official lifts the Order of Suspension under Section 28.6(b) of the San Francisco
16 Administrative Code, or a hearing officer terminates the Order of Suspension under Section 28.10.
17 This Amended Suspension Order replaces and supersedes the original March 1, 2021 Suspension
18 Order. Section 28.7 of the Administrative Code applies to this Amended Suspension Order and Counts
19 and Allegations.

20 If Alan Varela, William Gilmartin III, ProVen Management Inc., Baylands Soil Processing,
21 LLC, Comsa Emte USA, Inc., Egbert Enterprises, LLC, and/or ProVen-Comsa JV, are debarred, the
22 period of Suspension shall count towards the period of Debarment. (San Francisco Administrative
23 Code § 28.11(b).)

24 **VII. REQUEST FOR ORDER OF DEBARMENT**

25 For all of the reasons set forth in these Counts and Allegations, the City Attorney requests that
26 the hearing officer ORDER that Alan Varela, William Gilmartin III, ProVen Management, Inc.,
27 Baylands Soil Processing, LLC, Comsa Emte USA, Inc., Egbert Enterprises, LLC, and ProVen-Comsa
28 JV are irresponsible bidders and are disqualified from participating in the competitive process for

1 contracts, or from entering into contracts with, San Francisco, directly or indirectly, for a period
2 expiring March 1, 2026.

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Date: March 22, 2023



David Chiu
City Attorney
City and County of San Francisco

PROOF OF SERVICE

I, ELENA BENITEZ, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fourth Floor, San Francisco, CA 94102.

On March 22, 2023, I served the following document(s) pursuant to San Francisco Administrative Code section 28.5:

AMENDED SUSPENSION ORDER AND COUNTS AND ALLEGATIONS SEEKING DEBARMENT UNDER SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 28

on the following persons at the locations specified:

Alan Varela 4 Donald Drive Orinda, CA 94563	William Gilmartin III 158 Greenoaks Drive Atherton, CA 94027
Alan Varela 1477 Coombsville Road Napa, CA 94558	William Gilmartin III 932 Laurel Avenue San Mateo, CA 94401
<u>Via U.S. Postal Service certified mail, return receipt requested</u>	<u>Via U.S. Postal Service certified mail, return receipt requested</u>
ProVen Management Inc. Ken Welch – Registered Agent 225 3rd Street Oakland, CA 94607	Yvonne Meré Office of the City Attorney David Chiu 1390 Market Street, 7th Floor San Francisco, CA 94102
<u>Via U.S. Postal Service certified mail, return receipt requested</u>	Email: yvonne.mere@sfcityatty.org <u>Via Electronic Mail</u>
Carmen Chu Office of the City Administrator City Hall, Room 362 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102	Andrew M. Jordan, Inc. dba A&B Construction 225 3rd Street Oakland, CA 94607
Email: carmen.chu@sfgov.org	Andrew M. Jordan, Inc. dba A&B Construction 1350 4th Street Berkeley, CA 94710
<u>Via Electronic Mail</u>	<u>Via U.S. Postal Service certified mail, return receipt requested</u>
Andrew M. Jordan 2537 Hayward Drive Burlingame, CA 94010	Baylands Soil Processing LLC 225 3rd Street Oakland, CA 94607
<u>Via U.S. Postal Service certified mail, return receipt requested</u>	<u>Via U.S. Postal Service certified mail, return receipt requested</u>

<p>1 Comsa Emte USA, Inc. 2 225 3rd Street 3 Oakland, CA 94607</p> <p>4 Comsa Emte USA, Inc. 5 2000 5th Street 6 Berkeley, CA 94710</p> <p>7 <u>Via U.S. Postal Service certified mail,</u> 8 <u>return receipt requested</u></p>	<p>Egbert Enterprises, LLC 1350 4th Street Berkeley, CA 94710</p> <p><u>Via U.S. Postal Service certified mail,</u> <u>return receipt requested</u></p>
<p>9 ProVen Comsa JV 10 225 3rd Street 11 Oakland, CA 94607</p> <p>12 ProVen Comsa JV 13 2000 5th Street 14 Berkeley, CA 94710</p> <p>15 <u>Via U.S. Postal Service certified mail,</u> 16 <u>return receipt requested</u></p>	<p>Ben Rosenfield, Controller City and County of San Francisco City Hall, Room 316 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102</p> <p>Email: ben.rosenfield@sfgov.org</p> <p><u>Via Electronic Mail</u></p>

17 in the manner indicated below:

- 18 **BY CERTIFIED MAIL:** Following ordinary business practices, I sealed true and correct copies of the
19 above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the
20 United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office
21 for collecting and processing mail. I caused each such envelope, with certified mail postage thereon fully prepaid,
22 to be sealed and placed in a recognized place of deposit of the U.S. Mail in San Francisco, California, for
23 collection and mailing to the addresses(s) on the date indicated, with return receipt requested.
- 24 **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic
25 service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such
26 document(s) were transmitted *via* electronic mail from the electronic address: **elena.benitez@sfcityatty.org**
27 in portable document format ("PDF") Adobe Acrobat.

28 I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed on March 22, 2023, at San Francisco, California.


ELENA BENITEZ

EXHIBIT 1

UNITED STATES DISTRICT COURT
for the
Northern District of California

FILED
Sep 17 2020
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

United States of America
v.
ALAN VARELA and
WILLIAM GILMARTIN III,
Defendant(s)

Case No. 3-20-71327 TSH

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 February 18, 2019 in the counties of Napa and Sonoma in the Northern District of California, the defendant(s) violated:

Table with 2 columns: Code Section (18 U.S.C. § 666(a)(2)), Offense Description (Bribery of Local Official), and Maximum Penalties (10 years' imprisonment, \$250,000 fine, 3 years' supervised release, \$100 special assessment).

This criminal complaint is based on these facts:

Please see the attached affidavit of FBI Special Agent James A Folger.

Continued on the attached sheet.

Approved as to form Scott Joiner
AUSA Scott Joiner

/s/ via telephone
Complainant's signature
James A. Folger, Special Agent, FBI
Printed name and title

Attested to by the applicant by telephone in accordance with the requirements of Fed. R. Crim. P. 4.1.

Date: September 16, 2020

Thomas S. Hixson
Judge's signature

City and state: San Francisco, CA

Hon. Thomas S. Hixson, U.S. Magistrate Judge
Printed name and title

FILED

Sep 17 2020

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

3-20-71327 TSH

13	UNITED STATES OF AMERICA,)	AFFIDAVIT OF FBI SPECIAL AGENT JAMES A.
14	Plaintiff,)	FOLGER IN SUPPORT OF CRIMINAL
15)	COMPLAINT
16	v.)	
17	ALAN VARELA and)	
17	WILLIAM GILMARTIN III,)	
18	Defendants.)	
19	_____)	

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AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, James A. Folger, Special Agent with the Federal Bureau of Investigation, being duly sworn, hereby depose and state the following:

I. INTRODUCTION AND AGENT QUALIFICATIONS

1. I submit this affidavit in support of a criminal complaint against Alan Varela (“VARELA”) and William “Bill” Gilmartin III (“GILMARTIN”). As set forth below, there is probable cause to believe VARELA and GILMARTIN bribed Mohammed NURU, the former Director of San Francisco Public Works, in violation of Title 18, United States Code, Section 666(a)(2).

2. I am a Special Agent of the FBI and have been so employed since entering the FBI Academy in August 2012. I am sworn and empowered to investigate criminal activity involving violations of federal law. 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. Additionally, I received *juris doctor* and Master of Business Administration degrees from the University of San Francisco in 2012.

3. 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, fraud against the government, drug trafficking, gangs, organized crime, and RICO investigations. 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 several 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 and criminal gangs. 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

1 investigations. I have also received training on phone records and cell tower analysis from members of
2 the Cellular Analysis Survey Team (CAST) and have used this knowledge in numerous investigations.

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

8 5. I make this Affidavit based upon personal knowledge derived from my participation in
9 this investigation and upon information I believe to be reliable from the following sources, among
10 others:

- 11 a. my experience investigating honest services wire fraud, bribery, and other illegal
12 activity relating to public corruption;
- 13 b. oral and written reports about this investigation that I have received from
14 members of the FBI;
- 15 c. physical surveillance conducted by the FBI, the results of which have been
16 reported to me either directly or indirectly;
- 17 d. information obtained from undercover agents;
- 18 e. recorded conversations; and
- 19 f. confidential human sources.

20 6. Because this affidavit is being submitted for the purpose of establishing probable cause in
21 support of the requested Complaint, it does not set forth each and every fact that I, or others, have
22 learned during the course of the investigation. Rather, I have set forth only those facts I believe are
23 necessary to establish probable cause and to provide the Court with an overview of the facts that
24 establish VARELA and GILMARTIN's pattern of corrupt conduct and intent to influence or reward
25 NURU in connection with a transaction or series of transactions with the City and County of San
26 Francisco that involved \$5,000 or more.

27 7. Unless otherwise indicated, where actions, conversations, and statements of others are
28 described below, they are related in substance and in part. In addition, unless otherwise noted, wherever

1 in this Affidavit I assert a statement was made, the information was provided by another FBI agent, law
2 enforcement officer, recording, or witness who may have had either direct or hearsay knowledge of that
3 statement and to whom I or others have spoken, or whose reports I have reviewed.

4 8. The conversations I summarize below were derived in large part from various intercepted
5 communications. Collectively, these communications were documented in FBI reports and summaries.
6 These reports and summaries describe recorded conversations involving subjects of the investigation,
7 during which the subjects at times use code words and/or cryptic language to disguise conversations
8 about their criminal schemes and related activities. The reports are summarized based on agents'
9 interpretations of the conversations. Some of these reports and summaries contain interpretations of
10 coded words, cryptic language, and vague identifiers. It may be that subsequent review of the recorded
11 conversations and verbatim transcripts may show changes from the summaries initially prepared.
12 Quotations from the recordings are based on informal transcriptions of portions of certain key
13 recordings, which may not be exactly the same as formal transcriptions that are later prepared.

14 **II. COUNT 1: BRIBERY OF LOCAL OFFICIAL (18 U.S.C. §§ 666 (a)(2) AND 2)**

15 9. At all times material to this Complaint, the City and County of San Francisco (also
16 referred to below as the "City"), was a local government that received federal assistance in excess of
17 \$10,000 during a one-year period within twelve months before or after February 18, 2019.¹

18 10. At all times material to this Complaint, Mohammed NURU was the Director of Public
19 Works (DPW) for the City and County of San Francisco. Based on publicly available data, the total
20 DPW budget regularly encompassed hundreds of millions of dollars. As Director, NURU had great
21 official influence over contracts and construction projects granted by DPW. He also had significant
22

23 ¹ According to the Budget and Appropriations Ordinance passed by the Board of Supervisors on
24 July 25, 2017, for the Fiscal Year ended June 30, 2018, 5.1% of all funds appropriated for use by City
25 departments came from federal funding, a total in excess of \$400 million. This included \$55 million in
26 federal grant money passed-through to DPW. Federal funding also constituted 5.1% of the City's
27 general fund, a total in excess of \$260 million. *See* File No. 170653, Ordinance No. 156-17 (Budget and
28 Appropriation Ordinance) (available at <https://sfbos.org/ordinances>).

For the Fiscal Year ending June 30, 2019, 4.4% of all funds appropriated for use by City
departments came from federal funding, a total in excess of \$480 million. Federal funding also
constituted 5.1% of the City's general fund, a total in excess of \$270 million. *See* File No. 180574,
Ordinance No. 181-18 (Budget and Appropriation Ordinance) (available at <https://sfbos.org/ordinances>).

1 influence with other City departments.²

2 11. On or about February 18, 2019, in the Northern District of California, Alan VARELA
3 and William GILMARTIN, aided and abetted by each other, did corruptly give, offer, and agree to give
4 a thing of value to NURU, namely a tractor worth approximately \$40,000, intending to influence and
5 reward NURU in connection with a transaction and series of transactions of the City and County of San
6 Francisco involving \$5,000 or more.

7 12. As described below, this bribe was part of a much larger pattern and course of conduct in
8 which GILMARTIN, VARELA, and Balmore HERNANDEZ³ repeatedly provided items of value to
9 NURU, intending to influence and reward NURU in connection with his help steering City business
10 their way or otherwise resolving issues they encountered in connection with City contracts and
11 approvals.

12 **III. APPLICABLE LAW**

13 13. Title 18, United States Code, Section 666(a)(2), prohibits bribery of local officials who
14 are agents of an organization receiving federal funds. The elements of the offense include the following:

- 15 a. A person was an agent of an organization, a state, local or tribal government, or an
16 agency of a state, local, or tribal government.⁴
- 17 b. The organization, state or local government received federal assistance in excess of
18 \$10,000 in a one-year period.
- 19 c. The one-year period of federal assistance was within twelve months before or after the
20 commission of the offense.

21
22
23 ² While still serving as Director of DPW, NURU was charged by Criminal Complaint with
Honest Services Wire Fraud (18 U.S.C. §§ 1343, 1346) on January 15, 2020, and by a separate Criminal
Complaint with False Statement in violation of 18 U.S.C. § 1001 on January 28, 2020.

24 ³ HERNANDEZ was charged on June 4, 2020, by Complaint with one count of Bribery, in
25 violation of Title 18, United States Code, Section 666(a)(2). He has agreed to enter a guilty plea to a
26 single count of Conspiracy to Commit Honest Services Wire Fraud, in violation of Title 18, United
States Code, Sections 1343, 1346 and 1349. As a condition of that plea agreement, HERNANDEZ has
agreed to cooperate with the government's investigation.

27 ⁴“Agent” is defined in 18 U.S.C. § 666(d)(1). An “agent” need not have direct authority over the
28 day-to-day decisions; “general authority” to act for the agency and control its funds is sufficient. *See*,
e.g., *United States v. Shoemaker*, 2014 WL 1226719 (5th Cir. Mar. 25, 2014); *see also United States v.*
Fernandez, 2013 WL 3215461 (1st Cir. June 26, 2013) (state legislator).

1 d. The defendant gave, offered, or agreed to give a thing of value to any person.

2 e. The defendant intended to influence or reward the agent of the organization or agency in
3 connection with a transaction or series of transactions of the organization or agency that
4 involved \$5,000 or more.

5 f. The defendant acted corruptly.

6 14. Title 18, United States Code, Section 2, provides that “[w]hoever commits an offense
7 against the United States or aids, abets, counsels, commands, induces or procures its commission, is
8 punishable as a principal.”

9 15. The bribe need not be completed or successful. *See United States v. Kimbrew*, 944 F.3d
10 810, 815 (9th Cir. 2019) (liability for bribery of a public official, in violation of 18 U.S.C. §
11 201(b)(2)(A), “does not depend on an outcome; the offense is complete at the moment of agreement, and
12 that agreement need not even be accompanied by the bribe recipient’s genuine intentions to follow
13 through.”).

14 16. In addition, “[i]n order to obtain jurisdiction of a defendant under section 666, the
15 government need not prove that the funds actually stolen by the defendant were of federal origin. So
16 long as the [official] is an agent of an organization that receives more than \$10,000 in federal benefits in
17 any given year, it is not necessary that the particular funds stolen be among those ‘benefits.’” *United*
18 *States v. Wyncoop*, 11 F.3d 119, 122 (9th Cir. 1993). *See also Sabri v. United States*, 541 U.S. 600,
19 605–06 (2004) (funds subject to abuse by bribed agent need not be traceable to federal funds)

20 17. Nor does the government need to show “that the defendant intended for his payments to
21 be tied to specific official acts (or omissions). Bribery requires the intent to effect an exchange of money
22 (or gifts) for specific official action (or inaction), but each payment need not be correlated with a
23 specific official act.” *See United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998). The
24 requirement of the statute is satisfied “so long as the evidence shows a ‘course of conduct of favors and
25 gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor.’ *Id.*
26 (citation omitted). Payments may be made “with the intent to retain the official's services on an ‘as
27 needed’ basis, so that whenever the opportunity presents itself the official will take specific action on the
28 payor's behalf.” *Id. See also United States v. Kemp*, 500 F.3d 257, 282 (3d Cir. 2007); *United States v.*

1 *Menendez*, 291 F. Supp. 3d 606, 613 (D.N.J. 2018).⁵

2 **IV. FACTS ESTABLISHING PROBABLE CAUSE**

3 **A. Individuals**

4 18. Alan VARELA founded ProVen Management (“ProVen”) in 1991, a Bay Area civil
5 engineering and construction firm that specializes in large-scale infrastructure projects. VARELA is the
6 President of ProVen and GILMARTIN is the Vice President. VARELA and GILMARTIN also share
7 ownership in several construction-related businesses. ProVen has received a number of public contracts
8 from the City and County of San Francisco.

9 19. Balmore HERNANDEZ is the CEO and Vice President of AzulWorks, Inc. (AzulWorks),
10 which has received numerous contracts with the City and County of San Francisco, including contracts
11 with DPW in 2018 worth millions of dollars. Prior to forming AzulWorks, Inc., HERNANDEZ was a
12 longtime employee of DPW. I have learned over the course of this investigation that NURU and
13 HERNANDEZ have a close relationship. They were in frequent contact during the relevant time periods
14 described below. I have also learned HERNANDEZ and VARELA have a close relationship.

15 **B. Overview**

16 20. Agents have intercepted and/or reviewed multiple communications concerning items of
17 value given to NURU by GILMARTIN, HERNANDEZ and/or VARELA in exchange for NURU’s
18 assistance with business with the City. The scheme to bribe NURU focused heavily, though not
19 exclusively, on an attempt to win a contract through DPW to operate an asphalt plant on land owned by
20 the Port of San Francisco – an effort which lasted years and was still ongoing until NURU’s arrest in
21 January 2020. The bribes were frequently connected to NURU’s vacation home in Northern California
22 on Lodoga Stonyford Road in Stonyford.⁶ The home, which NURU and HERNANDEZ often referred
23 to as the “ranch,” was built from scratch by contractors largely from San Francisco or the Bay Area.

24 _____
25 ⁵ Other courts, including the Ninth Circuit, have held that bribery under 18 U.S.C. § 666 does not
require a quid pro quo. *See United States v. Garrido*, 713 F.3d 985, 996 (9th Cir. 2013) (citing *United*
States v. McNair, 605 F.3d 1152, 1187–89 (11th Cir.2010)).

26 ⁶ Although the home is technically located in Stonyford, intercepted communications show that
27 NURU and other subjects often refer to the vacation home as being in “Ladoga” or “Lodoga” (Lodoga,
CA is next to Stonyford, CA). For purposes of this affidavit, I use both Stonyford and Lodoga to refer
28 to NURU’s vacation home/ranch.

