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

In the matter of:

WING LOK “WALTER” WONG, an individual, W. WONG CONSTRUCTION CO., INC., a California corporation, GREEN SOURCE TRADING, LLC, a former California limited liability company, and ALTERNATE CHOICE, LLC., a California limited liability company

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

Dennis J. Herrera, City Attorney of the City and County of San Francisco (“San Francisco” or “City”), issues this **Order of Suspension** to Wing Lok “Walter” Wong (“Walter Wong”), W. Wong Construction Co., Inc., Green Source Trading, LLC, and Alternate Choice, LLC.

The Federal Bureau of Investigation (“FBI”) filed charges against Walter Wong, on June 23, 2020, in a federal information (“Criminal Information”) alleging a violation of 18 U.S.C. §§ 1343, 1346, 1349 – Conspiracy to Commit Honest Services Wire Fraud, and 18 U.S.C. § 1956(h) – Money Laundering Conspiracy, felonies. (**Exhibit 1.**) In the Criminal Information, the United States alleged that Walter Wong conspired with Mohammed Nuru (now former Director of the San Francisco Department of Public Works) and “other city officials” through bribes, kickbacks, and the concealment of information. (*Id.* at 3-4.)

On November 25, 2020, the FBI filed charges against Harlan Kelly, now-former General Manager of San Francisco Public Utilities Commission (“Kelly Criminal Complaint”). (**Exhibit 2.**) In the Kelly Criminal Complaint, the FBI attached an affidavit that states that Walter Wong paid for multiple international trips, meals and personal car service for Kelly and his family. (*Id.* ¶¶ 9-10.) Walter Wong did this to obtain a multi-million-dollar contract to

1 provide a “smart” LED lighting system, through a “contract through Green Source Trading,
2 LLC, a company he [Walter Wong] ran through his son.” (*Id.* ¶¶ 19-20.)

3 Walter Wong was the Chief Executive Office and a Director of W. Wong Construction
4 Co., Inc. (**Exhibit 3.**) Alternate Choice, LLC is the successor company to Green Source
5 Trading, LLC, the company for which Walter Wong sought to obtain a multi-million-dollar
6 contract based on his bribes. (**Exhibit 4.**) W. Wong Construction Co., Inc, Green Source
7 Trading, LLC, and Alternate Choice, LLC each had contracts with San Francisco.

8 City Attorney Dennis J. Herrera is an authorized Charging Official who can issue this
9 Order of Suspension on Walter Wong, W. Wong Construction Co., Inc., Green Source Trading,
10 LLC and Alternate Choice, LLC. (San Francisco Administrative Code §§ 28.1, 28.2.)

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

14 Until this Order of Suspension is lifted, amended, or terminated, Walter Wong, W. Wong
15 Construction Co., Inc., Green Source Trading, LLC and Alternate Choice, LLC are Suspended.

16 **Factual Background**

17 **Parties to be Suspended**

18 Walter Wong is an individual who at all times relevant to this Order of Suspension was
19 the owner, responsible managing corporate officer, or responsible managing employee of a
20 California corporation that held contracts (directly or indirectly) with San Francisco. He also
21 paid bribes to obtain contracts for a California limited liability company “which he ran though
22 his son” Washington Wong.

23 W. Wong Construction Co., Inc. is California corporation number C0896111. It
24 registered with the California Secretary of State on August 28, 1978. From before the filing of
25 the Criminal Information, Walter Wong was the Chief Executive Officer and a Director for W.
26 Wong Construction Co., Inc. (**Exhibit 3.**) W. Wong Construction Co., Inc. was a San Francisco
27 vendor which participated in the procurement process and obtained, direct or indirect, contracts
28 with San Francisco.

1 Green Source Trading, LLC. is California limited liability number 201002010311.
2 Walter Wong’s son, Washington Wong was the Managing Member of Green Source Trading,
3 LLC. (**Exhibit 4** p. 1.) It was merged into Alternate Choice, LLC on December 24, 2019. (*Id.*
4 p. 3.) Washington Wong is the Managing Partner for Alternate Choice, LLC. (*Id.* p. 4.) Green
5 Source Trading, LLC, and the successor company, Alternate Choice, LLC was a vendor which
6 participated in the procurement process and obtained, direct or indirect, contracts with San
7 Francisco.

8 **The Criminal Information and Kelly Criminal Complaint**

9 On June 23, 2020 the Criminal Information in the matter of *United States of America v.*
10 *Wing Lok “Walter” Wong*, United States District Court for the Northern District of California,
11 Case No. CR 20-257 was filed. (Exhibit 1.) It was furnished by an Assistant United States
12 Attorney, charging the offense of 18 U.S.C. §§ 1343, 1346 and 1349 – Conspiracy to Commit
13 Honest Services Wire Fraud, and 18 U.S.C. § 1956(h) – Conspiracy to Commit Money
14 Laundering, felonies. (*Id.*) Walter Wong conspired with Mohammed Nuru (now former
15 Director of Department of Public Works) and “other city officials” through briberies, kickbacks,
16 and the concealment of information. (*Id.* at 3-4.)

17 On November 25, 2020 the Criminal Complaint in the matter of *United States of America*
18 *v. Harlan Kelly*, United States District Court for the Northern District of California, Case No. CR
19 20-71739 was filed. (Exhibit 2.) The accompanying affidavit provided details of the allegations
20 underlying Walter Wong’s Criminal Information. (*Id.*) This includes the allegations that Walter
21 Wong paid for multiple international trips, case, fees meals and personal car service for Harlan
22 Kelly and his family. (*Id.* ¶¶ 9-10.) Walter Wong did this to obtain a multi-million-dollar
23 contract to provide a “smart” LED lighting system, through a “contract through Green Source
24 Trading, LLC, a company he [Walter Wong] ran through his son,” Washington Wong. (*Id.* ¶¶
25 19-20.) Green Source Trading, LLC is now Alternate Choice, LLC. (Exhibit 4 at p. 3.)

26 **Legal Basis for Suspension**

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

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

6 Contractor is defined as

7 Any individual person, business entity, or organization that submits a
8 qualification statement, proposal, bid, or grant request, or that contracts
9 directly or indirectly with the City for the purpose of providing any goods
10 or services or construction work to or for, or applies for or receives a grant
11 from, the City including without limitation any Contractor, subcontractor,
12 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.”

13 (*Id.*) Here, Walter Wong was the Chief Executive Officer of W. Wong Construction Co.,
14 Inc. And his bribery scheme was to obtain a contract for Green Source Trading, LLC, which is
15 now Alternate Choice, LLC. W. Wong Construction, Co., Inc., Green Source Trading, LLC, and
16 Alternate Choice, LLC each was a vendor with San Francisco.

17 Walter Wong’s criminal charge for 18 U.S.C. §§ 1343, 1346, 1349 and 1956(h) qualifies
18 as a basis for a suspension of Walter Wong, W. Wong Construction, Co., Inc., Green Source
19 Trading, LLC, and Alternate Choice, LLC.

20 Any Charging Official may issue an Order of Suspension to a Contractor
21 on the basis that the Contractor has been arrested or indicted, or become
22 the subject of a criminal, civil or administrative complaint issued by a
23 government entity, where the arrest or indictment, criminal, civil, or
24 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).

25 (San Francisco Administrative Code § 28.3(b).) The charge is a criminal complaint by the
26 Federal Government relevant to Walter Wong and his companies’ ability or capacity honestly to
27 perform under a City contract, and if the charges are true, would provide grounds for Debarment.
28

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

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

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

26 This is a non-exclusive list which requires only that Walter Wong, W. Wong
27 Construction, Co., Inc., Green Source Trading, LLC, and Alternate Choice, LLC. fall under one
28 of the prongs. But their unlawful actions fall under at least three prongs:

- subdivision (2) “failure to comply with the terms of a contract or with provisions of the Municipal Code,”
- subdivision (7) “collusion in obtaining award of any City contract or grant, or payment or approval thereunder,” and,
- subdivision (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.”

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

30 Walter Wong’s gifts to Nuru and Harlan Kelly would violate the San Francisco
31 Municipal Code and its regulations. The Campaign & Governmental Conduct Code is part of the

1 San Francisco Municipal Code. It contains a “Prohibition on Bribery. No person shall offer or
2 make, and no officer or employee shall accept, any gift with the intent that the City officer or
3 employee will be influenced thereby in the performance of any official act.” Campaign &
4 Governmental Conduct Code § 3.216(a). “The phrase “intent to influence” means any
5 communication made for the purpose of supporting, promoting, influencing, modifying,
6 opposing, delaying or advancing a governmental decision.” Regulation 3.216(b)-2. The City
7 contracts require that vendors comply with the laws of San Francisco. If the allegations are true,
8 Walter Wong gave gifts to Nuru and Kelly worth thousands of dollars with the intent to win
9 more work for his company and the companies he ran through his son, Washington Wong.

10 That would violate the San Francisco Municipal Codes, which would be a ground for
11 Debarment. It is therefore a basis for Suspension.

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

13 Walter Wong’s conduct also constitutes unlawful collusion to obtain the benefits of
14 publicly funded contracts.

15 Collusion has been variously defined as (1) “a deceitful agreement or
16 compact between two or more persons, for the one party to bring an action
17 against the other for some evil purpose, as to defraud a third party of his
18 right”; (2) “a secret arrangement between two or more persons, whose
19 interests are apparently 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.

