

1 JULIE L. FIEBER (SBN 202857)  
jfeiber@cpmlegal.com  
2 ANDREW W. BRITTON (SBN 340052)  
abritton@cpmlegal.com  
3 TAYLOR L. TANG (SBN 341677)  
ttang@cpmlegal.com  
4 **COTCHETT, PITRE & McCARTHY, LLP**  
San Francisco Airport Office Center  
5 840 Malcolm Road  
Burlingame, CA 94010  
6 Telephone: (650) 697-6000  
Facsimile: (650) 697-0577

7 *Attorneys for Plaintiff Michael Mitchell*  
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN MATEO**

11 **MICHAEL MITCHELL**, an individual

12 Plaintiff,

13 v.

14 **CITY OF BURLINGAME**, and **DOES 1-20**,

15 Defendants.  
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CASE NO.

**COMPLAINT FOR:**

1. **INVERSE CONDEMNATION**
2. **DANGEROUS CONDITION ON PUBLIC PROPERTY**
3. **NUISANCE**

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

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1 **I. INTRODUCTION**

2 1. On October 24, 2021, rain began to fall on the City of Burlingame and continued to  
3 fall over the next two days. Unfortunately, the City’s stormwater and sewer systems were not  
4 capable of handling the forecasted rain.

5 2. Undrained stormwater and backed-up sewer water flooded the streets of the  
6 northern Bayfront area of Burlingame, which is bound by Highway 101 to the west, the San  
7 Francisco Bay to the east, the City of Millbrae to the North, and Broadway to the south.

8 3. This flooding was a direct result of the City’s failure to have and keep its  
9 stormwater and sewer systems up to date. As a result, many Burlingame business owners and  
10 operators lost thousands of dollars and, to this day, suffer as a result of the City’s failures to  
11 properly design, construct, inspect, maintain, manage, and use its stormwater and sewer systems.

12 4. Plaintiff Michael Mitchell owns real property in the Bayfront neighborhood at 837  
13 Malcolm Road. Plaintiff also leases property located at 821 Malcolm Road, where he stores  
14 photographic and printing equipment for his business. As a result of the flooding, Plaintiff suffered  
15 and continues to suffer real property damage, personal and business property damages, business  
16 interruption, nuisance damages, and associated emotional distress.



28 *Figure 1: Malcolm Road on October 25, 2021.*

1 **II. JURISDICTION AND VENUE**

2 5. This Court is a court of general jurisdiction and therefore has subject matter  
3 jurisdiction over all claims asserted herein.

4 6. The amount in controversy exceeds the jurisdictional minimum of this Court.

5 7. Venue is proper in the County of San Mateo because Plaintiff resides in this  
6 County, the property at issue is or was located in this County, and the City of Burlingame is  
7 located within and has its principal place of business in this County. (Code Civ. Proc. § 394).

8 8. On February 8, 2022, Plaintiff Michael Mitchell submitted a Government Claim to  
9 the City of Burlingame pursuant to Government Code § 910, *et seq.* The City of Burlingame took  
10 no action on Plaintiff's claim after 45 days; therefore, the City rejected Plaintiff's claim as a matter  
11 of law pursuant to Government Code § 912.4(c).

12 **III. PARTIES**

13 **A. Plaintiff**

14 9. Michael Mitchell ("Plaintiff") is a small business owner who operates a  
15 photographic imaging and printing service, known as Mitchell Imaging. Plaintiff leases space to  
16 store equipment for his business at 821 Malcolm Road in Burlingame, California. Plaintiff also  
17 owns real property at 837 Malcolm Road in Burlingame, California, which Plaintiff leases to the  
18 City of San Francisco.

19 **B. Defendant**

20 10. The City of Burlingame ("City") is, and at all times relevant was, a municipal law  
21 corporation and general law city operating as a public entity and doing business in the State of  
22 California. The City has its principal place of business and office in the County of San Mateo.  
23 Plaintiff is informed and believes, and thereon alleges that the City, and/or its servants, agents,  
24 representatives, and employees were the owners of and were responsible for planning, designing,  
25 constructing, repairing, upgrading, maintaining and/or controlling the storm water and/or sewer  
26 systems designed to protect and service the Bayfront neighborhood of Burlingame, including  
27 Plaintiff's property.

