

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>T. Michael Lechner</b>  TELEPHONE NO.: <b>408-309-6015</b> FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY           CASE NUMBER:  <p style="text-align: right;"><b>SC19415</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: <b>41 West Yaney Avenue</b> MAILING ADDRESS: <b>Same</b> CITY AND ZIP CODE: <b>Sonora, CA 95370</b> BRANCH NAME: <b>Historical Branch</b>	
PLAINTIFF/PETITIONER: <b>Sierra Park Services, Inc.</b> DEFENDANT/RESPONDENT: <b>Edward and Marjorie Cole</b>	
<b>DECLARATION</b>	

Please see attachment.

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

Date: November 4, 2016

T. Michael Lechner  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME)

*T. M. LECHNER*  
 \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)

- Attorney for     Plaintiff     Petitioner     Defendant  
 Respondent     Other (Specify):

**SIERRA PARK SERVICES Inc.**

**DOCUMENTATION AND EXHIBITS**

**SMALL CLAIMS COURT CASE SC19415**

SIERRA PARK SERVICES, Inc. (PLAINTIFF)

Edward and Marjorie Cole (DEFENDANTS)

TRIAL DATE: November 29, 2016, 8:30, Department 3

**ATTACHMENTS:**

California Civil Code Section 845

SPS, Inc. 3-Year Budget & Assessments Summary

Defendants Billing Balance Details

## California Civil Code Section 845.

845. (a) The owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair.

(b) If the easement is owned by more than one person, or is attached to parcels of land under different ownership, the cost of maintaining it in repair shall be shared by each owner of the easement or the owners of the parcels of land, as the case may be, pursuant to the terms of any agreement entered into by the parties for that purpose. In the absence of an agreement, the cost shall be shared proportionately to the use made of the easement by each owner.

(c) If any owner refuses to perform, or fails after demand in writing to pay the owner's proportion of the cost, an action to recover that owner's share of the cost, or for specific performance or contribution, may be brought by the other owners, either jointly or severally. The action may be brought before, during, or after performance of the maintenance work, as follows:

(1) The action may be brought in small claims court if the amount claimed to be due as the owner's proportion of the cost does not exceed the jurisdictional limit of the small claims court. A small claims judgment shall not affect apportionment of any future costs that are not requested in the small claims action.

(2) Except as provided in paragraph (1), the action shall be filed in superior court and, notwithstanding Section 1141.13 of the Code of Civil Procedure, the action shall be subject to judicial arbitration pursuant to Chapter 2.5 of Title 3 of Part 3 (commencing with Section 1141.10) of the Code of Civil Procedure. A superior court judgment shall not affect apportionment of any future costs that are not requested in the action, unless otherwise provided in the judgment.

(3) In the absence of an agreement addressing the maintenance of the easement, any action for specific performance or contribution shall be brought in a court in the county in which the easement is located.

(4) Nothing in this section precludes the use of any available alternative dispute resolution program to resolve actions regarding the maintenance of easements in the small claims court or the superior court.

(d) In the event that snow removal is not required under subdivision (a), or under any independent contractual or statutory duty, an agreement entered into pursuant to subdivision (b) to maintain the easement in repair shall be construed to include snow removal within the maintenance obligations of the agreement if all of the following exist:

(1) Snow removal is not expressly precluded by the terms of the agreement.

(2) Snow removal is necessary to provide access to the properties served by the easement.

(3) Snow removal is approved in advance by the property owners or their elected representatives in the same manner as provided by the agreement for repairs to the easement.

(e) This section does not apply to rights-of-way held or used by railroad common carriers subject to the jurisdiction of the Public Utilities Commission.



# SIERRA PARK SERVICES, Inc. BUDGET & ASSESSMENTS

## 13/14 TO 15/16<sup>5</sup>

BUDGET ITEM	2013 - 2014	2014 - 2015	2015 - 2016	
	BUDGET	BUDGET	BUDGET	
<b>ROADS</b>	\$194,943	\$195,944	\$193,545	
Per Property Roads Amount <sup>1</sup> =	\$541.51	\$544.29	\$537.63	
<b>ANCILLARY</b>				
TRASH	\$17,125	\$17,522	\$19,300	
NEEDLES	\$20,353	\$21,045	\$18,300	
COMMON AREA MAINTENANCE	\$10,780	\$17,933	\$16,800	
GENERAL ADMINISTRATION	\$5,954	\$14,429	\$29,525	
ANCILLARY TOTAL =	\$54,212	\$70,929	\$83,925	
Less Other Anticipated Income and Retained Earnings =	-\$77,977	-\$73,129	-\$70,545	
Per Property Ancillary Amount <sup>1</sup> =	\$0	\$0	\$37.17	
SERVICES TOTAL <sup>2</sup> =	\$541	\$544	\$589	
Capital Improvement (Bridge Adder) <sup>3</sup> =		50	160	
TOTAL BILL FOR SERVICES <sup>4</sup> =	\$547	\$596	\$749	\$1,892
Late Fees =	\$225	\$325	\$275	\$825
				<b>\$2,717</b>

**NOTES:**

1. There are nominally 360 lots in the community (This is Total Cost Divided by that number).
2. An optional payment of \$50 (\$37 rounded up to \$50) was asked in 15/16 to cover the anticipated ancillary cost shortfall.
3. Shareholders voted to increase the proposed budget by this amount to replace an unsafe bridge.
4. The 13/14 bill was slightly higher because additional revenue received after the budget was proposed had not been applied.
5. Fiscal Year is June 1 to May 31.

