



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Loesch
Jon Cicirelli

SUBJECT: See Below

DATE: November 17, 2025

Approved

Date:

11/26/25

COUNCIL DISTRICT: 7

SUBJECT: Actions Related to the 9365 – Happy Hollow Park and Zoo Fossa Night House Project

RECOMMENDATION

- (a) Accept this report on the status of the 9365 - Happy Hollow Park and Zoo Fossa Night House Project, acknowledging contractor performance issues and failure to complete the project per contract requirements.
- (b) Terminate the existing 9365 - Happy Hollow Park and Zoo Fossa Night House Project contract with VNH Builders.
- (c) Adopt a resolution authorizing the City Manager, or her designee, to negotiate and execute agreements and any ancillary documents with the surety, American Contractors Indemnity Company, and any construction contractor to complete the project.

SUMMARY AND OUTCOME

This memorandum summarizes the status of the 9365 - Happy Hollow Park and Zoo Fossa Night House Project's (Project) construction status, outlining contractor performance issues and their failure to complete construction in accordance with contract requirements, and recommends terminating the Project's existing contract with VNH Builders (VNH).

Adoption of the resolution will allow the City Manager or her designee to negotiate and execute agreements with the surety, American Contractors Indemnity Company (Surety), and with a new and qualified general contractor to complete the construction of

the Project to ensure the facility can be available for its intended use at the earliest possible time.

BACKGROUND

The Project is located at Happy Hollow Park and Zoo (HHPZ) at 1300 Senter Road (Attachment A – Location Map – 9365 – Happy Hollow Park and Zoo Fossa Night House Project). The new structure is a 385 square foot single-story night house with three animal compartments and a separate work area for staff. The scope of work also includes the construction of a new exterior concrete pathway, a gravel pathway, and an exterior connecting enclosure with netting between the new concrete masonry unit structure and the adjacent animal exhibit. The night house structure will house a pair of new fossas currently being acquired by HHPZ.

In June 2024, the Director of Public Works awarded a contract to VNH for the construction of the Project. A Notice to Proceed was issued on September 26, 2024 with an expected completion on October 6, 2025. However, as of October 31, 2025, the Project remains approximately 30% complete due to non-performance of the contractor.

ANALYSIS

Termination of Contract

VNH began construction of the Project on October 7, 2024. Issues arose early on during the Project after an investigation by the City's Office of Equality Assurance (OEA) determined that VNH had committed multiple violations of the California Labor Code and the City of San José's contract provisions for prevailing wages. Additionally, VNH delayed procurement of critical materials and initiating design and engineering of deferred submittals within the contractor's scope. These materials and submittals were critical to the Project being completed on time.

Additional issues arose beginning in early August 2025, when VNH deliberately failed to mobilize to the site to perform work for approximately six weeks. The City issued a first warning letter to VNH on September 10, 2025, outlining the performance issues and providing an opportunity to correct their failure to perform work per the contract. Although VNH returned to the site to proceed with construction on September 15, 2025, they again failed to return to the site on September 26 and 29, 2025, prompting the issuance of the second warning letter to VNH on September 29, 2025. VNH continued to be absent from the site through October 2, 2025, when the City issued the third and final warning letter directing VNH to return to the Project site by October 10, 2025; otherwise, the City would proceed with contract termination.

With delayed progress throughout construction and a total of eight weeks of VNH being absent from the site, on October 10, 2025, after VNH did not show up at the Project site as instructed in the final warning letter, the City issued a letter to VNH notifying them of the City's intent to terminate the contract for cause for the construction of the Project.

VNH's repeated failures to mobilize on site to perform work have pushed the Project beyond the contractual substantial completion date of October 6, 2025. Therefore, staff recommend terminating VNH's contract due to non-performance and bringing a new contractor on board to complete the Project to minimize further delays.

Current Project Status

The Project is approximately at 30% completion. HHPZ's acquisition of the new pair of fossas and maintenance of their accreditation with the Association of Zoos and Aquariums is dependent on completion of the remaining work by March 2026. The remaining work includes:

- Completing concrete masonry unit installation;
- Installing doors, windows, and roof of the night house;
- Pouring the exterior concrete slab;
- Installing the exterior and interior animal enclosures;
- Installing the exterior exhibit area netting;
- Installing the new electrical panel and connection to the main switchboard; and
- Installing the new water heater and sinks, exterior lights, and heating mat.

The remaining balance of the original construction contract is \$574,289.44, which includes \$126,226.61 in unapproved payments to VNH. In addition, VNH owes the City a restitution amount of \$26,603.07 related to the notice of violation issued by the City, as well as liquidated damages accruing at the contractual rate of \$1,000 per day since October 6, 2025.

Performance Bond and Surety

The performance bond for the Project obligates Surety to ensure completion of the Project. When a contract is terminated because of lack of performance and the completion of a project is tendered to the surety, the project may be completed without further competitive bidding.

Surety was notified on October 15, 2025, regarding VNH's non-performance issues and the City's intent to terminate its agreement with VNH for this Project (Attachment B – Demand Under Performance Bond Letter to Surety). Surety has initiated an investigation into the matter, and the City is actively coordinating with Surety throughout this process.

Staff is recommending City Council authorize the City Manager, or her designee, to negotiate and execute one or more agreements with the Surety, and if need be, with any new general contractor, as necessary for completion of the Project. The terms of any such agreements would address such issues as a completion schedule, the payment of moneys from the City to Surety, or vice versa, for construction work, the conditions under which the City would release withheld funds, the City's payment of change orders requested by the City, and how to handle and pay for construction defects.

In addition, the payment of liquidated damages will also need to be addressed in any agreement with Surety given that the Project is so far behind schedule. The City has incurred significant additional costs as a result of the Project not yet being completed. The authority being requested would include the ability of the City Manager, or her designee, to negotiate the liquidated damages, if appropriate in the furtherance of completing the Project.

In the case Surety is not able to find a general contractor, Surety will be responsible to pay back the City for the amount specified in the bond agreement. After that, it's the responsibility of the City to find a new general contractor to complete the remaining work.