28 //

1           **C.     Unnamed & Doe Defendants**

2           11.     The true names and capacities, whether individual, corporate, associate or otherwise  
3 of Defendant Does 1 through 20 (“Does 1-20), inclusive, are unknown to Plaintiff at this time.  
4 Therefore, Plaintiff sues said Doe Defendants by such fictitious names pursuant to C.C.P. § 474.  
5 Plaintiff further alleges that each of said fictitious Defendants is in some manner responsible for  
6 the acts and occurrences hereinafter set forth. Plaintiff will amend this complaint to show their  
7 true names and capacities when the same are ascertained, as well as the manner in which each Doe  
8 Defendant is responsible for the harm Plaintiff suffered.

9           **D.     Agency & Concert of Action**

10          12.     At all times herein mentioned, Defendant City and Does 1-20, and each of them,  
11 were the agents, servants, employees, partners, aiders and abettors, co-conspirators, and/or joint  
12 venturers of each of the other Defendants named herein and were at all times operating and acting  
13 within the purpose and scope of said agency, service, employment, partnership, enterprise,  
14 conspiracy, and/or joint venture, and each Defendant has ratified and approved the acts of each of  
15 the remaining Defendants. Each of the Defendants aided and abetted, encouraged, and rendered  
16 substantial assistance to the other Defendants in breaching their obligations to Plaintiff, as alleged  
17 herein. In taking action to aid and abet and substantially assist the commission of these wrongful  
18 acts and other wrongdoings complained of, as alleged herein, each of the Defendants acted with  
19 conscious awareness of their primary wrongdoing and realized and appreciated that their conduct  
20 would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and  
21 wrongdoing.

22 **IV.    FACTUAL ALLEGATIONS**

23           **A.     The City’s Aging Sewer and Stormwater Systems Required Improvements**

24          13.     The City has a decades-old stormwater and sewer system which it constructs,  
25 operates, inspects, and maintains for the benefit of the public.

26          14.     In 2009, the City obtained voter approval to begin a \$39 million taxpayer-funded  
27 capital improvement program which included funding for stormwater and sewer system upgrades.

28

1           15.     One aspect of that capital improvement included upgrading a large-scale  
2 stormwater pump located at 842 Cowan Road in Burlingame (the “Cowan Pump”).

3           **B.     The City Knew that Plaintiff’s Property Was at a Substantial Risk of Flooding**

4           16.     The Cowan Pump services the northern Bayfront area of Burlingame, including  
5 Malcolm Road. The Bayfront area lies between Highway 101 to the west, the San Francisco Bay to  
6 the east, the City of Millbrae to the North, and Broadway to the South.

7           17.     The Bayfront neighborhood is also located within a Special Flood Hazard Area  
8 (“SFHA”). As designated by FEMA, the SFHA is an area determined to have potential for  
9 flooding.



27           Figure 2: Storm Drain Map of the Bayfront Neighborhood.

1           18.     On October 18, 2021, the National Weather Service (“NWS”) began forecasting  
2 significant rainfall in Northern California. By October 20, 2021, NWS forecasted an approaching  
3 Category 5 storm that would carry several inches of rain into the Bay Area over a 24-hour period.

4           19.     In turn, the City knew that these heavy rains posed a foreseeable risk of flooding at  
5 certain properties within its boundaries, including those located within Bayfront neighborhood.

6           20.     According to emails between City employees, the City saw nearly 6 inches of rain  
7 by 5:03 PM on October 24, 2021.

8                   From: [REDACTED]@burlingame.org>  
9                   Date: October 24, 2021 at 5:03:16 PM PDT  
10                   To: [REDACTED]@burlingame.org>  
11                   Subject: Storm Update

12                   Hi [REDACTED]

13                   We have already recorded over 5 ¼ inch rain since mid-night, and more rain is  
14 expected tonight. We have approximately 8 people in the Streets Division on duty  
15 responding to various localized flooding throughout the City. We’re going to relieve them  
16 and bring in another crew for tonight. Here are a few updates.