1 HERNANDEZ paid for and provided a substantial portion of the labor and materials to build the house
2 and improve the property (which consists of two adjacent 10-acre parcels). Based on my review of
3 intercepted communications and records from AzulWorks, Inc., I estimate that between late 2016 and
4 the end of 2018, HERNANDEZ supplied in excess of \$250,000 in labor and materials to help NURU
5 build the home and related improvements at the ranch.⁷ The investigation has analyzed known financial
6 accounts for NURU. Although the investigation identified more than \$200,000 that NURU spent on
7 home improvement (between approximately January 2017 and May 2019), no payments to
8 HERNANDEZ or AzulWorks have been identified.

9 21. During the relevant period, GILMARTIN also paid for extravagant dinners for NURU
10 and HERNANDEZ and appears to have subsidized some of the materials for NURU's ranch. After
11 reviewing business records, I estimate that GILMARTIN spent in excess of \$20,000 on meals with
12 NURU using a ProVen company credit card.

13 22. On or about February 18, 2019, as part of the bribery scheme, VARELA and
14 GILMARTIN arranged to purchase and deliver to NURU a tractor and attachments valued at
15 approximately \$40,000. Based on my review of business records, the tractor was financed through one
16 of VARELA's and GILMARTIN's companies along with other construction equipment, thereby
17 indicating a business purpose rather than a personal one. VARELA, GILMARTIN and HERNANDEZ
18 then coordinated delivery of the tractor to NURU, telling NURU that they had listed the contact for the
19 delivery under NURU's girlfriend's first name rather than NURU's name. Based on my training and
20 experience and the facts described below, I believe they did so to conceal and disguise the nature and
21 existence of the bribe payment.

22 **C. Corrupt Intent to Influence NURU in Connection With City Business**

23 23. HERNANDEZ acted as the primary contact between NURU and GILMARTIN and
24 VARELA. His actions, both during the scheme and when confronted by the FBI, provide strong
25 evidence of the trio's corrupt intent.

26
27 ⁷ This number does not include the tractor and related attachments (described below) that
28 VARELA, GILMARTIN and HERNANDEZ helped provide NURU in February 2019. Based on my
review of business records and publicly available data, I believe the tractor and attachments delivered to
NURU in February 2019 are worth in excess of \$40,000.

1 24. On January 27, 2020, another FBI agent and I interviewed HERNANDEZ at his home in
2 Burlingame, CA. HERNANDEZ confirmed he had known NURU for fifteen to twenty years and they
3 talked several times per month, including on the previous day. HERNANDEZ stated he first met NURU
4 while working at DPW. HERNANDEZ had worked at DPW as a civil engineer for 24 years before
5 leaving for the private sector. HERNANDEZ then made the following false and misleading statements,
6 among others, which I believe provide evidence of HERNANDEZ’s consciousness of guilt and corrupt
7 intent:

- 8 a. HERNANDEZ said he had not done any construction work on NURU’s vacation home in
9 Lodoga.
- 10 b. HERNANDEZ claimed his assistance with the vacation home was “as a friend,” and had
11 been limited to reviewing construction plans and paying two invoices – one for
12 approximately \$10,000 worth of lumber and the other for approximately \$10,000 of
13 electrical work.
- 14 c. HERNANDEZ claimed he did not expect anything in return for his assistance.

15 25. These statements were each false or highly misleading, as HERNANDEZ later confirmed
16 after he began cooperating with the investigation. Based on my review of time sheets and copies of
17 checks from AzulWorks, HERNANDEZ paid more than \$100,000 for labor at NURU’s Lodoga
18 property between at least as early as December 2016 and September 2018. His work crews often spent
19 multiple days or weeks at a time working on the property. I have also reviewed dozens of text messages
20 between NURU and HERNANDEZ over the same period of time where the two exchanged photos and
21 other updates about the progress of the work on NURU’s vacation home. Records provided by
22 AzulWorks further indicate HERNANDEZ spent more than \$100,000 on materials for NURU’s ranch,
23 including tiles, stone, doors, windows, and PVC pipe. According to AzulWorks receipts,
24 HERNANDEZ spent more than \$35,000 on windows alone, and close to \$10,000 on patio doors for
25 NURU.

26 26. HERNANDEZ’s claim that he expected nothing in return from NURU is contradicted by
27 his own communications with NURU. For example, on April 14, 2017, during a trip to China, NURU
28 texted HERNANDEZ a photo. NURU wrote “Getting ready to start heading home. How are you?”

1 Picture is me getting watered down with blessings of good luck in the new year. Greetings to everyone.
2 Thanks.” HERNANDEZ replied, “Bring me some blessings. I need some jobs.”

3 27. At the same time HERNANDEZ was texting “Bring me some blessings. I need some
4 jobs,” AzulWorks had a crew at NURU’s ranch in Lodoga. Company records show AzulWorks issued a
5 check on the same day of the text, for \$5,802, to cover work performed for NURU. On April 21, 2017,
6 AzulWorks issued two more checks, totaling \$15,191.25, for work on the ranch. The corresponding
7 time sheet shows the payment covered a team of eleven workers who logged hours between April 10
8 and April 15, 2017.⁸

9 **D. Bribes in Connection with Asphalt Plant Project**

10 28. The investigation has revealed that at least as early as 2013, HERNANDEZ and
11 GILMARTIN, began planning to use HERNANDEZ’s relationship with NURU to win a contract
12 through DPW to operate an asphalt plant on land owned by the Port of San Francisco. VARELA was
13 later included on emails from HERNANDEZ passing along inside information from NURU.

14 29. The efforts appear to have begun as early as February 2013. In an internal email
15 explaining expenses for accounting purposes, GILMARTIN wrote that an \$812.10 charge at Morton’s
16 on February 8, 2013, was for “dinner with Mohammad head of DPW and Balmore HERNANDEZ
17 discussing asphalt plant deal.”

18 30. On May 16, 2013, GILMARTIN expressed his appreciation for HERNANDEZ’s efforts
19 pursuing the deal, writing: “I have used you to help negotiate this deal because of your ability to
20 understand and present our proposal without making the other side nervous. For this you are entitled to
21 ownership.”

22 31. Communications concerning the asphalt plant and NURU (via email, text, and phone)
23 continued between GILMARTIN and HERNANDEZ from 2013 through at least 2019. As noted above,
24 VARELA was also involved in early communications about the asphalt plant project and later helped
25

26 ⁸ Based on my training and experience, I believe the payment was split into two parts to bring the
27 amount under \$10,000 to avoid bank reporting requirements and potential scrutiny from government
28 authorities, which further underscores HERNANDEZ’s efforts to conceal the corrupt nature of his
dealings with NURU. AzulWorks issued the checks to the same person on the same day – one for
\$8,000 and the other for \$7,191.25. Together the checks match the timesheet total for work performed
at Lodoga between April 10, 2017 and April 15, 2017.

1 deliver one of the largest bribes – a tractor – to NURU in February 2019.

2 32. In their communications, HERNANDEZ and GILMARTIN usually referred to NURU
3 only as “our friend,” and the group appears to almost always have met at the same restaurant in San
4 Mateo (RESTAURANT 1). Based on credit card statements, text messages, and recorded phone calls,
5 the dinner meetings appear to have occurred for a number of years, at times on what appears to be
6 almost a monthly or bi-monthly basis.

7 33. By the end of 2013, email and text communications among HERNANDEZ, VARELA,
8 GILMARTIN, and NURU indicate NURU was providing inside information on how DPW and the Port
9 of San Francisco (“Port”) were approaching a Request for Qualifications/Proposals (RFQ-P or RFP) for
10 the asphalt plant on Port land. Based on my training and experience and witness interviews conducted
11 in this investigation, I know this type of information is generally sensitive and can provide an unfair
12 competitive advantage to bidders who receive it before it is made public or shared with other bidders.

13 34. For example, on October 3, 2013, NURU forwarded an internal DPW email about the
14 carbon impact of the contemplated asphalt plant from his work account to his personal email account.
15 Three days later he then sent it to HERNANDEZ from his personal email account and added “This may
16 interest you.” HERNANDEZ forwarded the email three minutes later to GILMARTIN writing “Fyi
17 There is also a company in San Jose proposing cold asphalt paving. We need to address both if [sic]
18 these issues in our proposal.”

19 35. On December 11, 2013, HERNANDEZ sent VARELA and GILMARTIN an email re
20 “Asphalt RFP” and wrote:

21 This DRAFT is very close to the final product but it has substantial
22 changes from the previous version that may not be in our best interest.
23 Let’s review it carefully, and provide a page by page commentary for the
24 changes we need to implement. For example, this RFP makes reference to
25 the City Standards for mix designs which in turn makes reference to
26 CALTRANS RAP percentages which are much lower than we had
27 discussed. Let’s put together a schedule for getting back to them with
28 comments

26 36. I believe this email contained an internal draft RFP from DPW about the asphalt plant
27 that had not yet been publicly released.

28 37. The following day, GILMARTIN responded to the December 11, 2013 email with

1 concerns about the proposed site and other items. He did not copy VARELA. HERNANDEZ
2 responded: “We need to print the RFP on paper and get together and mark it up with our corrections or
3 changes that we want made. The RFP is incorrect with the site as our friend still want us at the site we
4 discussed. Let me know when we can meet.”

5 38. On January 2, 2014, HERNANDEZ again forwarded what appeared to be another
6 internal City email (subject “FW: Latest Draft of Request for Proposals and Memorandum of
7 Understanding for Asphalt and Concrete Production Lease Opportunity”) to VARELA and
8 GILMARTIN. HERNANDEZ wrote, “Bill, Attached is the latest DRAFT for our review and
9 comments.”

10 39. On January 6, 2014, GILMARTIN responded to HERNANDEZ with concerns about the
11 amount of security being demanded by the City. “They need to give us a guaranty sale of quantity for
12 asphalt and concrete. If they can ask for this kind of security I would hope they can offer something in
13 return.” HERNANDEZ replied to that email by suggesting a meeting with their “friend” and again
14 referencing the need to print out the RFP: “We need to set up a meeting with our friend to let him know
15 our concerns and propose to eliminate those security requirements. Just print the RFP and I will set up a
16 meeting, let me know your availability this week.”

17 40. On February 14, 2014, text messages between VARELA and HERNANDEZ indicate
18 they attended the Chinese New Year’s Parade in San Francisco, CA together.

19 41. On February 21, 2014, in response to what appears to be a missed call from VARELA,
20 HERNANDEZ texted VARELA:

21 Can't talk right now...I'll call you later.
22 Text me your comments
23 I am in a meeting
24 Email me comments, I will call you in 1 hour

25 42. Later in March, on March 20, 2014, HERNANDEZ texted GILMARTIN:

26 BH: “Do we still need to meet with Mohammed?”
27 GILMARTIN: “Yes ASAP
28 BH: “Mtg confirmed for 6 pm”

43. GILMARTIN then provided the address of RESTAURANT 1 in San Mateo. Credit Card

1 statements for GILMARTIN reflect a charge at RESTAURANT 1 for \$667.66 on March 20, 2014.

2 44. Based on the investigation and my training and experience, I believe GILMARTIN and
3 HERNANDEZ provided NURU with an expensive dinner in connection with their efforts to obtain his
4 continued assistance with the asphalt plant and other City business.

5 45. Roughly one month later, on April 15, 2014, HERNANDEZ texted GILMARTIN: “We
6 are getting a list of bidders for the asphalt plant and if we were 2nd, he will ask to call us for
7 negotiations.” On April 21, 2014, HERNANDEZ texted GILMARTIN: “Please review the info on the
8 asphalt plant and provide me with any comments. Take a look at the proposed lay-outs.”

9 46. On May 22, 2014, HERNANDEZ texted GILMARTIN: “Spoke with our friend and he
10 made a call. Call me.”

11 47. At that point, GILMARTIN appears to have felt increasingly confident that they would
12 obtain the asphalt plant deal and that it would be profitable. He also acknowledged the clandestine
13 “back channel” nature of their efforts. In a May 23, 2014 email to a work colleague, he wrote:

14 “the back channels of negotiating are in full swing for the candlestick
15 phase 2. I need to send a PDF file of the asphalt plant and concrete plant to
16 [well known business person]. This will be done through back channels
17 from Mohammad. Could you send again to me for the 10th time our
18 proposal for the plants, a PDF file excluding the financial performas. [sic]
19 This will be forwarded through various ways to get to him this am.

20 Just so you know there was a a [sic] meeting last night that figured out the
21 left hand needs to work with the right hand and two hands are better the
22 one!!! Please keep this information between you and me. All deals can
23 blow up. Loose lips sink ships.

24 It's not a done deal, keep your figures crossed this could be great for us”

25 48. In the summer of 2014, HERNANDEZ went on a trip to Africa with NURU, their
26 families, and others.

27 49. In the fall of 2014, communications increased concerning the asphalt plant. On
28 September 10, 2014, NURU emailed HERNANDEZ electrical plans for his Lodoga vacation property.

50. Then, on September 16, 2014, NURU forwarded an internal email from his work account
to his personal account. The email concerned an internal discussion among City employees and
summary of suggested next steps for an environmental assessment of the proposed Pier 94 asphalt batch
plant, among other things. NURU then forwarded the email (Fwd: SW Environmental Analysis –

1 Outcomes”) from his personal account to HERNANDEZ, writing “Going to Port Commission in two
2 weeks.” HERNANDEZ forwarded the email to GILMARTIN, who replied the following day: “Thanks.
3 I hope all of our efforts pay off some day. It seems that it is close.”

4 51. NURU appears to have met with HERNANDEZ and GILMARTIN again at
5 RESTAURANT 1 on October 22, 2014. On October 20, HERNANDEZ texted GILMARTIN:

6 BH: Our friend is available on Wednesday to meet for dinner, does it work for you?

7 GILMARTIN: Yes absolutely [RESTAURANT 1] again??

8 BH: Yes I am with him now so it is confirmed.

9 52. Credit card records show a charge on GILMARTIN’s credit card statement from
10 RESTAURANT 1 on October 22, 2014, for \$287.08.

11 53. On November 20, 2014, HERNANDEZ sent GILMARTIN an internal City email chain
12 between DPW and Port staff concerning the asphalt plant that ultimately went to NURU. I believe
13 HERNANDEZ obtained this email from NURU. Based on the email chain it appears NURU had asked
14 DPW employees for information on the asphalt plant on November 5, 2014. A DPW employee
15 responded to NURU the same day with a number of internal documents and also described various
16 specifications that were under consideration for the RFP. HERNANDEZ forwarded the email to
17 GILMARTIN with the message: “Here is the complete package fyi.” Attachments to the forwarded
18 email included an executive summary, draft RFP, appendices to the RFP, and a draft Memorandum of
19 Understanding between DPW and the Port.

20 54. On December 1, 2014, HERNANDEZ forwarded another internal Port email which he
21 had received from NURU. Among other items, the email contained internal communications between
22 Port staff and a Port Commissioner discussing the Port’s reaction to DPW’s request for a 10-acre site as
23 opposed to 4.7 acres for the asphalt plant, including what the Port expected to charge for rent.

24 55. On December 16, 2014, NURU forwarded another internal DPW email about the asphalt
25 plant from his DPW account to his personal email, and then to HERNANDEZ. The email concerned the
26 proposed site of the asphalt plant.

27 56. On January 28, 2015, NURU sent HERNANDEZ an electrical layout plan for his Lodoga
28 property. Two days later, on January 30, 2015, NURU forwarded an internal DPW/Port email (subject:

1 “RFQ/P with draft Port edits”) from his work email to his personal email, then sent it to HERNANDEZ,
2 who sent it to GILMARTIN. HERNANDEZ wrote: “[P]lease review this FINAL DRAFT. As you can
3 see, the Port is moving to request authorization for DPW to issue the RFP. Mark it up with your
4 comments and lets meet early next week to discuss. Next week is our last chance to suggest changes.”

5 57. The attachment to the email was titled “DRAFT-Asphalt-Concrete-Production-Lease-
6 Opportunity-Request-For-Proposal....docx” and was originally forwarded by DPW staff to NURU and
7 others (after DPW staff received it from Port staff with the message “Attached please find the draft RFP
8 with proposed Port edits”).

9 58. On February 2, 2015, NURU again forwarded an internal DPW/Port email (“Form of
10 Asphalt and Concrete Batch Plant Transaction”) from his work account to his personal email, then to
11 Balmore HERNANDEZ. Within minutes, HERNANDEZ forwarded it to GILMARTIN. The email
12 described plans for the Port and DPW to enter into a transaction for a concrete and asphalt batch plant.
13 The originating DPW employee wrote to NURU and one other senior DPW employee: “Reference e-
14 mail below. After speaking with their attorney, below is what the Port feels works best. They would
15 handle the lease negotiations and lease; and public works would handle the supply contract. Currently,
16 they plan to go before the Port Commission on 2/10 to clear Item #1 approval. If ok, I’ll respond... and
17 provide a schedule.”

18 59. That same day, GILMARTIN forwarded the email to a work colleague. After the
19 colleague expressed concern about being fully prepared for the Port Commission meeting, GILMARTIN
20 responded: “don't worry ... this is set up for us to win.”

21 60. On February 5, 2015, NURU again forwarded an internal email to HERNANDEZ that he
22 previously forwarded from his work account to his personal account. HERNANDEZ then forwarded it
23 to GILMARTIN. The email attached a redline draft memo of the February 10 Port Commission Staff
24 Report concerning the asphalt and concrete facilities. DPW staff had received it from Port staff and
25 forwarded it to NURU and another senior DPW employee writing: “FYI...providing comments by the
26 end of the day to the Port’s memo to the Port Commission on the Asphalt and Concrete facilities
27 (attached draft memo).” When forwarding the email, HERNANDEZ wrote to GILMARTIN: “Review
28 and call me or send me comments. We need to provide comments today by end of day.”

1 61. Four days later, on February 9, 2015, NURU emailed HERNANDEZ an invoice for
2 electrical work performed at his Lodoga property for \$10,244.44. A balance of \$5,244.44 remained
3 outstanding according to the document.

4 62. On February 10, 2015, the San Francisco Port Commission passed Resolution 15-07,
5 which requested authorization for San Francisco Public Works, in consultation with Port staff, to issue a
6 Competitive Solicitation for an Asphalt and Concrete Batching Plant at Seawall Lot 352 (located along
7 Amador Street) with a Bulk Maritime Terminal Component at Pier 94.

8 63. The following morning, on February 11, 2015, HERNANDEZ texted GILMARTIN:
9 “Everything went well last night. It is up to us when to issue RFP.” Based on my training and experience
10 and the context of the investigation, I believe this text shows the extent to which HERNANDEZ,
11 GILMARTIN, and VARELA were able to control the structure and timing of the RFP for the asphalt
12 plant through NURU.