20 (*Andrade v. Jennings*, 54 Cal. App. 4th 307, 327 (1997).) If the allegations are true, Walter
21 Wong, Nuru and Harlan Kelly engaged in an ongoing scheme involving Nuru and Harlan Kelly
22 providing favors to Walter Wong’s companies, including his son’s., and Walter Wong providing
23 favors to Nuru and Harlan Kelly. As a public contractor, Walter Wong had no legal basis to
24 provide tens of thousands of dollars’ worth of secret gifts for the personal benefit of Nuru and
25 Harlan Kelly. If true, this collusion undermines public trust in City contracting, is unfair to the
26 taxpayers, and unfair to legitimate contractors competing for public contracts, and would be a
27 ground for Debarment. It is therefore the basis for Suspension.

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

3 San Francisco law requires that “no officer or employee of the City and County shall
4 solicit or accept any gift or loan from a person who the officer or employee knows or has reason
5 to know is a restricted source.” Campaign & Governmental Conduct Code § 3.216(b). The
6 definition of a “restricted source” includes “a person doing business with or seeking to do
7 business with the department of the officer or employee.” Campaign & Governmental Conduct
8 Code § 3.216(b)(1). “The phrase ‘doing business’ with the department of the officer or
9 employee means entering into or performing pursuant to a contract with the department of the
10 officer or employee.” Regulation 3.216(b)-1. At all relevant times, under the Campaign &
11 Governmental Conduct Code and regulations adopted thereunder, Walter Wong, W. Wong
12 Construction, Co., Inc., Green Source Trading, LLC, and Alternate Choice, LLC were a
13 restricted source for Nuru and/or Harlan Kelly. It was unlawful for Nuru and/or Harlan Kelly to
14 accept any gift worth more than \$25 from them. But Walter Wong is alleged to have given gifts
15 worth at least in excess of thousands of dollars. Because it would be unlawful for Nuru and/or
16 Harlan Kelly to have accepted those gifts, the provision of those gifts would be a ground for
17 Debarment. It is therefore a basis for Suspension.

18 **Order of Suspension**

19 For all of these reasons, Dennis J. Herrera, as the Charging Official, hereby issues this
20 Order of Suspension on Walter Wong, W. Wong Construction, Co., Inc., Green Source Trading,
21 LLC, and Alternate Choice, LLC.

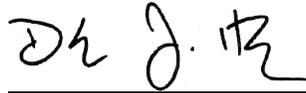
22 This Order of Suspension is self-executing; it is in effect from today’s date until the
23 Charging Official lifts the Order of Suspension under Section 28.6(b), or a hearing officer
24 terminates the Order of Suspension under Section 28.10(e).

25 Further, Section 28.7 in which the failure to request a hearing constitutes an admission of
26 the facts in counts and allegations *not does apply* to this Order of Suspension. The failure to
27 seek a hearing of an Order of Suspension does not at any time constitute an admission of the
28 facts in an Order of Suspension. Instead, at any time during the term of Suspension, Walter
Wong, W. Wong Construction, Co., Inc., Green Source Trading, LLC, or Alternate Choice, LLC.

1 may together or separately submit a written request of the Charging Officer to lift the Order of
2 Suspension. (San Francisco Administrative Code § 28.6(b).) Finally, at any time the Charging
3 Official may move to debar Walter Wong, W. Wong Construction, Co., Inc., Green Source
4 Trading, LLC, and/or Alternate Choice, LLC, and if they are so debarred, the period of
5 Suspension shall count towards the period of Debarment. (San Francisco Administrative Code
6 § 28.11(b).)

7 Pursuant to this Order of Suspension Walter Wong, W. Wong Construction, Co., Inc.,
8 Green Source Trading, LLC, and Alternate Choice, LLC are ineligible to participate in the
9 procurement process for contracts or from entering into contracts or grants at any tier, directly or
10 indirectly, with or for San Francisco. (San Francisco Administrative Code §§ 28.1, 28.11(c).)

11 Dated: March 1, 2021

12 

13 _____
14 Dennis J. Herrera
15 City Attorney
16 City and County of San Francisco
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EXHIBIT 1

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

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

COUNT ONE: 18 U.S.C. §§ 1343, 1346 and 1349- Conspiracy to Commit Honest Services Wire Fraud; Petty
 Minor
COUNT TWO: 18 U.S.C. § 1956(h) - Conspiracy to Commit Money Laundering Misdemeanor
 Felony
PENALTY: PLEASE SEE PENALTY SHEET ATTACHMENT

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

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEFENDANT - U.S.

▶ WING LOK "WALTER" WONG

DISTRICT COURT NUMBER

CR 20-257 JD

FILED

Jun 23 2020

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

PROCEEDING

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

Federal Bureau of Investigation

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

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

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

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

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

Name and Office of Person Furnishing Information on this form David L. Anderson

U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) Scott D. Joiner

DEFENDANT

IS NOT IN CUSTODY

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

IS IN CUSTODY

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

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

DATE OF ARREST ▶ Month/Day/Year

Or... if Arresting Agency & Warrant were not

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

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

Bail Amount: _____

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

Date/Time: _____ Before Judge: _____

Comments:

PENALTY SHEET ATTACHMENT

Count One:

18 U.S.C. §§ 1343, 1346, 1349 – Conspiracy to Commit Honest Services Wire Fraud

Maximum Penalties: 20 years imprisonment
\$250,000 fine or not more than the greater of twice the gross gain
or twice the gross loss
3 years supervised release
\$100 special assessment
Forfeiture

Count Two:

18 U.S.C. § 1956(h) – Money Laundering Conspiracy

Maximum Penalties: 20 years imprisonment
\$500,000 or twice the value of the monetary instrument or funds
involved in the transaction
3 years supervised release
\$100 special assessment
Forfeiture

1 DAVID L. ANDERSON (CABN 149604)
2 United States Attorney

FILED
Jun 23 2020
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

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

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12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 WING LOK "WALTER" WONG,
16 Defendant.

) CASE NO. CR 20-257 JD
) 
) VIOLATIONS:
) 18 U.S.C. §§ 1343, 1346 and 1349– Conspiracy to
) Commit Honest Services Wire Fraud; 18 U.S.C. §
) 1956(h) – Conspiracy to Commit Money Laundering;
) 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) –
) Criminal Forfeiture
)
) SAN FRANCISCO VENUE

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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 2004 and continuing through in
25 or about January 2020, in the Northern District of California and elsewhere, the defendant,

26 WING LOK "WALTER" WONG

27 did knowingly and intentionally conspire with Mohammed NURU and others, including other public
28 officials for the City and County of San Francisco (the "City"), known and unknown to the United States

INFORMATION

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

8
9 COUNT TWO: (18 U.S.C. § 1956(h) – Conspiracy to Commit Money Laundering)

10 2. Beginning at an unknown date, but as early as in or about 2008 and continuing through in
11 or about January 2020, in the Northern District of California and elsewhere, the defendant,

12 WING LOK “WALTER” WONG

13 did knowingly combine, conspire, and agree with Mohammed NURU and with other persons known and
14 unknown to the United States Attorney, to knowingly conduct and attempt to conduct financial
15 transactions affecting interstate commerce and foreign commerce, which transactions involved the
16 proceeds of specified unlawful activity, that is, wire fraud, knowing that the transactions were designed
17 in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the
18 proceeds of specified unlawful activity, and that while conducting and attempting to conduct such
19 financial transactions, knew that the property involved in the financial transactions represented the
20 proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section
21 1956(a)(1)(B)(i). All in violation of Title 18, United States Code, Section 1956 (h).

22
23 FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c))

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

27 4. Upon conviction for any of the offenses set forth in this Information , the defendant,

28 “WING LOK” WALTER WONG,

1 shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and
2 Title 28, United States Code, Section 2461(c), all property, real or personal, constituting, or derived
3 from proceeds the defendant obtained directly and indirectly, as the result of those violations.

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

- 5 a. cannot be located upon exercise of due diligence;
- 6 b. has been transferred or sold to, or deposited with, a third party;
- 7 c. has been placed beyond the jurisdiction of the court;
- 8 d. has been substantially diminished in value; or
- 9 e. has been commingled with other property which cannot be divided without
10 difficulty,

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

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

15
16 DATED:

17
18 DAVID L. ANDERSON
United States Attorney

19
20 
21 SCOTT D. JOINER
S. WAQAR HASIB
22 Assistant United States Attorneys
23
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FILED

Jun 23 2020

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

**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:

CASE NUMBER:

CR 20-257 JD

USA v. WING LOK "WALTER" WONG

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: 6/19/2020

Comments:

EXHIBIT 2

UNITED STATES DISTRICT COURT
for the
Northern District of California

FILED
Nov 25 2020
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

United States of America
v.
HARLAN KELLY
Defendant(s)

Case No.3:20-mj-71739 MAG

CRIMINAL COMPLAINT

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

On or about the date(s) of March 26, 2016 in the county of San Francisco in the Northern District of California, the defendant(s) violated:

Table with 2 columns: Code Section (18 U.S.C. §§ 1343, 1346) and Offense Description (Count One: Wire Fraud and Honest Services Wire Fraud). Includes Maximum Penalties: Maximum Prison Term of 20 Years; Maximum Fine of \$250,000, or not more than the greater of twice the gross gain or twice the gross loss; Maximum Term of Supervised Release of Three Years; Mandatory Special Assessment of \$100; and Forfeiture.

