

- F.1 Authorization for the purchase of four (4) new, replacement vehicles for the Public Works Department from Wondries Fleet Group – from Maintenance Supervisor Connolly. (RESOLUTION)**
- F.2 Second reading and adoption of an ordinance rezoning 68.55 acres of Vesting Tentative Tract Map 8270 from R-6000 (Low Density Residential) to LDR-FBC (Low Density Residential – Form Based Codes) and 3 acres from R-6000 (Low Density Residential) to POS-FBC (Parks and Open Space – Form Based Codes) for the Sanctuary Project, 386 single family units at the northwest corner of Cherry Street and Stevenson Boulevard – from Assistant City Manager Grindall and City Clerk Harrington. (ORDINANCE)**
- F.3 Acceptance of work with VSS International, Inc. for 2015 Street Slurry Seal Program, Project 1094 – from Associate Civil Engineer Tran. (RESOLUTION)**
- F.4 Acceptance of the Comprehensive Annual Financial Report (CAFR) for the period ending June 30, 2015 – from Administrative Services Director Woodstock. (MOTION)**
- F.5 Acceptance of bid and award of contract to Kimberlite Corporation DBA Sonitrol for the Silliman Activity and Family Aquatic Center Video Surveillance System and associated budget amendment – from Recreation and Community Services Director Zehnder. (RESOLUTION)**

NONCONSENT

- F.6 Declaration of emergency expenditure for replacement of heater for Lazy River at Silliman Activity and Family Aquatic Center – from Maintenance Supervisor Connolly. (RESOLUTION)**
- F.7 Introduction of an Ordinance amending Chapter 5.36 (Medical Marijuana Dispensaries) to Title 5 (Business Licenses and Regulations) of the Newark Municipal Code Clarifying and Affirming that Commercial Cultivation of Medical Marijuana is Prohibited in the City of Newark – from City Manager Becker and City Attorney Benoun. (INTRODUCTION OF ORDINANCE)**

F.5 Acceptance of bid and award of contract to Kimberlite Corporation DBA Sonitrol for the Silliman Activity and Family Aquatic Center Video Surveillance System and associated budget amendment – from Recreation and Community Services Director Zehnder. (RESOLUTION)

Background/Discussion – The existing security camera system at the Silliman Activity and Family Aquatic Center is antiquated and functionally obsolete. Only four of the existing eight cameras are functional at this time. In addition, only one of the two servers is currently operational and capable of limited storage of video feeds. This project will result in the replacement and upgrading of the security camera system at the Silliman Activity and Family Aquatic Center.

Requests for Proposals were issued to six vendors. Bids for the project were opened on October 27, 2015 with the following results:

Bidder	Installation/Equipment	Monthly Service
Kimberlite Corporation D.B.A. Sonitrol	\$ 33,694.00	\$ 424.00
Tyco Integrated Security	\$ 55,318.60	\$ 740.83

After proposals were received, staff determined that the building security recordings would need to be retained for a minimum of one year to comply with the current government code. Low bidder Kimberlite Corporation D.B.A. Sonitrol was asked to submit a revised proposal to include a server capable of meeting these storage requirements. The revised proposal received for a 42TB rack-mounted server is \$8,688.00 with an additional monthly service fee of \$188.00. This brings the revised installation/Equipment cost to \$42,382.00 with a monthly service fee of \$612.00; well below the other bid received by Tyco Integrated Security.

Based on the two bids received with the revised proposal to meet the requirement for additional data storage, staff recommends an Agreement for Services with Kimberlite Corporation D.B.A. Sonitrol. Sonitrol will install and maintain up to thirteen (13) IP 1080P cameras per agreed upon indoor and outdoor locations, covering entry and exit points, portions of the parking lots, front desk operations, Fitness Area and Preschool Patio (proposed site location map attached); one 34TB rack-mounted server with remote viewing via OS and android compatible devices; Uninterrupted Power Supply (UPS) with thirty minute run time; eighteen channel Power Over Ethernet Switch, and all new cabling and camera mounts. The agreement will also include a monthly service contract for one (1) year to include servicing and replacement or repair of all video components and systems.

As a result of this new system, the Citywide Records Retention Schedule will need to be revised to address the retention and destruction of the videos. The City Clerk will submit an updated Schedule at a future City Council meeting.

Funding for the video surveillance system is available through the Fiscal Year 2015-2016 Equipment Replacement Program. A budget amendment in the amount of \$2,500 is requested for Fiscal Year 2015-2016. The budget amendment is needed for the monthly service fee.

Attachment

Action - It is recommended that the City Council, by resolution, accept the bid and revised proposal and award a contract to Kimberlite Corporation D.B.A. Sonitrol for the Silliman Activity and Family Aquatic Center Video Surveillance System and approving a budget amendment to the 2014-2016 Biennial Budget for Fiscal Year 2015-2016.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ACCEPTING THE BID AND REVISED PROPOSAL AND AWARDING THE CONTRACT TO KIMBERLITE CORPORATION D.B.A. SONITROL FOR SILLIMAN ACTIVITY AND FAMILY AQUATIC CENTER VIDEO SURVEILLANCE SYSTEM AND APPROVING A BUDGET AMENDMENT TO THE 2014-2016 BIENNIAL BUDGET FOR FISCAL YEAR 2015-2016

WHEREAS, the City Council of the City of Newark does hereby find that Kimberlite Corporation D.B.A. Sonitrol was the lowest responsible bidder for providing, installing and maintaining a security camera system for the Silliman Activity and Family Aquatic Center, in the City of Newark;

BE IT RESOLVED that the City Council does hereby accept said bid of said company and does hereby authorize the Mayor of the City of Newark to sign an agreement with said company for the purchase, installation and maintenance of a security camera system for the Silliman Activity and Family Aquatic Center, according to specifications and terms of said bid.

BE IT FURTHER RESOLVED that the 2014-2016 Biennial Budget for Fiscal Year 2015 -2016 be amended as follows:

From:	010-0000-2991	Unallocated Fund Balance	\$2,500
To :	030-3032-5280	Contractual Services	\$2,500

CONTRACTUAL EQUIPMENT AND SERVICES AGREEMENT

This Service Agreement (hereinafter "Agreement") is made and entered into this 17TH day of DECEMBER, 2015 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and KIMBERLITE DBA SONITROL, a California corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to provide a Video Surveillance System consisting of cameras and servers ("Equipment") and installation, setup, training, and service agreement ("Services") to City as described in Exhibit "A", attached hereto and incorporated herein.

WHEREAS, in response to City's request, Consultant submitted a proposal and, after negotiations, Consultant agreed to provide Equipment and perform the services more particularly described in Exhibit "A", in return for the compensation described in this Agreement and Exhibit "B".

WHEREAS, in reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "C", City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

1. CONSULTANT'S SERVICES. Consultant shall provide Equipment and perform the Services described, and in the time, place, and manner specified in Exhibit "A" in accordance with the terms and conditions of this Agreement. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit "A", the Agreement shall control.

2. TIME FOR PERFORMANCE. Time is of the essence in the provision of Equipment and performance of Services under this Agreement and Consultant shall generally adhere to the schedule set forth in Exhibit "A"; provided, that City shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of Consultant's work product or other unavoidable delays occasioned by circumstances, provided, further, that such unavoidable delays shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant.

Consultant acknowledges the importance to City of City's performance schedule and agrees to put forth its best professional efforts to perform its Services under this Agreement in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound professional practices.

3. **COMPENSATION.**

A. **"Not to Exceed" Compensation.** City shall compensate Consultant for all Equipment and Services provided and performed by Consultant hereunder in an amount based upon Consultant's hourly or other rates set forth in Exhibit "B". The payments specified in Exhibit "B" shall be the only payments to be made to Consultant for Services rendered pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of fifty thousand and No/100 Dollars (\$50,000.00) unless the performance of Services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such Services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

B. **Method of Billing.** Consultant shall submit all billings for said services to City in the manner specified in Exhibit "B"; or, if no manner is specified in Exhibit "B", then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.