- 17                   • All creeks are at full capacity and have received calls from residents worried  
18 about possible overtopping of creeks in residential areas.
- 19                   • Basement was flooded at 1224 Balboa Ave.
- 20                   • Hillside Circle and Alvarado localized flooding
- 21                   • Stanton Rd. flooding
- 22                   • 1000 Rollins Rd. Sewage pumps down due to power outage, and backup  
23 generator having problems &
- 24                   • Wastewater treatment plant staff onsite dealing with high flows and power  
25 outage issues.

26           Figure 3: Storm Update email obtained from the City.

27           **C.     The Cowan Pump was not Functional before the Storm**

28           21.     The Cowan Pump, stormwater system, and sewer system were not prepared to  
handle, or capable of handling, the forecasted rain.

          22.     Emails obtained from the City indicate that the Cowan Pump restoration was  
several months behind schedule. Although the City originally planned to demolish the Cowan  
Pump starting in June of 2021, it waited until August 2021 – nearly two months later – to begin  
demolition.

1 From: [REDACTED]  
2 Sent: Friday, November 05, 2021 8:13 AM  
3 To: [REDACTED]  
4 Cc: [REDACTED]  
5 Subject: Cowan Storm Drain Pump Delivery Dates

6 Morning [REDACTED]

7 Please see below for dates Anvil showed in their schedule updates for the when the old Cowan pumps would be removed and when the new pumps would be installed:

Schedule	Submitted	Cowan Pump Demo Start	Cowan Pump Demo End	Cowan Pump Install Start	Cowan Pump Install End
Baseline		28-Jun	1-Jul	8-Sep	21-Sep
March Update		9-Aug	12-Aug	15-Sep	28-Sep
May Update		5-Aug	10-Aug	20-Sep	1-Oct
June Update	6-Jul	5-Aug	10-Aug	20-Sep	1-Oct
August Update	2-Sep	9-Aug	11-Aug	7-Oct	20-Oct
September Update				8-Nov	22-Nov

8 The dates in green show when the old pumps were actually removed. The June and August updates showed the pump install being completed in early October, so Anvil proceeded with removing the old pumps in August. Once the September update was submitted (showing November install) the old pumps were already out. The delivery date from Cascade just continued to creep on us.

9 Please let me know if you need any more information.

10 Thank you,  
11 [REDACTED]

12 Figure 4: Cowan Pump Construction Schedule.

13  
14  
15  
16 23. The City also delayed installation of the new Cowan Pump. Although the  
17 installation was originally scheduled for early September, by the time September arrived the  
18 installation had been postponed a full two months until November.

19  
20 24. Without those delays, the Cowan Pump would have been functioning as intended  
21 when the storm arrived.

22 25. However, communications to City staff indicate that when the storm arrived, the  
23 Cowan Pump was only capable of displacing approximately **12,300 gallons per minute** (“GPM”).  
24 In contrast, when fully functional, a single large pump at the Cowan station could displace  
25 approximately **22,500 GPM**.

26  
27  
28 //



1           **From:** [REDACTED]  
2           **Sent:** Wednesday, October 27, 2021 1:12 PM  
3           **To:** [REDACTED]  
4           **Cc:** [REDACTED]  
5           **Subject:** Cowan Bypass Capacity

6           Hi [REDACTED]

7           [REDACTED] informed me that each of the 6in City Pumps out at Cowan on Sunday pump 2900 GPM. With those two pumps and Anvil's pumps, the total bypass capacity at Cowan on Sunday was 12,300 GPM (4500+2000+2900+2900).

8           For reference, one of the small permanent pumps at Cowan pumps 9000 GPM and one of the large permanent pumps pump 22,500 GPM.

9           Thanks,  
10          [REDACTED]

11          Figure 5: Email to City staff on capacity of the Cowan Pump.

12           26.       Given the discrepancy between the capacity of the temporary pumps and the  
13           previous capacity of the Cowan pumps, the City knew or should have known that the temporary  
14           pump or system of temporary pumps could not remove sufficient water to prevent or mitigate the  
15           foreseeable risk of flooding posed in the event of heavy rain.