This criminal complaint is based on these facts:
See attached Affidavit of FBI Special Agent Tyler Nave

Continued on the attached sheet.

Approved as to form Scott Joiner
AUSAS D. Ward, R. Harris, S. Joiner

/s/
Complainant's signature
Special Agent Tyler Nave
Printed name and title

Sworn to before me by telephone.

Date: November 25, 2020

Judge's signature

City and state: San Francisco, CA

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

1 **AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT**

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

4 **I. INTRODUCTION AND AGENT QUALIFICATIONS**

5 1. I make this affidavit in support of an application for a criminal complaint charging Harlan
6 Kelly (KELLY) with one count of Honest Services Wire Fraud in violation of 18 U.S.C. §§ 1343, 1346.

7 1. I am a Special Agent of the FBI and have been so employed since March 2009. I am
8 sworn and empowered to investigate criminal activity involving violations of federal law. I am currently
9 assigned to FBI's San Francisco Division Public Corruption Squad, which investigates abuse of public
10 office in violation of criminal law, which includes fraud, bribery, extortion, conflicts of interest, and
11 embezzlement. My investigative experience includes, but is not limited to: conducting wire
12 communication interceptions; interviewing subjects, targets and witnesses; executing search and arrest
13 warrants; handling and supervising confidential human sources; conducting surveillance; and analyzing
14 phone records and financial records. I am an investigative or law enforcement officer of the United
15 States within the meaning of Section 2510(7) of Title 18, United States Code, that is, an officer of the
16 United States who is empowered by law to conduct investigations of and to make arrests for offenses
17 enumerated in Section 2516 of Title 18, United States Code.

18 2. During my employment with the FBI, I have received formal classroom and field training
19 at the FBI Academy in Quantico, Virginia and graduated from the New Agent Training program. My
20 training and experience includes, but is not limited to, public corruption, hate crimes, human trafficking,
21 and foreign counter-intelligence. I have also received additional formal and on-the-job training from the
22 FBI, as well as from the United States Attorney's office and other federal agents who have done
23 extensive work in the areas of financial crimes and public corruption. I have participated in several
24 investigations involving public corruption, bribery, and fraud, and I have been the lead agent on several
25 of those cases. I have worked on multiple wiretaps while investigating public corruption, white-collar
26 crime, and national security cases. I have received formal training in wiretaps at the FBI academy in
27 Quantico, Virginia as well as on the job training while working on wiretaps in active investigations in
28 multiple field offices.

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

6 4. I make this affidavit based upon personal knowledge derived from my participation in
7 this investigation and upon information obtained from other law enforcement agents, documents and
8 recorded conversations I have reviewed, and from witnesses and subjects of this investigation.

9 5. Because this affidavit is being submitted for the purpose of establishing probable cause in
10 support of the requested complaint, it does not set forth each and every fact that I, or others, have
11 learned during the course of the investigation. Rather, I have set forth only those facts I believe are
12 necessary to establish probable cause and to provide the Court with an overview of the facts that
13 establish that Harlan Kelly Jr., (KELLY), a public official, participated in a scheme to deprive the public
14 of their right to the honest services of KELLY.

15 **II. COUNT ONE: HONEST SERVICES WIRE FRAUD (18 U.S.C. §§ 1343, 1346)**

16 6. Beginning on a date unknown, but no later than September 2014, and continuing until on
17 or about September 2019, in the Northern District of California and elsewhere, defendant KELLY
18 knowingly, and with the intent to defraud, participated in, devised, and intended to device a scheme and
19 artifice to defraud the public of its right to the honest services of a public official through bribery and
20 kickbacks in breach of the official's fiduciary duty, by means of materially false and fraudulent
21 pretenses, representations, and promises, and by means of omission and concealment of material facts.
22 On or about March 26, 2016, in the Northern District of California and elsewhere, for the purpose of
23 executing the aforementioned scheme and artifice to defraud and attempting to do so, the defendant did
24 knowingly transmit and cause to be transmitted in interstate and foreign commerce, by means of a wire
25 communication, certain writings, signs, signals, pictures, and sounds, specifically, an American Express
26 credit card charge made in Hong Kong, on an account established and addressed in San Francisco, in the
27 Northern District of California, in violation of Title 18, United States Code, Sections 1343 and 1346.

1 **a. Relevant Law**

2 7. Title 18, United States Code, §§ 1343 and 1346 prohibit honest services wire fraud. The
3 elements of this offense are as follows:

- 4 a. The defendant knowingly devised or participated in a scheme to defraud the public of its
5 right to the honest services of a public official through bribery or kickbacks;¹
- 6 b. The defendant did so knowingly and with an intent to defraud, that is, the intent to
7 deceive and cheat;
- 8 c. The scheme or artifice to defraud involved a misrepresentation, false statement, false
9 pretense, or concealment of fact that was material; that is, the false statement, false
10 pretense, or concealment of fact had a natural tendency to influence, or were capable of
11 influencing, a person or entity's acts; and
- 12 d. The defendant used, or caused to be used, an interstate or foreign wire communication to
13 carry out or attempt to carry out an essential part of the scheme.

14 **III. FACTS ESTABLISHING PROBABLE CAUSE**

15 **a. Overview**

16 8. The investigation has uncovered a long-running bribery scheme and corrupt partnership
17 between KELLY and Walter Wong (WONG). WONG is a San Francisco construction company
18 executive and permit expediting consultant who runs or controls multiple entities that do business with
19 the City of San Francisco.² KELLY is the General Manager of the San Francisco Public Utilities
20 Commission (PUC), a position he was appointed to in 2012. Prior to his appointment to head the public
21 utilities agency, KELLY was the Assistant General Manager, Infrastructure, responsible for
22 implementing over \$10 billion in capital improvements for water, sewer, and power. KELLY is married
23 to San Francisco's City Administrator, the highest non-elected position in the City, which oversees the
24 General Services Agency, consisting of 25 departments, divisions and programs.

25 9. As part of the scheme, WONG would provide items of value to KELLY in exchange for
26 official actions by KELLY that benefitted or could benefit WONG's business ventures. Their
27
28

25 ¹ Honest services fraud does not require that the bribe or kickback be completed, or that official action
26 was actually taken, because the criminal act is the creation of a "scheme" to defraud.

27 ² WONG was charged by Information on June 23, 2020. On July 6, 2020, he pleaded guilty to one count
28 of Conspiracy to Commit Honest Services Wire Fraud (18 U.S.C. §§ 1343, 1346, 1349) and one count of
Conspiracy to Commit Money Laundering (18 U.S.C. § 1956(h)). He is cooperating with the government
pursuant to a cooperation plea agreement and is seeking sentencing consideration from the Court in the event that
he provides substantial assistance to the investigation.

1 relationship was extensive and involved coded text messages, multiple international trips paid for or
2 subsidized by WONG, cash exchanges, free meals, and even personal car service provided by WONG
3 (or his employees at WONG's direction) to KELLY.

4 10. As relevant to this criminal complaint, WONG paid travel and other expenses for
5 KELLY and his family during a March 2016 vacation the KELLY family took to Hong Kong and China.
6 These corrupt payments occurred while WONG was seeking a multi-million dollar contract from the
7 PUC to convert thousands of San Francisco city streetlights to smart LED technology. Shortly after the
8 bidding for that contract had ended, WONG performed extensive repair work on KELLY's personal
9 residence, work which he provided to KELLY at a substantial discount, according to WONG's
10 statements and documents I have reviewed.

11 11. WONG told investigators that he provided benefits like these to KELLY because of
12 KELLY's position at the PUC and the understanding that KELLY would, in return, use his official
13 position to benefit WONG's business ventures, including WONG's attempts to win business from the
14 PUC in connection with its ongoing efforts to convert to LED streetlights.

15 12. In exchange for various items of value, KELLY used his official position to assist
16 WONG's efforts, including by hand-delivering confidential internal PUC bid documents and
17 information related to the LED project. KELLY also used his official position to delay the deadline for
18 bids on the LED contract in order to benefit WONG, who was behind in preparing his bid on the PUC
19 contract. KELLY communicated by text with WONG about KELLY's efforts to delay the deadline for
20 bidding on the LED contract, stating in one text to WONG, as WONG was trying to prepare his bid, that
21 the PUC was delaying the deadline. Ten days later, as WONG was still preparing his bid, KELLY
22 texted: "You told me [t]hat you had everything? I don't know what to do? I don't know how to stop the
23 process anymore." KELLY used his cell phone for these texts to WONG, rather than his official email,
24 despite the fact that the subject matter related to official PUC business.

25 13. KELLY and WONG communicated by WeChat while KELLY was in China on a family
26 vacation that WONG arranged for and subsidized, and KELLY acknowledged the gifts he received from
27 WONG. In one text on April 2, 2016, KELLY thanked WONG for what he had done for KELLY and
28 his family: "Thank you for the best family vacation ever! A little something for everyone!"

1 **a. Walter Wong/Harlan Kelly Relationship**

2 14. The facts described below focus on WONG’s attempt to win business from PUC in
3 connection with San Francisco’s effort to convert more than 18,000 streetlights to smart LED
4 technology, and a family trip to Hong Kong that WONG arranged and subsidized while his efforts to
5 win the LED business were ongoing. However, KELLY’s corrupt dealings and communications with
6 WONG throughout their relationship were also much broader, and demonstrate KELLY’s intent to
7 defraud San Francisco of the rights to his honest services. In furtherance of their long-running corrupt
8 scheme to defraud, WONG communicated with KELLY in private text messages, rather than through
9 KELLY’s official PUC email account, about a number of projects.