Invoices shall be sent to:

City of Newark
Attn: Finance Department
37101 Newark Boulevard
Newark, CA 94560

C. **Payment.** Upon receipt of an invoice, City shall verify that the invoice has been properly prepared and that the conditions of payment have been fulfilled. If the payment conditions have been fulfilled, the invoice shall be processed and paid by City within thirty (30) days after City's receipt thereof.

D. **Consultant's Failure to Perform.** In the event that Consultant performs Services that do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from City, re-perform the Services (without additional compensation to Consultant). If Consultant's failure to perform in accordance with this Agreement causes damages to City, Consultant shall reimburse City for the damages incurred (which may be charged as an offset to Consultant's payment).

4. **ADDITIONAL SERVICES.** In the event City desires the performance of additional services not otherwise included within the Services described in Exhibit "A", such services shall be authorized by written task order approved in advance of the performance thereof. Such task order shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Except to the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

5. **INDEPENDENT CONSULTANT.** At all times during the term of this Agreement, Consultant shall be, and is an independent consultant and shall not be an employee or agent of City. Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's Services; however, City shall not have the right to control the means by which Consultant accomplished services rendered pursuant to this Agreement.

Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

6. **PERSONNEL.** Consultant understands that, in entering into this Agreement, City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of Consultant, including the qualifications of its Authorized Representative, its designated personnel, and its subconsultants, if any, identified in Exhibit "C". Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in Exhibit "C", without the prior written consent of City. All Services shall be performed by, or under, the direct supervision of Consultant's Authorized Representative.

Consultant agrees to include with all subconsultants in their subcontract the same requirements and provisions of this Agreement including the Indemnity and Insurance requirements to the extent they apply to the scope of the subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under this Agreement. Subconsultant further agrees to include these same provisions with any Sub-subconsultant. A copy of this Agreement's Indemnity and Insurance provisions will be furnished to the subconsultant upon request. The Consultant shall require all subconsultants to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any Services and will provide proof of compliance to the City.

In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any of Consultant's designated personnel or subconsultants, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

7. **EQUIPMENT.** Consultant shall, at its sole cost and expense, furnish all equipment which may be required for furnishing Services.

8. **CONFLICTS OF INTEREST PROHIBITED.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Section 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting

interest, any contract with City (including this Agreement) involving Consultant's conflicting interest may be terminated by City.

9. **NONDISCRIMINATION.** Consultant shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. Consultant shall not discriminate against any employee or applicant because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, sex, age, or any other basis, as defined in California Civil Code Section 51.

10. **COMPLIANCE WITH LAW AND STANDARD OF CARE.** Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform Services using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.

11. **INSURANCE.** Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, subcontractors, or employees.

A. **Verification of Coverage.**

Consultant shall furnish City with original certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences.

Proof of Insurance shall be mailed to the following address or any subsequent address as may be directed writing by the City Risk Manager:

CITY OF NEWARK
Attn: Risk Manager
37101 Newark Boulevard
Newark, CA 94560

City reserves the right to require and obtain complete, certified copies of all required insurance policies and endorsements at any time. Failure to exercise this right at any time shall not constitute a waiver of right to exercise later. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. **Minimum Scope of Insurance.**

Coverage shall be at least as broad as:

1. Insurance Services Office Form Number CG 00 01 covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury; and
2. Workers' Compensation insurance as required by the State of California with Statutory Limits, and Employer's Liability Insurance; and

C. Minimum Limits of Insurance.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

Consultant shall maintain limits no less than:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. General Liability:
(including products and completed operations, property damage, bodily injury and personal and advertising injury.) 2. Employer's Liability: | <p>\$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.</p> <p>\$1,000,000 per accident for bodily injury or disease.</p> |
|--|--|

D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, officials, directors, employees, contractors, agents, and volunteers; or (2) Consultant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount specified by the City Risk Manager or designee.

E. Claims Made Policies.

For all "claims made" coverage, in the event that Consultant changes insurance carriers Consultant shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than five (5) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Consultant changes to a new carrier.

F. Wasting Policies.

No policy required by this paragraph 16 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. Remedies.

In addition to other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
2. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City Risk Manager. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

I. Other Insurance Provisions.

The commercial general liability policy is to contain, or be endorsed to contain, the following provisions:

1. Additional Insureds. City, its officers, officials, directors, employees, and volunteers ("Additional Insureds") are to be covered as insureds with respect to: liability arising out of work or operations performed by or on behalf of Consultant; including materials, parts, or equipment furnished in connection with such work or operations.

2. Primary Coverage. For any claims related to Services, Consultant's insurance coverage shall be primary insurance as respects to City, its officers, officials, directors, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, directors, employees, or volunteers shall be excess of Consultant's insurance and shall not be contribute with it. Consultant's policy will not seek contribution from the City's insurance or self insurance.

3. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled during the term of this Agreement without notice to City.

4. Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

5. Deductibles and Self-Insured Retention (SIR). All deductibles and self-insured retentions must be disclosed to the City Risk Manager for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.

6. Subconsultants. Consultant shall include all subconsultants as insured under its policies or shall require and verify separate certificates and endorsements have been obtained for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

7. Waiver of Subrogation. With respect to Workers' Compensation and Employer's Liability Coverage, the insurer shall agree to waive all rights of subrogation against City, its officers, officials, directors, employees, agents, and volunteers for losses arising from work performed by Consultant for City.

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 16 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

9. Variation. The City Risk Manager may approve a variation in these insurance requirements upon a determination that the coverage, scope, limits, and form of such insurance are either not commercially available or that City's interest are otherwise fully protected. Any variation granted shall be done in writing and shall be made a part of this Agreement as Appendix "A".

12. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18 herein below) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s),

(b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage and whether any City property was involved.

13. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, Consultant shall: (1) immediately defend, and (2) indemnify City, and its officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or subconsultants. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City, immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

The review, acceptance or approval of Consultant's work or work product by any indemnified party shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This paragraph survives completion of the Services or the termination of this contract. The provisions of this paragraph are not limited by and do not affect the provisions of this contract relating to insurance.

Consultant/Subconsultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. "In no event shall indemnification or hold harmless apply to signal monitoring services under this or any other agreement"

14. WARRANTY/DISCLAIMER OF LIABILITY. Consultant warrants that upon delivery the Equipment substantially conforms to its documentation which is defined as those

visually readable materials developed by or for Consultant for use in connection with the Equipment, in either written or electronic form, and is free from defects that will materially impair its use.

15. **LICENSES, PERMITS, ETC.** Consultant represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession. In addition to the foregoing, Consultant shall obtain and maintain during the term hereof a valid City of Newark Business License.

16. **TERM/TERMINATION.**

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire upon completion of performance of Services hereunder by Consultant. Completion of the Project means the installation and setup by Consultant of all the Equipment, the completion by Consultant of all training and other Services, and the payment by City to Consultant of the entire Contract Amount as provided in paragraph 3 above.

B. Notwithstanding the provisions of paragraph 16 Section A above, either party may terminate this Agreement without cause by giving written notice thereof not less than ten (10) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

17. **CONTRACT ADMINISTRATION.** This Agreement shall be administered by _____ of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

18. **NOTICES.** Written notices required or convenient hereunder shall be delivered personally or by depositing the same with the United States Postal Service, first class (or equivalent) postage prepaid and addressed, in the case of Consultant, to:

CITY OF NEWARK

Consultant

Sonitrol DBA Sonitrol
3090 Teagarden Street
San Leandro Ca 94577

Administrator

City of Newark
37101 Newark Boulevard
Newark, CA 94560

19. **PARAGRAPH HEADINGS.** Paragraph headings used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning thereof.