13 64. It appears NURU met HERNANDEZ and GILMARTIN again for dinner on March 4,
14 2020. On March 3, 2015, HERNANDEZ texted GILMARTIN: “Confirmed for tomorrow at 730 at the
15 same place.” GILMARTIN responded: “Ok great I'll see you then.” Credit card statements for
16 GILMARTIN show a charge of \$344.93 at RESTAURANT 1 on March 4, 2015.

17 65. The RFP for the asphalt plant was ultimately issued by DPW on April 7, 2015. It was
18 later revised on May 13, 2015.

19 66. On May 21, 2015, NURU placed a purchase order for a manufactured home from a
20 company in Chico, CA. The invoice listed a cost of \$138,551.48 and an unpaid balance of \$128,051.48
21 after the down payment.

22 67. On June 7, 2015 (nine days before final bids were submitted), GILMARTIN emailed
23 VARELA about the asphalt plant: “Why are we even involved? Because I've pursued this for 3 plus
24 years and the deal is finally here[.] We Don't [sic] have the capital or the experience to do this deal but
25 we are in the middle of it... The city people insist this is our deal to have. If I walk away I may lose
26 credibility in the city, part of me says so what.” He concluded by asking for help thinking through who
27 they should partner with on the deal.

1 68. VARELA responded, "Let's talk about this. I want to make sure we do this for us and not
2 for others. I also know we are shirt in [sic] cash and we also have not run an asphalt plant or concrete
3 plant."

4 69. On or about June 16, 2015, four bids were submitted for the asphalt plant, including a bid
5 from a proposed joint venture involving ProVen - VARELA and GILMARTIN's company.

6 70. That same night GILMARTIN texted HERNANDEZ: "It's in now we cross our fingers
7 that we get the entire deal [development company] and the rfp. Your help has been key to the entire
8 deal, thank you. Tell our friend thanks for the opportunity. The way this all came down was maybe the
9 most ironic deal I've ever been involved with. You and I hopefully played this like a fine violin. Time
10 now will tell. I'll see you in the am. I'm going to go get drunk now !!!"

11 71. On June 19, 2015, GILMARTIN exchanged text messages with HERNANDEZ about the
12 status if the RFP. HERNANDEZ responded with information about the composition of the selection
13 panel:

14 GILMARTIN: Any news on the rfp

15 ????

16 HERNANDEZ: No [sic] yet

17 Finishing panel selection before they can start review

18 Panel is 2 from DPW, 1 PUC, 1 PORT

19 1mta

20 GILMARTIN: Just do your thing and make it ALL happen!!

21 72. On August 3, 2015, text messages between HERNANDEZ and GILMARTIN indicated
22 they were again planning to meet with NURU for dinner, who they referred to as their "friend."
23 HERNANDEZ texted "How about dinner with our friend this Wednesday. We are here together."
24 GILMARTIN replied that Wednesday was good, and HERNANDEZ texted "We have some info to prep
25 you. Same place at 7:30."

26 73. Based on my training and experience, my review of other evidence in this investigation,
27 and the context and timing of this communication, I believe NURU and HERNANDEZ were meeting
28

1 with GILMARTIN to prepare him for an interview with the panel that was reviewing bids on the asphalt
2 plant.

3 74. Credit card statements for GILMARTIN show a charge of \$394.07 at RESTAURANT 1
4 on Wednesday, August 5, 2015.

5 75. The next day, on August 6, 2015, NURU sent HERNANDEZ a copy of the manufactured
6 home purchase order (dated 5/21/15 and referenced above) from a company in Chico, CA for
7 \$138,551.48. The unpaid balance after down payment was \$128,051.48. In the same email, NURU
8 included related documents and an updated agreement with the same company, dated 8/1/2015, with a
9 higher cost of \$194,257.91.

10 76. On August 11, 2015, at 8:16 AM, HERNANDEZ texted GILMARTIN “Good luck
11 today!!!!”

12 77. On August 21, 2015, HERNANDEZ texted GILMARTIN “The scoring is done and it is
13 all good.” I believe this refers to the scoring performed by the panel on the bids for the asphalt plant and
14 that NURU provided this information to HERNANDEZ before it was publicly available.

15 78. Credit card statements for GILMARTIN and text messages between HERNANDEZ and
16 GILMARTIN indicate they again met for dinner with NURU at RESTAURANT 1 on Tuesday,
17 September 8, 2015. HERNANDEZ texted GILMARTIN on September 2, 2015: “Our friend will meet
18 you on Tuesday at the same place at 7pm.” The total this time, according to GILMARTIN’s credit card
19 records, was \$547.84.

20 79. Two weeks later, on September 22, 2015, the San Francisco Port Commission selected
21 VARELA and GILMARTIN’s joint venture as the most responsive bid and directed Port staff to enter
22 into an Exclusive Negotiation Agreement with the venture.

23 80. Based on my review of email communications and other records, I believe VARELA and
24 GILMARTIN’s joint venture may not have been the most qualified bidder, and benefitted significantly
25 (and was intended to benefit significantly) from NURU’s influence on the process in exchange for the
26 items of value conferred on NURU by VARELA, HERNANDEZ, and GILMARTIN.

27 81. For example, in the June 7, 2015 email regarding the asphalt plant to VARELA
28 (described above), GILMARTIN wrote “Why are we even involved? Because I’ve pursued this for 3

1 plus years and the deal is finally here[.] We Don't [sic] have the capital or the experience to do this deal
2 but we are in the middle of it.” He concludes by asking for help thinking through who they should
3 partner with on the deal. VARELA responded, “Let's talk about this. I want to make sure we do this for
4 us and not for others. I also know we are shirt in [sic] cash and we also have not run an asphalt plant or
5 concrete plant.”

6 82. On October 25, 2015, following the Port’s September decision to enter into an Exclusive
7 Negotiation Agreement with VARELA and GILMARTIN’s joint venture, NURU texted HERNANDEZ
8 pictures of the work completed at his Lodoga property and wrote: “Thanks so much for all the help this
9 weekend. We definitely moved the project to another level. There's no way we could have gotten this far
10 without your leadership. God will bless you and your family for your kindness.”

11 83. Text messages between HERNANDEZ and GILMARTIN and credit card receipts
12 indicate they met with NURU again at RESTAURANT 1 on November 5, 2015. The November meal
13 cost \$394.34.

14 84. An email from GILMARTIN to a business associate about another venture the following
15 day, on November 6, 2015, shows the bribery scheme with NURU extended beyond the asphalt plant.
16 After discussing the other venture, GILMARTIN described the leverage he wielded though NURU:
17 “Our biggest strength is our access to San Francisco. I had dinner with Mohammad last night and
18 discussed this project. He is on board to help expedite this project and he's on board to delay the
19 project.”

20 85. There was another dinner at RESTAURANT 1 in December. On December 22, 2015,
21 HERNANDEZ texted GILMARTIN: “Our friend would like to meet, let me know when you are
22 available.” GILMARTIN replied and agreed to meet at 7:00 “at the same place” the following day.

23 86. The following day, December 23, 2015, GILMARTIN texted HERNANDEZ: “I'm here
24 we have a booth tonight important !!! Bottle of opus ready when our friend is here !” Credit card
25 statements show a charge to GILMARTIN from RESTAURANT 1 of \$475.85.

26 87. An entry on NURU’s calendar, titled “Asphalt RFQ/P Update & Presentation,” indicates
27 he met at City Hall with GILMARTIN and other principals from the joint venture, DPW, and the Port,
28 to discuss the asphalt plant a few weeks later, on January 19, 2016.

1 88. On February 23, 2016, the Port Commission formally adopted an exclusive negotiation
2 agreement with VARELA and GILMARTIN's joint venture.

3 89. On June 10, 2016, GILMARTIN emailed a business contact about his relationship with
4 NURU, writing "we currently do not have any contracts with DPW. We are negotiating with DPW for
5 supply contracts for the new asphalt plant. I have a very close relationship with Mohammad Nuru. I can
6 call him or visit his office on any given moment or day."

7 90. Text messages and credit card statements show the group again met for dinner at
8 RESTAURANT 1 on August 11, 2016. The charge to GILMARTIN was \$367.33.

9 91. On November 22, 2016, texts and credit card statements show GILMARTIN and
10 HERNANDEZ met for dinner in "the back private room" at RESTAURANT 1. Based on the pattern
11 described above, I believe NURU was with them. The charge to GILMARTIN's credit card for this
12 meal was \$519.78.

13 92. Text messages between HERNANDEZ and GILMARTIN and credit card receipts
14 indicate expensive dinners with NURU at RESTAURANT 1 continued as negotiations on the asphalt
15 plant among DPW, the Port, and GILMARTIN and VARELA's joint venture stretched on for years
16 without resolution.⁹ HERNANDEZ also continued to provide labor and materials for NURU's ranch.

17 93. On February 21, 2017, HERNANDEZ texted NURU:

18 "I am at Home Depot working on your windows

19 And doors

20 Lots of work"

21 Then, on February 28, 2017, HERNANDEZ again texted with NURU:

22 HERNANDEZ: The guys are working up there now Keep working on the wood.

23 NURU: Thank you

24 HERNANDEZ: I will need a favor from you this week

25 NURU: For sure

26 HERNANDEZ: Maybe we can meet today after work

27
28 ⁹ Additional investigation revealed that, following NURU's January 2020 arrest and resignation, DPW and the Port scrapped their plans for the asphalt plant.

1 94. Copies of checks and time sheets from AzulWorks show crews were on-site at NURU’s
2 Lodoga property for almost the entire month of March 2017.

3 95. In 2017, the meals from GILMARTIN also appear to have gotten much more expensive.
4 On April 14, 2017, during a trip to China, NURU texted HERNANDEZ a photo. NURU wrote “Getting
5 ready to start heading home. How are you? Picture is me getting watered down with blessings of good
6 luck in the new year. Greetings to everyone. Thanks.” HERNANDEZ replied, “Bring me some
7 blessings. I need some jobs.”

8 96. Ten days later, on April 24, 2017, HERNANDEZ texted GILMARTIN: “Our friend is
9 back from his trip. Let me know when you are available to meet.” GILMARTIN responded, “Set it up
10 next week.”

11 97. On May 16, 2017, GILMARTIN texted HERNANDEZ: “Any luck for dinner?” in the
12 ensuing exchange of messages the two agreed to meet Thursday at 7:30. HERNANDEZ texted NURU
13 the same day: “Dinner Thursday at 7:30.” Credit card records for GILMARTIN show a charge from
14 RESTAURANT 1 dated Thursday, May 18, 2017, for \$1,075.27.

15 98. Another exchange of text messages showed a July 20, 2017 meeting between
16 HERNANDEZ and GILMARTIN at RESTAURANT 1, which I believe – based on the pattern over
17 several years described above and other facts identified during this investigation – also included NURU.
18 After arranging the meeting by text message on July 10, 2020, a message from GILMARTIN to
19 HERNANDEZ stated “Confirming tonight?” “Chipino [sic], lamb chops, sea base or baby back ribs?”
20 Credit card records show a July 20, 2017 charge from RESTAURANT 1 to GILMARTIN’s credit card
21 in the amount of \$1,033.85.

22 99. On July 26, 2017, HERNANDEZ texted NURU:

23 HERNANDEZ: Can you check on the reading last night

24 NURU: Working on it now

25 HERNANDEZ: No news?

26 NURU: Continued to September and we will be trying to work on getting
27 language to protect the developers interest. what the board is
wanting is is a public process to appeal.

28 HERNANDEZ: Thanks

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100. As noted above, negotiations between DPW, the Port, and the joint venture regarding the supply contract and other issues remained ongoing and unresolved through early 2020.

101. On August 5, 2017, HERNANDEZ texted GILMARTIN:

HERNANDEZ: Our friend's window and door order is ready to process. Let me know if you would like to process directly. It has a job number only

GILMARTIN: Best way let's meet up Monday

HERNANDEZ: I won't be in town until next Sunday
But let's meet the following Monday
Thanks

GILMARTIN: Okay
Wednesday that week I'm out Monday Tuesday

HENANDEZ: Ok let's meet at our spot for 7:30
Thanks

GILMARTIN: Got it

102. Business records show that on August 25, 2017, HERNANDEZ spent \$47,020.45 on patio doors and Andersen windows at Home Depot. This expenditure appears to have followed another expensive dinner with NURU and GILMARTIN at RESTAURANT 1.

103. On August 16, 2017, GILMARTIN texted HERNANDEZ to let him know that he could not make the meeting. The two then decided to change it to the following Monday, with HERNANDEZ writing "Our friend prefers Monday." The same day, HERNANDEZ texted with NURU: "[GILMARTIN] needs to reschedule to next week Monday Tuesday or Wednesday" and then later "We are set for Monday." The following Monday was August 21, 2017.

104. On August 21, 2017, GILMARTIN texted HERNANDEZ to confirm the 7:30 dinner. He then wrote: "Baltimore specially [sic] How do they guarantee the payment of the deficiency fee if they do not take the 100,000 tons per year? How is that payment guaranteed? Does the BOS have to approve that expenditure every year, or can the long term lease/supply agreement bind them to that commitment? When will we be able to enter into the supply agreement to confirm all of this in writing?" Based on the other facts described in this affidavit, and the timing and context of this communication, I believe

1 GILMARTIN was alerting HERNANDEZ to the issues he wanted to raise with NURU at dinner so
2 NURU could help them finalize the supply contract for the asphalt plant on favorable terms.

3 105. GILMARTIN's credit card statement shows a charge from RESTAURANT 1 dated
4 August 23, 2017 in the amount of \$1,696.29. I believe this charge was for the dinner on August 21,
5 2017 described above.

6 106. On November 16, 2016, NURU emailed HERNANDEZ a bill from Home Depot
7 regarding replacement doors. The amount was approximately \$1,400. NURU wrote: "I think this was
8 meant for you, as we discussed yesterday on the phone. Okay, thanks."

9 107. On November 28, 2017, HERNANDEZ texted GILMARTIN and asked: "Do we need to
10 meet with our friend?..." GILMARTIN responded: "Yes, let's schedule next week..."

11 108. On November 30, 2017, HERNANDEZ texted NURU: "We are in the back room."
12 Credit card records for GILMARTIN show a charge of \$1,543.76 at RESTAURANT 1 on the same day.

13 109. The materials I have reviewed, including text messages, emails, intercepted phone calls
14 and credit card records, indicate the pattern of dinners with HERNANDEZ, GILMARTIN and NURU at
15 RESTAURANT 1 continued through at least early 2019 and likely later, all while negotiations on the
16 asphalt plant continued without full resolution. The cost of the dinners at RESTAURANT 1 during the
17 relevant period, which I believe NURU attended, totals approximately \$20,000.

18 **E. VARELA Delivers the John Deere Tractor**

19 110. As noted above, GILMARTIN's business partner, VARELA, was involved in early email
20 communications and had knowledge of the internal City drafts of the RFP for the asphalt plant that
21 HERNANDEZ was sharing in 2013. In the fall of 2018, VARELA also traveled to South America with
22 NURU and Walter WONG. WONG is providing information to the government in this investigation
23 pursuant to a plea agreement related to his bribes of NURU and others and is seeking a benefit in his
24 eventual sentence.

25 111. VARELA's communications with WONG in the Fall of 2018 make clear VARELA was
26 concerned about being seen in public with NURU. On September 18, 2018, VARELA and WONG
27 emailed about setting up a dinner with NURU. According to the email from WONG, NURU had
28 suggested RESTAURANT 1. WONG wanted to know if VARELA had any other suggestions.

1 VARELA responded: “Hi Walter, [RESTAURANT 1] in San Mateo might be better considering that
 2 this way we will not be meeting with Mohammed in SF.” Based on my training and experience, and the
 3 context of this communication within the larger bribery scheme described above, I believe this email
 4 shows VARELA was concerned about being seen in San Francisco with NURU because it might give
 5 rise to suspicions about the group’s corrupt activities.

6 112. My conclusion is further supported by VARELA’s role in purchasing and delivering a
 7 tractor and attachments to NURU at his ranch on or about February 18, 2019, after the trip to South
 8 America. Based on my review of business records and publicly available data, I believe the tractor and
 9 attachments delivered to NURU are worth in excess of \$40,000. In addition, based on my review of
 10 business records, the tractor was financed through one of VARELA’s and GILMARTIN’s companies.
 11 VARELA also was the individual who signed the relevant documents to purchase the tractor and was the
 12 one who dealt with the company that sold the tractor.

13 113. According to statements provided by HERNANDEZ to investigators, during their dinners
 14 at RESTAURANT 1, NURU indicated to GILMARTIN and HERNANDEZ several times that he
 15 wanted a tractor for his ranch.¹⁰ Ultimately, HERNANDEZ coordinated the delivery of the tractor to
 16 NURU with VARELA.

17 114. The arrangement described by HERNANDEZ is corroborated through text messages and
 18 other intercepted communications.

19 115. For example, on May 9, 2018, HERNANDEZ texted GILMARTIN: “Our friend is
 20 reminding me of the piece of equipment that was promised Can you check.” GILMARTIN replied “I
 21 thought you were going to send a model number i will take care of it.”

22 116. On July 9, 2018, HERNANDEZ again texted GILMARTIN:

23 HERNANDEZ: Dinner on Wednesday or Thursday

24 He is also asking about the equipment

25 GILMARTIN: Either day

26 HERNANDEZ: You pick a day and let’s meet

27
 28 ¹⁰ HERNANDEZ provided this information to investigators as part of a proffer session. He is cooperating with the investigation as part of ongoing plea negotiations.

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GILMARTIN: Ok
Wednesday

HERNANDEZ: Ok good
Same place at 7:30

117. I have reviewed communications showing VARELA was emailing with a sales representative about purchasing the tractor for NURU in November 2018. On November 15, 2018, VARELA identified the tractor model and attachments he wanted to purchase and emailed the sales representative the following day that it would need to be delivered to “Colusa,” but he still needed to get the exact address.¹¹ Employees at the company who sold the tractor to VARELA recall he was in a rush to get it delivered. The company offices that sold and delivered the tractor are located in Napa and Sonoma counties.

118. Business and email records indicate the invoice for the tractor was dated December 5, 2018, and a version signed by VARELA was emailed back to the sales representative on December 13, 2018.

119. Business records also show VARELA executed documents supporting the loan to purchase the tractor on or about December 31, 2018, and January 9, 2019. The tractor was not delivered to NURU, however, until February 2019.

120. On January 18, 2019, HERNANDEZ texted VARELA the address for NURU’s ranch and asked VARELA in Spanish if they could talk.

121. On February 6, 2019, HERNANDEZ texted GILMARTIN:

HERNANDEZ: Dinner next week?
GILMARTIN: Yes Tuesday or Wednesday I’m heading out Thursday but important to meet
HERNANDEZ: Tuesday at 7:00 pm same place
Anything on the tractor?