10 15. For example, on March 4, 2014, WONG texted KELLY, “Just finished mayor breakfast
11 p’s call me, lots of delevoper [sic] complaint your department.”

12 16. On March 6, 2014, WONG texted KELLY: “1111 California, p/a # 201008199171. This
13 is a good example is a revised plan. PUC approved before but not willing to review and resign.” After
14 KELLY did not respond, WONG again texted four hours later:

15 WONG: did u request help to this permit 1111 California, p/a # 201008199171. this
16 one is in 35 radar

17 KELLY: Yes have people working on ot.

18 WONG: tk

19 17. The reference to “35” was a code that WONG and KELLY used to refer to a former San
20 Francisco mayor. The number 35 corresponds to the letters for the official’s initials on a numeric
21 telephone keypad. I have seen coded references to “35” as early as 2013 in text messages between
22 KELLY and WONG. For example, on May 31, 2013, WONG texted KELLY “ps let me know Sunday
23 what time, do u want to meet at lunch time.” KELLY responded “Yes with 35.” WONG replied “35
24 may play golf tomorrow, he said for me to meet w u first, what time tomorrow is good for u.”

25 18. A similar exchange occurred in July 2014:

26 7/28/14

27 WONG: 35 will be at cc [Citi Center, the name of WONG’s office building] 7 pm
28 tomorrow

1 7/29/14

2 KELLY: Still on at 7?

3 WONG: yes we are at cc boss is here too

4 **b. San Francisco LED Smart Lights Project**

5 19. In September 2014, the City of San Francisco issued a Request for Proposals (RFP) for a
6 multi-million dollar contract to provide a “smart” LED lighting system for San Francisco city streets that
7 could be controlled remotely (“LED Luminaries With Wireless Network Control System.”). After
8 several addendums to the RFP and several delays (at least one of which appears to have been engineered
9 by KELLY to benefit WONG), the deadline for submitting bids was set for March 2, 2015.

10 20. WONG sought to bid on the LED RFP contract through Green Source Trading LLC., a
11 company he ran through his son. WONG and KELLY repeatedly communicated about this project
12 before it was bid, and KELLY provided WONG with confidential non-public information related to the
13 bid. Text messages sent and received between WONG and KELLY which I have reviewed corroborate
14 the information that WONG provided to investigators about obtaining helpful inside PUC information
15 from KELLY throughout the extended bid process for the LED contract.

16 21. According to statements WONG has made to investigators, at this time in his relationship
17 with KELLY, WONG had already provided free or subsidized travel and covered expenses for KELLY
18 during multiple trips to China. He had also done the same for the then-Director of San Francisco Public
19 Works (DPW), Mohammed Nuru and for other San Francisco public officials. According to WONG, in
20 part based on the corrupt relationship he had established with KELLY and Nuru during these trips, he
21 then received public contracts from both DPW and PUC based on official acts and influence exercised
22 by KELLY and Nuru, including a 2013 pilot project with DPW, and a second 2014 project with the
23 PUC. WONG’s companies, Green Source Trading LLC and later, Alternate Choice LLC., also
24 participated in a program to provide DPW (and later the PUC) with holiday lights in the shapes of bells
25 and snowflakes.

26 **i. LED Pre-Bid Information Sharing Between WONG and KELLY**

27 22. On September 16, 2014, the PUC issued RFP 79002 - Request for Proposals for LED
28

1 Luminaires with Wireless Network Control System.³ A pre-proposal conference was set for September
2 30, 2014 with proposals due by October 27, 2014. The due dates were subject to change and did in fact
3 change several times.

4 23. The following day, on September 17, 2014, KELLY texted WONG: “Yes we finally got
5 it out. Keep me posted on you your proposal.(any problems). Panel is the next step.” WONG replied:
6 “Ok see you tomorrow.”

7 24. On November 21, 2014, the RFP was amended and reissued as RFP 79002-A. In the first
8 week of November 2014, text messages indicate that KELLY and WONG attempted to meet in person.
9 After a missed meeting on November 4, 2014, they arranged by text message to meet at WONG’s office
10 restaurant on November 5, 2014:

11 KELLY: Hey Mr. W lunch today? I forgot that we were meeting yesterday, sorry

12 WONG: lunch is ok can we meet 11:30

13 KELLY: Where to meet?

14 WONG: Citi center [the name of the building WONG owns] cafe [sic] the best
15 restaurant in town

16 KELLY: I will take a cab over there. 11:45

17 25. On November 11, 2014, KELLY texted WONG “I need to give you a document.”

18 26. On November 13, 2014, before the amended smart LED RFP was publicly released,
19 WONG and KELLY arranged by text message for KELLY to deliver documents to WONG:

20 WONG: do u have time to meet today

21 KELLY: I have the docs. Send someone over to pick up.

22 WONG: ok ps give me address do u have 770 info too

23 KELLY: 525 golden gate [the address of KELLY’s office at the PUC] call me
24 when they are down stairs. Yes 770 is included.

25 27. Subsequent text messages indicate that KELLY sent someone down to deliver the
26 documents to WONG. WONG then texted KELLY “Pick up from front desk.” KELLY responded
27

28 ³ http://mission.sfgov.org/oca_bid_attachments/FA36574.pdf

1 “Call me after u read the docs.”

2 28. WONG provided investigators with confidential documents containing inside information
3 that he received from KELLY at different times during the bid process. Among the materials WONG
4 received from KELLY is a PUC memorandum titled “RFP 79002 Bid Review,” dated November 4,
5 2014 (about one week prior to WONG picking up a package of documents at KELLY’s office and the
6 day before they met for lunch on November 5, 2014). The RFP number matches the LED RFP
7 described above. The memo purports to “analyze[] the reasons for the variance between actual pricing
8 and anticipated pricing for RFP 79002 - LED Street Lights with a Wireless Control System.” It
9 described the history of the LED project and the foundations of the PUC’s cost estimate. Among other
10 things, the memo provided tables summarizing and ranking the cost proposals for the 31 bids received
11 by the PUC for the September RFP, identifying the bidder by name, the type of LED fixture used in the
12 bid, the type of control used in the bid, and the costs associated with each LED fixture and control for
13 each bid. The total costs of the bids ranged from \$4.8 million to almost \$11.5 million.

14 29. Later on November 13, 2014, KELLY texted WONG:

15 Re streetlights,

16 1. Al will triple check but we both believe the minimum quals are pass/fail.

17 2. The LBE [Local Business Entity] points apply at all stages of the evaluation that are
18 subjective (as opposed to min quals which is objective) thus they apply to the raw score
19 at the quality evaluation and cost evaluation stages.

20 3. There were 4 of 31 proposals that initially we thought did not pass min quals; however,
21 now we believe we will salvage 2 of the 4 - maybe 3 proposals. Al can speak with Mary
22 tomorrow and provide you more details.

23 WONG replied and thanked KELLY for the information.

24 30. About a week later, on November 21, 2014, the PUC formally issued its amended RFP
25 titled LED Luminaires with Wireless Network Control System, RFP 79002-A. The RFP set a pre-
26 proposal conference for December 11, 2014 and a new due date for proposals of January 9, 2015.
27 According to the amended RFP and a December 16, 2014 memorandum from the pre-proposal
28 conference, the original RFP was reissued “to include the provisions of Chapter 14B, the City's Local

1 Business Enterprise (LBE) Ordinance” which would allow “firms that are certified by the Contract
2 Monitoring Division to claim a 10% rating bonus” as long as the LBE was “certified to provide the same
3 product or service that is described in the RFP.”

4 **ii. KELLY Delays LED Bid Process to Aid WONG**

5 31. Four days before proposals were due under the amended RFP, on January 5, 2015,
6 KELLY texted WONG: “We are going to postpone the LED light date.” He also provided WONG with
7 a name and number of an individual in the East Bay who had attended the pre-proposal conference in
8 December. WONG replied “Till when,” to which KELLY responded: “Weeks.” (The due date for the
9 RFP was in fact delayed, as noted below.) Later that night, WONG and KELLY again exchanged text
10 messages, and WONG informed KELLY “we also submit the LBE paper hope this can be final review
11 from them hope u can help to check if they got a require Document.”

12 32. On January 15, 2015, six days after the original due date for the recently amended RFP,
13 WONG and KELLY exchanged the following texts about the project:

14 WONG: Current LED RFP does not require any assembly in SF

15 KELLY: We legally can’t require that. However, you can place that in the special
16 consideration. Also one of the competitor already assemble in SF
17 R u certified?

18 WONG: not yet

19 KELLY: Did u talk with [name of individual provided on January 5, 2015]

20 WONG: The control from France just received information from UL

21 KELLY: You told me That you had everything? I don't know what to do? I don't
22 know how to stop the process anymore

23 WONG: Just talk to Frank will use existing control with UL to send in will call u
24 after work

25 KELLY: Great! I will be in LA until Friday evening

26 WONG: Hope we can get together weekend

27 KELLY: 4 sure

28 33. Based on this text exchange, it appears that WONG was even further behind on the LED

1 project than KELLY initially thought. When WONG texted KELLY on January 15, 2015, and told him
2 that he was still waiting on a “control” from UL in France and would not have it until the end of the
3 month, KELLY responded in exasperation: “You told me That you had everything? I don't know what to
4 do? I don't know how to stop the process anymore.” But his exasperation quickly turned to relief when
5 WONG informed him they would still be able to submit a proposal with the existing control, and he
6 happily agreed to meet with WONG on the weekend, texting back “4 sure.”