City's Completion of Project

At this time, it remains uncertain whether the City will be able to reach a final resolution with Surety, or how long such a resolution may take. To ensure that the facility becomes available for its intended use at the earliest possible time, staff recommends approval to release this Project for rebidding and award to a new contractor. In this scenario, to expedite the award of a new contract for construction, staff will initiate the direct award process under San José Municipal Code Section 27.06.090 F, which allows for the Director of Public works to procure a contract without any competitive process after making a written determination that an unusual or unique situation makes competitive procurement of the contract contrary to the public interest. This approach will provide the City with greater flexibility and options to complete the remaining construction work in a timely manner, regardless of the outcome of discussions with Surety.

In the event the City proceeds to complete the Project using its own funds, the City will seek to compel Surety to reimburse the costs incurred for completing the work. If successful, those funds will be returned to the City.

Office of Equality Assurance

OEA is responsible for administration and enforcement of prevailing wage requirements on public work construction projects.

Through on-site employee interviews and review of certified payroll, OEA identified misclassifications and underpayments to 15 workers and issued a notice of violation on May 30, 2025 (Attachment C – Notice of Violation to VNH Builders from OEA). VNH contested the notice of violation and, at the request of the OEA Division Manager, submitted copies of original and revised certified payrolls, canceled checks, paystubs, timecards, and daily logs as evidence of compliance.

On October 10, 2025, VNH was issued a decision by OEA upholding the notice of violation dated May 30, 2025. VNH failed to validate claims that employees working on the Project were correctly classified, paid accurately, in-full, or promptly.

OEA has issued formal referrals of the violations to the California Department of Industrial Relations - Labor Commissioner, Santa Clara County District Attorney, and California Department of Justice - Attorney General.

Association of Zoos and Aquariums' Accreditation

In 2015, the Association of Zoos and Aquariums' accreditation team identified the outdated fossa night house at HHPZ as inadequate and requiring replacement. The Association of Zoos and Aquariums' accreditation sets the national standard for animal care, welfare, and modern zoo operations, and accredited institutions must demonstrate compliance with these standards to maintain their status. If the Project is not completed on schedule, HHPZ risks losing its Association of Zoos and Aquariums' accreditation during the upcoming 2026 review cycle, jeopardizing the HHPZ's ability to house and care for endangered species, including the fossas.

Delays in construction pose a serious risk to the HHPZ's animal collection plan. A pair of fossas has already been identified for HHPZ, contingent upon a March 2026 completion date. Further schedule slippage could result in the loss of this pair, with no assurance that another would be available in the future. Each delay increases uncertainty around securing these rare animals, undermining both the HHPZ's conservation work and its ability to engage visitors through meaningful wildlife experiences. Timely completion of the Project is therefore critical, not only as a facility improvement, but as a cornerstone of HHPZ's accreditation, conservation commitments, and continued service to the community.

COST SUMMARY/IMPLICATIONS

The total budget amount for the HHPZ improvement projects is \$4 million. The funding is to replace the supporting poles and netting improvements at the jaguar, fossa, and red panda exhibits at HHPZ. The jaguar and the red panda exhibits were completed in summer 2025 for \$2.5 million. The fossa exhibit is to be completed in early 2026. Additional funding may be needed upon the evaluation of the remaining construction

work from Surety or the new general contractor and would be included in a future budget action.

1. TOTAL COST OF PROJECT:

Project Delivery	\$1,225,000
Construction Contract	2,362,369
Contingency	231,079
TOTAL PROJECT COSTS*	\$3,818,448
Prior Years' Expenditures & Encumbrances	\$3,776,593
TOTAL REMAINING PROJECT COSTS	\$41,855

*Total project costs include \$2,513,118 for the Jaguar and Red Panda Exhibit Improvement projects.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn. #	Appropriation Name	Total Appropriation	Amt. for Contract	2025-2027 Adopted Biennial Capital Budget Page	Last Budget Action (Date, Ord. No.)
391	4130	Happy Hollow Park and Zoo Exhibit Improvements	\$256,000	N/A	557	10/21/2025, 31252

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the Planning, Building, and Code Enforcement Department.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the December 9, 2025 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Categorically Exempt, File No. ER24-077, 15303, New Construction or Conversion of Small Structures.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
MATT LOESCH
Director, Public Works Department

/s/
JON CICIRELLI
Director, Parks, Recreation, and
Neighborhood Services Department

For questions, please contact Sal Kumar, Deputy Director, Public Works Department at sal.kumar@sanjoseca.gov.

ATTACHMENTS

Attachment A – Location Map – 9365 – Happy Hollow Park and Zoo Fossa Night House Project