¹¹ The same email communications show VARELA was purchasing a slightly cheaper model of the same tractor at the same time and having it delivered to his personal residence in Napa.

1 GILMARTIN: Ready for delivery

2 HERNANDEZ: We will see you Tuesday

3 GILMARTIN: Great

4 122. The following day, on February 7, 2019, at approximately 4:32 PM, NURU called
5 HERNANDEZ. HERNANDEZ told NURU that he “spoke with Alan [VARELA] and the John Deere is
6 ready. You need to give me two days, available days, on weekdays in the next two weeks, he uh, John
7 Deere have to deliver and teach you how to operate it, so you need to give me two days and they'll pick
8 one of those days to make it work for you.”

9 123. On February 11, 2019, NURU and HERNANDEZ had the following text message
10 exchange about arranging dinner with GILMARTIN and coordinating the tractor delivery:

11 HERNANDEZ: Bill [GILMARTIN] can not change his appointment on

12 Wednesday as he has a client flying in for Europe

13 Either tomorrow or next week

14 Please let me know

15 NURU: Next week is better if tomorrow doesn't work.

16 Can't do Tuesday, next week is better

17 Next Wednesday, February 20th is good

18 HERNANDEZ: Ok let me check

19 NURU: Will bet [sic] ranch 18 & 19

20 HERNANDEZ: Ok

21 You can coordinate directly with Alan [VARELA] if you wish

22 NURU: Best you handle this unless you advise otherwise.

23 HERNANDEZ: Ok I will

24 Confirmed dinner for next Wednesday

25 124. Following this last text, at approximately 11:28 AM, NURU called HERNANDEZ.
26 HERNANDEZ confirmed the arrangements described above. NURU would be at his vacation home on
27 the following Tuesday and Wednesday so he could receive delivery of the John Deere tractor. During
28 the exchange, NURU also said he thought it was better if HERNANDEZ dealt directly with who I

1 believe to be VARELA and GILMARTIN:

2 NURU: Okay. That's good, I got that down. And then, let them know I
3 picked those two days, so I'll be up there. I took Tuesday off, so I'll
be up there, so.

4 HERNANDEZ: Okay, yeah, I'm trying to confirm that, it's just, this guy's hard to
pin down man, so.

5 NURU: I know, I know. That's why, better you deal with them because I -
6 yeah, so, yeah, um, yeah so I'll be there. you know, I'll go Saturday
7 night and I'll stay there until Tuesday.

8 HERNANDEZ: Okay.

9 125. On February 13, 2019, NURU and HERNANDEZ spoke by phone about the delivery of
10 the tractor at noon on February 18, 2019. HERNANDEZ made clear to NURU that they were using
11 someone else's name for the delivery:

12 HERNANDEZ: The the equipment is scheduled for the 18th at noontime, ok, at 12

13 NURU: oh 12

14 HERNANDEZ: They're gonna ask for Sandra, we give a Sandra's name, ok?¹²

15 NURU: Ok, no problem, no problem

16 HERNANDEZ: Ok, if anything changes, let me know, ok?

17 NURU: Ok ok, that's good, that's good, I'll be up there, so I'll be there for
18 sure, yeah

19 126. On February 14, 2019, HERNANDEZ texted VARELA "Gracias"

20 127. On February 18, 2019, NURU texted HERNANDEZ a photo of a John Deere tractor
21 being unloaded from a truck and wrote "Works begins at the ranch."

22 128. On the same day NURU also texted VARELA "Thank You." He also called VARELA at
23 approximately 11:56 AM:

24 NURU: Mr. Alan.

25 VARELA: Hey how are you?

26 NURU: Man did you see that brother? very nice very very nice

27 VARELA: Ok good

28 ¹² "Sandra" is the first name of NURU's girlfriend at the time.

1 NURU: Yeah beautiful machine

2 After discussing how beautiful NURU's new tractor was, VARELA said "I am going to make another
3 trip um probably next week to bring the attachments....so I got one more attachment that is a bore
4 attachment, another attachment that is a grading attachment for spreading rock and leveling things, ok,
5 I'm glad they made it over there." NURU responded "Nice, nice. I just finished my training course
6 (laughs)" and VARELA replied "Good. That is the only reason I wanted to coordinate. Otherwise, I
7 wouldn't have told them to deliver it, but uh, there are a few things that need to be, go over, and how
8 things connect and that stuff."

9 129. The two then ended their conversation with VARELA indicating they would talk again
10 soon (as described below, it appears the group met at RESTAURANT 1 two days later):

11 NURU: Ok nice nice nice Ok ok just wanted to say thank you so much. I'll send
12 you a picture. It's got a a nice house in my ranch where I am going to keep
13 it. I will send you the picture right now. You see it in the garage haha

14 VARELA: Awesome that is good. It's got air conditioning right?

15 NURU: Oh yeah its beautiful air condition and heater. Oh yeah man its good.
16 Work now. No excuse now but to work. We can work now haha

17 VARELA: Good alright Mohammed. Have a great day. Enjoy your day. Glad that
18 thing showed up and uh

19 NURU: Thank you

20 VARELA: We will talk shortly

21 130. NURU had a similar conversation with HERNANDEZ the following day, February 19,
22 2019, at approximately 7:46 AM. The two of them discussed NURU's new tractor and HERNANDEZ
23 asked if NURU was happy with it. NURU responded "Yeah, yeah, very nice. It's a nice tractor. Very
24 nice, you know, it's a modern tractor for sure."

25 131. The following day, February 20, 2019, HERNANDEZ texted NURU: "Are we on for
26 dinner tonight?" NURU responded "Yes." They also spoke by phone after NURU returned
27 HERNANDEZ's call:
28

1 NURU: Hey, so tonight what time?
2 BH: Uhh 7, 7:30, what time do you want?
3 NURU: 7:30 okay, okay, I got it.
4 BH: Yeah Bill [GILMARTIN] wants to confirm that's all
5 NURU: Okay, okay, alright, alright.
6 BH: Alright, we'll see you there

7 132. Consistent with the pattern established above, credit card records show a charge to
8 GILMARTIN's credit card at RESTAURANT 1 for \$716.80 on the same day.

9 133. Two days later, NURU called HERNANDEZ and referenced what I believe to be the
10 dinner meeting and asphalt plant negotiations:

11 BH: I'll be around this weekend ya know, Sunday uh, we can get together for a little
12 bit if you have time I mean you're not tired. Get together for drinks or something?

13 NURU: Okay. Alright that sounds (talking over each other)

14 BH: I'll be around.

15 NURU: Okay, alright, yeah. I'm good.

16 BH: Let me know. (UI) that was a good meeting this week, I think we had a good
17 meeting, so. (talking over each other) (UI) pick up those meetings and continue
18 moving.

19 NURU: Let me, I'm working to find out from [] why is it taking so long, ya know?

20 BH: Yeah.

21 NURU: You know they keep on saying when Bill [GILMARTIN] changes the site or (UI),
22 but I'll find out what's going on.

23 BH: Okay.

24 NURU: Yep, we're good. We're good. Yeah.

25 Based on the timing and the context of this call, and the pattern described above, I believe NURU had
26 dinner with HERNANDEZ and GILMARTIN on February 20, 2019, shortly after delivery of the tractor,
27 to again discuss the asphalt plant and how NURU could help them resolve the still ongoing negotiations
28 with the Port and DPW, which had at this point been dragging on for several years.

1 134. On February 26, 2019, HERNANDEZ texted GILMARTIN: "Working on it, message
2 passed We will get feedback and instructions."

3 **V. CONCLUSION**

4 135. Based on the foregoing facts and my training and experience, I respectfully submit there
5 is probable cause to believe, after establishing a continuing course of conduct in which thousands of
6 dollars were spent on lavish meals for NURU, and hundreds of thousands of dollars in labor and
7 material were provided to NURU in exchange for his official acts as the Director of DPW,
8 GILMARTIN and VARELA bribed NURU with a tractor worth approximately \$40,000, in violation of
9 Title 18, United States Code, Sections 666(a)(1)(B) and 2, intending to influence and reward NURU in
10 connection with a transaction and series of transactions of the City and County of San Francisco
11 involving \$5,000 or more.

12
13 _____ /s/ via telephone
14 JAMES A. FOLGER
15 Special Agent, Federal Bureau of Investigation

16 Sworn to before me over the telephone and signed
17 by me pursuant to Fed.R.Crim.P 4.1 and 4(d)
18 this 16th day of September, 2020.

19 
20 _____
21 HON. THOMAS S. HIXSON
22 United States Magistrate Judge
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CRIMINAL COVER SHEET

Instructions: Effective November 1, 2016, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

CASE NAME:

USA v. ALAN VARELA and WILLIAM GILMARTIN III

CASE NUMBER:

CR 3-20-71327 TSH

Is This Case Under Seal?

Yes

No

Total Number of Defendants:

1

2-7

8 or more

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes

No

Venue (Per Crim. L.R. 18-1):

SF

OAK

SJ

Is this a potential high-cost case?

Yes

No

Is any defendant charged with a death-penalty-eligible crime?

Yes

No

Is this a RICO Act gang case?

Yes

No

Assigned AUSA

(Lead Attorney): Scott D. Joiner

Date Submitted: 9/17/2020

Comments:

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL MINUTES

Date: May 27, 2021

Time: 14 minutes
1:57 p.m. to 2:11 p.m.

Judge: WILLIAM H. ORRICK

Case No.: [21-cr-00192-WHO-1](#)

Case Name: UNITED STATES v. Varela

Attorney for Plaintiff: Scott Joiner

Attorney for Defendant: Josh Cohen

Defendant **Alan Varela** – present (by video), on bond

Deputy Clerk: Jean Davis

Interpreter: n/a

Court Reporter: Ruth Levine Ekhaus

Probation Officer: n/a

PROCEEDINGS

Parties appear by video for change of plea hearing. Defendant confirms that he has been advised of his right to appear in person and voluntarily waives that right. The Court finds that it is appropriate for the hearing to be conducted via videoconference in light of the general orders of this district and the extraordinary circumstances associated with the COVID-19 pandemic.

Mr. Varela is sworn and queried as to his background, physical and mental condition, and understanding of the proceedings. He is advised of his rights, the possible consequences of the entry of a guilty plea, and the maximum penalties associated with the offense.

The government provides a brief statement of the elements of the offense and of the facts it would be prepared to prove at any trial of this matter. Defense counsel concurs with the statement of the elements and confirms that there is a factual basis for the plea.

Defendant pleads GUILTY to Count One of the Information. The plea is accepted as knowing, voluntary, and supported by an independent basis in fact. Defendant is adjudicated guilty.

The matter is referred to the U.S. Probation Office for preparation of a Presentence Report.

CASE CONTINUED TO: Sentencing for September 16, 2021 at 1:30 p.m.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL MINUTES

Date: May 27, 2021

Time: 11 minutes
2:23 p.m. to 2:34 p.m.

Judge: WILLIAM H. ORRICK

Case No.: [21-cr-00192-WHO-2](#)

Case Name: UNITED STATES v. Gilmartin

Attorney for Plaintiff: Scott Joiner

Attorney for Defendant: Ted Cassman

Defendant **William Gilmartin** – present (by video), on bond

Deputy Clerk: Jean Davis

Court Reporter: Ruth Levine Ekhaus

Interpreter: n/a

Probation Officer: n/a

PROCEEDINGS

Parties appear by video for change of plea hearing. Defendant confirms that he has been advised of his right to appear in person and voluntarily waives that right. The Court finds that it is appropriate for the hearing to be conducted via videoconference in light of the general orders of this district and the extraordinary circumstances associated with the COVID-19 pandemic.

Mr. Gilmartin is sworn and queried as to his background, physical and mental condition, and understanding of the proceedings. Mr. Gilmartin is advised of his rights, the possible consequences of the entry of a guilty plea,

Government counsel provides a brief statement of the elements of the offense; defense counsel concurs with the statement of elements. A written statement of the facts the government would be prepared to prove at trial has been provided as a sealed attachment to the plea agreement. Mr. Gilmartin admits those facts, and defense counsel confirms that there is a factual basis for the plea.

Defendant pleads GUILTY to Count 1 of the Information. The plea is accepted as knowing, voluntary, and supported by an independent basis in fact. Defendant is adjudicated guilty.

The matter is set for a status conference to determine whether it is ripe for sentencing. Mr. Gilmartin is continued on pretrial release under the current conditions and is admonished as to the importance of complying with those conditions.

CASE CONTINUED TO: December 2, 2021 at 1:30 p.m. for Status Conference.



THE UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT *of* CALIFORNIA

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Department of Justice

U.S. Attorney's Office

Northern District of California

FOR IMMEDIATE RELEASE

Thursday, September 16, 2021

Public Contractor Sentenced To Two Years In Federal Prison For Bribing San Francisco Public Official

Defendant Bribed Former SF DPW Director Mohammed Nuru with Money, Meals, And Gifts – Including A Tractor

SAN FRANCISCO – Alan Varela was sentenced today in federal court to 24 months in prison and ordered to pay a \$127,000 fine for a seven year conspiracy to commit honest services wire fraud by bribing a San Francisco public official, announced Acting United States Attorney Stephanie M. Hinds and Federal Bureau of Investigation Special Agent in Charge Craig D. Fair. The sentence was handed down by the Honorable William H. Orrick, United States District Judge.

A federal complaint filed September 17, 2020, charged Varela, 60, of Orinda, and William Gilmartin, 61, of San Mateo, with bribery of a public official. In 1991, Varela founded ProVen Management, a Bay Area civil engineering and construction firm that engaged in large scale infrastructure projects. Varela and Gilmartin acted as the firm's president and vice-president, respectively, during the conspiracy time period. According to the complaint, Varela and Gilmartin provided a stream of benefits to Mohammed Nuru, then the Director of San Francisco's Department of Public Works (DPW), in exchange for favorable treatment of their business interests, including non-public inside information.

Upon entering his guilty plea to conspiring to commit honest services wire fraud on May 27, 2021, Varela described in his plea agreement his role in the bribery conspiracy of then-DPW Director Nuru. The bribery's goal was to use Nuru's prominence as a powerful San Francisco public official to ensure the success of Varela and his co-conspirators' business ventures. Nuru's position as DPW Director provided him with great influence over San Francisco public contracts, permits, and construction projects, as well as over other City departments and private companies seeking DPW contracts. In his plea agreement, Varela admitted that for seven years, from 2013 until the day of Nuru's arrest on federal charges January 27, 2020, he conspired with his co-defendant Gilmartin, with Balmore Hernandez – a construction

company CEO who pled guilty earlier and is cooperating with the FBI – and with others to pay bribes to Nuru consisting of cash, free meals and entertainment, equipment for Nuru’s ranch, and the prospect of a cut of future profits from expected City contracts.

Varela’s plea agreement detailed a scheme in which he and his co-conspirators focused on winning a lucrative DPW contract and its related Port of San Francisco lease to operate an asphalt recycling plant and a concrete plant on the Port’s land. The plea agreement describes that Nuru agreed, in exchange for cash and other valuables, to use his official position to get Varela and his co-conspirators’ proposal selected. Gilmartin arranged to compensate Nuru by asking an unnamed company to award a \$100,000 contract to Hernandez and, in turn, Hernandez used the contract’s proceeds for Nuru. For his part, Nuru sent early drafts of San Francisco’s Request for Proposals for the project and other inside information to the conspirators to improve their likelihood of being selected. Nuru also regularly discussed the plans and inside information with Gilmartin and Hernandez over expensive restaurant dinners, always paid for by Gilmartin and ultimately totaling approximately \$20,000.

The conspirators’ proposal was selected in September 2015. According to the plea agreement, Nuru continued to meet with the group to supply additional inside information during the expensive meals paid for by Gilmartin. At one of their meetings, Nuru requested a tractor for his ranch. Varela coordinated with Gilmartin and Hernandez to deliver the tractor to Nuru.

Nuru was arrested on federal bribery-related charges on January 27, 2020, before the negotiations to finalize the asphalt recycling plant agreements with DPW and the Port of San Francisco reached completion.

In a filed memorandum addressing Varela’s sentencing, the government argued that Varela’s conduct with Nuru was business as usual for Varela. The government asserted that Varela, whose business success had gained him a life of luxury including 50 acres in Napa, for years facilitated a casual culture of corruption, a culture that ultimately undermines the public’s faith in their government and the rule of law. Elaborating on the tractor bribe, the sentencing memorandum points out that the value of the new John Deere tractor, including its attachments, approximated \$40,000. Varela lined up the purchase of the tractor and rushed to get it delivered to Nuru at Nuru’s ranch on February 18, 2019. The delivery led to Nuru to happily text “Work begins at the ranch” along with a photo of the tractor being unloaded at his ranch. The government, after outlining this and other acts of bribery, submitted a sentence recommendation of 30 months imprisonment.

This case is part of a larger federal investigation targeting public corruption in the City and County of San Francisco. To date, eleven individuals have been charged, including two high-ranking San Francisco public officials, Mohammed Nuru and Harlan Kelly. Multiple city contractors and facilitators have been charged. According to the charges earlier filed against Mohammed Nuru and others, Nuru allegedly took hundreds of thousands of dollars in bribes in cash, meals, and work on his vacation home from contractors who obtained San Francisco public contracts. Allegations in the complaint filed against Harlan Kelly assert he received thousands of dollars in airfare, meals, jewelry, and travel expenses, along with repair work on his house.

In addition to the prison term and fine, United States District Judge Orrick also sentenced the defendant to a three-year period of supervised release. Varela will begin serving his sentence on January 2022.

The case is being prosecuted by the Corporate and Securities Fraud section of the U.S. Attorney’s Office. The case is being investigated by the FBI.

Topic(s):

Drug Trafficking

Component(s):

USAO - California, Northern

Updated September 17, 2021

UNITED STATES DISTRICT COURT
Northern District of California

UNITED STATES OF AMERICA

v.

Alan Florencio Varela

) **JUDGMENT IN A CRIMINAL CASE**

)

) USDC Case Number: CR-21-00192-001 WHO

) BOP Case Number: DCAN321CR00192-001

) USM Number: 26450-111

) Defendant's Attorney:

Josh Alan Cohen (Retained)

THE DEFENDANT:

- pleaded guilty to count(s): One of the Information.
- pleaded nolo contendere to count(s): which was accepted by the court.
- was found guilty on count(s): after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 1343 and 1349	Conspiracy to Commit Honest Services Wire Fraud	January 2020	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s):
- Count(s) dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/16/2021

Date of Imposition of Judgment

Signature of Judge

The Honorable William H. Orrick III

United States District Judge

Name & Title of Judge

9/21/2021

Date

DEFENDANT: Alan Florencio Varela
CASE NUMBER: CR-21-00192-001 WHO

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 24 months.