7 34. Based on my training and experience, and from facts gathered during this investigation
8 (including interviews with WONG), along with the context of this communication, I believe that at this
9 point KELLY had used his official position to delay the RFP process in order to assist WONG. I further
10 believe that he did this in exchange for items of value that he had previously received from WONG and
11 that KELLY anticipated he would receive in the future.

12 35. Based on my training and experience, as well as from information I have learned during
13 the course of this investigation, I believe it was a violation of San Francisco and PUC policies - and
14 highly inappropriate - for KELLY to be communicating in this manner with WONG and to be delivering
15 internal PUC bid documents to WONG surreptitiously while WONG was in the middle of submitting a
16 bid for a major contract from PUC.

17 **iii. KELLY Again Provides WONG With Confidential Bid Information**

18 36. KELLY and WONG appear to have continued to communicate about the LED RFP later
19 in the month. On January 27, 2015, WONG texted KELLY “tech team reply, what you request is
20 possible, do u have time to go over what we find.” KELLY did not respond.

21 37. On January 27, 2015, WONG texted “are you intown [sic]?” KELLY replied “Yes, let
22 me get the specs.”

23 38. On January 30, 2015, WONG and KELLY had the following exchange:

24 WONG: Good morning do u have a few minutes to catch up.

25 KELLY: Ok can you send some one over to pick up specs

26 WONG: yes what time

27 who should we see

28 39. A couple hours later, on the same day, the texts continued:

1 WONG: can we go to pick up package yet

2 KELLY: Come now to my office

3 WONG: what floor

4 on our way ps let u know what floor

5 Green Source Trading, LLC

6 40. Several hours after that, WONG texted KELLY “review info we have question ps let me
7 know when can i call you.”

8 41. On February 19, 2015, RFP 79002-A was reissued with addendum number 5, setting a
9 due date for proposals of March 2, 2015.

10 42. On February 27, 2015, KELLY and WONG discussed the LBE issue by text message and
11 arranged to meet for lunch the following day:

12 WONG: good morning, what time will you available tomorrow

13 KELLY: Lunch?

14 WONG: when today or tomorrow

15 KELLY: Tomorrow

16 WONG: ok we got LBE thank you

17 KELLY: Congrats!

18 The following day they arranged by text message to meet at a well-known Chinese restaurant in San
19 Francisco.

20 43. In light of the amendment to the RFP concerning LBE participation, and the preference
21 that was to be given to LBEs under the revised RFP (as described in KELLY’s previous text message), I
22 believe WONG was giving notice to KELLY that because of the delay caused by the amendments to the
23 RFP, WONG would now be qualified to bid on the LED project as an LBE in time for the new due date.

24 **iv. KELLY Gives WONG Confidential Internal Bid Documents**

25 44. After bids for the Smart LED contract were submitted in March 2015, KELLY again
26 provided WONG with confidential inside information on the bidding process. Contained within the
27 documents that KELLY provided WONG (which WONG in turn produced to investigators) are color
28 hard copy spreadsheets titled “RFP 79002-A Controls System Score Sheet 1” for each panelist who was

1 ranking the bids. The spreadsheets are dated either April 16, 2015, or April 17, 2015 (for some of the
2 spreadsheets the column width appears to be too narrow for the date to have displayed when printed, but
3 the April dates are the same for all the spreadsheets where a date appears). There are also hand written
4 notations to KELLY, which appear to be from the PUC project manager handling the LED RFP, as well
5 as the individual panelists' scores for each category and sub category of the bids' control systems.

6 45. WONG also produced an email which he said he originally received from KELLY in
7 hard copy. The email is dated May 20, 2015, and is addressed to KELLY from the same PUC project
8 manager who was handling the LED Smart Lights RFP. The printout displays KELLY's name at the top
9 of the header, indicating that KELLY printed the email himself before giving it to WONG. The email,
10 subject "LED RFP Follow Up Information," reads: "Hi Harlan, In preparation for our meeting on Friday
11 I have attached a spreadsheet that will hopefully answer some of your outstanding questions about the
12 controls systems. If there is any other data or info that would be helpful please let me know." The title
13 of the Excel spreadsheet attachment is "Harlan Summary." WONG provided federal investigators with a
14 copy of the spreadsheet. The spreadsheet lists various costs and licensing fees for LED control software
15 by different vendors and evaluates software and cellular data costs over a 15-year period. The top three
16 ranked "controls systems" are also identified.

17 46. Text messages between KELLY and WONG indicate that they met for meals at various
18 times near when these documents were created: April 4, 2015; May 3, 2015 (for the mayor's birthday
19 dinner); and June 2, 2015. Based on the investigation and interviews with WONG, I believe the two
20 also met on other occasions during the summer of 2015. WONG told investigators that he always paid
21 for KELLY's meals when they met.

22 47. Insider PUC documents that KELLY secretly gave WONG and that WONG produced to
23 investigators also include a hard copy spreadsheet titled "RFP 79002-A Summary Score Sheet" dated
24 July 26, 2015, summarizing and ranking the scores for each bidder. As with the documents described
25 above, these spreadsheets also contain hand-written notes addressed to KELLY from the PUC project
26 manager, including a sticky note to "Harlan" explaining that "a more elaborate version of this
27 spreadsheet was sent to...OCA/City Hall in June." There is also a note apologizing for black and white
28 copies because the "color printer on 7 isn't working."

1 48. Another hard copy spreadsheet provided by KELLY to WONG (and by WONG to
2 investigators) is titled “Summary Score Sheet w/LBE Discount” and dated July 7, 2015. It is
3 accompanied by a sticky note from the same PUC project manager that states “Harlan, This is the final
4 spreadsheet produced by [employee] for use by OCA [Office of Contract Administration].” The
5 spreadsheet also ranks bidders by their scores and highlights the top 10 bids, including LBE discounts.
6 WONG’s company was ranked near the bottom.

7 49. At least one witness who worked for the City of San Francisco and is knowledgeable
8 about San Francisco contracting requirements told us that the internal PUC documents described herein
9 could generally only be disseminated to the public pursuant a Public Records Act request, followed by
10 review by the City Attorney’s Office and redactions of non-public information. In addition, the witness
11 stated that certain documents KELLY provided to WONG marked “Confidential – Draft” would not be
12 disseminated publicly, even pursuant to a Public Records Act request.

13 50. Based on my training and experience investigating public corruption cases, I know that
14 providing one bidder with internal, non-public information about an upcoming bid distorts the
15 competitive nature of the bidding process, and can allow a contractor to bid in a way that prevents the
16 public agency from receiving the full financial benefits of a competitive bidding process, often resulting
17 in inflated bids or higher costs to agencies and thus taxpayers.

18 51. I believe all of the foregoing indicates that KELLY was using his official position to
19 obtain confidential inside information from PUC employees about the bidding process that KELLY then
20 secretly provided to WONG in hard copy while the bidding evaluation was still ongoing. I also believe
21 KELLY provided documents in hard copy, rather than by email, in order to avoid leaving behind an
22 electronic paper trail. I further believe that KELLY did this for WONG because of the items of value
23 that WONG had already provided to him and would provide in the future

24 **v. PUC Cancels 2015 Contract; Reissues Bid Requests in 2016**

25 52. In September 2015, the PUC decided not to award the contract to any bidder. Instead, the
26 PUC issued a new RFP for the project in September of 2016, this time as “TC 79004 LED
27 LUMINAIRES.” Green Source Trading submitted its initial bid for this RFP on November 14, 2016.

28 53. As before, KELLY again covertly provided hard copy internal PUC documents to

1 WONG in 2016. WONG has provided investigators with spreadsheets dated November 22, 2016, that
2 KELLY had arranged for hand delivery to WONG in the same manner as before. These spreadsheets
3 are each marked “Confidential” and have a “Draft” watermark across them. One spreadsheet is titled
4 “TC 79004 LED LUMINAIRES BID SCREENING OVERVIEW,” and another is titled “TC 79004
5 LED LUMINAIRES SECTION 90 RESPONSIVE BID REVIEW.” According to WONG, although his
6 bids were ultimately unsuccessful, these and other internal bid documents KELLY gave him throughout
7 the extended bidding process for both RFPs helped WONG obtain a competitive advantage in putting
8 together his revised bid and interacting with the PUC staff that would rank the bids and make
9 recommendations on which company would be awarded the contract.

10 **c. WONG Arranges a Trip to Hong Kong for KELLY and Family**

11 54. In March 2016, in the period between the 2015 and the 2016 Smart LED Lights RFPs,
12 WONG arranged personal travel to Hong Kong and China for KELLY and his family. WONG paid for
13 incidentals during this trip for KELLY, his wife, mother-in-law, and two children. WONG confirmed
14 that he did so because of KELLY’s position with PUC and KELLY’s ability to use his official position
15 to benefit WONG’s business ventures, including WONG’s attempts to win business from PUC in
16 connection with its ongoing efforts to convert to LED streetlights. In exchange, WONG expected and
17 understood that KELLY would take official actions to benefit WONG’s bids on public contracts.