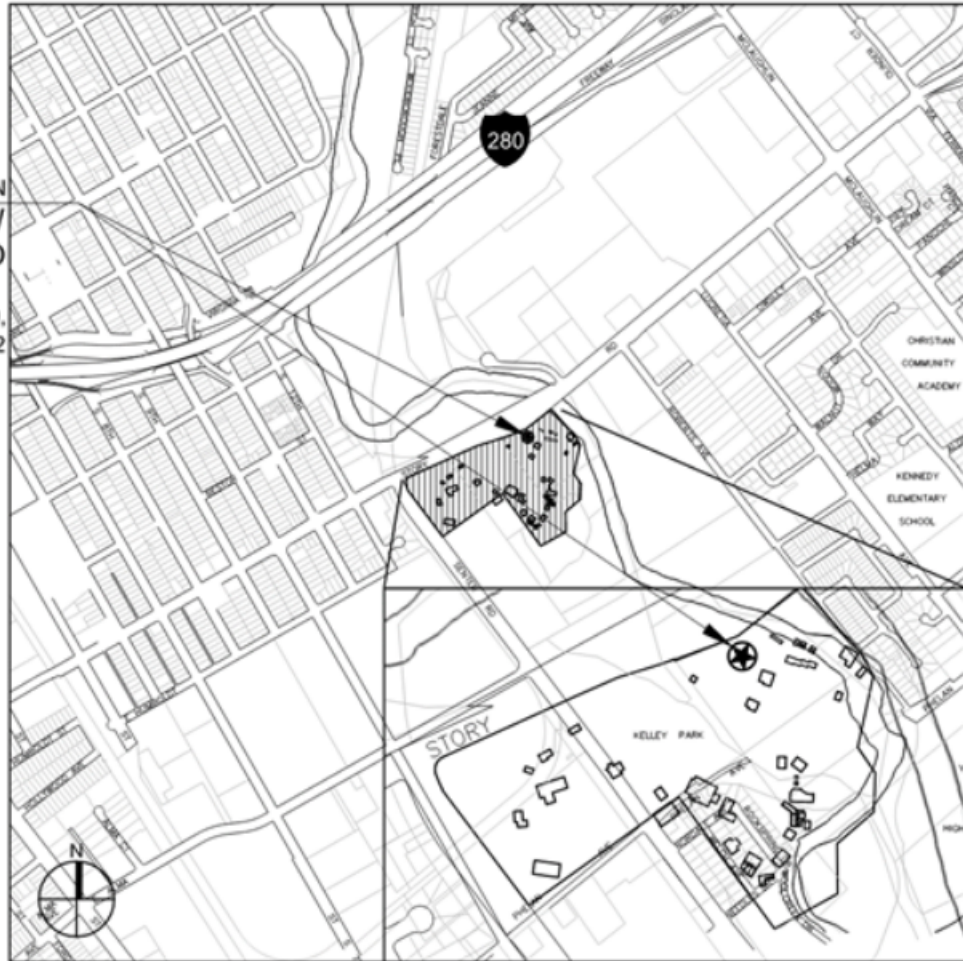
Attachment B – Demand Under Performance Bond Letter to Surety

Attachment C – Notice of Violation to VNH Builders from OEA

**Attachment A – Location Map – 9365 – Happy Hollow Park and Zoo
Fossa Night House Project**

PROJECT LOCATION
HAPPY HOLLOW
PARK AND ZOO

1300 SENTER RD.
SAN JOSE CA 95112



1300 SENTER RD, SAN JOSE CA 95112

SCALE: N.T.S.



Office of the City Attorney
NORA FRIMANN, CITY ATTORNEY

ANDREW MALEK
Deputy City Attorney
Direct Line: (408) 535-1944

October 15, 2025

Patrick Lavery
Vice President, Bond Claims
Tokio Marine HCC – Surety Group
American Contractors Indemnity Company
801 S. Figueroa Street, Suite 700
Los Angeles, CA 90017

Re: Demand Under Performance Bond

Project: City of San Jose Fossa Night House Project (“Project”)
Owner: City of San Jose (“City”)
Contractor: VNH Builders (“VNH”)
Performance Bond No.: 1001223786

Dear Mr. Lavery:

The letter is to formally demand that American Contractors Indemnity Company (“Surety”) perform its obligations under the above-referenced performance bond to complete the contract for the Project, including the payment of liquidated damages.

On July 1, 2024, the City awarded VNH a contract in the amount of \$663,708 for the construction of the Project. The original contract required completion of the Project within 365 calendar days of the notice to proceed, which would have been October 6, 2025.

As a result of ongoing performance issues, VNH failed to complete work on the Project and has stopped working. On May 30, 2025, the City sent VNH a letter issuing a notice of violation, determining that VNH committed several violations of the California Labor Code and the City’s contract provisions for prevailing wages. A copy of the letter is attached here. The total restitution VNH owes is \$26,063.07, which VNH has not paid.

VNH Builders stopped working between August 1, 2025 to September 12, 2025, then September 24, 2025 and has not returned to work, to date. On September 10, 2025, the City sent VNH a notice to cure letter, attached here. VNH responded with a letter dated September 15, 2025 incorrectly claiming breach of contract and threatening not to return to work. On September 29, 2025, the City sent a letter demanding that VNH return to work. On October 2, 2025, the City sent another letter indicating to VNH if they do not return to work, the City will initiate the termination process. VNH has failed to return to work, and on October 10, 2025 the City notified VNH that it will proceed to terminate the contract for cause. The Surety was copied on those letters.

At this point, the Project is approximately 30 percent complete. Because VNH has not completed the work, the City has not filed a notice of completion. A list of the remaining work that needs to be completed is attached to this letter. The City's estimate of the value to complete this work is \$597,630.95. At this point, the City is requesting the Surety to step in and perform under the requirements of the contract's performance bond.

I am informed that the City is currently withholding normal 5% retention on the Project in the amount of approximately \$6,325.40 and liquidated damages which are calculated at \$1,000 per day.

I look forward to working with Surety on completing this Project and to resolving this matter quickly.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

NORA FRIMANN, City Attorney

By: Andrew Malek

ANDREW MALEK
Deputy City Attorney

cc: Matt Loesch, Director of Public Works

AJM/vmm

Attachment C – Notice of Violation to VNH Builders from OEA



VNH Builders
842 Mahler Road
Burlingame, CA 94010

May 30, 2025

Notice of Violation

Project name: 9365 – PARK: Happy Hollow Park & Zoo Fossa Night House

Prime contractor: VNH Builders

Contractor in violation of CA Labor Code: VNH Builders

I. Investigation

After an investigation of the above-named project file, the City’s Office of Equality Assurance (OEA) has determined that VNH Builders (VNH) has committed multiple violations of the California Labor Code and the City of San Jose’s contract provisions for prevailing wages.

The City awarded the construction contract for the Project to VNH on or about September 12, 2024. The original contract amount was \$663,708. The Project is a “public works” subject to prevailing wage requirements in Chapter 1 of Part 7 of Division 2 of the California Labor Code (sections 1720 – 1861).

After reviewing VNH’s certified payroll reports, City inspector daily reports, VNH Builders’ construction daily logs, and observations from site visits and worker interviews, OEA has determined that VNH has violated numerous provisions of the California Labor Code, including sections 221, 223, 224, 225, 225.5, 226, 1774 and 1776, in addition to Article III of City of San Jose Contract Number 667974.