The appearance bond is hereby exonerated, or upon surrender of the defendant as noted below. Any cash bail plus interest shall be returned to the owner(s) listed on the Affidavit of Owner of Cash Security form on file in the Clerk's Office.

- The Court makes the following recommendations to the Bureau of Prisons: designate the defendant to the minimum-security federal prison camp at Lompoc, California, or, if that is not possible, to the minimum-security federal prison camp at Sheridan, Oregon, to facilitate family visitation.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at on (no later than 2:00 pm).
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - at on 1/14/2022 (no later than 2:00 pm).
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: one year.

MANDATORY CONDITIONS OF SUPERVISION

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance.
- 3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- 4) You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
- 5) You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
- 6) You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
- 7) You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Alan Florencio Varela
CASE NUMBER: CR-21-00192-001 WHO

Judgment - Page 4 of 7

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of RELEASE, unless the probation officer instructs you to report to a different probation office or within a different time frame.
 - 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
 - 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
 - 4) You must follow the instructions of the probation officer related to the conditions of supervision.
 - 5) You must answer truthfully the questions asked by your probation officer.
 - 6) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with, for example), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
 - 7) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by these and the special conditions of your supervision that he or she observes in plain view.
 - 8) You must work at least part-time (defined as 20 hours per week) at a lawful type of employment unless excused from doing so by the probation officer for schooling, training, community service or other acceptable activities. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
 - 9) You must not communicate or interact with someone you know is engaged in criminal activity. You must not associate, communicate, or interact with any person you know has been convicted of a felony, unless granted permission to do so by the probation officer.
 - 10) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
 - 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
 - 12) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- If the probation officer determines that you pose a risk to a third party, the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk. *(check if applicable)*

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision upon a finding of a violation of probation or supervised release.

(Signed) _____
Defendant

Date

U.S. Probation Officer/Designated Witness

Date

SPECIAL CONDITIONS OF SUPERVISION

1. You must not maintain a position of fiduciary capacity without the prior permission of the probation officer.
2. You must pay any fine and special assessment that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.
3. At the direction of the probation officer, you must complete 100 hours of community service.
4. You must submit your person, residence, office, vehicle, electronic devices and their data (including cell phones, computers, and electronic storage media), or any property under your control to a search. Such a search must be conducted by a United States Probation Officer or any federal, state or local law enforcement officer at any time with or without suspicion. Failure to submit to such a search may be grounds for revocation. You must warn any residents that the premises may be subject to searches.
5. You must provide the probation officer with access to any financial information, including tax returns, and must authorize the probation officer to conduct credit checks and obtain copies of income tax returns.

SCHEDULE OF PAYMENTS

Having assessed the defendant’s ability to pay, payment of the total criminal monetary penalties is due as follows*:

- A Lump sum payment of _____ due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, or E, and/or F below); or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal (e.g., weekly, monthly, quarterly) installments of _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal (e.g., weekly, monthly, quarterly) installments of _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant’s ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
A lump sum payment of criminal monetary penalties totaling \$127,100 shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons’ Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant’s interest in the following property to the United States: One John Deere 4052R Compact Utility Tractor, Stock Number 34607, and all related attachments, as described in Belcorp AG invoice 120518 issued to Oro Holdings LLC, dated December 5, 2018.
- The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, **but such future orders do not affect the defendant’s responsibility for the full amount of the restitution ordered.**

* Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

EXHIBIT 3

1940071

FILED 
Office of the Secretary of State
of the State of California

**ARTICLES OF INCORPORATION
OF
ProVen Management INC.**

MAY 19 1995


Bill Jones
Secretary of State

I

The name of this corporation is ProVen Management INC.

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process is:

Alan Varela
111 Myrtle St. #204
Oakland, CA 94607

IV

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue is 10,000.



Alan Varela, Incorporator

17-631028



Secretary of State
Statement of Information
(California Stock, Agricultural
Cooperative and Foreign Corporations)

118

SI-550

FILED
Secretary of State
State of California

JUN - 5 2017

IMPORTANT — Read instructions before completing this form.

Fees (Filing plus Disclosure) – \$25.00;

Copy Fees – First page \$1.00; each attachment page \$0.50;
Certification Fee – \$5.00 plus copy fees

1. Corporation Name (Enter the exact name of the corporation as it is recorded with the California Secretary of State. Note: If you registered in California using an assumed name, see instructions.)

Proven Management, Inc.

This Space For Office Use Only

2. 7-Digit Secretary of State File Number

C1940071

3. Business Addresses

a. Street Address of Principal Executive Office - Do not list a P.O. Box 225 3rd St.	City (no abbreviations) Oakland	State CA	Zip Code 94607
b. Mailing Address of Corporation, if different than Item 3a	City (no abbreviations)	State	Zip Code
c. Street Address of Principal California Office, if any and if different than Item 3a - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

4. Officers

The Corporation is required to list all three of the officers set forth below. An additional title for the Chief Executive Officer and Chief Financial Officer may be added; however, the preprinted titles on this form must not be altered.

a. Chief Executive Officer/ Alan	First Name	Middle Name	Last Name Varela	Suffix
Address 225 3rd St.			City (no abbreviations) Oakland	State CA Zip Code 94607
b. Secretary Alan	First Name	Middle Name	Last Name Varela	Suffix
Address 225 3rd St.			City (no abbreviations) Oakland	State CA Zip Code 94607
c. Chief Financial Officer/ Alan	First Name	Middle Name	Last Name Varela	Suffix
Address 225 3rd St.			City (no abbreviations) Oakland	State CA Zip Code 94607

5. Director(s)

California Stock and Agricultural Cooperative Corporations ONLY: Item 5a: At least one name and address must be listed. If the Corporation has additional directors, enter the name(s) and addresses on Form SI-550A (see instructions).

a. First Name Alan	Middle Name	Last Name Varela	Suffix
Address 225 3rd St.		City (no abbreviations) Oakland	State CA Zip Code 94607
b. Number of Vacancies on the Board of Directors, if any <input type="text"/>			

6. Service of Process (Must provide either Individual OR Corporation)

INDIVIDUAL – Complete Items 6a and 6b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) Alan	Middle Name	Last Name Varela	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 225 3rd St.	City (no abbreviations) Oakland	State CA	Zip Code 94607

CORPORATION – Complete Item 6c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete Item 6a or 6b

7. Type of Business

Describe the type of business or services of the Corporation

General Contractor

8. The information contained herein, including in any attachments, is true and correct.

05/09/2017
Date

Alan Varela
Type or Print Name of Person Completing the Form

ihz

President
Title

Alan Varela
Signature



**Attachment to
Statement of Information**
(California Stock and Agricultural
Cooperative Corporations)

**SI-550A
Attachment**

A. Corporation Name

Proven Management, Inc.

B. 7-Digit Secretary of State File Number

C1940071

This Space For Office Use Only

C. List of Additional Director(s) – If the corporation has more than one director, enter the additional directors' names and addresses.

5b. First Name William	Middle Name	Last Name Gilmartin	Suffix III
Address 225 3rd St.	City (no abbreviations) Oakland	State CA	Zip Code 94607
5c. First Name	Middle Name	Last Name	Suffix
Address	City (no abbreviations)	State	Zip Code
5d. First Name	Middle Name	Last Name	Suffix
Address	City (no abbreviations)	State	Zip Code
5e. First Name	Middle Name	Last Name	Suffix
Address	City (no abbreviations)	State	Zip Code
5f. First Name	Middle Name	Last Name	Suffix
Address	City (no abbreviations)	State	Zip Code
5g. First Name	Middle Name	Last Name	Suffix
Address	City (no abbreviations)	State	Zip Code
5h. First Name	Middle Name	Last Name	Suffix
Address	City (no abbreviations)	State	Zip Code
5i. First Name	Middle Name	Last Name	Suffix
Address	City (no abbreviations)	State	Zip Code
5j. First Name	Middle Name	Last Name	Suffix
Address	City (no abbreviations)	State	Zip Code

212

[Home](#) | [Online Services](#) | [License Detail](#) | [Personnel List](#)

Contractor's License Detail (Personnel List)

Contractor License # 749370
Contractor Name PROVEN MANAGEMENT INC

Click on the person's name to see a more detailed page of information on that person

Licenses Currently Associated With

Name [KENNETH WAYNE WELCH](#)
Title CEO / PRESIDENT
Association Date 01/25/2022
Name [JOSEPH PATRICK GILMARTIN](#)
Title RMO
Association Date 02/01/2022
Classification A
Additional Classification [There are additional classifications that can be viewed by selecting this link.](#)

Licenses No Longer Associated With

Name [ABRAM JOHN MCMICKIN](#)
Title RMO
Association Date 04/06/2021
Disassociation Date 02/01/2022
Classification A
Additional Classification [There are additional classifications that can be viewed by selecting this link.](#)
Name [ALAN FLORENCIO VARELA](#)
Title RMO
Association Date 05/13/1998
Disassociation Date 04/06/2021
Classification A
Additional Classification [There are additional classifications that can be viewed by selecting this link.](#)

Name CHARLES JOSEPH SCHEMBRI
Title RME
Association Date 08/09/1999
Disassociation Date 10/29/2002
Classification B
Additional Classification [There are additional classifications that can be viewed by selecting this link.](#)

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EXHIBIT 4



California Secretary of State
Electronic Filing

FILED

Secretary of State
State of California

Corporation - Statement of Information

Entity Name: PROVEN MANAGEMENT INC.

Entity (File) Number: C1940071

File Date: 12/08/2020

Entity Type: Corporation

Jurisdiction: CALIFORNIA

Document ID: GM61815

Detailed Filing Information

1. Entity Name: PROVEN MANAGEMENT INC.

2. Business Addresses:
 - a. Street Address of Principal Office in California: 225 3rd Street
Oakland, California 94607
United States of America

 - b. Mailing Address: 225 3rd Street
Oakland, California 94607
United States of America

 - c. Street Address of Principal Executive Office: 225 3rd Street
Oakland, California 94607
United States of America

3. Officers:
 - a. Chief Executive Officer: Ken Welch
225 3rd Street
Oakland, California 94607
United States of America

 - b. Secretary: Joe Gilmartin
225 3rd Street
Oakland, California 94607
United States of America

Document ID: GM61815



California Secretary of State Electronic Filing

Officers (cont'd):

c. Chief Financial Officer:

Abram McMickin
225 3rd Street
Oakland, California 94607
United States of America

4. Director:

Ken Welch
225 3rd Street
Oakland, California 94607
United States of America

Number of Vacancies on the Board of
Directors:

0

5. Agent for Service of Process:

Ken Welch
225 3rd Street
Oakland, California 94607
United States of America

6. Type of Business:

General Contractor

By signing this document, I certify that the information is true and correct and that I am authorized by California law to sign.

Electronic Signature: Ken Welch

Use bizfile.sos.ca.gov for online filings, searches, business records, and resources.

Document ID: GM61815



California Secretary of State

Electronic Filing

Corporation - Attachment to Statement of Information

List of Additional Directors:

1. Abram McMickin
225 3rd Street
Oakland, California 94607
United States of America
2. Joe Gilmartin
225 3rd Street
Oakland, California 94607
United States of America
3. Zachary Varela
225 3rd Street
Oakland, California 94607
United States of America
- 4.
- 5.
- 6.
- 7.

Document ID: GM61815

EXHIBIT 5



**State of California
Secretary of State**

LLC-1

File #

200928110140

**LIMITED LIABILITY COMPANY
ARTICLES OF ORGANIZATION**

FILED
In the Office of the Secretary of State
of the State of California

OCT 07 2009

A \$70.00 filing fee must accompany this form.

IMPORTANT – Read instructions before completing this form.

This Space For Filing Use Only

ENTITY NAME (End the name with the words "Limited Liability Company," or the abbreviations "LLC" or "L L C." The words "Limited" and "Company" may be abbreviated to "Ltd." and "Co.," respectively.)

1. NAME OF LIMITED LIABILITY COMPANY

Baylands Development, LLC

PURPOSE (The following statement is required by statute and should not be altered.)

2. THE PURPOSE OF THE LIMITED LIABILITY COMPANY IS TO ENGAGE IN ANY LAWFUL ACT OR ACTIVITY FOR WHICH A LIMITED LIABILITY COMPANY MAY BE ORGANIZED UNDER THE BEVERLY-KILLEA LIMITED LIABILITY COMPANY ACT.

INITIAL AGENT FOR SERVICE OF PROCESS (If the agent is an individual, the agent must reside in California and both Items 3 and 4 must be completed. If the agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to Corporations Code section 1505 and Item 3 must be completed (leave Item 4 blank))

3. NAME OF INITIAL AGENT FOR SERVICE OF PROCESS

Alan Varela

4. IF AN INDIVIDUAL, ADDRESS OF INITIAL AGENT FOR SERVICE OF PROCESS IN CALIFORNIA CITY STATE ZIP CODE

712 Sansome Street San Francisco CA 94111

MANAGEMENT (Check only one)

5. THE LIMITED LIABILITY COMPANY WILL BE MANAGED BY.

- ONE MANAGER
- MORE THAN ONE MANAGER
- ALL LIMITED LIABILITY COMPANY MEMBER(S)

ADDITIONAL INFORMATION

6. ADDITIONAL INFORMATION SET FORTH ON THE ATTACHED PAGES, IF ANY, IS INCORPORATED HEREIN BY THIS REFERENCE AND MADE A PART OF THIS CERTIFICATE

EXECUTION

7. I DECLARE I AM THE PERSON WHO EXECUTED THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED

09/28/09

DATE

SIGNATURE OF ORGANIZER

Mike Bradshaw

TYPE OR PRINT NAME OF ORGANIZER



Secretary of State
Statement of Information
(Limited Liability Company)

LLC-12

18-D94413

FILED

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

DEC 03, 2018

This Space For Office Use Only

IMPORTANT — [Read instructions](#) before completing this form.

Filing Fee – \$20.00

Copy Fees – First page \$1.00; each attachment page \$0.50;
Certification Fee - \$5.00 plus copy fees

1. Limited Liability Company Name (Enter the exact name of the LLC. If you registered in California using an alternate name, [see instructions](#).)
BAYLANDS SOIL PROCESSING, LLC

2. 12-Digit Secretary of State File Number 200928110140	3. State, Foreign Country or Place of Organization (only if formed outside of California) CALIFORNIA
---	--

4. Business Addresses

a. Street Address of Principal Office - Do not list a P.O. Box 225 3rd St	City (no abbreviations) Oakland	State CA	Zip Code 94607
b. Mailing Address of LLC, if different than item 4a 225 3rd St	City (no abbreviations) Oakland	State CA	Zip Code 94607
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box 225 3rd St	City (no abbreviations) Oakland	State CA	Zip Code 94607

5. Manager(s) or Member(s)

If no **managers** have been appointed or elected, provide the name and address of each **member**. At least one name **and** address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A ([see instructions](#)).

a. First Name, if an individual - Do not complete Item 5b Alan	Middle Name	Last Name Varela	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 225 3rd St	City (no abbreviations) Oakland	State CA	Zip Code 94607

6. Service of Process (Must provide either Individual **OR** Corporation.)

INDIVIDUAL – Complete Items 6a and 6b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) Paula	Middle Name	Last Name Gilmartin	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 225 3rd St	City (no abbreviations) Oakland	State CA	Zip Code 94607

CORPORATION – Complete Item 6c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete Item 6a or 6b

7. Type of Business

a. Describe the type of business or services of the Limited Liability Company
Clean Landfill

8. Chief Executive Officer, if elected or appointed

a. First Name	Middle Name	Last Name	Suffix
b. Address		City (no abbreviations)	State Zip Code

9. The Information contained herein, including any attachments, is true and correct.

12/03/2018

Paula Gilmartin

Operations Consultant

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. [SEE INSTRUCTIONS](#) BEFORE COMPLETING.)

Name: []

Company:

Address:

City/State/Zip: []



Secretary of State
Statement of Information
(Limited Liability Company)

LLC-12

20-E34452

FILED

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

OCT 28, 2020

This Space For Office Use Only

IMPORTANT — [Read instructions](#) before completing this form.

Filing Fee – \$20.00

Copy Fees – First page \$1.00; each attachment page \$0.50;
Certification Fee - \$5.00 plus copy fees

1. Limited Liability Company Name (Enter the exact name of the LLC. If you registered in California using an alternate name, [see instructions](#).)
BAYLANDS SOIL PROCESSING, LLC

2. 12-Digit Secretary of State File Number
200928110140

3. State, Foreign Country or Place of Organization (only if formed outside of California)
CALIFORNIA

4. Business Addresses

a. Street Address of Principal Office - Do not list a P.O. Box 225 3rd Street	City (no abbreviations) Oakland	State CA	Zip Code 94607
b. Mailing Address of LLC, if different than item 4a 225 3rd Street	City (no abbreviations) Oakland	State CA	Zip Code 94607
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box 225 3rd Street	City (no abbreviations) Oakland	State CA	Zip Code 94607

5. Manager(s) or Member(s)

If no **managers** have been appointed or elected, provide the name and address of each **member**. At least one name **and** address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A ([see instructions](#)).

a. First Name, if an individual - Do not complete Item 5b William J. Gilmartin III	Middle Name J	Last Name Gilmartin	Suffix III
b. Entity Name - Do not complete Item 5a William J. Gilmartin III			
c. Address 225 Third Street	City (no abbreviations) Oakland	State CA	Zip Code 94607

6. Service of Process (Must provide either Individual **OR** Corporation.)

INDIVIDUAL – Complete Items 6a and 6b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) William	Middle Name J	Last Name Gilmartin	Suffix III
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 225 Third St.	City (no abbreviations) Oakland	State CA	Zip Code 94607

CORPORATION – Complete Item 6c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete Item 6a or 6b

7. Type of Business

a. Describe the type of business or services of the Limited Liability Company
Soil Recycling Construction Industry

8. Chief Executive Officer, if elected or appointed

a. First Name	Middle Name	Last Name	Suffix
b. Address	City (no abbreviations)	State	Zip Code

9. The Information contained herein, including any attachments, is true and correct.

10/28/2020

Paula Gilmartin

Operations Manager

Date

Type or Print Name of Person Completing the Form

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. [SEE INSTRUCTIONS](#) BEFORE COMPLETING.)

Name: []

Company:

Address:

City/State/Zip: []

EXHIBIT 6

August 26, 2021

Richard E. Robinson
Deputy City Attorney
Office of the City Attorney
City and County of San Francisco
Fox Plaza Building
1390 Market Street, Fourth Floor
San Francisco, CA 94102

RE: Information Request Regarding Baylands Soil Processing LLC

Dear Mr. Robinson:

This responds to your letter dated July 26, 2021. Your letter was addressed to Jlynnne Burnett. Please note that Ms. Burnett is not a current Baylands employee. Please direct any further inquiries to the my attention.