16           27.       Plaintiff is further informed that, at the same time, the City failed to adequately  
17           design, construct, operate, manage, use, inspect, or maintain its stormwater and sewer systems  
18           which, in isolation or in combination with the inadequate pumping, substantially contributed to the  
19           flooding. This flooding, in turn, damaged buildings and businesses in the flooded area.

20           28.       As a result of the City's failures, several streets in the Bayfront area of Burlingame,  
21           including Malcolm Road, experienced substantial flooding which both damaged property located  
22           in the Bayshore area and prevented access to properties located on the flooded roads.

23           **D.       The Flooding Damaged Plaintiff's Property and Business**

24           29.       As a result of the flooding caused by the City's stormwater and/or sewer system,  
25           Plaintiff suffered substantial damages to their property and business in an amount to be proven.

26           30.       Plaintiff suffered damage to his business as a result of flooding at 821 Malcolm  
27           Road, where Plaintiff stored his photography and imaging equipment. Water damaged or destroyed  
28           printing materials, lighting, storage, and other property intended for use in Plaintiff's business. To  
          date, Plaintiff has not been able to fully replace all damaged or destroyed equipment.

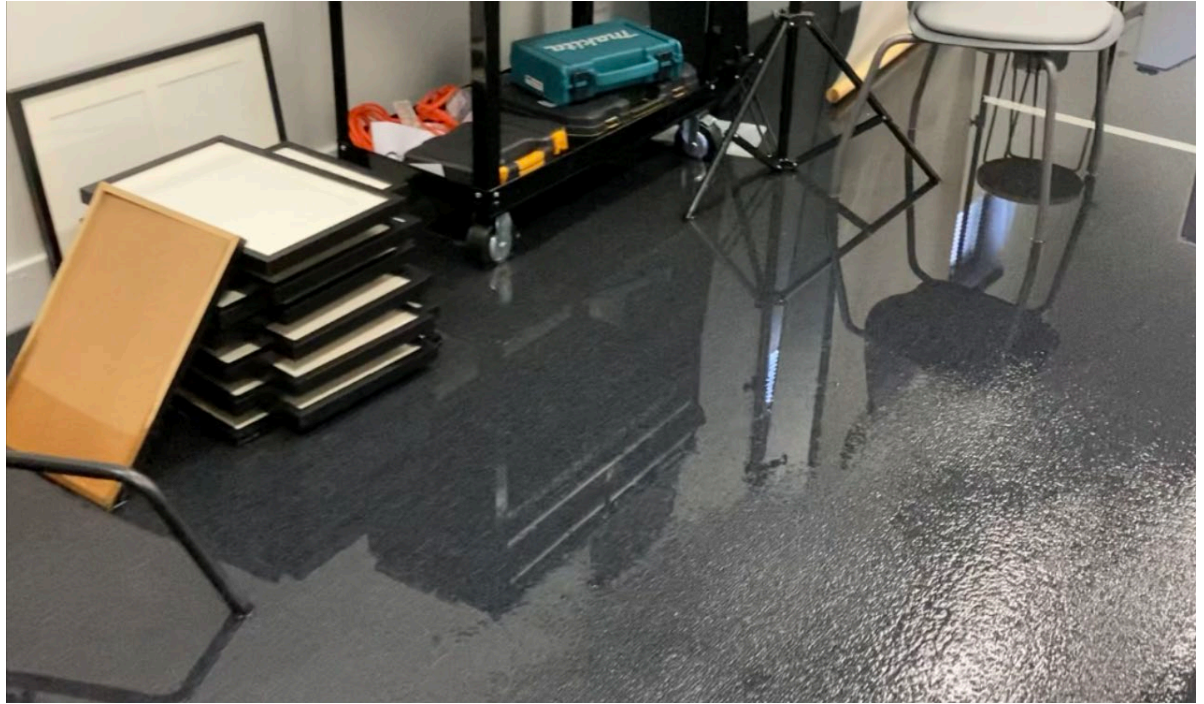


Figure 6: Interior Damage at Plaintiff's Property.