II. Findings

After review of City inspector daily reports, VNH Builders’ construction daily logs, observation from site visits and worker interviews conducted on 12/4/2024 and 2/19/2025, the workers

performing work on the project were inaccurately and inappropriately classified on certified payrolls as follows:

- 7 workers classified as Laborer Group 6B should have been classified as Laborer Group 3; Group 3(A);
- 5 workers classified as Laborer Group 3 should have been classified as Laborer Group 3; Group 3(A).
- 1 worker classified as Plumber: Sprinkler Fitter should have been classified as Plumber: Sprinkler Fitter (Fire Protection and Fire Control Systems); and
- 2 workers classified as Construction Specialists should have been classified as Laborer: Construction Specialists.

Workers misclassified have been reclassified based on the work actually performed.

Prevailing Wage- Fringe Benefits

After review of certified payroll reports, fringe benefit statement and workforce statement in comparison to each worker's earning statements, the OEA was unable to conclude that the total hourly rate was paid to each worker because the check numbers reported on the certified payroll reports did not match the check number on each worker's earning statements for the specific pay period.

In addition, hourly rates differ amongst the certified payroll report, workforce statement and earning statement for each worker; therefore, the Department of Industrial Relations ("DIR") basic hourly rate for each applicable classification was utilized to determine restitution to each worker.

III. Violations

The nature of the violations of the CA Labor Code and City contract provisions are as follows:

A. Violation No. 1 - Labor Code § 1774 – ARTICLE 2. Wages: Section 1774 states that the contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

- Based on OEA's review of City inspector daily reports, VNH Builders' construction daily logs, observation from site visits and worker interviews, OEA has determined that VNH has underpaid 15 workers a total of \$26,063.07. Attached **Exhibit A** has the breakdown of restitution calculations for these 15 workers.

B. Violation No. 2 - City of San Jose Contract Number 667974 – ARTICLE III: Article III of City of San Jose Contract number 667974 states: "It is further expressly agreed by and between the parties hereto that the general prevailing rate of per diem wages and the general prevailing wage rate for holiday and overtime work in this locality for each craft,

classification, or type of worker needed to execute this contract is that ascertained by the Director of the Department of Industrial Relations of the State of California, copies of which are on file in the Office of the City Clerk and the Department of Public Works, which shall be made available to any interested party on request, which said rates are hereby made a part hereof, incorporated herein by reference as though set forth in full...”

- Similar to Violation No. 1, based on OEA’s review of City inspector daily reports, VNH Builders’ construction daily logs, observation from site visits and worker interviews, OEA has determined that VNH has underpaid 15 workers a total of \$26,063.07. Attached **Exhibit A** has the breakdown of restitution calculations for these 15 workers.

C. Violation No. 3 - Labor Code § 1776 – ARTICLE 2. Wages: Section 1776 states that “Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct;
 - (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by that person’s employees on the public works project;
- (b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
- (1) A certified copy of an employee’s payroll record shall be made available for inspection or furnished to the employee or the employee’s authorized representative on request.”

Payroll Reporting

After review of certified payroll reports, corresponding city inspector daily reports and VNH Builders’ construction daily logs, numerous discrepancies have been identified:

- Payroll #7, week ending 12/8/2024: 8 hours reported for Wilder Ramirez, Cesar Castro, and Jose Clemente on Friday, 12/6/2024. City inspector daily report and VNH Builders’ construction daily log reported no work performed on this day.
- Payroll #9, week ending 12/22/2024: 0 hours reported for Wilder Ramirez, Cesar Castro, Erick Pena, and Marvin Gutierrez on Monday, 12/16/2024. City inspector daily report show hand digging and water line relocation work performed on this day.

- Payroll #13, week ending 1/19/2025: Isidro Parilla reported twice on this payroll with different hours. First entry reported Isidro working 8 hours on Thursday, 1/16/2025 and second entry reported Isidro working 8 hours on Thursday, 1/16/2025 and Friday, 1/17/2025. City inspector daily report show no work performed on Friday, 1/17/2025.

D. Violation No. 4 - California Labor Code § 226: Section 226, although not part of the prevailing wage laws, requires all employers to regularly furnish each of their employees with an accurate itemized statement, in writing for all payment types, including cash payments. Cash payments in lieu of fringe benefits should have been reported on certified payroll reports and reflected in each worker's earning statement.

- VNH Builders provided Statement of Employer Payments (PW 26 Form-DIR) in October 2024, signed by Wilder Alexander Ramirez stating that "cash reimbursement payment" are made weekly, monthly, and quarterly.
- Statement of Employer Payments (PW 26 Form- DIR) should only be used when payments are made to plans and funds on behalf of the worker, not when employees are paid in cash. Cash payments in lieu of fringe benefits should have been reported on certified payroll reports and reflected in each worker's earning statement, which were not completed here.

E. Violation No. 5 - California Labor Code § 221. : Section 221 states that "[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

- Based on OEA's observation from site visits and worker interviews, OEA has determined that VNH requires certain workers to give a percentage of their take-home-pay, after a check is cashed, back to VNH as cash. The subsequent payment of cash back to VNH by certain workers violates Labor Code § 221, in that it is unlawful for VNH to "collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

F. Violation No. 6 - California Labor Code § 223. Section 223 states that "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

- Based on OEA's observation from site visits and worker interviews, OEA has determined that VNH requires certain workers to give a percentage of their take-home-pay, after a check is cashed, back to VNH as cash.
- This subsequent payment back to VNH is a mechanism by which VNH is secretly paying these workers a lower wage than that required by the prevailing wage laws.

G. Violation No. 7 - California Labor Code § 224. Section 224 states that "[t]he provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to

withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement."

- For the reasons described herein, VNH has violated Sections 221 and 223 of the Labor Code by requiring certain workers to give a percentage of their take-home-pay, after a check is cashed, back to VNH as cash.
- VNH is not empowered by state or federal law to engage in such actions and such actions require certain employees to pay more in withholdings than that is required from the final amount actually received by said employee.