The sum of \$2,717 is the amount owed by a property owner who made no payments over this period. As noted in SC-100, MC-031, the Coles' amount owed through May 3, 2016 is \$2,019.00. This is the sum of the amounts of annual billings of \$547 for Fiscal Year (FY) 13/14, \$594 for FY 14/15, and \$750 for FY 15/16 plus accumulated late fees less payments made totalling \$547.00.

8:43 AM

06/01/16

**Sierra Park Services, Inc.**  
**Customer Balance Detail**  
 As of May 31, 2016

Type	Date	Num	Account	Class	Amount	Balance
<b>Cole, Edward &amp; Marjorie</b>						0.00
Invoice	06/06/2013	72	1200 · Accounts rec...		547.00	547.00
Invoice	09/11/2013	375	1200 · Accounts rec...		25.00	572.00
Invoice	10/15/2013	430	1200 · Accounts rec...		25.00	597.00
Invoice	11/13/2013	473	1200 · Accounts rec...		25.00	622.00
Invoice	12/17/2013	514	1200 · Accounts rec...		25.00	647.00
Invoice	01/14/2014	552	1200 · Accounts rec...		25.00	672.00
Invoice	02/06/2014	591	1200 · Accounts rec...		25.00	697.00
Payment	03/14/2014	758776	1200 · Accounts rec...		-547.00	150.00
Invoice	03/15/2014	626	1200 · Accounts rec...		0.00	150.00
Invoice	06/04/2014	823	1200 · Accounts rec...		594.00	744.00
Invoice	09/09/2014	1188	1200 · Accounts rec...		25.00	769.00
Invoice	10/01/2014	1255	1200 · Accounts rec...		25.00	794.00
Invoice	11/04/2014	1309	1200 · Accounts rec...		25.00	819.00
Invoice	12/05/2014	1355	1200 · Accounts rec...		25.00	844.00
Invoice	01/07/2015	1398	1200 · Accounts rec...		25.00	869.00
Invoice	02/02/2015	1443	1200 · Accounts rec...		25.00	894.00
Invoice	03/02/2015	1487	1200 · Accounts rec...		25.00	919.00
Invoice	04/01/2015	1525	1200 · Accounts rec...		25.00	944.00
Invoice	05/04/2015	1573	1200 · Accounts rec...		25.00	969.00
Invoice	06/08/2015	1611	1200 · Accounts rec...		25.00	994.00
Invoice	06/10/2015	1712	1200 · Accounts rec...		750.00	1,744.00
Invoice	07/02/2015	2005	1200 · Accounts rec...		25.00	1,769.00
Invoice	08/03/2015	2043	1200 · Accounts rec...		25.00	1,794.00
Invoice	09/02/2015	2087	1200 · Accounts rec...		25.00	1,819.00
Invoice	10/01/2015	2116	1200 · Accounts rec...		25.00	1,844.00
Invoice	11/01/2015	2172	1200 · Accounts rec...		25.00	1,869.00
Invoice	12/01/2015	2222	1200 · Accounts rec...		25.00	1,894.00
Invoice	01/04/2016	2267	1200 · Accounts rec...		25.00	1,919.00
Invoice	02/01/2016	2309	1200 · Accounts rec...		25.00	1,944.00
Invoice	03/01/2016	2351	1200 · Accounts rec...		25.00	1,969.00
Invoice	04/04/2016	2393	1200 · Accounts rec...		25.00	1,994.00
Invoice	05/02/2016	2432	1200 · Accounts rec...		25.00	2,019.00
<b>Total Cole, Edward &amp; Marjorie</b>					<b>2,019.00</b>	<b>2,019.00</b>

**CERTIFIED MAIL®**

Terry Michael Lechner  
1696 Husted Avenue  
San Jose, CA 95124-1924



7016 1970 0000 7134 4734

NOV 03 2016  
SAN JOSE, CA  
95124



1000



95350

U.S. POSTAGE  
PAID  
SAN JOSE, CA  
95124  
NOV 03, 16  
AMOUNT

**\$6.68**

R2304H108724-05

**RETURN RECEIPT  
REQUESTED**

Edward Cole  
1242 Chadwick Ct.  
Modesto, CA 95350

SC19415

95350-562442