20. **EXHIBITS.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

21. **SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.

22. **GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

23. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

24. **ASSIGNABILITY.** Neither Consultant nor City shall subconsult, assign, sell, mortgage, hypothecate, or otherwise transfer their respective interests or obligations in this Agreement without the express prior written consent of the non-transferring Party.

25. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

26. **WAIVERS.** Waiver of breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

27. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

28. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Consultant and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

29. **COVENANT AGAINST CONTINGENT FEES.** Consultant hereby warrants that Consultant has not employed or retained any company or person, other than a *bona fide* employee working for Consultant, to solicit or secure this Agreement, and Consultant has not paid or agreed to pay any company or person, other than a *bona fide* employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, at City's discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

By _____
Consultant

Date _____

Date _____

Printed Name

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A
SCOPE OF SERVICES



SONITROL
 VERIFIED ELECTRONIC SECURITY

Enrique Martinez-Truso
 3090 TEAGARDEN AVE, SAN LEANDRO CA 94577
 OFFICE 510-537-1122 EXT204 CELL 510-552-4107
 etruso@sonitrolsecurity.com

**CITY OF NEWARK
 SILLIMAN ACTIVITY & FAMILY AQUATIC CENTER
 6800 MOWRY AVE, NEWARK CA 94560**

**VIDEO SURVEILLANCE SYSTEM
 PROPOSAL**

QUOTATION IS VALID 30 DAYS FROM DATE ISSUED

Sonitrol to install the following:

- | | |
|------------------|--------------------------------------|
| (1) SERVER | (2) 17" Desktop Video Monitor Screen |
| (1) POE Switch | (1) UPS |
| (6) Dome Camera | Cabling |
| (7) PTZ Camera | Lift |
| (7) Camera Mount | |

Details:

- SPECO - SERVER, 42TB Storage, with remote viewing via iOS & android compatible devices
- SPECO - 18ch Power Over Ethernet Switch
- SPECO - PTZ Camera, IP HD, 1080P, 4.3-129MM
- SPECO - Dome Camera, IP HD, 1080P, 3.6-16MM, IR LED TO 49
Uninterrupted Power Supply

12 MONTH TERM / USER OWNED EQUIPMENT.
ADEQUATE LIGHTING TO BE PROVIDED BY OTHERS.
USER TO PROVIDE PUBLIC/EXTERNAL STATIC IP ADDRESS FOR REMOTE VIEWING IF DESIRED
VIDEO MONITORING SCREEN SIZE AND TYPE NOT SPECIFIED THEREFORE OFFERED AS LISTED.

SYSTEM PURCHASE, PARTS & INSTALLATION:

\$42,382.00 TAX INCLUDED

MONTHLY RATE FOR SERVICE AGREEMENT:

\$ 612.00

EXHIBIT B

PAYMENT

Purchase order required prior to scheduling install.

Installation balance is due upon completion.

Monthly rate for service agreement is \$612 and will be billed quarterly.

EXHIBIT C
QUALIFICATIONS

See attached

The City of Newark California - SAFAC
Submitted By Sonitrol

October 25, 2015

In Re: Sonitrol Video Surveillance System

David Zehnder
Recreation and Community Services Director
Silliman Activity and Family Aquatic Center
6800 Mowry Ave
Newark CA 94560

We are pleased to provide you with the following information for your video surveillance system.

Company: Kimberlite Corporation D.B.A. Sonitrol
3090 Teagarden Street
San Leandro, Ca. 94577
Telephone: 510-537-1122 ext 204
Fax: 510-881-8192
Contact: Enrique Martinez-Truso
510-552-4107

Sincerely,

Enrique Martinez-Truso
Senior Security Consultant

FIRM ORGANIZATION, CREDENTIALS, GENERAL BACKGROUND

Sonitrol has been operating as the exclusive Sonitrol dealer in the Bay Area since 1976. Kimberlite Corporation, the nation's largest independent Sonitrol dealer, and the 21st largest security alarm company in the U.S., was formed in 1986, via a pooling of interests of seven Sonitrol dealers serving the San Joaquin Valley and the Bay Area.

Sonitrol of Alameda County is located at 3090 Teagarden Street, San Leandro, Ca. 94577. CA. All services proposed hereunder will be provided by Sonitrol of Alameda County. We're proud of our long history in the Bay area, and of our ability to guarantee CITY OF NEWARK: SAFAC that all services will *always* be provided locally. We have been operating a central monitoring station in the area for over 30 years. All installation activities will be managed locally. Finally, we offer CITY OF NEWARK: SAFAC, a three-hour service response time, 24/7/365, with company employees who will arrive in a fully stocked truck ready to fix any service problem that may arise.

Sonitrol of Alameda County is a full-service security provider, offering an industry-leading, comprehensive and fully integrated product line, including intrusion detection, access control, digital video, and fire alarm services. We install, service, and monitor all of our products locally.

VIDEO SURVEILLANCE EQUIPMENT AND SERVICE AGREEMENT

Installations at client sites include the full range of our service offering. It is our guarantee and commitment to you that we will provide these services during the lifetime of our service agreement:

Lifetime System Repair

Sonitrol will respond to your facility and repair any component of your video system that fails because of normal wear and tear at no additional cost to you during regular business hours.

Lifetime System Replacement

Should any component of your video system terminally fail and we cannot repair it, we will replace the item with a comparable unit at no cost to you.*

Lifetime Confidence

Should any of your video system components require removal for repair or replacement, Sonitrol will provide a comparable loaner unit while your system is being repaired.

Lifetime Training

As requested, Sonitrol will provide your staff with on-site training for your video system up to 2 times per year at no additional cost to you.

Lifetime Maintenance

Sonitrol will inspect, clean and service your video system one time each year at no additional cost to you.**

**Must be associated with Sonitrol equipment, and not caused by misuse or abuse of the system, fire, flood, or any other event not caused by Sonitrol.*

**Only applies to products manufactured by Sonitrol's Preferred Partners.*

**Except as stated in this agreement, the terms of the Client Agreement apply.*

*** Except cameras requiring a lift to access in Sonitrol's sole opinion.*

The City of Newark California - SAFAC
Submitted By Sonitrol

PROJECT TEAM

The project team shall include but not be limited to. Ken Berry, Pam McKean, Lisa Fontillas and Enrique Martinez-Truso. Mr. Berry will serve as Project Director. Appearing below is a brief profile of the individuals to be consulted on this project:

Ken Berry, Vice President & Regional General Manager

ACE License 84104. Ken has accountability for the overall business for both security and fire of the Greater Bay Area Branch Operations, and manages all sales and marketing, technical support and installation services in the Greater Bay Area. Ken will head the Sonitrol team at the CITY OF NEWARK: SAFAC as Project Director. Thus, Ken Berry will be the CITY OF NEWARK: SAFAC lead point of contact. Ken joined Sonitrol of Stockton/Modesto in 2002.

Pam McKean, Regional Installation Manager

ACE Alarm License 72397.

Pam directly manages and schedules all new and existing equipment installations, modifications to existing security systems, annual preventative maintenance programs, and technical repairs for our clients. Pam will serve as Project Superintendent for the installation of all security systems. She is certified by Sonitrol on Access Control and SonIP Security Products and is also our Video Product Manager, in which capacity she designs CCTV applications for all of our Northern and Central California clients. Pam has been in the Alarm business for over 20 years.

Jeanette Roxas, Regional Customer Service Manager

Jeanette oversees a staff of customer service representatives that visit with our customers on a regular basis. Their visits consist of mapping, code changes, reports, programming and testing the systems with the customer. We have a Customer Service representatives dedicated just to schools and government agencies.