H. Violation No. 8 - California Labor Code § 225. Section 225 states that "[t]he violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor."

- For the reasons described herein, VNH has violated Sections 221 and 223 of the Labor Code by requiring certain workers to give a percentage of their take-home-pay, after a check is cashed, back to VNH as cash.
- Said actions of VNH constitute a misdemeanor under state law.

I. Violation No. 9 - California Labor Code § 225.5. Section 225.5 states that any employer who unlawfully withholds wages due any employee, in violation of Labor Code sections 221 and 223, shall be subject to a civil penalty in the amount of \$100 for failure to pay each employee for an initial violation, and \$200 for each subsequent violation, or for any willful or intentional violation, plus 25% of the amount unlawfully withheld.

- For the reasons described herein, VNH has violated Sections 221 and 223 of the Labor Code by requiring certain workers to give a percentage of their take-home-pay, after a check is cashed, back to VNH as cash.
- OEA reserves the right to seek any penalties for the actions of VNH in improperly withholding wages from certain employees.

Restitution Owed

These violations resulted in an underpayment affecting fifteen (15) workers on ninety-eight (98) working days. The total restitution owed is twenty-six thousand, sixty-three dollars and seven cents (\$26,063.07). This amount does not include the restitution that may be owed to certain employees for VNH's violation of California Labor Code sections 221 and 223, as explained above.

Refer to the attached document for a detailed breakdown of the restitution calculations.

OEA reserves the right to assess penalties in addition to the restitution amount owed.

Payment Process Information

To remedy this violation, VNH Builders must first prepare restitution checks to all underpaid employees and deliver the restitution checks by certified mail to Emily A. Savage Contract Compliance Specialist or Armando Benavidez, Contract Compliance Assistant, no later than 30 days from the date of the issuance of this Notice of Violation. Penalties will be assessed after restitution checks have been received by OEA.

Mailing Address:

Emily A. Savage
Office of Equality Assurance
200 East Santa Clara Street, Fifth Floor
San Jose, CA 95113

Notice of Violation Review Process:

VNH Builders has the right to contest this Notice of Violation. VNH Builders is afforded the opportunity to provide additional information and relevant documentation to Christopher Hickey (OEA Director) no later than ten (10) days from the date of issuance of this Notice of Violation.

The additional information and relevant documentation will be reviewed and responded to by the OEA Director. If VNH Builders is still not satisfied with the results VNH Builders is afforded the opportunity to speak with the Director of Public Works, no later than ten (10) days following the OEA Director's response. The Director of Public Works' decision will be final.

Failure to Pay Restitution

If VNH Builders fails to pay the restitution within the time required by this Notice or, in the event that this Notice of Violation is not contested as provided above, within the time required by the decision of the City Compliance Officer, the City will issue an Administrative Citation and further penalties will be assessed.

OFFICE OF EQUALITY ASSURANCE

Emily A. Savage

Contract Compliance Specialist

Phone: 408-300-4029

Email: Emily.Savage@sanjoseca.gov

Cc: Christopher Hickey Office of Equality Assurance

Judy Ann Kekki, Office of Equality Assurance

Tom Wu, Project Manager

July 16, 2025

VHN Builders
842 Mahler Road
Burlingame, CA 94010
Attn: Bruno Viera

Re: City of San Jose Fossa Night House Project

Mr. Viera:

This is in response to your letter dated July 1, 2025 in which you incorrectly contend that the City is in violation of Public Contract Code Section 20104.50 and in default under the terms of the City's Public Works Contract with VNH Builders for the above-referenced project.

You are in receipt of the City's May 30, 2025 letter notifying you of serious violations of numerous provisions of the California Labor Code regarding proper payment of your employees. VNH Builders has not paid the total restitution owed in the amount of twenty-six thousand, sixty-three dollars and seven cents (\$26,063.07) for the Labor Code violations documented in the City's May 30, 2025 letter. Further, as stated in the May 30, 2025 letter, this amount does not include the restitution that may be owed to certain employees for VNH's violation of California Labor Code sections 221 and 223.

The City is within its rights and is obligated to withhold any further payment to VNH Builders pending your payment of all restitution owed to your employees. Section 9-1.06A of the Standard Specifications, which is a term of the City's Public Works Contract with VNH Builders provides as follows:

"Before the City makes **any partial payment** or the final payment, and as a condition of a Contractor's application for progress or final payment being deemed complete, the Engineer may require the Contractor to submit satisfactory evidence that the Contractor is not delinquent in payments to employees or creditors for labor and materials incorporated into the work."

To date, VNH has failed to submit satisfactory evidence that it is not delinquent in payments to its employees as documented in the City's May 30, 2025 letter and as required under the terms of the Contract.

Contrary to your assertion, the City is not in violation of Public Contract Code Section 20104.50. By its terms, Section 20104.50 requires "prompt payment" of "undisputed and properly submitted payment request." As detailed in its May 30, 2025, the City disputes the amounts owed to VNH Builders on account of the unresolved Labor Code violations detailed in the City's letter and your payment request was therefore not properly submitted. The City will not consider any further payment requests from VNH to be undisputed and properly submitted until VNH has satisfactorily resolved all unpaid restitution and pending labor code violations under the Contract.

Finally, your threat to stop work on the Project is contrary to Section 8-1.11A of the Standard Specifications, which provides as follows:

"If a dispute should arise between the Contractor and the City regarding work performed or to be performed or payment therefore, Contractor hereby agrees that it will continue to perform the work called for under this contract and hereby expressly waives its rights, if any, to terminate or suspend work pending resolution of said dispute."

In the event that VNH Builders stops work on the Project, the City will consider all of its remedies for breach of Contract including but not limited to submitting a claim to the surety under the Performance Bond for this project.