Your questions and our responses are below:

What is the nature of your company's relationship with the Suspended Contractors?

Alan Varela and Bill Gilmartin II are each 50% owners of Baylands.

Baylands and ProVen have had a vendor-customer relationship: on occasion, Baylands has sold fill to ProVen. Otherwise, Baylands has no relationship with ProVen.

Did your company in any way benefit from any misconduct committed by the Suspended Contractors, including but not limited to the misconduct alleged in the criminal proceedings described above? If so, how?

No. Not applicable.

From the period beginning January 1, 2016 through to the date of your response to this request, have any of the Suspended Contractors or officers, directors, agents or employees of the Suspended Contractors assisted with or participated in the preparation of any bids, requests for proposal, requests for qualification, grant applications, or any other communications (collectively, "Communications") related to any efforts by your company to enter into contracts at any tier directly or indirectly, with or for San Francisco? If so, please state i) Suspended Contractor(s) involved, ii)

Richard E. Robinson
Deputy City Attorney
August 26, 2021
Page 2

the nature of their participation, iii) the date of the Communication(s), and iv) the nature of the contract or potential contract.

No. Not applicable.

From the period beginning January 1, 2016 through to the date of your response to this request, did any current or past owners, directors, officers or employees of your company have any roles with, provide services to, or receive benefits from, any of the Suspended Contractors? If so, please explain i) which owners, directors, officers, or employees have or had roles or received benefits from the Suspended Contractors, ii) what those roles or benefits were, and iii) when they began and, if applicable, ended.

Since January 1, 2016, Alan Varela and Bill Gilmartin II have each been 50% owners of Baylands and have each been 50% owners of ProVen. From January 1, 2016 through to December 10, 2020, Messrs. Varela and Gilmartin were ProVen directors and officers.

Since January 1, 2016, no other current or past owners, directors, officers or employees of Baylands has had any role with, provided services to, or received benefits from Varela, Gilmartin or ProVen.

From the period beginning January 1, 2016 through to the date of your response to this request, did any current or past owners, directors, officers or employees of the Suspended Contractors have any roles with, provide services to, or receive benefits from your Company? If so, please explain i) which owners, directors, officers, or employees have or had roles or received benefits from your Company, ii) what those roles or benefits were, and iii) when they began and, if applicable, ended.

From January 1, 2016 through to December 10, 2020, Alan Varela and Bill Gilmartin II were ProVen directors and officers, and, since January 1, 2016, Messrs. Varela and Gilmartin have each been 50% owners of ProVen. Since January 1, 2016, Messrs. Varela and Gilmartin have each been 50% owners of Baylands and have each been 50% owners of ProVen.

Since January 1, 2016, no other current or past owners, directors, officers or employees of ProVen has had any role with, provided services to, or received benefits from Baylands.

Richard E. Robinson
Deputy City Attorney
August 26, 2021
Page 3

From the period beginning January 1, 2016 through to the date of your response to this request, did any current or past owners, directors, officers or employees of your company have any ownership interest in the Suspended Contractors? If so, please explain i) when that ownership interest began, ii) if applicable, when that ownership interest ended, and iii) if applicable, to whom the current or past owners, directors, officers or employees of your company sold their ownership interest and for what price.

Since January 1, 2016, Alan Varela and Bill Gilmartin II have each been 50% owners of Baylands and have each been 50% owners of ProVen.

Since January 1, 2016, no other current or past owners, directors, officers or employees of Baylands have had any ownership interest in ProVen.

From the period beginning January 1, 2016 through to the date of your response to this request, did any current or past owners, directors, officers or employees of the Suspended Contractors have any ownership interest in your company? If so, please explain i) when that ownership interest began, ii) if applicable, when that ownership interest ended, and iii) if applicable, to whom the Suspended Contractors sold their ownership interest and for what price.

Since January 1, 2016, Alan Varela and Bill Gilmartin II have each been 50% owners of ProVen and have each been 50% owners of Baylands.

Since January 1, 2016, no other current or past owners, directors, officers or employees of ProVen have had any ownership interest in Baylands.

Since January 1, 2016, has your company shared any facilities or equipment with the Suspended Contractors? For example, has your company sub-let any property from or to the Suspended Contractors, or leased equipment from or to the Suspended Contractors, or utilized such facilities or equipment at no or minimal charge? If so, please explain what facilities or equipment your company and the Suspended Contractors have shared, and when those facilities or equipment were shared.

No.

During the pendency of the Suspended Contractors' suspension and, if applicable, debarment, will your company commit to refraining from conduct that

Richard E. Robinson
Deputy City Attorney
August 26, 2021
Page 4

would support a finding that your company is an affiliate of the Suspended Contractors under Chapter 28 of the San Francisco Administrative Code?

Yes.

Has your company or its current or past directors, officers, or employees cooperated with any governmental investigations into alleged corruption in San Francisco contracting? If so, what was or is the nature of that cooperation?

No. (None have been asked to do so.)

Are there any identity of interests among family members between the Suspended Contractors and your company? If so, what are those interests?

No.

Are there any other facts that would support a finding that your company is an “Affiliate” of the Suspended Contractors, as that term is defined in Chapter 28 of the Administrative Code? If so, what are those facts?

Not that I’m aware of.

Please let me know if you have any further questions.

Sincerely,

Daniella Matteucci

Daniella Matteucci
Administrator

EXHIBIT 7

FILED
In the Office of the Secretary of State
of the State of California

DEC 15 2010

**Statement and Designation
by Foreign Corporation**

COMSA EMTE USA INC.

(Name of Corporation)

_____, a corporation organized and existing under the laws of Delaware, makes the following statements and designation:
(State or Place of Incorporation)

- 1. The address of its principal executive office is 315 Montgomery Street, 9th Floor,
San Francisco, CA 94104
- 2. The address of its principal office in the State of California is 315 Montgomery Street, 9th Floor
San Francisco, CA 94104 (If none, leave Item 2 blank.)

Designation of Agent for Service of Process in the State of California
(Complete either Item 3 or Item 4.)

- 3. (Use this paragraph if the process agent is a natural person.)

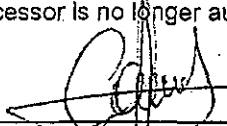
_____, a natural person residing in the State of California, whose complete street address is _____

_____, is designated as agent upon whom process directed to this corporation may be served within the State of California, in the manner provided by law.

- 4. (Use this paragraph if the process agent is another corporation.)

Corporation Service Company which will do business in California as CSC - Lawyers Incorporating Service, a corporation organized and existing under the laws of Delaware, is designated as agent upon whom process directed to this corporation may be served within the State of California, in the manner provided by law.

- 5. It irrevocably consents to service of process directed to it upon the agent designated above, and to service of process on the Secretary of State of the State of California if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given.


(Signature of Corporate Officer)

Carlos Lopez Vilardell, President
(Typed Name and Title of Officer Signing)

If an individual is designated as the agent for service of process, include the agent's business or residential street address in California (a P.O. Box address is not acceptable). If another corporation is designated as the agent for service of process, do not include the address of the designated corporation. Note: Corporate agents must have complied with California Corporations Code section 1505 prior to designation, and a corporation cannot act as its own agent.

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "COMSA EMTE USA INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIFTEENTH DAY OF DECEMBER, A.D. 2010.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "COMSA EMTE USA INC." WAS INCORPORATED ON THE FOURTH DAY OF OCTOBER, A.D. 2010.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.



4880258 8300

101193558

You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 8431126

DATE: 12-15-10



State of California Secretary of State

F

Statement of Information (Foreign Corporation)

FEES (Filing and Disclosure): \$25.00.**If this is an amendment, see instructions.****IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM****1. CORPORATE NAME****2. CALIFORNIA CORPORATE NUMBER**

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 13**.**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

5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY CITY STATE ZIP CODE

6. MAILING ADDRESS OF THE 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/ ADDRESS CITY STATE ZIP CODE

8. SECRETARY ADDRESS CITY STATE ZIP CODE

9. CHIEF FINANCIAL OFFICER/ ADDRESS CITY STATE ZIP CODE

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 11 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 11 must be left blank.

10. NAME OF AGENT FOR SERVICE OF PROCESS

11. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE

Type of Business

12. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION

13. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

DATE TYPE/PRINT NAME OF PERSON COMPLETING FORM TITLE SIGNATURE

Dr. Shirley N. Weber
California Secretary of State



Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Sunday, March 7, 2021. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C3340414 COMSA EMTE USA INC.

Registration Date:	12/15/2010
Jurisdiction:	DELAWARE
Entity Type:	FOREIGN STOCK
Status:	FTB FORFEITED
Agent for Service of Process:	ALAN VARELA 225 3RD STREET OAKLAND CA 94607
Entity Address:	225 3RD STREET OAKLAND CA 94607
Entity Mailing Address:	225 3RD STREET OAKLAND CA 94607

This entity is not eligible for online records requests. To order a Certificate of Status, please complete and return the [Business Entities Records Order Form](#)

Document Type	↕	File Date	↕	PDF
SI-NO CHANGE		11/25/2019		
SI-COMPLETE		02/22/2018		
REGISTRATION		12/15/2010		

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- If the image is not available online, for information on ordering a copy refer to [Information Requests](#).
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Frequently Asked Questions](#).

Modify Search

New Search

Back to Search Results

EXHIBIT 8



Contractor's License Detail for License # 970915

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- ▶ CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- ▶ Only construction related civil judgments reported to CSLB are disclosed ([B&P 7071.17](#)).
- ▶ Arbitrations are not listed unless the contractor fails to comply with the terms.
- ▶ Due to workload, there may be relevant information that has not yet been entered into the board's license database.

Data current as of 3/8/2021 2:09:52 PM

Business Information

PROVEN COMSA J V
225 3RD STREET
OAKLAND, CA 94607
Business Phone Number:(510) 671-0000

Entity Joint Venture
Issue Date 03/15/2012
Expire Date **03/31/2020**

License Status

This license is expired and not able to contract at this time.

Additional Status

- ▶ The joint venture license will need to resolve an existing problem with one of its entities to renew active or reactivate.
- ▶ The license will need a contractors bond to renew active or reactivate.
- ▶ The license will need to meet the workers compensation requirements to renew active or reactivate.

Classifications

A - GENERAL ENGINEERING CONTRACTOR

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with [ACCREDITED SURETY AND CASUALTY COMPANY INC.](#)

Bond Number: 10088605
Bond Amount: \$15,000
Effective Date: 03/06/2018
Cancellation Date: 03/06/2020
[Contractor's Bond History](#)

Workers' Compensation

This license has workers compensation insurance with the [FEDERAL INSURANCE COMPANY](#)

Policy Number:54309963
Effective Date: 06/01/2019
Expire Date: 06/01/2020
[Workers' Compensation History](#)

[Home](#) | [Online Services](#) | [License Detail](#) | [Personnel List](#)

▼ Contractor's License Detail (Personnel List)

Contractor License # 970915
Contractor Name PROVEN COMSA J V

Click on the person's name to see a more detailed page of information on that person

Licenses Currently Associated With

Name [PROVEN MANAGEMENT INC](#)
Title ENTITY
Association Date 03/15/2012
Classification A
Name [COMSA EMTE U S A INC](#)
Title ENTITY
Association Date 03/15/2012

Licenses No Longer Associated With

[Back to Top](#)

[Conditions of Use](#)

[Privacy Policy](#)

[Accessibility](#)

[Accessibility Certification](#)

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EXHIBIT 9



State of California
 Bill Jones
 Secretary of State

199929910026
 File# _____

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

OCT. 21 1999

Bill Jones

BILL JONES, Secretary of State

**LIMITED LIABILITY COMPANY
 APPLICATION FOR REGISTRATION**

A \$70.00 filing fee must accompany this form.
IMPORTANT - Read instructions before completing this form.

This Space For Filing Use Only

1. Name under which the foreign limited liability company proposes to register and transact business in California:
 (End the name with the words "Limited Liability Company," "Ltd. Liability Co.," or the abbreviations "LLC" or "L.L.C.")
EGBERT ENTERPRISES, LLC

2. Name of the foreign limited liability company, if different from that entered above:

3. This foreign limited liability company was formed on October 18 1999 in Delaware
 (month) (day) (year) (state or country)
 and is authorized to exercise its powers and privileges in that state.

4. Name of the agent for service of process in this state, and check the appropriate provision below:
Alan Varela, which is
 an individual residing in California. Proceed to item 5.
 a corporation which has filed a certificate pursuant to Section 1505 of the California Corporations Code. Proceed to item 6.

5. If an individual, California address of the agent for service of process:
 Address: 2095 Jerrold Avenue, Suite 217
 City: San Francisco State: CA Zip Code: 94124

6. In the event the above agent for service of process resigns and is not replaced, or if the agent cannot be found or served with the exercise of reasonable diligence, the Secretary of State of the State of California is hereby appointed as the agent for service of process of this foreign limited liability company.

7. Address of the principal executive office: City State Zip Code
2095 Jerrold Ave., Suite 217 San Francisco CA 94124

8. Address of the principal office in California, if any: City State Zip code
2095 Jerrold Ave., Suite 217 San Francisco CA 94124

Type of business of the limited liability company:
REAL ESTATE DEVELOPMENT AND INVESTMENT

DECLARATION: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Alan Varela
 Signature of Authorized Person
10/20/99
 Date

Alan Varela, Manager
 Type or Print Name and Title of Authorized Person

9. RETURN TO: NAME
 FIRM
 ADDRESS
 CITY/STATE
 ZIP CODE

State of Delaware
Office of the Secretary of State PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "EGBERT ENTERPRISES, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE EIGHTEENTH DAY OF OCTOBER, A.D. 1999.

199929910026



Handwritten signature of Edward J. Freel in cursive script.

Edward J. Freel, Secretary of State

3112205 8300

991438117

AUTHENTICATION:

0029516

DATE:

10-18-99

EXHIBIT 10

1 STEPHANIE M. HINDS (CABN 154284)
Acting United States Attorney

FILED
May 06 2021
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 UNITED STATES OF AMERICA,) CASE NO. CR 21-0192 SI
13 Plaintiff,)
14 v.) VIOLATIONS:
15 ALAN VARELA and) 18 U.S.C. §§ 1343, 1346 and 1349– Conspiracy to
WILLIAM GILMARTIN III,) Commit Honest Services Wire Fraud;
16 Defendants.) 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)
17) – Criminal Forfeiture
18) SAN FRANCISCO VENUE
19)

20 INFORMATION

21 The United States Attorney charges:

22
23 COUNT ONE: (18 U.S.C. § 1349 – Conspiracy to Commit Honest Services Wire Fraud)

24 1. Beginning at an unknown date, but as early as in or about 2013 and continuing through in
25 or about January 2020, in the Northern District of California and elsewhere, the defendants,

26 ALAN VARELA and
27 WILLIAM GILMARTIN III

28 did knowingly and intentionally conspire with Mohammed Nuru and others, known and unknown to the

INFORMATION

1 United States Attorney, to commit wire fraud, that is, having devised and intending to devise a material
2 scheme and artifice to defraud the City and County of San Francisco (the “City”), and the citizens of San
3 Francisco of their right to the honest and faithful services of Mohammed Nuru through bribery,
4 kickbacks, and the concealment of material information, to transmit and cause to be transmitted by
5 means of wire communication in interstate commerce writings, signs, signals, pictures and sounds for
6 the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Sections
7 1343 and 1346. All in violation of Title 18, United States Code, Section 1349.

8
9 FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c))

10 2. The allegations contained in this Information are re-alleged and incorporated by reference
11 for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and
12 Title 28, United States Code, Section 2461(c).

13 3. Upon conviction for the offense set forth in this Information, the defendants,

14 ALAN VARELA and
15 WILLIAM GILMARTIN III

16 shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and
17 Title 28, United States Code, Section 2461(c), all property, real or personal, constituting, or derived
18 from proceeds the defendant obtained directly and indirectly, as the result of those violations, including
19 but not limited to: One John Deere 4052R Compact Utility Tractor, Stock Number 34607, and all
20 related attachments, as described in Belcorp AG invoice 120518 issued to Oro Holdings LLC, dated
21 December 5, 2018.

22 If any of the property described above, as a result of any act or omission of the defendant:

- 23 a. cannot be located upon exercise of due diligence;
24 b. has been transferred or sold to, or deposited with, a third party;
25 c. has been placed beyond the jurisdiction of the court;
26 d. has been substantially diminished in value; or
27 e. has been commingled with other property which cannot be divided without
28 difficulty,

1 the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21,
2 United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

3 All pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code,
4 Section 2461(c), and Federal Rule of Criminal Procedure 32.2.

5
6 DATED: May 6, 2021

STEPHANIE M. HINDS
Acting United States Attorney

7
8 
9 SCOTT D. JOINER
Assistant United States Attorney

EXHIBIT 11

1 STEPHANIE M. HINDS (CABN 154284)
Acting United States Attorney

2 HALLIE HOFFMAN (CABN 210020)
3 Chief, Criminal Division

4 SCOTT D. JOINER (CABN 223313)
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102-3495
7 Telephone: (415) 436-7200
8 FAX: (415) 436-7234
Scott.Joiner@usdoj.gov

Attorneys for United States of America

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12
13

14 UNITED STATES OF AMERICA,) NO. CR 21-00192
15 Plaintiff,) PLEA AGREEMENT
16 v.)
17 ALAN VARELA,)
18 Defendant.)

1 I, Alan Varela, and the United States Attorney’s Office for the Northern District of California
2 (hereafter “the government”) enter into this written Plea Agreement (the “Agreement”) pursuant to Rule
3 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

4 The Defendant’s Promises

5 1. I agree to plead guilty to Count One of the captioned Information, charging me with
6 Conspiracy to Commit Honest Services Wire Fraud in violation of 18 U.S.C. §§ 1343, 1346 and 1349. I
7 agree the elements of conspiracy to engage in honest services wire fraud in violation of 18 U.S.C.
8 § 1349 are: (1) I agreed with one or more people to engage in a scheme or plan to deprive the people of
9 San Francisco of the honest services of a San Francisco public official; and (2) I joined in that agreement
10 knowing of at least one of its objects and intending to help achieve it. The elements of honest services
11 wire fraud, in violation of 18 U.S.C. §§ 1343 and 1346, are: (1) I knowingly devised or participated in a
12 scheme to defraud the public of its right to the honest services of a public official through bribery or
13 kickbacks in breach of the official’s fiduciary duty; (2) I did so knowingly and with an intent to defraud,
14 that is, the intent to deceive and cheat the public of honest services; (3) the scheme or artifice to defraud
15 involved a deception, misrepresentation, false statement, false pretense, or concealment that was
16 material; and (4) I used, or caused to be used, an interstate or foreign wire communication to carry out or
17 attempt to carry out an essential part of the scheme.