Marcos Reyes, Central Station V.P

General Manager of our central station located at our corporate office in Fresno Ca. Marcos was the General Manager for Sonitrol Corporate largest central station located in Texas. Prior to that Marcos was a Police Officer for the Sanger Police Department. Marcos 25 years of experience with Sonitrol enables him to solve all problems that arise.

Lisa Fontillas, Regional Sales Manager

Manages our sales team in Northern California, Lisa has been in the security business for over 20 years with various companies and has been with Sonitrol for several years.

Enrique Martinez-Truso, Senior Security Consultant

Designs, recommends, and implements security solutions for our bay area clients. He has been in the security field in many capacities for over 15 years.

Eugene Rutan

Eugene is Manager of our Fire Division located at our San Leandro Office. Eugene has over 30 years of experience in fire on installation and fire systems design. Eugene also facilitates our inspections for our customers throughout Northern and Southern California.

WORK PLAN/METHODOLOGY

The depth of our experience in with large public projects in California, coupled with the experience we have gained in protecting various sites .We deal with prevailing wage jobs daily, our payroll department and computerized payroll system is set up for prevailing wage jobs..

We service more school districts and government agencies than any other alarm provider in California. That experience gives us a unique insight into large site operations, particularly as they relate to security systems. In short, we do not believe that CITY OF NEWARK: SAFAC could find a more experienced or better security partner.

We will assign a customer service representative to your site to train and be available to meet your needs for training as the project is being completed and after the project is done. The customer service representative will be available for on-site training, email, or via cell phone, as the need arises.

CLIENT SATISFACTION/REFERENCES

EDUCATIONAL CLIENT LIST:

Bakersfield City School District
Beardsley School District
Berkeley Unified School District
Castro Valley Unified School District
Brentwood Unified School District
Clovis Unified School District
Delano Union School District
Denair Unified School District
Fowler Unified School District
Fremont Unified School District
Kern High School District
Keyes Unified School District
Lincoln Unified School District
Livermore Unified School District
Madera Unified School District
McFarland Union School District
Midway School District

Mt Diablo Unified School District
Modesto City Schools
New Haven Unified School District
Oakdale Unified School District
Oakland Unified School District
Panama Buena Vista Unified School District
Panama School District
Aspire Public School
Rosedale Unified School District
Salida Unified School District
San Leandro Unified School District
San Lorenzo Unified School District
San Ramon Unified School District
Sanger Unified School District
St. Helena Unified School District
Tulare Unified School District
Turlock Unified Schools

The City of Newark California - SAFAC
Submitted By Sonitrol

CLIENT REFERENCES

Julie Ballard
Operations
New Haven Unified School District
34200 Avarado-Niles Road
Union City, CA 94587
(510) 471-1100
Description of Work:

- Intrusion Alarm
- Fire Alarm

Kevin Hare
Plant Manager
Kapstone Container Corporation
8511 Blain Street
Oakland CA 94621
510-957-2056
Description of Work:

- Intrusion Alarm
- Surveillance System

Greg Dyer
Director of Maintenance Services
San Leandro Unified School District
1145 Aladdin Ave
San Leandro, CA 94577
(510) 662-3530
Description of Work:

- Intrusion Alarm
- Fire Alarm
- Access Control
- Surveillance System

Doug Marr
Operations
San Lorenzo Unified School District
15510 Usher Street
San Lorenzo, CA 94580
(510) 317-4600
Description of Work:

- Intrusion Alarm
- Fire Alarm
- Surveillance System

Pratchi Amin
Construction Manager
Pittsburg Unified School District
2000 Railroad Ave
Pittsburg, CA 94565
925-473-2300
pamin@pittsburg.k12.ca.us
Description of Work:

- Intrusion Alarm



ZU008U

CLIENT AGREEMENT

NO. _____

DATE: 12/17/15

CLIENT NAME SILLIMAN ACTIVITY AND FAMILY AQUATIC CENTER

PHONE 510-578-4620

INSTALL AT 6800 MOWRY AVE, NEWARK

CA 94560

BILL TO ABOVE BILL TO OTHER

Name Address City State Zip

Dealer agrees to install or cause to be installed and to service, without liability and not as an insurer, during the term of this agreement, an alarm system as described on the Security System Quotation dated 12/2/15 which becomes part of this Agreement

This agreement applies to: (check appropriate categories)

All equipment is the personal property of the Dealer Client Burglar Alarm Signaling System Sprinkler Supervisory Signaling Service
Hold-Up Alarm Signaling Service Access Control Service
TELEPHONE CO. CHARGES INCLUDED: Yes No Fire Alarm Signaling Service Other CAMERA SYSTEM

SPECIAL INSTRUCTIONS:

USER TO PROVIDE 110 VAC SINGLE RECEPTILES AT HEAD END EQUIPMENT
USER TO PROVIDE PUBLIC/EXTERNAL STATIC IP ADDRESS FOR REMOTE VIEWING

The undersigned agrees to pay the DEALER, its agents or assigns the sums of:

INSTALLATION: \$ 42382.00 \$ INCLUDED \$ 42382.00 (Down Payment) Balance upon Completion

MAINTENANCE MONITORING: \$ 612.00/MONTHLY \$ 0 \$ 612.00/MONTHLY @ QUARTERLY
(Payable In Advance) Tax Total Payment Mode

SERVICE: INSTALL: (1) SERVER, (1) POE SWITCH, (6) HD DOME CAMERA, (7) PTZ CAMERA, (7) CAMERA MOUNT, (2) MONITOR, (1) UPS

MONTHLY MANAGEMENT REPORT: Yes No \$ N/A COMMUNICATION LINK: \$ N/A

LIMITED WARRANTY

- 1. Except as set forth herein, THE DEALER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, AND DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY. CLIENT ACKNOWLEDGES THAT NO OTHER REPRESENTATIONS WERE MADE TO CLIENT OR RELIED UPON BY CLIENT WITH RESPECT TO THE QUALITY AND FUNCTION OF THE GOODS.
2. In the event any part of the equipment installed shall become defective or inoperative under normal use within one (1) year from the date of the original invoice for this installation, and DEALER determines the equipment is defective or inoperative, DEALER shall replace or repair such defective part without charge to CLIENT. IN NO EVENT SHALL DEALER BE LIABLE FOR MORE THAN, AND CLIENT'S EXCLUSIVE REMEDY FOR BREACH OF THIS LIMITED WARRANTY SHALL BE LIMITED TO, THE REPAIR OR REPLACEMENT OF DEFECTIVE EQUIPMENT INSTALLED UNDER THIS AGREEMENT, AND DEALER SHALL NOT BE LIABLE FOR INJURIES TO PERSONS OR PROPERTY, INCLUDING BUT NOT LIMITED TO, ALL GENERAL, DIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WARRANTY IS NOT ASSIGNABLE.
3. If CLIENT shall discover a defect in the products supplied under this Agreement, CLIENT shall immediately contact DEALER in writing or by telephone and fully describe the nature of the defect so that repair service may be rendered.
4. DEALER shall not be liable for repair or replacement in the event of damage to material or equipment caused by accident, vandalism, flood, water, lightning, fire, intrusion, abuse, misuse, an act of God, any casualty, including electricity, unauthorized repair service, modification or improper installation by anyone other than DEALER and any other cause beyond the control of DEALER, including interruption of electrical or telephone service.
5. CLIENT acknowledges that any affirmation of fact or promise made by DEALER shall not be deemed to create an express warranty, and that DEALER makes no representation or warranty, that the system or service supplied may not be compromised, circumvented, or that the system or services will in all cases provide the signaling, monitoring and response for which it was intended. CLIENT is not relying on DEALER'S skill or judgment in selecting or furnishing a system suitable for any particular purpose. Some states do not allow limitations on how long an implied warranty lasts or the exclusion or the limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights and you may also have other rights that may vary from state to state.