Rosa Kim
Senior Architect
City Facilities Architectural Services

September 10, 2025

VNH Builders
842 Mahler Road
Burlingame, CA 94010
Attn: Bruno Vieira

Re: City of San Jose Fossa Night House Project

Mr. Vieira:

This is a letter outlining current performance issues with VNH Builders. VNH Builders has deliberately failed to show up on site to perform work for the past 6 weeks starting from Aug. 1, 2025.

Without VNH Builders making any significant progress on site, the construction schedule is now critically delayed past the substantial completion date of Oct. 6, 2025. The following are key components that have been affected by VNH Builder's failure to perform work per the Contract:

- Concrete pour for the exterior slab-on-grade including installation of all expansion joints per plan and the relocation of an incorrectly installed domestic water line.
- CMU block installation delay since material delivery on 8/1/25 and 8/7/25.
- Animal enclosure installation by Mathews Mechanical, which requires 4-6 weeks for fabrication and 2-3 weeks for installation. The City of San Jose has not yet received revised shop drawings for final review to start fabrication.
- Interior animal enclosure with the delay of installation past 10/14/25 – 11/11/25. A revised date is required.
- Connecting animal enclosure with the delay of installation past 9/26/25 – 11/5/25. A revised date is required.
- New electrical panel delivery with the delay of installation past 9/23/25. A revised date is required.
- Fabric mesh installation by Nets Unlimited, which requires 12 weeks after approved shop drawings and 2 weeks for installation. Shop drawings were approved by the City and the AOR on 9/3/25 and no confirmation for installation date was provided.
- Time extension letter for the project schedule.
- Updated master schedule.

- No designation of a superintendent to supervise the project and work on-site since the previous superintendent (Luis Villa) leaving the project on 7/28/25.
- Missing weekly 3-week look ahead, agenda and meeting minutes.

VNH Builders was to provide all purchase orders for materials including, but not limited to, key components such as the animal enclosure, electrical panel and fabric mesh netting. VNH Builders has not yet provided any documentation of these purchase orders to the City of San Jose.

VNH Builders is currently in breach of its obligations under the Contract.

VNH Builders must be on site starting Monday Sept. 15, 2025 to resume work and address the listed items. **Failure to correct any of the issues constitutes a default of the Contract with the City of San Jose.** In the event that VNH Builders fails to resume work and address the listed items, the City will consider all remedies, including but not limited to Contract termination and a claim under the Performance Bond for the Project.



Rosa Kim
Senior Architect
City Facilities Architectural Services

cc: [Jeremy Crawford, CCI Surety]

September 30, 2025

VNH Builders
842 Mahler Road
Burlingame, CA 94010
Attn: Bruno Vieira

Re: City of San Jose Fossa Night House Project

Mr. Vieira:

This is in response to your letter dated September 15, 2025 in which you incorrectly contend that the City is (a) in breach of contract and (b) in violation of Public Contract Code Section 20104.50 and (c) in default under the terms of the City's Public Works Contract with VNH Builders for the above-referenced project (Project).

Standard Specifications

Article I of the contract for the Project states that you agree to do all the work and furnish all the materials and equipment necessary to construct and complete, in accordance with the Plans and Specifications hereinafter mentioned and all the documents therein referred to are hereby specifically referred to and by such reference made a part of this contract. The bid documents for this Project state "The work embraced herein shall be done in accordance with the City ("City") of San José Standard Specifications (July 1992) and the City of San José Standard Details (July 1992) insofar as the same may apply and in accordance with the following special provisions." The City of San José Standard Specifications and Standard Details can be found in their entirety at: <https://www.sanjoseca.gov/your-government/departments-offices/public-works/resources/standard-specifications-and-details>.

Section 4.1.03 of the Standard Specifications states that the City "has the right to issue to Contractor a "Directed Change Order" requiring Contractor to perform work at the price and on the terms which City, in its sole discretion, shall deem reasonable. Contractor will thereafter perform work for the price and on the terms set forth in such change order. The Contractor shall not have the right to terminate the contract based upon the issuance of a "Directed Change Order." Contractor may then make a claim as provided for in this contract

for any additional compensation, or time extension, or both which the Contractor believes is due and owing to them for performing such work.”

The City is also within its rights and is obligated to withhold any further payment to VNH Builders pending your payment of all restitution owed to your employees. Section 9-1.06A of the Standard Specifications, which is a term of the City’s Public Works Contract with VNH Builders provides as follows:

“Before the City makes **any partial payment** or the final payment, and as a condition of a Contractor’s application for progress or final payment being deemed complete, the Engineer may require the Contractor to submit satisfactory evidence that the Contractor is not delinquent in payments to employees or creditors for labor and materials incorporated into the work.”

Additionally, Section 8-1.11A of the Standard Specifications provides as follows:

“If a dispute should arise between the Contractor and the City regarding work performed or to be performed or payment therefore, Contractor hereby agrees that it will continue to perform the work called for under this contract and hereby expressly waives its rights, if any, to terminate or suspend work pending resolution of said dispute.”

Contract Breach Allegation

In your letter dated September 15, 2025, you allege the City is in breach of contract and in violation of Public Contract Code Section 20104.50.

The City is withholding payment due to VNH’s numerous serious violations of the California Labor Code, which is within the City’s rights pursuant to Section 9-1.06A of the Standard Specifications. You are in receipt of the City’s May 30, 2025 letter notifying you of those violations regarding proper payment of your employees. VNH Builders has not paid the total restitution owed in the amount of twenty-six thousand, sixty-three dollars and seven cents (\$26,063.07) for the Labor Code violations documented in the City’s May 30, 2025 letter. Further, as stated in the May 30, 2025 letter, this amount does not include the restitution that may be owed to certain employees for VNH’s violation of California Labor Code sections 221 and 223.

To date, VNH has failed to submit satisfactory evidence that it is not delinquent in payments to its employees as documented in the City’s May 30, 2025 letter and as required under the terms of the Contract.