18 55. WONG said his practice, when arranging international travel for San Francisco public
19 officials like KELLY and Nuru, was to have the officials purchase their own airfare. WONG would
20 then reimburse the officials in cash for the airfare in order to avoid leaving a paper trail for investigators.
21 When WONG reviewed his American Express credit card records from the trip, he also identified
22 expenses – including meals costing hundreds of dollars and jewelry – which WONG said he bought for
23 KELLY and his family.⁴ WONG told me he used both his American Express credit card ending in the
24

25 ⁴ For example, WONG’s credit card records show a \$418.95 purchase from Chow Tai Fook Jewelry Co.
26 in Hong Kong on March 25, 2016. Separately, an itinerary for KELLY’s trip sent by WONG’s assistant describes
27 a half day city tour on the same day, including a visit to “the Jewelry Factory with its outlet for bargain
28 shopping.” WONG was able to confirm for investigators that his standard practice would have been to pay for
these types of expenses for individuals like KELLY (and Mohammed Nuru) anytime they traveled with him
overseas. Financial records encompassing the dates of the KELLYs trip to Hong Kong (discussed below)
corroborate WONG’s account.

1 digits 7-51005 and his Citi Advantage credit card ending in the digits 8980.

2 56. Among the charges on WONG's American Express card, is a \$615.41 (USD) charge at
3 the Intercontinental HK Harbourside, Restaurant on March 26, 2016. WONG told investigators that he
4 paid for the \$615.41 meal for the Kellys. WONG did not remember the specifics of the meal, but he
5 said the purpose of his organizing the trip was to spend money on the Kellys for things like meals and
6 hotel rooms and, in turn, obtain official action from KELLY that would help WONG's business.

7 57. In keeping with the purpose of the trip, WONG also said that he paid for the Kellys hotel
8 stay. On March 30, 2016, WONG's credit card shows a charge of \$2,011.40 at the Mira Hotel in Hong
9 Kong. WONG said the group stayed in three rooms. KELLY and his wife stayed together in a room, the
10 children and their grandmother had a room, and WONG had a room for himself. Based on the number
11 of nights and rooms for the traveling party, combined with the discounted rate WONG normally paid for
12 rooms at this hotel, WONG told investigators that the \$2,000-plus amount included his own stay as well
13 as charges that he paid for the KELLY family stay.⁵

14 58. As with the other expenses WONG incurred on the trip, he was not reimbursed by
15 KELLY, nor did he request reimbursement for these costs. He instead paid for these amounts (and
16 would have paid other expenses on the trip) in exchange for KELLY's previous and anticipated official
17 action on WONG's behalf.⁶

18 59. On June 23, 2020, KELLY's spouse was interviewed by the FBI and asked about expense
19 payments during the March 2016 Hong Kong trip. She told the agents that she paid WONG a lot of
20 money for the trip, and brought lots of cash on the trip to give to Rose Pak, a San Francisco political
21 activist who they visited as part of the trip. Investigators have reviewed bank records and have found
22 only one \$500 cash withdrawal from the Kelly's accounts in the weeks prior to the March 2016 Hong
23

24 ⁵ According to the Kellys' financial records that I and other FBI agents have reviewed, there is a March 30, 2016
25 charge for \$1,390 for the Mira Hotel in Hong Kong. WONG said he believed paid for everything. Based on
26 the rate described by WONG, this amount is consistent with WONG paying for two rooms (one for
KELLY and his wife and one for WONG) and KELLY's mother-in-law paying for her own room with
the grandchildren.

27 ⁶ Based upon my training and experience, I know that credit card charges made overseas necessarily involve a
28 wire transaction affecting interstate commerce or a foreign wire because the wire reflecting the charge travels
from the point of sale terminal in the overseas location to the United States where it is processed for debit and
payment to the customer, in this case WONG, who resides in the Northern District of California, and receives his
credit card statements, both electronically and by mail, in the NDCA.

1 Kong trip, and one \$400 withdrawal from KELLY's mother-in-law's account. Further, investigators
2 have found records showing that the KELLYs out-of-pocket expenses via their own credit or debit cards
3 while in Hong Kong and Macau totaled only \$130.97, other than a charge paying for a portion of their
4 hotel bill. Because the Kellys' incurred almost no significant expenses on their own known credit or
5 debit cards during an extended international trip, I believe this corroborates WONG's statements that he
6 paid for thousands of dollars in incidental expenses for the Kellys during the trip. WONG's statements
7 to investigators are further corroborated by the encrypted thank you message from KELLY described
8 below.

9 60. From electronic evidence I reviewed, I have learned that KELLY and WONG were
10 communicating while in Hong Kong using the Chinese message application WeChat. In a text message
11 sent the day he was returning to the United States, on April 2, 2016, KELLY wrote to WONG: "Thank
12 you for the best family vacation ever! A little something for everyone!" As with KELLY's other's
13 communications using his personal email and cell phone in furtherance of the scheme to defraud, I
14 believe KELLY's use of a personal, Chinese-based messaging application in these instances was an
15 attempt to conceal his communications and evidence of his corrupt intent to defraud the public of honest
16 services. I further believe that KELLY's encrypted "thank you" to WONG corroborates WONG's
17 statements to investigators that WONG spent thousands of dollars on KELLY during the trip in
18 exchange for KELLY's anticipated official action benefitting WONG's businesses.

19 61. Emails and other communications and documents also show that WONG arranged the
20 Kellys' flights to Hong Kong. Text messages indicate that WONG used a credit card provided by
21 KELLY to purchase the tickets. On March 1, 2016, WONG and KELLY exchanged the following text
22 messages:

23 WONG: Is this flight ok for your group
24 Mar 24 2016 SFO 12:55 arrive Hong Kong
25 March 25 7 pm April 3 12:30 am arrive SFO April 2
26 10 pm

27 KELLY: Ok with me

28 WONG: which credit card should we use ps give us a copy by fax 415 554 8805

1 can we meet tomorrow after work ?

2 can i call you

3 62. Significantly, KELLY's bank accounts show an unexplained cash deposit of \$1,800 on
4 April 29, 2016, just weeks after the Hong Kong trip. The total is close to the amount that Kelly's family
5 paid for two of the Hong Kong flights (\$1,706), according to documents, including bank account
6 statements and check ledgers, that I and other agents have reviewed. The aforementioned deposit was
7 the largest cash deposit into KELLY's accounts since March 2014, and further corroborated WONG's
8 account that he would have reimbursed KELLY in cash for KELLY and his wife's airfare.

9 63. State and local ethics and disclosure laws require officials like KELLY to (among other
10 things) report potential conflicts of interest and list the gifts they have received, including meals and
11 travel, every year on a document known as a Form 700. Although KELLY's Form 700 disclosed a \$55
12 breakfast he received from the San Francisco Chamber of Commerce on March 16, 2016, he never
13 disclosed any of the travel, accommodations, meals, or other items of value he received during his 2016
14 trip to Hong Kong and China. I believe this is evidence of KELLY's intent to defraud and his desire to
15 hide the benefits he received from WONG.

16 64. In September 2016, the LED lights contract was put out for rebid, and in November 2016,
17 WONG's company bid again. According to WONG, the internal PUC documents that KELLY had
18 previously provided allowed WONG to adjust his bid to be more competitive. In the end, WONG's
19 company placed much higher in the ranking to win the bid than it did previously, and according to
20 WONG, was allowed to participate in a run-off review. However, WONG said that they decided to
21 withdraw from the process after the city made multiple changes to the contract requirements. According
22 to WONG, after expressing frustration to Nuru about the changes, Nuru told him to forget about the
23 project because someone else had bribed KELLY with a much larger sum and WONG was not going to
24 win the RFP.

25 65. In addition to the 2015 and 2016 LED Smart Lights bids, WONG's company, Green
26 Source Trading, had contracts with the PUC to provide LED Christmas snowflake lights in and around
27 Union Square and Market Street. WONG told investigators he received contracts for holiday lights from
28 KELLY and Nuru, in exchange for the items of value that he provided to both public officials. KELLY

1 and WONG repeatedly communicated about this contract using KELLY's personal email account. For
2 example, on March 1, 2019, and again on September 19, 2019, WONG sent KELLY a quote regarding
3 snowflake LED rope lights to KELLY's personal email account. WONG sent these emails to KELLY's
4 personal email, despite the fact that they contained documents and information related to their contract
5 work for PUC, and KELLY is required by San Francisco's Sunshine Ordinance to use his official email
6 for communications related to PUC business.

7 66. Based on my training and experience, I believe KELLY's use of his personal email to
8 communicate about official business provides additional probable cause to believe that WONG and
9 KELLY engaged in the bribery scheme described above. By using his personal email to communicate
10 about PUC business pertaining to LED lights contracts, KELLY ensured that these emails would not be
11 preserved as San Francisco government records and would not therefore be subject to public record
12 keeping and disclosure laws. As with KELLY's other's communications using his personal email and
13 his cell phone (calls and texts) in furtherance of the honest services scheme to defraud, I believe
14 KELLY's use of his personal devices and email in these instances is evidence of his corrupt intent to
15 defraud the public of honest services.

