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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**”).<sup>1</sup> 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

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28 <sup>1</sup> 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



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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
<b><u>Via U.S. Postal Service certified mail, return receipt requested</u></b>	<b><u>Via U.S. Postal Service certified mail, return receipt requested</u></b>
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
<b><u>Via U.S. Postal Service certified mail, return receipt requested</u></b>	Email: yvonne.mere@sfcityatty.org  <b><u>Via Electronic Mail</u></b>
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
<b><u>Via Electronic Mail</u></b>	<b><u>Via U.S. Postal Service certified mail, return receipt requested</u></b>
Andrew M. Jordan 2537 Hayward Drive Burlingame, CA 94010	Baylands Soil Processing LLC 225 3rd Street Oakland, CA 94607
<b><u>Via U.S. Postal Service certified mail, return receipt requested</u></b>	<b><u>Via U.S. Postal Service certified mail, return receipt requested</u></b>

<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><b>Via U.S. Postal Service certified mail,</b></u> 8 <u><b>return receipt requested</b></u></p>	<p>Egbert Enterprises, LLC 1350 4th Street Berkeley, CA 94710</p> <p><u><b>Via U.S. Postal Service certified mail,</b></u> <u><b>return receipt requested</b></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><b>Via U.S. Postal Service certified mail,</b></u> 16 <u><b>return receipt requested</b></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><b>Via Electronic Mail</b></u></p>

in the manner indicated below:

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

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

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

  
ELENA BENITEZ