31. The damage to Plaintiff's business property precluded Plaintiff from operating their business for a substantial amount of time, resulting in business losses. The flooding further precluded Plaintiff from accessing 821 Malcolm Road to rescue, remediate, or restore their business property before it was damaged or destroyed, thereby exacerbating the damage.

32. Following the flood, Plaintiff expended both economic and noneconomic resources to remediate, repair, or replace their damaged property. As a result, Plaintiff has suffered and continues to suffer financial harm and nuisance damages. Plaintiff further suffered real property damage to their property at 837 Malcolm Road. Water intrusion damaged the structure and its components and diminished the value of Plaintiff's property

33. Plaintiff's harms could have and should have been avoided had the City taken reasonable steps to adequately design, construct, operate, manage, use, inspect, and/or maintain its stormwater and sewer systems.

34. In response to the October flooding, Plaintiff submitted two Government Claim forms to the City of Burlingame on February 8, 2022 – one for Plaintiff's real property at 837 Malcolm Road and a second for Plaintiff's business at 821 Malcolm Road (attached hereto as Exhibit A). The City acknowledged receipt of Plaintiff's claim (attached hereto as Exhibit B).)



1 **SECOND CAUSE OF ACTION**

2 **DANGEROUS CONDITION ON PUBLIC PROPERTY**

3 45. Plaintiff incorporates and re-alleges each of the allegations above as though fully  
4 set forth herein.

5 46. The City owns and controls the stormwater and sewer systems designed to protect  
6 and prevent the Bayfront neighborhood of Burlingame, which includes Plaintiff's property on  
7 Malcolm Road and leased space on Malcolm road, from stormwater flooding and sewage backup.

8 47. At the time of the flood, the stormwater and sewer systems were in dangerous  
9 conditions as a result of the City's failure to adequately design, construct, operate, manage, use,  
10 inspect, and/or maintain those systems and their various component parts.

11 48. The dangerous conditions created a foreseeable risk of flooding and sewage backup  
12 and resulting damage to Plaintiff's property.

13 49. The City's own negligence and wrongful conduct in failing to properly design,  
14 construct, operate, manage, use, inspect, and/or maintain its stormwater and sewer systems in order  
15 to prevent flooding at Plaintiff's property created the dangerous condition.

16 50. As a direct and legal result of such dangerous conditions, Plaintiff suffered  
17 economic and noneconomic harm.

18 51. Wherefore, Plaintiff prays for relief as set forth below.

19 **THIRD CAUSE OF ACTION**

20 **PRIVATE NUISANCE**

21 52. Plaintiff incorporates and re-alleges each of the allegations set forth above as  
22 though fully set forth herein.

23 53. Plaintiff owns real property located at 837 Malcolm Road in Burlingame,  
24 California, which Plaintiff leases to the City of San Francisco

25 54. Plaintiff leases real property located at 821 Malcolm Road in Burlingame,  
26 California, at which Plaintiff stores property for use in their business.

27 55. The City, through its actions and omissions in negligently designing, constructing,  
28 operating, managing, using, inspecting and/or maintaining its stormwater and sewer systems and

1 their various component parts, as well as its inaction in failing to properly upgrade or correct  
2 known defects and dangers in the stormwater system and/or sewer systems created conditions  
3 which were harmful to Plaintiff's property and/or obstructed the use of Plaintiff's property.

4 56. As a direct and legal result of the harmful conditions created by the City, Plaintiff  
5 suffered the harms alleged herein. Further, the seriousness of the harm to Plaintiff, including risk  
6 to Plaintiff's property and substantial economic and noneconomic damages, outweighs the public  
7 benefit of the City's conduct.

8 57. Wherefore, Plaintiff prays for relief as set forth below.