Contrary to your assertion, the City is not in violation of Public Contract Code Section 20104.50. By its terms, Section 20104.50 requires “prompt payment” of “undisputed and properly submitted payment request.” As stated in the Standard Specifications, the City can require you to submit satisfactory evidence that the you are not delinquent in payments to employees or creditors for labor and materials incorporated into the work. As detailed in its May 30, 2025, the City disputes the amounts owed to VNH Builders on account of the unresolved Labor Code violations detailed in the City’s letter and your payment request was therefore not properly submitted. The City will not consider any further payment requests from VNH to be undisputed and properly submitted until VNH has satisfactorily resolved all unpaid restitution and pending labor code violations under the Contract.

Why the City Can Issue Directed Change Orders

The Standard Specifications allow for the City to issue directed change orders, as explained earlier in this letter. Here are critical path items that VNH Builders has not provided to the City:

1. Expansion Joints: Change Proposal CP-6 was addressed in Directed Change Order CCO-2 in the amount of \$1,828.25 issued on 9/16/25 which covers the cost for all expansion joints, including the expansion joint at the existing grade beam and the expansion joints located throughout the exterior slab-on-grade. Since the base contract drawings on sheets A-101A and S2.1 identifies all locations of the expansion joints and control joints on the exterior slab-on-grade, the installation cost of the expansion joints is part of the base contract. Further clarification was provided by the AOR and SEOR with RFI-34.1, 49, 39.1 and 41 to VNH starting with RFI-34.1 issued on 4/7/25 providing details and several options for how to install an expansion joint. The Key-Loc joint system was selected because it allows VNH to complete the work in one concrete pour instead of separate pours. In addition, City Standard specification 73-1.05 Curb Construction states that “Expansion joints shall be installed only where specifically called for on the plans or as directed by the Engineer.” The expansion joints are part of the base contract and therefore labor for installation is not included and the amount of \$3,100.01 was not accepted by the City. The work has been on hold since 7/31/25 and needs to proceed immediately.

In addition, there are Change Proposals from VNH Builders that the City has not approved.

Tree branch removal: Change proposal CP-5 for the tree branch removal in the amount of \$3,403.71 is void. The horizontal tree branch was already addressed by the City and an email was sent on 7/21/25 to VNH Builders stating the change proposal is not approved.

Temporary pathway: Change proposal CP-8 in the amount of \$1,088.88 for installing a wooden temporary pathway is not approved since this work is means and methods for moving material on-site. Additionally, as stated in Section 4-1.04 of the Standard Specifications, VNH is responsible for hauling and maintaining access at their expense.

VNH Cannot Stop Work

As previously mentioned, Section 8-1.11A of the Standard Specifications prohibits you from stopping work.

In the event that VNH Builders stops work on the Project, the City will consider all of its remedies for breach of Contract including but not limited to submitting a claim to the surety under the Performance Bond for this project.



Rosa Kim
Senior Architect
City Facilities Architectural Services

cc: [CCI Surety, Patrick Laverty, Donna Le, Jeremy Crawford]

October 2, 2025

VNH Builders
842 Mahler Road
Burlingame, CA 94010
Attn: Bruno Vieira

Re: City of San Jose Fossa Night House Project

Mr. Vieira:

VNH has not shown up on the project site from September 26, 2025 , through today, October 2, 2025. VNH must return to work by October 10, 2025; otherwise, City will proceed with contract termination.



Tom Wu
Associate Architect
City Facilities Architectural Services

cc: [CCI Surety, Patrick Laverty, Donna Le, Jeremy Crawford]

October 10, 2025

VNH Builders
842 Mahler Road
Burlingame, CA 94010
Attn: Bruno Vieira

Re: City of San Jose Fossa Night House Project

Mr. Vieira:

This letter is to notify VNH Builders of the City's intention to terminate its agreement relating to the Fossa Night House Project (Project). The City intends to terminate the agreement for cause, pursuant to Section 8-1.11 of the City of San José Standard Specifications. The City will bring this to the City Council for approval of termination on December 9, 2025. You will have the opportunity to appear at the hearing and speak on the matter. The City intends to terminate for cause due to VNH's disruption of work as well as multiple Labor Code violations that have not been resolved to date.

Standard Specifications

Article I of the contract for the Project states that you agree to do all the work and furnish all the materials and equipment necessary to construct and complete, in accordance with the Plans and Specifications hereinafter mentioned and all the documents therein referred to are hereby specifically referred to and by such reference made a part of this contract. The bid documents for this Project state "The work embraced herein shall be done in accordance with the City ("City") of San José Standard Specifications (July 1992) and the City of San José Standard Details (July 1992) insofar as the same may apply and in accordance with the following special provisions." The City of San José Standard Specifications and Standard Details can be found in their entirety at: <https://www.sanjoseca.gov/your-government/departments-offices/public-works/resources/standard-specifications-and-details>.

Section 4.1.03 of the Standard Specifications states that the City "has the right to issue to Contractor a "Directed Change Order" requiring Contractor to perform work at the price and on the terms which City, in its sole discretion, shall deem reasonable. Contractor will thereafter perform work for the price and on the terms set forth in such change order. The

Contractor shall not have the right to terminate the contract based upon the issuance of a "Directed Change Order." Contractor may then make a claim as provided for in this contract for any additional compensation, or time extension, or both which the Contractor believes is due and owing to them for performing such work."

The City is also within its rights and is obligated to withhold any further payment to VNH Builders pending your payment of all restitution owed to your employees. Section 9-1.06A of the Standard Specifications, which is a term of the City's Public Works Contract with VNH Builders provides as follows:

"Before the City makes **any partial payment** or the final payment, and as a condition of a Contractor's application for progress or final payment being deemed complete, the Engineer may require the Contractor to submit satisfactory evidence that the Contractor is not delinquent in payments to employees or creditors for labor and materials incorporated into the work."

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"If a dispute should arise between the Contractor and the City regarding work performed or to be performed or payment therefore, Contractor hereby agrees that it will continue to perform the work called for under this contract and hereby expressly waives its rights, if any, to terminate or suspend work pending resolution of said dispute."

Contract Breach Allegation

In your letter dated September 15, 2025, you alleged the City is in breach of contract and in violation of Public Contract Code Section 20104.50.