16 **d. WONG Pays for Water Damage Repair Work at KELLY's Residence**

17 67. In 2017, KELLY contracted with WONG to repair water damage to the KELLY
18 residence. Walter Wong Construction invoiced KELLY \$23,236 for the work. On August 11, 2017
19 WONG emailed KELLY stating that KELLY's insurance company would only cover \$11,547.
20 Ultimately, KELLY paid WONG only \$11,547 for the repair work, according to WONG, and confirmed
21 by billing records and checks from KELLY that I have reviewed. WONG stated that he never pressed
22 KELLY to pay the remainder of the bill because he wished to provide KELLY with benefits in exchange
23 for KELLY, as head of the PUC, directing business to WONG and his companies as KELLY had done
24 in the past.

25 68. KELLY has admitted that he knew he underpaid WONG for the water damage repair
26 work. On May 21, 2020, WONG met with KELLY and, under the direction of law enforcement,
27 surreptitiously recorded the conversation. During this conversation, WONG told KELLY that the FBI
28 had seized WONG's records, and that WONG's attorneys were asking about the repair work on

1 KELLY's house. KELLY admitted that he knew he underpaid WONG, stating: "*I only paid what my*
2 *insurance gave me, and my deductible. So on that one, if that's one you want me to pay, I'm willing to*
3 *pay.*" KELLY then said: "*So it's not like you were giving me money. we were friends, you were helping*
4 *me, and the insurance company was telling me, that's too high, he's ripping you off. but I know you're*
5 *not ripping me off.*"

6 69. During this conversation, KELLY said they should get a third-party estimate for the cost
7 of the unpaid work, saying: "*you can just say, you know, that number's disputed, and so Harlan's*
8 *saying one thing and you're saying something else.*" Further, in the recorded conversation, KELLY
9 denied not paying for his airline tickets to Hong Kong, and for other construction work WONG did on
10 KELLY's residence. KELLY said he fully paid the construction bills he received from WONG, and
11 believed that he gave WONG his credit card to pay for tickets to Hong Kong.

12 **IV. CONCLUSION AND REQUEST FOR SEALING**

13 70. Based on the forgoing, I believe probable cause exists for the issuance of a criminal
14 complaint charging KELLY with one count of Honest Services Wire Fraud, in violation of 18 U.S.C. §§
15 1343 and 1346. Based on the evidence above, I believe that KELLY violated his duty of honest services
16 to the City and County of San Francisco by providing WONG with internal bid documents, and non-
17 public information regarding a multi-million city contract in return for bribes and kickbacks, including
18 thousands of dollars of personal expenses WONG paid during KELLY's trip to Hong Kong, and
19 thousands of dollars of repair work WONG performed on KELLY's residence, for which KELLY never
20 paid.

21 71. I further request that the Court order that all papers in support of this application,
22 including the affidavit, be sealed until further order of the Court. These documents discuss an ongoing
23 criminal investigation that is neither public nor known to all of the targets of the investigation.
24 Accordingly, there is good cause to seal these documents because their premature disclosure may give
25 targets an opportunity to flee/continue flight from prosecution, destroy or tamper with evidence, change
26 patterns of behavior, notify confederates, or otherwise seriously jeopardize the investigation.

27 //

28 //

EXHIBIT 3

A0516243
FILED
In the office of the Secretary of State
of the State of California

896111
CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION

NOV - 4 1998

Bill Jones
BILL JONES, Secretary of State

The undersigned certify that:

1. They are the President and Secretary, respectively, of W. Wong Construction Co., a California corporation.
2. Article I of the Articles of Incorporation of this corporation is amended to read as follows:

The name of the corporation is: W. WONG CONSTRUCTION.

3. The foregoing amendment of Articles of Incorporation has been duly approved by the Board of Directors.
4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of the shareholders in accordance with Section 902, California Corporations Code. The total number of outstanding shares of the corporation is 84,767. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: October 29, 1998

Walter Wong
WALTER WONG, President

Diana Wong
DIANA WONG, Secretary

NCTD

A0657412

46

FILED
in the office of the Secretary of State
of the State of California

896111

JAN 25 2007

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION

The undersigned certify that:

1. They are the President and Secretary, respectively, of W. Wong Construction, a California corporation.
2. Article I of the Articles of Incorporation of this corporation is amended to read as follows:

The name of the corporation is: W. WONG CONSTRUCTION CO., INC.

3. The foregoing amendment of Articles of Incorporation has been duly approved by the Board of Directors.
4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of the shareholders in accordance with Section 902, California Corporations Code. The total number of outstanding shares of the corporation is 84,767. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: January 23, 2007

Walter Wong
WALTER WONG, President

Diana Wong
DIANA WONG, Secretary



State of California Secretary of State

S

16

Statement of Information

(Domestic Stock and Agricultural Cooperative Corporations)

**FEES (Filing and Disclosure): \$25.00. If amendment, see instructions.
IMPORTANT - READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

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

DEC 07 2011

This Space for Filing Use Only

1. CORPORATE NAME

C0896111
W. WONG CONSTRUCTION CO., INC.
205 13TH STREET
SAN FRANCISCO, CA 94103-2461

Due Date:

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

2. 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 16.
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 has been previously filed, this form must be completed in its entirety.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 3 and 4 cannot be P.O. Boxes.)

3. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
205 13TH STREET	SAN FRANCISCO	CA	94103
4. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
		CA	
5. MAILING ADDRESS OF CORPORATION, IF DIFFERENT THAN ITEM 3	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.)

6. CHIEF EXECUTIVE OFFICER/PRESIDENT	ADDRESS	CITY	STATE	ZIP CODE
WALTER WONG	205 13TH STREET	SAN FRANCISCO	CA	94103
7. SECRETARY	ADDRESS	CITY	STATE	ZIP CODE
WALIANA DIEU	205 13TH STREET	SAN FRANCISCO	CA	94103
8. CHIEF FINANCIAL OFFICER/VICE PRESIDENT	ADDRESS	CITY	STATE	ZIP CODE
DIANA WONG	205 13TH STREET	SAN FRANCISCO	CA	94103

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

9. NAME	ADDRESS	CITY	STATE	ZIP CODE
WALTER WONG	205 13TH STREET	SAN FRANCISCO	CA	94103
10. NAME	ADDRESS	CITY	STATE	ZIP CODE
WALIANA DIEU	205 13TH STREET	SAN FRANCISCO	CA	94103
11. NAME	ADDRESS	CITY	STATE	ZIP CODE
DIANA WONG	205 13TH STREET	SAN FRANCISCO	CA	94103

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

Agent for Service of Process (If the agent is an individual, the agent must reside in California and Item 14 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 14 must be left blank.)

13. NAME OF AGENT FOR SERVICE OF PROCESS

WALTER WONG

14. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE
205 13th Street	SAN FRANCISCO	CA	94103

Type of Business

15. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION
CONSTRUCTION

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

7/20/2011
DATE

WALTER WONG
TYPE/PRINT NAME OF PERSON COMPLETING FORM

PRESIDENT
TITLE

SIGNATURE



California Secretary of State
Electronic Filing

FILED

Secretary of State
State of California

Corporation - Statement of Information No Change

Entity Name: W. WONG CONSTRUCTION CO., INC.

Entity (File) Number: C0896111

File Date: 08/24/2020

Entity Type: Corporation

Jurisdiction: CALIFORNIA

Document ID: GH91427

There has been no change in any of the information contained in the previous complete Statement of Information filed with the California Secretary of State.

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: Walter Wong

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

Document ID: GH91427

EXHIBIT 4



**Secretary of State
Statement of Information**
(Limited Liability Company)

LLC-12

133

FILED
Secretary of State
State of California

MAY 29 2018

IMPORTANT — This form can be filed online at bizfile.sos.ca.gov.

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

Above Space For Office Use Only

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

Green Source Trading, LLC

2. 12-Digit Secretary of State Entity (File) Number

201002010311

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

4. Business Addresses

a. Street Address of Principal Office - Do not list a P.O. Box 205 13th Street, Suite 3120	City (no abbreviations) San Francisco	State CA	Zip Code 94103
b. Mailing Address of LLC, if different than item 4a	City (no abbreviations)	State	Zip Code
c. Street Address of California Office, if item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State CA	Zip Code

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 address(es) on Form LLC-12A.

a. First Name, if an individual - Do not complete item 5b Washington	Middle Name	Last Name Wong	Suffix
b. Entity Name - Do not complete item 5a			
c. Address 205 13th Street, Suite 3120	City (no abbreviations) San Francisco	State CA	Zip Code 94103

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) Washington	Middle Name	Last Name Wong	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 205 13th Street, Suite 3120	City (no abbreviations) San Francisco	State CA	Zip Code 94103

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 Limited Liability Company

Wholesale, retail, and import

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 made part of this document, is true and correct.

4/30/18
Date

Washington Wong
Type or Print Name of Person Completing the Form

Managing Member
Title

Signature

 <p>Attachment to Statement of Information (Limited Liability Company)</p>	<p>LLC-12A Attachment</p>
--	--------------------------------------

A. Limited Liability Company Name (Enter the exact name on file with the California Secretary of State.)

Green Source Trading, LLC

Above Space For Office Use Only

B. 12-Digit Secretary of State Entity (File) Number	C. State, Foreign Country, or Place of Organization (only if formed outside of California)
201002010311	

D. List of Additional Manager(s) or Member(s) - If the manager/member is an individual, enter the individual's name and address. If the manager/member is an entity, enter the entity's name and address. Note: The LLC cannot serve as its own manager or member.