18 I agree that the maximum penalties are as follows:

- | | | | |
|----|----|---------------------------------|--|
| 19 | a. | Maximum prison term | 20 years |
| 20 | b. | Maximum fine | \$ 250,000 or not more than
the greater of twice the gross gain or
twice the gross loss (18 U.S.C. §
21 3571) |
| 22 | c. | Restitution | |
| 23 | d. | Maximum supervised release term | 3 years |
| 24 | e. | Mandatory special assessment | \$100 |
| 25 | f. | Potential deportation | |
| 26 | g. | Forfeiture | |

27 //

28 //

1 2. I agree that I am guilty of the offense to which I am pleading guilty, and I agree that the
2 following facts are true:

3 a. Beginning in or about 2013, and continuing through on or about January 28, 2020,
4 in the Northern District of California and elsewhere, I agreed with Mohammed NURU, Balmore
5 HERNANDEZ, William GILMARTIN, and others to commit wire fraud and to defraud the
6 public of its right to the honest services of a public official. More specifically, I agreed to pay
7 bribes and kickbacks to NURU, who was then a public official with the City and County of San
8 Francisco, in exchange for NURU's official acts and the official influence he wielded. I did so
9 knowingly and with the intent to defraud. The purpose of the conspiracy was to protect and
10 preserve NURU's power and influence as a public official, and to use his power and influence to
11 enrich ourselves and ensure the success of our business ventures.

12 b. During the relevant time, NURU was the director of San Francisco Public Works,
13 also known as the Department of Public Works (herein, "DPW") of the City and County of San
14 Francisco (herein, "the City"). As Director of DPW, NURU had great influence over City
15 business and policy, including public contracts, permits, and construction projects in the City.
16 His power and influence extended not only to contracts and permits within the purview of DPW,
17 but also numerous City departments, as well as the private companies and individuals that
18 required approvals and contracts from DPW and other City agencies in the ordinary course of
19 their business.

20 c. NURU used and agreed to use the powers of his position as DPW Director, as
21 well as the power of various City departments and agencies subject to his influence as DPW
22 Director, to take and cause governmental actions, including: the awarding of City business in
23 exchange for financial benefits and other items of value for NURU and his family members and
24 associates.

25 d. Our overarching plan manifested itself in various activities, but all of the actions
26 described below were intended to enrich myself, GILMARTIN, HERNANDEZ and NURU
27 through the exercise of NURU's power and influence and official actions in exchange for items
28 of value.

1 e. The items of value that were offered and provided to NURU, or that were
2 promised as part of the scheme in exchange for his assistance, or promised assistance, included:
3 free meals and entertainment for NURU at various restaurants; cash; equipment for NURU'S
4 ranch; and a portion of the proceeds that we expected to earn from City contracts or subcontracts
5 awarded to us as a result of NURU's official acts or the influence he exerted in his official
6 capacity.

7 f. Our efforts focused on winning a supply contract with DPW and a related lease
8 with the Port of San Francisco (the "Port") to operate an asphalt recycling plant and a concrete
9 plant on Port land. NURU agreed to use his official position in an effort to have our proposal
10 selected as the most qualified bidder in exchange for cash and other items of value, as well as a
11 potential share of the future profits.

12 g. The bid we submitted ultimately consisted of a proposed joint venture between
13 COMPANY 1, COMPANY 2, and COMPANY 3. COMPANY 2 told us that it was interested in
14 the joint venture primarily because of the opportunity it provided to work closely with
15 COMPANY 4, which was responsible for a much larger project commissioned by the City. To
16 induce COMPANY 2 to participate in the joint venture, GILMARTIN asked NURU to
17 encourage COMPANY 4 to award a contract relating to the larger project to COMPANY 2.
18 COMPANY 4 later awarded a contract to COMPANY 2. To compensate NURU for his actions,
19 GILMARTIN asked COMPANY 2 to award a subcontract to HERNANDEZ to generate
20 proceeds that could be used to pay NURU. COMPANY 2 thereafter awarded a subcontract to
21 HERNANDEZ, the proceeds of which HERNANDEZ used to benefit NURU. The value of the
22 subcontract was approximately \$100,000.

23 h. Beginning at the end of 2013, NURU began sending us drafts of the City's
24 Request for Proposals (RFP) for the asphalt recycling plant project. This allowed us to privately
25 provide input on the draft through NURU so that we would be better positioned to have our
26 proposal selected as the winning bid after the RFP was released to the public. HERNANDEZ
27 received draft versions of the RFP and other inside information about DPW and Port plans for
28 the project from NURU, who would email the materials to his personal account and then to

1 HERNANDEZ. HERNANDEZ would then share the materials with GILMARTIN and me.
2 GILMARTIN would also meet regularly with HERNANDEZ and NURU to discuss our plans,
3 almost always over dinner at RESTAURANT 1 in San Mateo, CA. GILMARTIN paid for dinner
4 at these meetings. In communications about the scheme, NURU was usually referred to as “our
5 friend,” rather than by name.

6 i. The RFP drafting process continued for some time, as did regular dinner meetings
7 and the flow of inside information about the project from NURU. In February 2015, the Port
8 Commission formally voted to ask DPW to issue the RFP. The RFP was publicly released in
9 April 2015 and a revised version was released in May 2015. Bids were submitted in June 2015.
10 Our joint venture was selected as the most-qualified bidder in September 2015. NURU
11 continued to meet with us, supply inside information, and receive our input throughout the
12 process. We continued to provide expensive meals to him for free.

13 j. Negotiations with DPW and the Port about the asphalt plant stretched on for
14 years. We were still attempting to finalize the agreements with the City when NURU was
15 arrested on federal charges in January 2020. Regular dinner meetings with NURU, which
16 GILMARTIN paid for, continued as did NURU’s assistance. I agree that GILMARTIN spent
17 approximately \$20,000 on dinners for NURU, HERNANDEZ, and himself during the relevant
18 period. I stipulate that the benefit to NURU for these dinners was approximately \$7,000.

19 k. In addition to the asphalt plant, at these meetings there was also discussion about
20 other ways in which NURU could use his official position to our benefit in connection with City
21 business or the official influence that he could wield over other parties. NURU would also
22 request additional items of value that he wanted in exchange for his ongoing assistance. One
23 such item was a tractor for his ranch. I coordinated with GILMARTIN and HERNANDEZ to
24 deliver the tractor to NURU, which I arranged to have delivered in February 2019. For purposes
25 of the Guidelines calculations below, I stipulate that the value of the benefit conveyed to NURU
26 (use of the tractor I delivered) was approximately \$20,000.

27 l. I further stipulate and agree that, as a public official, NURU owed the public a
28 fiduciary duty to provide honest services and that his fiduciary duty precluded him from

1 accepting bribes and kickbacks in exchange for official action and influence that benefitted my
2 co-conspirators and myself.

3 m. I agree that at all relevant times described above, I acted knowingly and with the
4 intent to defraud that is, the intent to deceive and cheat the public of honest services of a public
5 official, namely NURU, through bribery or kickbacks in breach of NURU's fiduciary duty. I
6 further agree that the scheme to defraud involved deceptions, misrepresentations, false
7 statements, false pretenses, or concealment that was material. I further stipulate and agree that as
8 part of the scheme, I and my co-conspirators exchanged and caused to be exchanged numerous
9 interstate telephone calls, text messages, and emails, including international and interstate wire
10 communications. For example, on November 19 and 20, 2015, GILMARTIN exchanged text
11 messages with HERNANDEZ about fulfilling our commitment to NURU. At the time,
12 GILMARTIN was outside of the United States and HERNANDEZ was in the Northern District
13 of California. In addition, I stipulate and agree that the banking transactions generated by our
14 scheme utilized numerous interstate wire communications, including in connection with the
15 financing of the tractor I delivered to NURU in February 2019

16
17 3. I agree to give up all rights that I would have if I chose to proceed to trial, including the
18 rights to a jury trial with the assistance of an attorney; to confront and cross-examine government
19 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth
20 Amendment claims; to any further discovery from the government; and to pursue any affirmative
21 defenses or present evidence.

22 4. I agree to give up my right to appeal my conviction, including constitutional challenges
23 to the statutes of conviction. I agree to give up my right to appeal the judgment and all orders of the
24 Court. I also agree to give up my right to appeal any aspect of my sentence, including any orders
25 relating to forfeiture and/or restitution, reserving only my right to claim that my sentence violated this
26 plea agreement, applicable law, or the Constitution. I reserve my right to claim that my counsel was
27 ineffective. I understand that this waiver includes, but is not limited to, any and all constitutional or
28 legal challenges to my convictions and guilty pleas, including arguments that the statutes to which I am

1 pleading guilty are unconstitutional, and any and all claims that the statement of facts provided herein is
2 insufficient to support my plea of guilty.

3 5. I agree not to file any collateral attack on my conviction or sentence, including a petition
4 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was
5 ineffective.

6 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered. In
7 the event I violate any of the terms of the Agreement, I agree that the facts set forth in Paragraph 2 of
8 this Agreement and, if applicable, the fact that I made a sworn admission to them in a previous court
9 proceeding, shall be admissible against me in any subsequent proceeding, including at trial. In any
10 subsequent proceeding conducted after I violate any of the terms of the Agreement, I expressly waive
11 any and all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in
12 Paragraph 2 of the Agreement and, if applicable, the fact that I made a sworn admission to them at a
13 previous court proceeding.

14 7. I understand that the Court must consult the United States Sentencing Guidelines and
15 take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I
16 also understand that the Court is not bound by the Guidelines calculations below; the Court may
17 conclude that a higher Guidelines range applies to me, and, if it does, I will not be entitled, nor will I
18 ask, to withdraw my guilty plea. I further agree that regardless of the sentence that the Court imposes on
19 me, I will not be entitled, nor will I ask, to withdraw my guilty plea. I agree that the Sentencing
20 Guidelines offense level should be calculated as set forth below, and that I will not request a downward
21 departure under the Sentencing Guidelines from that offense level, although I reserve the right to seek a
22 downward variance based on the factors set forth in 18 U.S.C. § 3553(a). I understand that the
23 government is free to oppose any such request. The parties have reached no agreement regarding my
24 Criminal History Category.¹

25 a. Base Offense Level, U.S.S.G. § 2C1.1(a)(2):

12

27 ¹ The government is agreeing to these Guidelines calculations as consideration for the
28 defendant's acceptance of responsibility and pre-Indictment resolution. These Guidelines calculations
do not constitute a waiver of any kind and have no binding effect on future Guidelines calculations for
defendants in any other case, including for defendants in cases related to this one.

1 I understand that the restitution described above creates a lien in favor of the United States on all
2 property and rights to property I may possess upon entry of judgment and continues for the later of 20
3 years from the entry of judgment or 20 years after release from imprisonment or until the debt is paid in
4 full. I further understand the government will record a notice of the lien in any county where I reside or
5 have property. I further understand that this order of restitution cannot be discharged in bankruptcy and
6 that if I default on the payment of a fine or restitution, the Court may revoke probation or a term of
7 supervised release, modify the terms or conditions of probation or supervised release, resent me,
8 hold me in contempt of court, order the sale of property, enter or adjust a payment schedule, or take any
9 other action necessary to obtain compliance.

10 Within thirty days of the execution of this Plea Agreement, if asked by the Financial Litigation
11 Unit (“FLU”) of the United States Attorney’s Office, I agree to complete, under penalty of perjury, a
12 financial statement provided by the U.S. Attorney’s Office and to update that statement with material
13 changes within seven days of the change. I understand that I must identify all assets and financial
14 interests valued at more than \$1,000. I further understand that these assets and financial interests
15 include all assets and financial interests in which I have an interest, direct or indirect, whether held in
16 my own name or in the name of another, in any property, real or personal.

17 I agree to surrender assets I obtained as a result of my crimes, and release funds and property
18 under my control in order to pay any fine, forfeiture, or restitution. I further agree to notify the FLU
19 before transferring any interest in property owned directly or indirectly by me, including any interest
20 held or owned under any other name or entity, including trusts, partnerships, and/or corporations. I also
21 agree to notify the FLU of any interest in property I may obtain, directly or indirectly, which is valued at
22 more than \$1,000, and which includes any interest obtained under any other name, or entity, including a
23 trust, partnership, or corporation, after the execution of this Plea Agreement until the fine or restitution
24 is paid in full.

25 I agree that any fine, forfeiture, or restitution imposed by the Court against me will be due
26 immediately and subject to immediate enforcement by the government as authorized by 18 U.S.C.
27 § 3613. I further understand that the government may seek immediate collection of the entire fine,
28 forfeiture, or restitution from any assets without regard to any schedule of payments imposed by the

1 Court or established by the Probation Office and that monetary penalties imposed by the Court will be
2 submitted to the Treasury Offset Program so that any federal payment or transfer of returned property I
3 receive may be offset and applied to federal debts.

4 10. I agree not to commit or attempt to commit any crimes before sentence is imposed or
5 before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release; not
6 to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the
7 government; and not to fail to comply with any of the other promises I have made in this Agreement. I
8 agree that if I fail to comply with any promises I have made in this Agreement, then the government will
9 be released from all of its promises in this Agreement, including those set forth in The Government's
10 Promises Section below, but I will not be released from my guilty plea.

11 11. I agree to forfeit my interest in the following property (hereinafter "subject property"):

- 12 a. One John Deere 4052R Compact Utility Tractor, Stock Number 34607, and all
13 related attachments, as described in Belkorp AG invoice 120518 issued to Oro
14 Holdings LLC, dated December 5, 2018.

15 I admit that I controlled and managed Oro Holdings LLC at all relevant times with my co-conspirator,
16 William Gilmartin, and that we caused Oro Holdings LLC to purchase the subject property. I further
17 admit that the subject property was involved in and was proceeds of the offense because it was
18 purchased and delivered as a bribe to Mohammed Nuru, and thus is forfeitable to the United States
19 pursuant to the provisions of 18 U.S.C. § 982; 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), and
20 the procedures outlined in Rule 32.2 of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853. I
21 relinquish any and all right, title, and interest I may have in the subject property and agree that such
22 right, title, and interest can be forfeited to the United States without further notice to me. I also agree I
23 will not contest any administrative or judicial forfeiture proceeding (whether criminal, civil, state or
24 federal) that may be brought against said property. I further agree to waive all constitutional and
25 statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any
26 forfeiture carried out in accordance with this Agreement on any grounds, including that the forfeiture
27 constitutes an excessive fine or punishment or that the forfeiture proceeding was brought in violation of
28 the statute of limitations.

1 12. I agree that this Agreement contains all of the promises and agreements between the
2 government and me, and I will not claim otherwise in the future. No modification of this Agreement
3 shall be effective unless it is in writing and signed by all parties.

4 13. I agree that the Agreement binds the U.S. Attorney's Office for the Northern District of
5 California only, and does not bind any other federal, state, or local agency.

6 The Government's Promises

7 14. The government agrees not to file any additional charges against the defendant that could
8 be filed as a result of the investigation that led to the captioned Information.

9 15. Based on the defendant's pre-indictment acceptance of responsibility, the government
10 agrees to recommend a below-Guidelines custodial sentence between 24-30 months in custody, unless
11 the defendant violates the terms of the Agreement above or fails to accept responsibility.

12 The Defendant's Affirmations

13 16. I confirm that I have had adequate time to discuss this case, the evidence, and the
14 Agreement with my attorney and that my attorney has provided me with all the legal advice that I
15 requested.

16 17. I confirm that while I considered signing this Agreement, and at the time I signed it, I
17 was not under the influence of any alcohol, drug, or medicine that would impair my ability to understand
18 the Agreement.

19 18. I confirm that my decision to enter a guilty plea is made knowing the charge that has
20 been brought against me, any possible defense, and the benefits and possible detriments of proceeding to
21 trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or
22 threatened me to enter into this Agreement.

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24
25 Dated: MAY 7, 2021

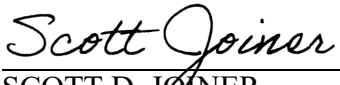


ALAN VARELA
Defendant

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STEPHANIE HINDS
Acting United States Attorney

Dated: 5/7/2021


SCOTT D. JOINER
Assistant United States Attorney

19. I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights my client is giving up by pleading guilty, and, based on the information now known to me, my client's decision to plead guilty is knowing and voluntary.

Dated: 5/6/21



NANCI L. CLARENCE
JOSH A. COHEN
Clarence Dyer & Cohen LLP
Attorneys for Defendant

EXHIBIT 12

MEMORANDUM

September 17, 2015

TO: MEMBERS, PORT COMMISSION
Hon. Leslie Katz, President
Hon. Willie Adams, Vice President
Hon. Kimberly Brandon
Hon. Doreen Woo Ho

FROM: Monique Moyer
Executive Director

SUBJECT: Request authorization to commence negotiation with ProVen Management and DeSilva Gates Construction Company, or in the alternative, with their newly-formed joint venture NewCo, for the terms of an Exclusive Negotiations Agreement for the lease of SWL 352 for asphalt operations

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

At its meeting on September 8, 2015, the Port Commission heard an informational presentation regarding the results of a Request of Qualifications / Proposal process, conducted by San Francisco Public Works staff, in consultation with Port staff, for recycled concrete and recycled asphalt plants as a part of a lease opportunity at Pier 94 / Seawall Lot 352. Port staff now requests Port Commission approval to begin negotiations over the terms of an Exclusive Negotiations Agreement with ProVen Management and DeSilva Gates Construction Company, or in the alternative, with their newly-formed joint venture NewCo.

This report provides greater detail than what was presented to the Port Commission on September 8, 2015. Material updates to the September 2, 2015 memorandum are presented herein as double underlined text. In particular, this memo provides additional information related to (1) questions posed by Commissioners on September 8, 2015 regarding financial capacity and initial asphalt plant construction costs, (2) recommendation for approval and (3) the accompanying Resolution for approval.

Executive Summary

San Francisco Public Works ("Public Works"), in conjunction with the Port, has completed a Request for Qualifications / Proposal ("RFQ/P") process for recycled concrete and recycled asphalt plants as a part of a lease opportunity at Pier 94 /

THIS ITEM COVERS CALENDAR ITEM NO. 12A

Seawall Lot 352. The advertised opportunity allowed flexibility for responsive proposers to, along with construction of a new asphalt plant, either construct a new concrete plant or partner with an existing local concrete provider. Included in the solicitation was the requirement that the respondent negotiate with the City for long-term contracts to supply high recycled content concrete and asphalt. A map of the project area is included with this report as Exhibit A.

After issuing clarifying addenda, Public Works and the Port received four responsive proposals to the RFQ/P: (1) a partnership of Central Concrete Supply Company and NewCo (a to-be-formed partnership of Proven Management and DeSilva Gates Construction Company), (2) Conco, (3) Granite Rock, and (4) Resource Management System (a collaboration between Ghilotti Brothers Inc. and Bayview Sand & Gravel).