9 **VI. PRAYER FOR RELIEF**

10 Plaintiff prays for relief as follows:

- 11 1. General, special, and consequential damages sustained by Plaintiff according to proof;
- 12 2. Prejudgment interest at the maximum legal rate;
- 13 3. Attorneys' fees, costs, engineering fees, appraisal fees, costs, disbursements, and other  
14 expenses under the first cause of action;
- 15 4. All such further relief as the Court deems just and proper.

16 Dated: May 12, 2022

**COTCHETT, PITRE & McCARTHY, LLP**

17  
18 By: 

JULIE L. FIEBER  
ANDREW W. BRITTON  
TAYLOR L. TANG

*Attorneys for Plaintiff Michael Mitchell*

21 **VII. JURY TRIAL DEMANDED**

22 Plaintiff hereby demands a jury trial.

23  
24 Dated: May 12, 2022

**COTCHETT, PITRE & McCARTHY, LLP**

25  
26 By: 

JULIE L. FIEBER  
ANDREW W. BRITTON  
TAYLOR L. TANG

*Attorneys for Plaintiff Michael Mitchell*

# **Exhibit A**

# CLAIM AGAINST THE CITY OF BURLINGAME

Please return to: City Clerk  
501 Primrose Rd.  
Burlingame, CA 94010



(date stamp)  
**RECEIVED**  
FEB 08 2022  
CITY CLERK'S OFFICE  
CITY OF BURLINGAME

Please type or print clearly, (this form can be completed online before printing)

Claimant's Name: Michael Mitchell  
Claimant's Address: 821 Malcolm Road, Burlingame, CA 94010  
Street or PO Box, City State Zip

Claimant's Home Phone: (650) 346-4848 Claimant's Work Phone: (650) 346-4848

Amount of Claim: \_\_\_\_\_ Attach copies of bills/estimates

If amount claimed is more than \$10,000, indicate where jurisdiction rests:  Municipal Court  Superior Court

Address to which notices are to be sent, if different than above:

Name: Cotchett, Pitre & McCarthy, Attn. Andrew W. Britton  
Address: 840 Malcolm Road, Ste. 200, Burlingame, CA 94010  
Street or PO Box, City State Zip

Date of incident: October 24-26, 2021 Time of incident: N/A

Location of incident: 821 Malcolm Road, Burlingame, CA 94010

Describe the incident or accident including your reason for believing that the city is liable for your damages:

In late October 2021, substantial flooding caused by the City's failure to exercise reasonable care in the construction, inspection, and/or maintenance of its storm water and/or sewer systems damaged Claimant's property and resulted in business interruptions. See Exhibit A.

Describe all damages which you believe you have incurred as a result of this incident:

Removal and replacement of chattel (tools, materials, misc. items); corresponding business interruption losses.

Names of public employee(s) causing the damages you are claiming:

City of Burlingame Public Works, Water Division.

I hereby declare, under penalty of perjury, that I have read the foregoing and that the same is true to the best of my knowledge.

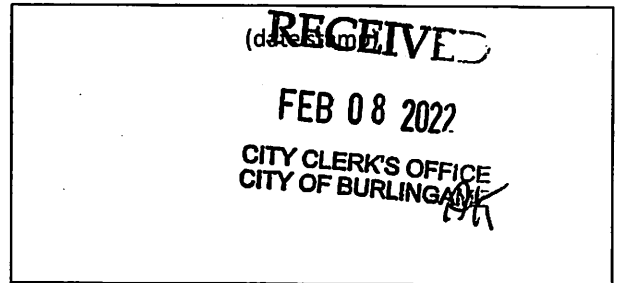
Date: 2/8/22 Signature: \_\_\_\_\_

*Any person, who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment of fine or both. Claims for personal injury or damage to personal property must be filed within 180 days of the incident; all other claims must be filed within one year of the incident' See Government Code Section 900 et seq.*

# CLAIM AGAINST THE CITY OF BURLINGAME

Please return to:

City Clerk  
501 Primrose Rd.  
Burlingame, CA 94010



Please type or print clearly, (this form can be completed online before printing)