2a. First Name - Do not complete Item 2b Kaiting	Middle Name	Last Name Wong	Suffix
2b. Entity Name - Do not complete Item 2a			
2c. Address 205 13th Street, Suite 3120	City (no abbreviations) San Francisco		State CA
		Zip Code 94103	
3a. First Name - Do not complete Item 3b	Middle Name	Last Name	Suffix
3b. Entity Name - Do not complete Item 3a			
3c. Address	City (no abbreviations)		State
		Zip Code	
4a. First Name - Do not complete Item 4b	Middle Name	Last Name	Suffix
4b. Entity Name - Do not complete Item 4a			
4c. Address	City (no abbreviations)		State
		Zip Code	
5a. First Name - Do not complete Item 5b	Middle Name	Last Name	Suffix
5b. Entity Name - Do not complete Item 5a			
5c. Address	City (no abbreviations)		State
		Zip Code	
6a. First Name - Do not complete Item 6b	Middle Name	Last Name	Suffix
6b. Entity Name - Do not complete Item 6a			
6c. Address	City (no abbreviations)		State
		Zip Code	
7a. First Name - Do not complete Item 7b	Middle Name	Last Name	Suffix
7b. Entity Name - Do not complete Item 7a			
7c. Address	City (no abbreviations)		State
		Zip Code	
8a. First Name - Do not complete Item 8b	Middle Name	Last Name	Suffix
8b. Entity Name - Do not complete Item 8a			
8c. Address	City (no abbreviations)		State
		Zip Code	



200108610070
201002010311



State of California Secretary of State

OBE MERG

FILED *JHR*
Secretary of State
State of California
DEC 24 2018 *8*

Certificate of Merger

(California Corporations Code sections 1113(g), 3203(g), 6019.1, 8019.1, 9640, 12540.1, 15911.14, 16915(b) and 17710.14)

EFFECTIVE DATE

IPC This Space For Filing Use Only *12-31-18*

IMPORTANT — Read all instructions before completing this form.

1. NAME OF SURVIVING ENTITY Alternate Choice, LLC	2. TYPE OF ENTITY LLC	3. CA SECRETARY OF STATE FILE NUMBER 200108610070	4. JURISDICTION CA
5. NAME OF DISAPPEARING ENTITY Green Source Trading, LLC	6. TYPE OF ENTITY LLC	7. CA SECRETARY OF STATE FILE NUMBER 201002010311	8. JURISDICTION CA

9. THE PRINCIPAL TERMS OF THE AGREEMENT OF MERGER WERE APPROVED BY A VOTE OF THE NUMBER OF INTERESTS OR SHARES OF EACH CLASS THAT EQUALED OR EXCEEDED THE VOTE REQUIRED. (IF A VOTE WAS REQUIRED, SPECIFY THE CLASS AND THE NUMBER OF OUTSTANDING INTERESTS OF EACH CLASS ENTITLED TO VOTE ON THE MERGER AND THE PERCENTAGE VOTE REQUIRED OF EACH CLASS. ATTACH ADDITIONAL PAGES, IF NEEDED.)

SURVIVING ENTITY			DISAPPEARING ENTITY		
CLASS AND NUMBER	AND	PERCENTAGE VOTE REQUIRED	CLASS AND NUMBER	AND	PERCENTAGE VOTE REQUIRED
Manager		100%	Manager		100%
2			2		

10. IF EQUITY SECURITIES OF A PARENT PARTY ARE TO BE ISSUED IN THE MERGER, CHECK THE APPLICABLE STATEMENT.
 No vote of the shareholders of the parent party was required. The required vote of the shareholders of the parent party was obtained.

11. IF THE SURVIVING ENTITY IS A DOMESTIC LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP, OR PARTNERSHIP, PROVIDE THE REQUISITE CHANGES (IF ANY) TO THE INFORMATION SET FORTH IN THE SURVIVING ENTITY'S ARTICLES OF ORGANIZATION, CERTIFICATE OF LIMITED PARTNERSHIP OR STATEMENT OF PARTNERSHIP AUTHORITY RESULTING FROM THE MERGER. ATTACH ADDITIONAL PAGES, IF NECESSARY.
N/A

12. IF A DISAPPEARING ENTITY IS A DOMESTIC LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP, OR PARTNERSHIP, AND THE SURVIVING ENTITY IS NOT A DOMESTIC ENTITY OF THE SAME TYPE, ENTER THE PRINCIPAL ADDRESS OF THE SURVIVING ENTITY.
PRINCIPAL ADDRESS OF SURVIVING ENTITY CITY AND STATE ZIP CODE
N/A

13. OTHER INFORMATION REQUIRED TO BE STATED IN THE CERTIFICATE OF MERGER BY THE LAWS UNDER WHICH EACH CONSTITUENT OTHER BUSINESS ENTITY IS ORGANIZED. ATTACH ADDITIONAL PAGES, IF NECESSARY.
N/A

14. STATUTORY OR OTHER BASIS UNDER WHICH A FOREIGN OTHER BUSINESS ENTITY IS AUTHORIZED TO EFFECT THE MERGER. N/A
15. FUTURE EFFECTIVE DATE, IF ANY
12 - 31 - 2018
(Month) (Day) (Year)

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

17. I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT OF MY OWN KNOWLEDGE. I DECLARE I AM THE PERSON WHO EXECUTED THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED.

	12/19/2018	Washington Wong, Managing Member
SIGNATURE OF AUTHORIZED PERSON FOR THE SURVIVING ENTITY	DATE	TYPE OR PRINT NAME AND TITLE OF AUTHORIZED PERSON
	12/19/2018	Kaiting Wong, Managing Member
SIGNATURE OF AUTHORIZED PERSON FOR THE SURVIVING ENTITY	DATE	TYPE OR PRINT NAME AND TITLE OF AUTHORIZED PERSON
	12/19/2018	Washington Wong, Managing Member
SIGNATURE OF AUTHORIZED PERSON FOR THE DISAPPEARING ENTITY	DATE	TYPE OR PRINT NAME AND TITLE OF AUTHORIZED PERSON
	12/19/2018	Kaiting Wong, Managing Member
SIGNATURE OF AUTHORIZED PERSON FOR THE DISAPPEARING ENTITY	DATE	TYPE OR PRINT NAME AND TITLE OF AUTHORIZED PERSON

For an entity that is a business trust, real estate investment trust or an unincorporated association, set forth the provision of law or other basis for the authority of the person signing: _____



Secretary of State
Statement of Information
 (Limited Liability Company)

LLC-12

20-A62822

FILED

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

FEB 07, 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](#).)
 ALTERNATE CHOICE, LLC

2. 12-Digit Secretary of State File Number
 200108610070

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 205 13th Street, Suite 3120	City (no abbreviations) San Francisco	State CA	Zip Code 94103
b. Mailing Address of LLC, if different than item 4a 205 13th Street, Suite 3120	City (no abbreviations) San Francisco	State CA	Zip Code 94103
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box 205 13th Street, Suite 3120	City (no abbreviations) San Francisco	State CA	Zip Code 94103

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 Washington	Middle Name	Last Name Wong	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address 205 13th Street, Suite 3120	City (no abbreviations) San Francisco	State CA	Zip Code 94103

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) Washington	Middle Name	Last Name Wong	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 205 13th Street, Suite 3120	City (no abbreviations) San Francisco	State CA	Zip Code 94103

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
 Trading

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.

02/07/2020

Washington Wong

Managing Partner

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: []



**Attachment to
Statement of Information
(Limited Liability Company)**

**LLC-12A
Attachment**

20-A62822

A. Limited Liability Company Name

ALTERNATE CHOICE, LLC

This Space For Office Use Only

B. 12-Digit Secretary of State File Number

200108610070

C. State or Place of Organization (only if formed outside of California)

CALIFORNIA

D. List of Additional Manager(s) or Member(s) - If the manager/member is an individual, enter the individual's name and address. If the manager/member is an entity, enter the entity's name and address. Note: The LLC cannot serve as its own manager or member.

First Name Kaiting	Middle Name	Last Name Wong	Suffix
Entity Name			
Address 205 13th Street, Suite 3120	City (no abbreviations) San Francisco	State CA	Zip Code 94103
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code

EXHIBIT 5

CHAPTER 28:

ADMINISTRATIVE DEBARMENT PROCEDURE

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

SEC. 28.0. FINDINGS.

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

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

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

SEC. 28.1. DEFINITIONS.

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

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

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

City. The City and County of San Francisco.

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

Day. A calendar day unless otherwise specified.

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

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

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

SEC. 28.2. DEBARMENT AND SUSPENSION AUTHORITY.

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

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

SEC. 28.3. GROUNDS FOR DEBARMENT AND SUSPENSION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 28.6. REQUEST FOR A HEARING.

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

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

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

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

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

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

SEC. 28.8. APPOINTMENT OF THE HEARING OFFICER.

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

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

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

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

SEC. 28.9. PRE-HEARING PROCEDURE.

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

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

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

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

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

CODIFICATION NOTE

– 1. So in Ord. [239-20](#).

SEC. 28.10. HEARINGS AND DETERMINATIONS.

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

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

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

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

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

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

CODIFICATION NOTE

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

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

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

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

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

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

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

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

CODIFICATION NOTE

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

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

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

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

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

SEC. 28.13. [REDESIGNATED.]

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