The City is withholding payment due to VNH's numerous serious violations of the California Labor Code, which is within the City's rights pursuant to Section 9-1.06A of the Standard Specifications. You are in receipt of the City's May 30, 2025 letter notifying you of those violations regarding proper payment of your employees. VNH Builders has not paid the total restitution owed in the amount of twenty-six thousand, sixty-three dollars and seven cents (\$26,063.07) for the Labor Code violations documented in the City's May 30, 2025 letter. Further, as stated in the May 30, 2025 letter, this amount does not include the restitution that may be owed to certain employees for VNH's violation of California Labor Code sections 221 and 223.

To date, VNH has failed to submit satisfactory evidence that it is not delinquent in payments to its employees as documented in the City's May 30, 2025 letter and as required under the terms of the Contract.

Contrary to your assertion, the City is not in violation of Public Contract Code Section 20104.50. By its terms, Section 20104.50 requires "prompt payment" of "undisputed and properly submitted payment request." As stated in the Standard Specifications, the City can require you to submit satisfactory evidence that the you are not delinquent in payments to employees or creditors for labor and materials incorporated into the work. As detailed in its May 30, 2025, the City disputes the amounts owed to VNH Builders on account of the unresolved Labor Code violations detailed in the City's letter and your payment request was therefore not properly submitted.

VNH Cannot Stop Work

As previously mentioned, Section 8-1.11A of the Standard Specifications prohibits you from stopping work. VNH Builders stopped working between August 1, 2025 to September 12, 2025, then September 24, 2025 and has not returned to work, to date.



Rosa Kim
Senior Architect
City Facilities Architectural Services

cc: [CCI Surety, Patrick Laverty, Donna Le, Jeremy Crawford]

Date of Issuance: October 10, 2025

VIA EMAIL: Bruno Vieira, bruno.vieira@vnhbbuilders.com
Branum Spliethof, branum@vnhbbuilders.com
Kaio Cesar, accounting@vnhbbuilders.com
management@vnhbbuilders.com
service@vnhbbuilders.com

RE: Office of Equality Assurance- Director Decision – Notice of Violation

Project Names: 9365- PARK: Happy Hollow Park & Zoo Fossa Night House
10230- Central Service Yard Domestic & Fire Line Improvements

General Contractor: VNH Builders

Contractor in Violation: VNH Builders

Attention Bruno Vieira:

The purpose of this letter is to transmit my decision regarding VNH Builders appeal of the Office of Equality Assurance's (OEA) May 30, 2025 Notice of Violations on 9365- PARK: Happy Hollow Park & Zoo Fossa Night House and 10230- Central Service Yard Domestic & Fire Line Improvements.

In my review of the documentation provided by VNH Builders on September 10, 2025, VNH Builders has failed to validate claims that employees working on the City of San Jose project were correctly classified, paid accurately, in-full, or promptly.

Documentation received and reviewed contained the following:

- Invalid Itemized Statements (CA Labor Code 226)
 - Inaccurate, unreported hours based on daily reports
 - Inaccurate hourly rates of pay
 - Inaccurate "Gross Pay"
 - Inaccurate "Net Pay"
 - Inaccurate/Non-reported check numbers
 - Inconsistent payrates based on classification
- Canceled checks
 - Missing canceled checks
 - Inaccurate net pay compared to invalid itemized statements

- Written memos showing "approved to cash"
 - Checks issued days/months outside standard payroll issuance
 - Checks issued for previous work performed without verification of actual days worker, total hours performed, classification and hourly pay rates
- Missing daily reports/ all hours worked

-Director Decision-

I uphold the Notice of Violations dated May 30, 2025, for work performed 9365- PARK: Happy Hollow Park & Zoo Fossa Night House and 10230- Central Service Yard Domestic & Fire Line Improvements through February 19, 2025.

Restitution

As provided in the May 30, 2025 Notice of Violations, I have concluded restitution owed through February 19, 2025 is as follows:

9365- Happy Hollow Park & Zoo Fossa Night House- **\$26,063.07**

10230- Central Service Yard Domestic and Fire Line Improvements- **\$172,095.42**

Refer to the attached documents for detailed breakdown of the restitution calculations:

- 9365- Fossa Night House- VNH Builders- OEA Restitution Calculations (1)
- 10230- CSY Water Lines- VNH Builders- OEA Restitution (1)

The Office of Equality Assurance will conduct a prevailing wage review to ensure compliance and accurate pay for work performed on both projects from March 2025 through current. Restitution will be required if misclassifications or underpayments are identified during this review.

Penalties

Pursuant to California Labor Code Section 1775, the Office of Equality Assurance will issue penalty assessments upon completion of the investigation.

Payment Process Information

VNH Builders must prepare restitution checks to all underpaid employees and deliver the restitution checks by certified mail to Emily Savage, Contract Compliance Specialist, 200 East Santa Clara Street, 5th Floor, San Jose CA 95113 no later than twenty (20) days from the Date of the Issuance of this Updated Notice of Violation. OEA will disburse the restitution checks to the affected workers.

Notice of Violation Review Process

VNH has the right to contest this OEA Director Decision. You are afforded the opportunity to speak with Matt Loesch, Director of Public Works Matt.Loesch@sanjoseca.gov within sixty (60) days from the Date of the Issuance of this OEA Director Decision. The Director of Public Works decision will be final.

Failure to Pay Restitution

If VNH Builders fails to pay the restitution amount within the time required by this Notice or in the event that this Notice is contested as provided above, and within the time required by the decision of the City officer, the City will assess fines, fees, and penalties as prescribed by CA Labor Code section 1775.

Sincerely,

/S/

Christopher Hickey
Director- Office of Equality Assurance

Attachments:

Notice of Violation- 9365- Fossa Night House HHPZ 5.30.2025

9365- Fossa Night House- VNH Builders- OEA Restitution Calculations

Notice of Violation- 10230- Central Service Yard Domestic & Fire Line Improvements 5.30.2025

10230- CSY Water Lines- VNH Builders- OEA Restitution