Claimant's Name: Michael Mitchell

Claimant's Address: 837 Malcolm Road, Burlingame, CA 94010

*Street or PO Box, City State Zip*

Claimant's Home Phone: (650) 346-4848

Claimant's Work Phone: (650) 346-4848

Amount of Claim: \_\_\_\_\_ *Attach copies of bills/estimates*

If amount claimed is more than \$10,000, indicate where jurisdiction rests:  Municipal Court  Superior Court

Address to which notices are to be sent, if different than above:

Name: Cotchett, Pitre & McCarthy, ATTN: Andrew W. Britton

Address: 840 Malcolm Road, Ste. 200, Burlingame, CA 94010

*Street or PO Box, City State Zip*

Date of incident: October 24-26, 2021

Time of incident: N/A

Location of incident: 837 Malcolm Road, Burlingame, CA 94010

Describe the incident or accident including your reason for believing that the city is liable for your damages:

In late October 2021, substantial flooding caused by the City's failure to exercise reasonable care in the construction, inspection, and/or maintenance of its storm water and/or sewer systems damaged Claimant's property and resulted in business interruptions. See Exhibit A.

Describe all damages which you believe you have incurred as a result of this incident:

Real property damage (removal of floodwater; removing and replacing water-damaged sheetrock; taping and painting replaced sheetrock; removing and replacing water-damaged carpet and wood; various electrical repairs); damage to chattel (furniture, tools, materials, misc. items); corresponding business interruption losses.

Names of public employee(s) causing the damages you are claiming:

City of Burlingame Public Works, Water Division.

I hereby declare, under penalty of perjury, that I have read the foregoing and that the same is true to the best of my knowledge.

Date: 2/8/22

Signature: \_\_\_\_\_

*Any person, who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment of fine or both. Claims for personal injury or damage to personal property must be filed within 180 days of the incident; all other claims must be filed within one year of the incident' See Government Code Section 900 et seq.*



# **Exhibit B**



RECEIVED

FEB 10 2022

COTCHETT, PITRE, & McCARTHY, LLP

## The City of Burlingame

OFFICE OF THE  
CITY ATTORNEY

CITY HALL — 501 PRIMROSE ROAD  
BURLINGAME, CALIFORNIA 94010-3997

TEL: (650) 558-7204  
[www.burlingame.org](http://www.burlingame.org)

February 9, 2022

Mr. Michael Mitchell  
c/o Cotchett, Pitre & McCarthy  
Attn: Andrew Britton  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010

RE: Claim for Damage  
Incident Date: October 24-26, 2021  
Claim No: BU-1494

Dear Mr. Mitchell:

This letter is to acknowledge receipt of the claim you filed against the City re: 821 Malcolm Road. It was received on February 8, 2022.

An investigation of the circumstances will be conducted, and you should expect to hear further from this office or Sedgwick Claims Services on behalf of The Plan JPA, the City's claim administrator, within the next 20 days.

Sincerely,

*Scott Spansail*

SCOTT N. SPANSAIL  
Assistant City Attorney

cc: The Plan JPA



RECEIVED

FEB 11 2022

## The City of Burlingame

COTCHETT, PITRE, & MCCARTHY, LLP

OFFICE OF THE  
CITY ATTORNEY

CITY HALL — 501 PRIMROSE ROAD  
BURLINGAME, CALIFORNIA 94010-3997

TEL: (650) 558-7204  
[www.burlingame.org](http://www.burlingame.org)

February 9, 2022

Mr. Michael Mitchell  
c/o Cotchett, Pitre & McCarthy  
Attn: Andrew Britton  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010

RE: Claim for Damage  
Incident Date: October 24-26, 2021  
Claim No: BU-1493

Dear Mr. Mitchell:

This letter is to acknowledge receipt of the claim you filed against the City re: 837 Malcolm Road. It was received on February 8, 2022.

An investigation of the circumstances will be conducted, and you should expect to hear further from this office or Sedgwick Claims Services on behalf of The Plan JPA, the City's claim administrator, within the next 20 days.

Sincerely,

*Scott Spansail*

SCOTT N. SPANSAIL  
Assistant City Attorney

cc: The Plan JPA