THIS AGREEMENT IS NOT BINDING UNLESS APPROVED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SONITROL. IN THE EVENT OF FAILURE OF APPROVAL, THE ONLY LIABILITY OF DEALER SHALL BE TO RETURN TO THE CLIENT THE AMOUNT, IF ANY, PAID UPON THE SIGNING OF THIS AGREEMENT. CLIENT ACKNOWLEDGES THAT DEALER'S LIABILITY IS LIMITED AS SET FORTH HEREIN AND THAT DEALER IS A SONITROL INDEPENDENT FRANCHISED DEALER AND NOT A SUBSIDIARY OR AGENT OF SONITROL CORPORATION.

CLIENT ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT, AND SPECIFICALLY ACKNOWLEDGES AND ACCEPTS THAT DEALER'S LIABILITY IS LIMITED AS SET FORTH HEREIN.

In certain states alarm agents are licensed and regulated. In this state the agency is DEPT. OF CONSUMER AFFAIRS.

THE MONITORING SERVICE CHARGE IS SUBJECT TO CHANGE AS SET FORTH IN PARAGRAPH 3 ON THE REVERSE SIDE. IN ADDITION TOGETHER WITH THE FIRST PAYMENT, CLIENT SHALL PAY THE PRO RATA SHARE OF THE MONITORING SERVICE CHARGE FOR THE MONTH IN WHICH MONITOR/SERVICE COMMENCED.

THIS AGREEMENT IS FOR A TERM OF ONE YEAR FROM THE DATE INSTALLATION IS COMPLETED. IF THIS TRANSACTION IS WITH A RESIDENTIAL CLIENT, YOU MAY CANCEL IT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY FROM THE DATE OF THIS AGREEMENT. SEE THE ATTACHED NOTICE OF CANCELLATION FORM. WORK ON YOUR INSTALLATION WILL BEGIN APPROXIMATELY AS SCHEDULED AND SHALL BE SUBSTANTIALLY COMPLETED WITHIN APPROXIMATELY WORKING DAYS AFTER COMMENCEMENT SUBJECT TO PERMISSIBLE DELAYS PURSUANT TO THIS AGREEMENT.

SONITROL INDEPENDENT FRANCHISED DEALER Sonitrol of ALAMOSA COUNTY ADDRESS 3090 TTAGARDEN STREET CITY SAN LEANDRO STATE CA PHONE NO. 510-537-1122 LIC. NO. ACO2599

SUBJECT TO TERMS ON REVERSE, INCLUDING PARAGRAPH 12.

SIGNATURE X (CLIENT) TITLE DATE

SIGNATURE X (DEALER REPRESENTATIVE) REG. NO. ACE 10209

APPROVED X (SONITROL INDEPENDENT FRANCHISED DEALER) REG. NO.

ORIGINAL



SONITROL[®]
 VERIFIED ELECTRONIC SECURITY

OPENING AND CLOSING HOURS:

These are not necessarily your normal business hours.

	MON-FRI	SATURDAY	SUNDAY
OPENING HOURS	_____	_____	_____
CLOSING HOURS	_____	_____	_____
HOLIDAY HOURS	_____	_____	_____

OBSERVED HOLIDAYS:

List all holidays and the holiday hours for which this facility will have different hours or be closed.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

AUTHORIZED INDIVIDUALS:

Persons permitted to make any data or personnel changes to this account/facility and request report information. These individuals may or may not require access to the facility.

NAME	PHONE #
_____	_____
_____	_____
_____	_____
_____	_____

_____ initial here

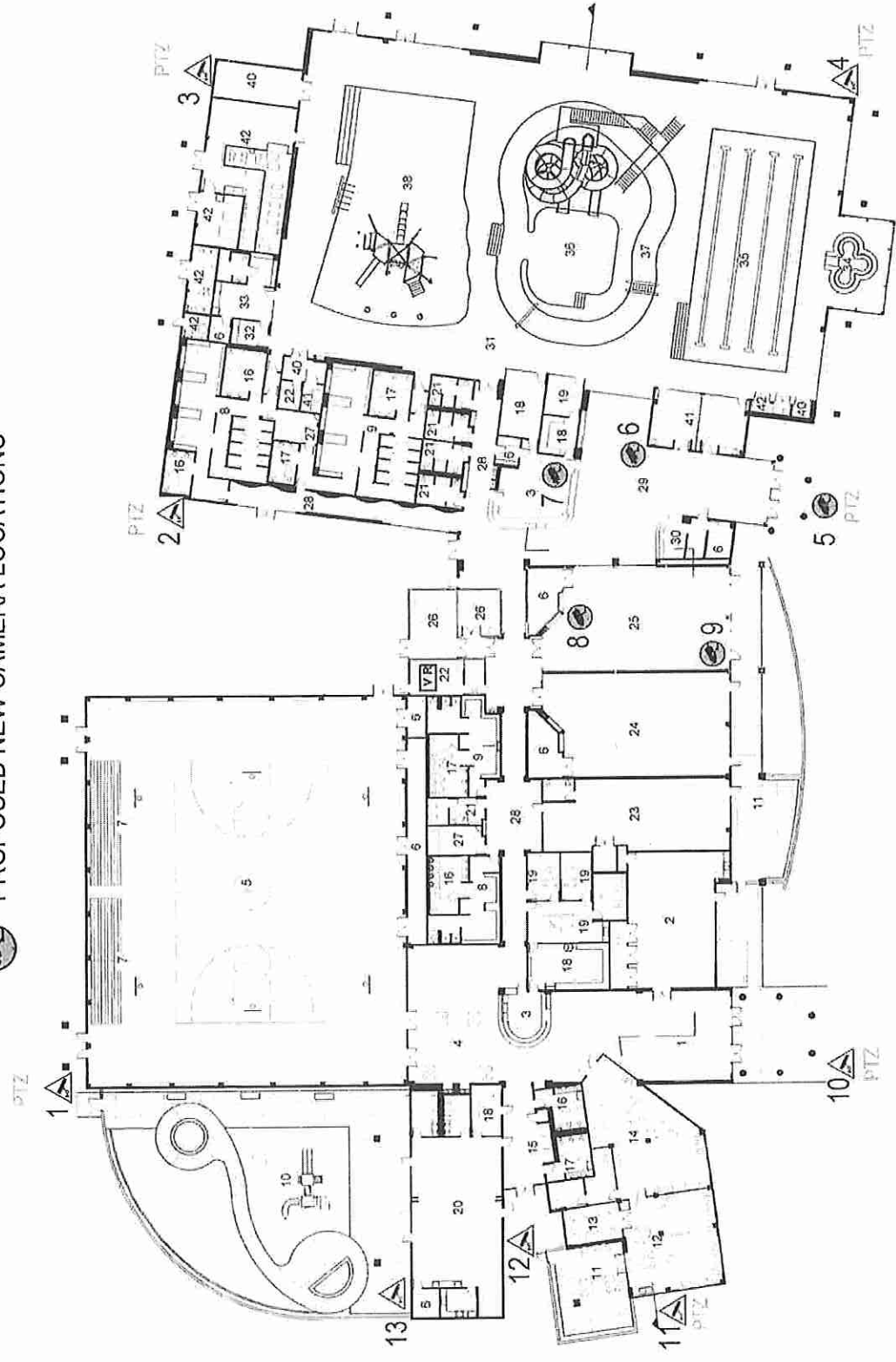
Customer Site Communications Form			
Customer Name:		Date:	
Street Address:		Technical Person Contact:	
City, State, Zip:		Phone:	
Customer Contact:		Mobile:	
Phone:		Email:	
Mobile:		Customer ISP:	
Email:		Customer Router / Firewall:	
Will the Customer IT Dept. / Technical contact be available during alarm system installation:			YES / NO
Customers Network – Reserved IP Assignment <small>This is the IP the customer allocates for Sonitrol equipment (This information is required for your system to be completed. Missing information could result in delays)</small>			
LAN IP Assignment:		WAN IP Assignment:	
LAN Subnet:		WAN Subnet:	
LAN Gateway:		WAN Gateway:	
LAN Port:		WAN Port:	
Alarm Panel Phone #:		Phone Line Type:	Analog POTS / Digital / VoIP / NA