Advisory Panel analysis yielded Central Concrete Supply Company / NewCo as the proposal that offers the best potential partnership with both the Port for long term tenancy and the City for long term supply contracts, outscoring all other proposals on every criterion. Comparative advantages on depth of experience, development and operations concepts, guarantees of supply and overall financial viability are particularly pronounced.

Public Works and Port staff recommend that the Port Commission authorize Port Staff to commence negotiation with ProVen Management (“ProVen”) and DeSilva Gates Construction Company (“DeSilva Gates”), or in the alternative, with their newly-formed joint venture NewCo, for the terms of an Exclusive Negotiations Agreement (“ENA”) for the lease of SWL 352 for asphalt operations.

Public Works and Port staff present this proposal for the Port Commission’s and public’s review and feedback. Port staff will return to the Port Commission to request authorization to enter into an Exclusive Negotiations Agreement, which will include benchmarks and milestones for negotiating a lease, with NewCo. Prior to returning to the Port Commission, Port Staff will ensure that ProVen and DeSilva Gates have formed NewCo as a legal entity, with appropriate financial capacity, with which the Port may enter into an ENA.

Strategic Objective

Moving forward with this opportunity furthers the strategic objective of implementation of the Port’s *Piers 80-96 Maritime Eco-Industrial Center Strategy*, a separate staff report on which, dated September 19, 2014, may be found here:

<http://www.sfport.com/modules/showdocument.aspx?documentid=8677>

Overview

On February 6, 2015, the Port Commission authorized Public Works, in conjunction with Port staff to issue a competitive solicitation for an Asphalt and Concrete batching plant at Seawall Lot 352 (located along Amador Street) with a bulk maritime terminal component at Pier 94. The City, through Public Works, solicited proposals from qualified respondents (“Respondents”) to either:

1. Develop and operate a new asphalt plant that can produce asphalt with a high percentage of recycled content and develop and operate a new concrete plant

that can produce concrete mixes with high recycled content within approximately 204,688 square feet of land, located at Seawall Lot 352 (“the Site”); or

2. Develop and operate a new recycled asphalt plant on the Site and propose a partnership with an existing local concrete plant that can provide concrete mixes with high recycled content.

The Port’s Final Southern Waterfront Supplemental Environmental Impact Report (“FSEIR”) and subsequent addenda to this FSEIR have treated concrete batching and asphalt production opportunities on Port property similarly in the context of annual production limits for batching facilities in the area, including the environmental impacts that arise from such operations and the mitigation measures designed to minimize these impacts to acceptable levels. Further environmental review will be required prior to lease approval for the batching opportunity.

The solicitation states that the City will select the most qualified Respondent with the goal of negotiating a maritime industrial lease with the Port. Solicitation requirements include experience in the financing, development and operation of new asphalt and concrete plants and an exemplary record of environmental facility design, regulatory compliance and community relations.

Additionally, the Respondent will be required to make a maritime commitment to either:

1. Use the available marine bulk cargo terminal to receive aggregate materials from marine vessels at the Pier 94 maritime berth (or other identified berth) or
2. Pay a maritime deficiency fee--the Respondent will be encouraged to source recycled construction materials from the existing construction materials recycling facility adjacent to the Site.

Public Works may negotiate non-exclusive long-term purchase contracts that would provide the City with a reliable, high-quality and competitively priced source of recycled asphalt and recycled concrete mixes.

Public Works staff issued the RFQ/P on April 7, 2015 and conducted a pre-bid conference and site tour on April 20, 2015. Four respondents submitted proposals on June 16, 2015:

- Central Concrete Supply Company and NewCo (a Proven Management and DeSilva Gates Construction collaboration)
- Conco
- Graniterock
- Resource Management System (RMS): Ghilotti Brothers Inc. and Bayview Sand & Gravel

Project Objectives

This RFQ/P has the following objectives:

1. Provide a Site for the construction of a new recycled asphalt and new concrete plant or a new recycled asphalt plant in partnership with an existing local concrete plant;
2. Secure an experienced partner to develop and operate a new recycled asphalt plant and a new concrete plant that can provide products using higher recycled content or secure an experienced partner to develop and operate a new recycled asphalt plant and propose a partnership with an existing local concrete plant that can provide products using higher recycled content;
3. Enable the reuse of asphalt grindings and crushed concrete generated locally into high recycled content asphalt and concrete mix designs for City projects;
4. Provide a source for recycled asphalt and concrete mixes with a high percentage of recycled content using innovative, reliable, high-quality and competitively priced mix designs with higher recycled content than is currently available in the existing commercial facilities;
5. Increase maritime and Port activities at Pier 94 maritime berth (or other identified berth);
6. Minimize unnecessary truck trips;
7. Promote City environmental policies, including those related to landfill diversion, construction materials recycling, air quality, stormwater management, and use of recycled materials in Public Works projects;
8. Provide employment and contracting opportunities for San Francisco residents; and
9. Comply with the Port Commission's Waterfront Land Use Plan and Southern Waterfront Beautification Policy as well as the City's general land use policies.

Advertising and Pre-Bid Conference

Public Works staff advertised the RFQ/P opportunity in newspapers and on both the Public Works posting site and Office of Contract Administration posting site.

Eighteen members of the public representing twelve firms attended the pre-bid conference and site tour on April 20, 2015. Public Works and Port staff answered questions at the conference and site tour. Public Works staff published written responses to questions received via an addendum on the Office of Contract Administration and Public Works websites.

Advisory Panel and Staffing

Port staff recruited a panel of five advisors to review and score the RFQ/P written and oral responses ("Advisory Panel") consisting of the following individuals:

- Kristin Allen, Project Manager III, San Francisco International Airport
- Richard Berman, Utility Specialist, Port of San Francisco
- Julia Dawson, Deputy Director, Financial Management and Administration, Public Works
- Brian Henderson, Waste Water Enterprise Engineering Manager, Public Utilities Commission
- Larry Stringer, Deputy Director, Operations, Public Works

RFP Evaluation Criteria

The Advisory Panel conducted an initial determination on responsiveness and acceptability. Elements reviewed during initial screening included: proposal completeness, compliance with format requirements, compliance with Minimum Qualification requirements, and verifiable references. Each Respondent was required to provide proof that they have a minimum of five (5) years' experience operating asphalt and concrete production as a company, or minimum individual team member's professional experience operating asphalt and concrete production facilities of ten (10) years, or comparable experience.

The Advisory Panel used the following specific criteria in evaluating the responses to this RFQ/P and the oral interview:

- a. Experience, reputation of the Respondent's team, economic success of similar ventures **(15 points)**
- b. Regulatory compliance record **(10 points)**
- c. Local economic benefits **(10 points)**
- d. The quality of the development and operations concept **(10 points)**
- e. Environmental performance plans **(10 points)**
- f. Layout and design of the asphalt and concrete facilities **(5 points)**
- g. Financial capacity for facility development, operations **(5 points)**
- h. Guarantees of supply to City-sponsored projects; ability to provide high quality and competitively priced recycled asphalt, concrete **(20 points)**
- i. Long-term financial viability of proposal **(15 points)**

The Proposals and Scoring

The Advisory Panel met once prior to reviewing and scoring the written proposals. Public Works and Port staff developed questions for the oral interview. The Advisory Panel rated each respondent and assigned a total weighted score consisting of the written and oral components. The written score accounted for 65% of the total combined score and the oral interview score accounted for 35%. The Advisory Panel interviewed all four respondent teams on August 11, 2015.

The written score accounted for 65% of the total combined score and the oral interview score accounted for 35%. Table 1 below shows the Advisory Panel's aggregate scores for all four proposals and final scores and ranking.

While the cost of plant construction was not specifically requested in the solicitation, City experience running an asphalt plant presumes an initial direct construction cost of

roughly \$3-4 million, though this cost is subject to plant design, which is in part driven by supply contract negotiations and the percentage of recycled content desired by the City.

Table 1: Advisory Panel's Aggregate Scores				
Criteria	Central Concrete Supply Company and NewCo SF A/C (Proven Management and DeSilva Gates Construction)	Resource Management System (RMS): Ghilotti Brothers Inc. And Bayview Sand & Gravel	Conco	Graniterock
	Written & Oral Scores	Written & Oral Scores	Written & Oral Scores	Written & Oral Scores
Experience	71	38	34	58
Regulatory Compliance	40	31	29	27
Local Economic Benefits	41	39	27	23
Development and Operations Concept	43	20	23	10
Environmental Performance Plans	41	26	24	19
Proposed Layout and Design	23	11	13	4
Financial Capacity	21	15	17	19
Guarantees Of Supply	86	58	44	40
Financial Viability	60	40	40	31
Total Score	426	278	251	231
Rank	1	2	3	4

Conclusion and Recommendation

The Central Concrete Supply Company / NewCo proposal, which partners a new asphalt plant with an existing concrete plant at Central Concrete, offers the best potential partnership with both the Port for long term tenancy and the City for long term supply contracts, outscoring all other proposals on every criterion. Overall, the Central / NewCo proposal was recognized for the bidders' demonstrated ability to produce asphalt and concrete, the comprehensiveness, specificity and insight of the proposal, (the Central / NewCo submission was approximately 650 pages long, whereas the

combined total of the other three proposals was approximately 220 pages) and the unanimity of panelist's conclusions (each of the five panelists independently scored Central / NewCo highest on both the written and oral responses to the solicitation).

To highlight one of the most important criteria – financial capacity – while the Central / NewCo proposal was deemed to be responsive to the RFQ/P, the second ranked proposal overall, RMS, provided financial assurance from only a single individual and did not provide the required four years of financial statements.

The proposal would have Central dedicate to production of high recycled content concrete one of its existing concrete plants, Plant #31, currently in operation on Port property within the terms of the Port's existing lease, obviating the need for new lease negotiations with Central.

Based on the Advisory Panel's analysis, Port staff request authorization to enter into negotiations with ProVen and DeSilva Gates, or in the alternative, with their newly-formed joint venture NewCo, over an Exclusive Negotiations Agreement for the lease of the Site for asphalt plant operations. Public Works staff will enter into simultaneous negotiations with Central for long-term concrete supply contracts, and with Proven and DeSilva Gates or NewCo for long-term asphalt supply contracts.

After Port Commission authorization to enter exclusive negotiations, Port staff and representatives of ProVen and DeSilva Gates or in the alternative, their newly-formed joint venture NewCo, will present the proposed plan to the Southern Waterfront Advisory Committee.

Prior to returning to the Port Commission, Port Staff will ensure that ProVen and DeSilva Gates have formed NewCo as a legal entity, with appropriate financial capacity, with which the Port may enter into an ENA.

Next Steps

Port staff will return to the Port Commission to request authorization to enter into an Exclusive Negotiations Agreement, which will include benchmarks and milestones for negotiating a lease, with NewCo.

Prepared by: Richard Chircop
Associate Engineer, Public Works

Daley Dunham
Special Projects Manager, Port

Patrick Rivera
Division Manager, Public Works

For: Brad Benson
Director of Special Projects, Port

Exhibit A: Site Plan

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 15-32

- WHEREAS, On February 10, 2015, through Resolution 15-07, the Port Commission authorized San Francisco Public Works (“SFPW”), in consultation with Port staff, to offer the opportunity for lease and operation of an asphalt and concrete batching plant at Seawall Lot 352 / Pier 94 (“SWL 352”) and long-term supply contracts for asphalt and concrete for City-sponsored projects through a competitive solicitation process; and
- WHEREAS, On April 11, 2015, SFPW issued a Request for Qualifications / Proposal (“RFQ/P”) for this opportunity, and on June 16, 2015 received four proposals; and
- WHEREAS, The proposal submitted by Central Concrete Supply Company (“Central”), ProVen Management (“ProVen”) and DeSilva Gates Construction Company (“DeSilva Gates”) received the highest scores from the formal review panel under the RFQ/P criteria, with decisively higher scores than other respondents; and
- WHEREAS, Under the proposal, Central will dedicate one of its existing concrete plants, Plant #31, currently in operation on Port property, to production of high recycled content concrete, within the terms of the Port’s existing lease, obviating the need for new lease negotiations with Central; and
- WHEREAS, Under the highest-scoring proposal, ProVen and DeSilva Gates will construct a new high recycled content asphalt plant at SWL 352; and
- WHEREAS, In the proposal, ProVen and DeSilva Gates declare their intention to form a new joint venture, NewCo, as the entity that will negotiate with the Port for the lease of SWL 352; and
- WHEREAS, Port staff are prepared to commence discussions and negotiations with ProVen and DeSilva Gates of terms of an Exclusive Negotiations Agreement (“ENA”) for the lease of SWL 352, concurrently with SFPW’s discussions with NewCo for terms of a long-term asphalt supply contract and with Central for terms of a long-term concrete supply contract; and

WHEREAS, Port staff recommend that the Port Commission authorize staff to commence negotiations with Proven and DeSilva Gates, or in the alternative, with their newly-formed joint venture, NewCo, for the terms of an ENA for the lease of SWL 352 for asphalt operations; and

WHEREAS, Any ENA and lease for SWL 352 will require approval of the Port Commission, and further, long-term supply contracts with SFPW for concrete and asphalt will require the approval of the City Purchaser and the Board of Supervisors; now therefore be it

RESOLVED, That the Port Commission hereby authorizes staff to commence negotiations with ProVen and DeSilva Gates, or in the alternative, with their newly-formed joint venture NewCo, for the terms of an ENA for the lease of SWL 352 for the asphalt operations described in the RFQ/P, the final terms and conditions of which shall be subject to approval of the Port Commission.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 22, 2015.

Amy Quesada
Secretary

Digitally signed by Amy Quesada
DN: cn=Amy Quesada, o=Port of San Francisco, ou=Port Executive,
email=amy.quesada@port.com, c=US
Date: 2015.12.09 14:38:31 -0800

EXHIBIT 13

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)

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)

EXHIBIT 14

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

RICHARD E. ROBINSON
Deputy City Attorney

Direct Dial: (415) 554-3954
Email: richard.e.robinson@sfcityatty.org

October 12, 2021

VIA CERTIFIED MAIL
7021 0350 0000 0604 0035

Carlos Lopez Vilardell
COMSA EMTE USA, INC.
225 3rd Street
Oakland CA, 94607

Re: Request for Information Regarding Suspended Contractors

Dear Mr. Vilardell:

We write to follow up on our July 26, 2021 letter requesting information concerning COMSA EMTE USA, INC ("Comsa Emte")'s connections with Alan Varela, William Gilmartin III and ProVen Management, Inc. ("ProVen", collectively with Varela and Gilmartin III, the "Suspended Contractors"). We asked that you respond to our July 26, 2021 letter by August 25, 2021. We have yet to receive a response.

Comsa Emte's failure to respond to our July 26, 2021 letter, despite our request, indicates that Comsa Emte is an affiliate of the Suspended Contractors. Accordingly, our office is preparing a Suspension Order that will apply to Comsa Emte. If you contend that Comsa Emte is not an "Affiliate" of the Suspended Contractors, please contact me immediately.

Sincerely,

DENNIS J. HERRERA
City Attorney

Richard Robinson

Richard E. Robinson
Deputy City Attorney

RER/da

cc: Keslie Stewart (via email)
Keslie.Stewart@sfcityatty.org

1 **PROOF OF SERVICE**

2 I, DONNA ALSCHULER, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the above-
4 entitled action. I am employed at the City Attorney’s Office of San Francisco, Fox Plaza Building,
1390 Market Street, Fourth Floor, San Francisco, CA 94102.

5 On October 12, 2021, I served the following document(s):

6 **RICHARD E. ROBINSON’S OCTOBER 12, 2021 LETTER TO COMSA EMTE USA, INC.
7 RE REQUEST FOR INFORMATION REGARDING SUSPENDED CONTRACTORS**

8 on the following persons at the locations specified:

9 Carlos Lopez Vilardell
10 COMSA EMTE USA, INC.
225 3rd Street
Oakland CA, 94607

11 in the manner indicated below:

12 **BY UNITED STATES CERTIFIED MAIL:** Following ordinary business practices, I sealed true and
13 correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection
14 and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco
City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed
envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service
that same day.

15 I declare under penalty of perjury pursuant to the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on October 12, 2021, at San Francisco, California.



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DONNA ALSCHULER

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EXHIBIT 15

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

RICHARD E. ROBINSON
Deputy City Attorney

Direct Dial: (415) 554-3954
Email: richard.e.robinson@sfcityatty.org

October 12, 2021

VIA CERTIFIED MAIL
7021 0350 0000 0603 9961

Ms. Ambriana Herrera
EGBERT ENTERPRISES, LLC
1350 4th Street
Berkeley CA, 94710

Re: Request for Information Regarding Suspended Contractors

Dear Ms. Herrera:

We write to follow up on our July 26, 2021 letter requesting information concerning EGBERT ENTERPRISES, LLC ("Egbert Enterprises")'s connections with Alan Varela, William Gilmartin III and ProVen Management, Inc. ("ProVen", collectively with Varela and Gilmartin III, the "Suspended Contractors"). We asked that you respond to our July 26, 2021 letter by August 25, 2021. We have yet to receive a response.

Egbert Enterprises's failure to respond to our July 26, 2021 letter, despite our request, indicates that Egbert Enterprises is an affiliate of the Suspended Contractors. Accordingly, our office is preparing a Suspension Order that will apply to Egbert Enterprises. If you contend that Egbert Enterprises is not an "Affiliate" of the Suspended Contractors, please contact me immediately.

Sincerely,

DENNIS J. HERRERA
City Attorney

Richard Robinson

Richard E. Robinson
Deputy City Attorney

RER/da

cc: Keslie Stewart (via email)
Keslie.Stewart@sfcityatty.org

1 **PROOF OF SERVICE**

2 I, DONNA ALSCHULER, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the above-
4 entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building,
1390 Market Street, Fourth Floor, San Francisco, CA 94102.

5 On October 12, 2021, I served the following document(s):

6 **RICHARD E. ROBINSON'S OCTOBER 12, 2021 LETTER TO EGBERT ENTERPRISES,
7 LLC RE REQUEST FOR INFORMATION REGARDING SUSPENDED CONTRACTORS**

8 on the following persons at the locations specified:

9 Ms. Ambriana Herrera
10 EGBERT ENTERPRISES, LLC
1350 4th Street
Berkeley CA, 94710

11 in the manner indicated below:

12 **BY UNITED STATES CERTIFIED MAIL:** Following ordinary business practices, I sealed true and
13 correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection
14 and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco
City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed
envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service
that same day.

15 I declare under penalty of perjury pursuant to the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on October 12, 2021, at San Francisco, California.

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DONNA ALSCHULER

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