INTERNAL USE ONLY			
Panel Group:		IP Periodic Test Interval:	
Account #:		Panel Polling Frequency:	
NNC #:		Panel ACK Wait Time:	
Virtual Acct #:		D6200 Panel Poll:	
		D6200 ACK Wait:	

INTERNAL USE ONLY			
Sonitrol Panel Type:		DVR Type:	
Panel Firmware:		Backup Signal Plans:	Phone Lines / Cellular / Other / NA
Onsite Firewall Test:	YES / NO	Backup Connection Device:	
Heartbeat / Keep alive:		Backup Connection ISP:	

 EXISTING CAMERA
 PROPOSED NEW CAMERA LOCATIONS

1. TOWER LOBBY
2. MEETING ROOM
3. CONTROL DESKS
4. GLAZED GALLERIA
5. GYMNASIUM
6. STORAGE
7. BLEACHERS
8. MEN'S LOCKERS
9. WOMEN'S LOCKERS
10. PLAYGROUND
11. PATIO
12. TEEN LOUNGE
13. TEEN STUDY ROOM
14. TEEN GAMES
15. VENDING
16. MEN'S RESTROOM
17. WOMEN'S RESTROOM
18. STAFF ROOMS
19. ADMINISTRATION
20. CHILDCARE
21. FAMILY RESTROOM
22. ELECTRICAL ROOM
23. ACTIVITY
24. AEROBICS
25. FITNESS
26. RECEIVING
27. JANITOR
28. COORIDOR
29. AQUATICS LOBBY
30. SNACK BAR
31. NATATORIUM
32. FIRST AID
33. LIFE GUARD
34. SPA
35. LAP SWIM POOL
36. SPLASH DOWN POOL
37. LAZY RIVER
38. ACTIVITY POOL
39. EVENT ROOM
40. POOL STORAGE
41. MECHANICAL
42. POOL MECHANICAL



FLOOR PLAN

GEORGE M. SILLMAN
 COMMUNITY ACTIVITY CENTER
 CITY OF NEWARK, CA

F.6 Declaration of emergency expenditure for replacement of heater for Lazy River at Silliman Activity and Family Aquatic Center – from Maintenance Supervisor Connolly. (RESOLUTION)

Background/Discussion – Over the holiday furlough, the heater equipment for the Lazy River at the Silliman Activity and Family Aquatic Center failed and cannot be repaired. The original unit will need to be replaced. The Lazy River is used by aquatic exercise classes in addition to recreational use on a regular basis. It is anticipated the cost of replacing the heater will be \$32,000 to \$40,000 and will take approximately 6 to 10 weeks to build and install. The City of Newark’s Purchasing Ordinance and the Public Contract Code require expenditure for a repair of this magnitude to follow a competitive formal bid process. The formal bid process would add two to three months to a build and install.

A public works contract can be awarded without competitive bidding, provided that the legislative body makes a finding and passes a resolution by four-fifths vote that an emergency exists. Such an emergency would mean that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. In the interest of public convenience and safety, it is recommended the City Council make a finding and adopt a resolution that an emergency exists as a result of the equipment failure of the heater for the Lazy River at Silliman Activity and Family Aquatic Center. Adoption of this resolution will allow staff to proceed with a quotation and negotiation process to have the repairs completed in a timely manner. Funding is available in the Equipment Replacement Fund for the repair.

Attachment

Action - It is recommended that the City Council, make a finding and adopt a resolution declaring an emergency exists as a result of equipment failure of the heater for the Lazy River at Silliman Activity and Family Aquatic Center and the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property and authorize the City Manager to sign documents necessary for the repair.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK DECLARING AN EMERGENCY EXISTS AS A RESULT OF EQUIPMENT FAILURE OF THE HEATER FOR THE LAZY RIVER AT SILLIMAN ACTIVITY AND FAMILY AQUATIC CENTER AND THE PUBLIC INTEREST AND NECESSITY DEMAND THE IMMEDIATE EXPENDITURE OF PUBLIC MONEY TO SAFEGUARD LIFE, HEALTH OR PROPERTY AND AUTHORIZE THE CITY MANAGER TO SIGN DOCUMENTS NECESSARY FOR THE REPAIR

WHEREAS, California Public Contract Code Sections 1102 and 20168 allow Public Works contracts to be awarded without competitive bidding, provided that the legislative body makes a finding and passes a resolution by a four-fifths vote that an emergency exists; and,

WHEREAS, recent equipment failure has significantly impacted the heater for the Lazy River at the Silliman Activity and Family Aquatic Center that requires immediate replacement to address health and public safety concerns; and,

WHEREAS, the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that an emergency exists and the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property.

BE IT FURTHER RESOLVED, that the City Manager, or his designee, is hereby authorized and empowered to execute on behalf of the City of Newark all documents necessary to accomplish such emergency repair at Silliman Activity and Family Aquatic Center.

F.7 Introduction of an Ordinance amending Chapter 5.36 (Medical Marijuana Dispensaries) to Title 5 (Business Licenses and Regulations) of the Newark Municipal Code Clarifying and Affirming that Commercial Cultivation of Medical Marijuana is Prohibited in the City of Newark – from City Manager Becker and City Attorney Benoun. (INTRODUCTION OF ORDINANCE)

Summary – Recent changes in state law force local public agencies to determine whether to regulate or ban commercial cultivation of medical marijuana prior to March 1, 2016. The City Council expressly banned medical marijuana dispensaries in 2011. With respect to commercial cultivation of medical marijuana, the Newark Zoning Ordinance currently does not authorize it as it is neither a permitted use nor conditionally permitted use in any zoning district. However, in an abundance of caution, staff recommends that the Council introduce an ordinance making it clear that commercial cultivation of medical marijuana is prohibited. This would serve to eliminate the potential negative side effects resulting from medical marijuana cultivation, including risk of criminal activity such as burglary, trespass and robbery, potential fire hazards, and environmental degradation.

Cultivation for non-commercial, personal purposes by qualified patients and primary caregivers would be permitted by this proposed ordinance. Both qualified patients and primary caregivers would be allowed to grow medical marijuana within a limited confined area defined by the new State law. This amounts to a 100 square feet area for patients and 500 square feet for a primary caregiver who has a maximum of 5 patients. The patients and primary caregivers could only use the marijuana for their own personal medical use and cannot give or sell marijuana to anybody else.

Background/Discussion –

Last fall, Governor Brown signed into law three bills collectively known as the Medical Marijuana Regulation and Safety Act (“MMSRA”). The MMRSA establishes a State licensing scheme for commercial medical marijuana activities, including dispensaries and cultivation. At the same time, the MMRSA protects local control by allowing cities to either ban or regulate medical marijuana dispensaries and cultivation. However, there is a looming deadline for cities to address medical marijuana cultivation: each city must make this decision prior to *March 1, 2016*, otherwise the State will be the “sole licensing authority for medical marijuana cultivation applicants” in that city.

Legislative History of Marijuana

Marijuana has been illegal under Federal law since the enactment of the Controlled Substances Act in 1970. The Act defined marijuana as having no accepted medical use and made it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.

In 1996, California voters approved Proposition 215, commonly known as the Compassionate Use Act (“CUA”). The CUA creates limited exemptions from State criminal liability for seriously ill, qualified patients who are in need of medical marijuana for specified purposes and who obtain and use marijuana under limited, specified circumstances.

In 2004, the California State Legislature enacted the Medical Marijuana Program Act (“MMPA”), which clarified the scope of the CUA and allowed cities to adopt and enforce medical marijuana regulations.

Case Law Regarding Medical Marijuana

In 2013, the California Supreme Court held that neither the CUA nor the MMPA limit local regulation of land use for medical marijuana. Other California Appellate Courts have similarly recognized that local regulation of medical marijuana, including the prohibition of cultivation of all marijuana within a city, does not conflict with either the CUA or MMPA. Additionally, both State and Federal Courts recognize local concerns about illegal non-medical marijuana use by persons claiming to be patients and caregivers in connection with the CUA and MMPA.

Medical Marijuana in Newark – Ban on Dispensaries Adopted in 2011

In 2006, City staff received numerous inquiries from persons interested in opening medical marijuana dispensaries. Staff indicated that such a use is neither permitted nor conditionally permitted in any zoning district and further indicated that staff would not recommend approval of such a use because both the possession and sale of marijuana is illegal under Federal law. Nonetheless, the inquiries persisted. As a result, the Newark City Council adopted an ordinance making it clear that the City will not issue any entitlements, licenses, or permits for a use that is illegal under State or Federal law. (Section 1.04.100 of the Newark Municipal Code.)

In spite of taking such action, a medical marijuana dispensary opened in the City – even after staff notified the operator that dispensaries are illegal under the Municipal Code. Staff prosecuted the dispensary administratively and the hearing officer’s decision (imposition of a \$48,500 fine) was upheld by the California Court of Appeal. The dispensary ultimately closed after a criminal investigation led by the Southern Alameda County Major Crimes Task Force resulted in the seizure of multiple firearms and a substantial amount of cash and marijuana.

During this administrative process and after a second illegal dispensary opened, the City Council adopted Ordinance No. 450, making it expressly clear that medical marijuana dispensaries are prohibited in the City. Ordinance No. 450 was not intended to be a “new” ordinance, but instead was merely a “clarification” that existing zoning laws do not authorize medical marijuana dispensaries.

Effects of Cultivation

The City of Newark, along with other California cities and counties, has experienced negative impacts associated with the cultivation of medical marijuana. The Newark Police Department reports that it receives 3 to 5 complaints per month from citizens, including everything from offensive odors to excessive foot traffic and excessive (and typically erratic) driving.

Newark Police have also investigated several illegal cultivation operations in Newark, including an investigation last month in December that resulted in the seizure of nearly 300 marijuana plants at a residential location on Munyan Street. Newark Police discovered unpermitted and unsafe building and structural modifications to support marijuana growth, including rebuilt walls and exposed electrical wires. These modifications pose significant public safety concerns.

Additionally, it is not uncommon for landlords to file property loss reports with Newark PD complaining about damaged residential properties. The complaints stem from tenants who abandon the property and leave behind evidence of substantial marijuana growth, including heat lamps, unpermitted and exposed electrical wiring, and sometimes firearms. In one such circumstance at a residential location in Union City, police investigated a home that had been abandoned, but the tenants had left the heat lamps on. One wall was heated to 142 degrees.

Furthermore, marijuana cultivation can also potentially attract criminal activity in the form of home burglaries given the value of marijuana being grown. The cost of marijuana production can be expensive due to the rising costs of electricity. This either results in the theft of marijuana by a burglar and/or the grower installing an electric bypass that illegally steals power.

Firearms are often associated with marijuana cultivation as Newark Police have seized firearms (including shotguns) from marijuana cultivators. These concerns extend beyond Newark, as Hayward Police seized over fifty (50) firearms during one investigation in Hayward, most of which were found in a warehouse.

Marijuana cultivation can also lead to the establishment of “Butane Honey Oil conversion labs”, which pose significant public safety concerns. Some cultivators use butane to heat or cook dry marijuana, which converts the cannabis into liquid form, thus raising the concentration of THC, which, in turn, increases profits. Butane gas can be used as a safe ignition source to fuel fires, but can be a dangerous gas if not ventilated carefully as it has the potential to ignite. For example, a few years ago a Butane Honey Oil conversion lab led to an explosion in an apartment complex in Walnut Creek that severely damaged the building.

Butane Honey Oil conversion labs are not unheard of in Newark. Just last year Newark Police investigated one such lab that was found in a garage in a residential neighborhood off

of Bettencourt Street. The case resulted in an arrest for five felony counts of child endangerment as children were residing in the house.

Proposed Ordinance

The Newark Municipal Code currently does not authorize commercial cultivation of medical marijuana anywhere in the City based on two facts. First, commercial cultivation of medical marijuana is not listed as a permitted or conditionally permitted use in any zoning district. Second, the Newark Municipal Code expressly states that the City will not issue a license for a use that is inconsistent with Federal law. Since the manufacturing and possession of marijuana is illegal under the Controlled Substances Act, the Newark Municipal Code would not authorize the City to issue any permit for marijuana cultivation.

However, in abundance of caution and in light of deleterious effects commercial cultivation has on our residents and community, staff recommends that the Council introduce an ordinance clarifying and confirming that commercial cultivation of medical marijuana is not permitted under the Municipal Code and that the City shall not issue any licenses to any potential operators. Staff believes this ordinance will alleviate concerns regarding potential illegal activity, reduce nuisance complaints and the need for police service calls, and will facilitate and promote the safety and well-being of our residents.

Finally, while staff has concerns about large scale commercial cultivation, staff does not share the same concerns for small scale *personal* cultivation by “qualified patients” who have a legitimate medical condition. The proposed ordinance would authorize both “qualified patients” and “primary caregivers” to cultivate medical marijuana under limited and specified circumstances established by the new State law. The City would allow this personal cultivation but, like the State, would not issue licenses for such activity.

Qualified patients are people who have a legitimate medical condition and who receive written authorization from a medical professional to use medical marijuana. The ordinance would authorize them to grow medical marijuana only for their own personal consumption and in an area no greater than 100 square feet. They would not be allowed to sell or give the marijuana to any other person and would have to comply with all other State requirements.

Primary caregivers, as defined by State law, are individuals who have assumed the responsibility for the health and safety of qualified patients. Primary caregivers would be allowed to cultivate marijuana in an area no greater than 500 square feet and have a maximum of five patients. Primary caregivers would likewise not be allowed to sell or distribute the marijuana to anybody other than their patients and comply with all other State requirements.

Attachment

Action – For the reasons outlined above, staff recommends that the City Council introduce an ordinance amending Chapter 5.36 (Medical Marijuana Dispensaries) of Title 5 (Business Licenses and Regulations) of the Newark Municipal Code to clarify and affirm the prohibition of commercial cultivation of medical marijuana.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWARK AMENDING CHAPTER 5.36 (MEDICAL
MARIJUANA DISPENSARIES) OF TITLE 5 (BUSINESS
LICENSES AND REGULATIONS) OF THE NEWARK
MUNICIPAL CODE TO CLARIFY AND AFFIRM THE
PROHIBITION OF COMMERCIAL CULTIVATION OF
MEDICAL MARIJUANA

**THE CITY COUNCIL OF THE CITY OF NEWARK DOES ORDAIN AS
FOLLOWS:**

SECTION I. FINDINGS AND PURPOSE. The City Council finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5 and entitled “The Compassionate Use Act of 1996” or “CUA”).

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.” The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

C. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code § 11362.7 et seq. and referred to as the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

D. In City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” Additionally, in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in Maral

affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

E. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed.

F. On October 9, 2015 Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (hereinafter “MMRSA”). The MMRSA establishes a State licensing scheme for commercial medical cannabis activities while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MMRSA allows the City to prohibit commercial medical marijuana activities, including cultivation.

G. The City Council of the City of Newark finds that commercial medical marijuana activities can adversely affect the health, safety, and well-being of City residents. Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or a variety of crimes.

H. The limited immunity from specified state marijuana laws provided by the Compassionate Use Act and Medical Marijuana Program does not confer a land use right or the right to create or maintain a public nuisance.

I. The MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority.

J. The City Council of the City of Newark further finds and declares that commercial cultivation of marijuana for medicinal purposes is currently prohibited under the City’s permissive zoning regulations as no district permits or conditionally permits such a use. However, the Council desires to enact this ordinance to expressly make clear that all such commercial cultivation is prohibited in all zones throughout the City and the City shall not issue any such permit for cultivation. This ordinance is therefore consistent with the City’s zoning code.

K. This Ordinance is not detrimental to, and in fact protects, the public convenience, health, interest, safety, and welfare of the City for the reasons set forth above.

L. Personal cultivation as allowed by State law will not be prohibited by this ordinance.

M. This ordinance is not subject to review under CEQA pursuant to sections 15060(c) (2) and 15060(c) (3) (the activity is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines), because it has no potential for resulting in physical change in the environment, directly or ultimately. This ordinance does not, in itself, authorize commercial cultivation of marijuana for medicinal purposes; therefore there is no potential for resulting in physical change in the environment, directly or ultimately.

SECTION II. AMENDMENT OF THE CODE. Chapter 5.36, currently entitled “Medical Marijuana Dispensaries” is hereby amended as set forth below. Additions are shown by underline text and deletions are shown by ~~strikeout~~.

CHAPTER 5.36 MEDICAL MARIJUANA DISPENSARIES AND COMMERCIAL CULTIVATION

Section 5.36.010 – Purpose, findings and intent.

Section 5.36.020 – Definitions.

Section 5.36.030 – Prohibition of medical marijuana dispensaries and commercial cultivation.

Section 5.36.040 – Public nuisance.

Section 5.36.050 – Civil penalties.

Section 5.36.010 Purpose, findings and intent.

- A. In enacting this chapter, the city council finds as follows:
1. In 1970, Congress enacted the Controlled Substances Act (“CSA”) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.
 2. In 1996, the voters of the State of California approved Proposition 215 [the Compassionate Use Act (the “Act”) (codified as Health and Safety Code section 11362.5 *et seq.*)].
 3. The Act creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

4. On January 1, 2004, the “Medical Marijuana Program” (“MMP”), codified as Health and Safety Code sections 11362.7 to 11362.83, was enacted by the State Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMP.
5. The Act expressly anticipates the enactment of additional local legislation. It provides: “Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others or to condone the diversion of marijuana for nonmedical purposes.” (Health and Safety Code section 11362.5)
6. The city council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, according to news stories widely reported and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The city council reasonably anticipates that the City of Newark will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news stories and statistical research regarding secondary impacts is contained in a copyrighted 2009 white paper report entitled White Paper of Medical Marijuana Dispensaries by California Police Chiefs Association Task Force.
7. The city council further takes legislative notice that as of August 2011, according to at least one compilation, 161 cities and 17 counties have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The city council further takes legislative notice that 143 cities and 12 counties have adopted prohibitions against medical marijuana dispensaries.
8. The city council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state’s medical marijuana laws, entitled “GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008).” (http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.) The Attorney General has stated in the guidelines that “[a]lthough medical marijuana ‘dispensaries’ have been operating in California for years, dispensaries, as such, are not recognized under the law.”
9. The city council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with the Act and the MMP also have been recognized by state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588; *People ex rel. Lungren*

v. Peron (1997) 59 Cal.App.4th 1383, 1386 to 1387; *Gonzales v. Raich* (2005) 545 U.S. 1.)

10. The city council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the Controlled Substances Act (“CSA”) (*Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588); that the federal courts have recognized that despite the Act and MMP, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 545 U.S. 1; *United States v. Oakland Cannabis Buyers’ Cooperative* (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the Act and MMP (*Gonzales v. Raich*, 545 U.S. 1).
11. The city council further takes legislative notice that the United States Attorney General announced in 2008 its intention to maintain enforcement of federal laws as applied to medical marijuana dispensaries which otherwise comply with state law. There is no certainty how long this uncodified policy will remain in effect, and the underlying conflict between federal and state statutes still remains.
12. The United States Department of Justice issued a memorandum dated June 29, 2011 that outlined the Department’s intent to enforce the CSA in jurisdictions considering legislation that would sanction and regulate commercial cultivation and distribution of marijuana for purportedly medical use.
13. An ordinance prohibiting medical marijuana dispensaries and commercial cultivation, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana dispensaries and commercial cultivation, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of the city.

B. The purpose of this chapter is to prohibit the establishment, operation, and location (fixed or mobile) of medical marijuana dispensaries and commercial cultivation in the city. Further, this chapter shall not prevent the limited cultivation of medical marijuana for personal use by a qualified patient or primary caregiver, provided such cultivation is in compliance with California Health & Safety Code Section 11362.777.

Section 5.36.020 Definitions.

A. For the purposes of this chapter, “medical marijuana dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is provided, sold, made available or otherwise distributed to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card.

B. For the purposes of this chapter, the terms “primary caregiver,” “qualified patient” and “person with an identification card” shall be as defined in California Health and Safety Code section 11362.7, and as the same may be amended from time to time.

C. For purposes of this chapter, a “medical marijuana dispensary” shall not include the following uses, provided that the location of such uses are otherwise regulated by applicable law, and further provided any such use complies strictly with applicable law, including, but not limited to, California Health and Safety Code section 11362.5 *et seq.* and California Health and Safety Code section 11362.7 *et seq.*:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code.
2. A health-care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
4. A residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
5. A residential hospice, or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

D. For purposes of this chapter, the terms “commercial cannabis activity”, “cannabis”, and “cultivation” shall have the same meaning as set forth in California Business & Professions Code Section 19300.5, and as the same may be amended from time to time.

Section 5.36.030 Prohibition of medical marijuana dispensaries and commercial cultivation.

A. Medical marijuana dispensaries and commercial cannabis activity constituting cultivation are prohibited in the city. No medical marijuana dispensary, fixed or mobile, shall establish, locate, operate, or otherwise be permitted within the city. No commercial cannabis activity constituting cultivation shall establish, locate, operate, or otherwise be permitted within the city.

B. The city shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary or commercial cannabis activity constituting cultivation.

C. Cultivation of cannabis for non-commercial, personal purposes by a qualified patient or a primary caregiver, subject to the limitations and requirements of subsection (g) of California Health & Safety Code Section 11362.777, is not prohibited within the city.

Section 5.36.040 Public nuisance.

Any use or condition caused, or permitted to exist, in violation of any provisions of this Chapter 5.36 shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the city pursuant to California Code of Civil Procedure Section 731 or any other remedy available to the city.

Section 5.36.050 Civil penalties.

In addition to any other enforcement permitted by this Chapter 5.36, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant to the provisions of this Code against any person or entity that violates this Chapter.

SECTION III. Declaration of Existing Law. Chapter 5.36, amended by this ordinance, is declaratory of, clarifies, and affirms existing law.

SECTION IV. Severability and Validity. If any section, subsection, sentence, clause, or phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful, or otherwise invalid by a court of competent jurisdiction, then such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Newark hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

SECTION V. The passage of this ordinance is not a project according to the definition in the California Environmental Quality Act and, therefore, is not subject to the provisions requiring environmental review.

SECTION VI. Effective Date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in The What's Happening Tri City Voice, a newspaper of general circulation published and printed in the City of Fremont, County of Alameda and circulated in the City of Newark.