

**CITY COUNCIL MEETING  
TUESDAY, MARCH 21, 2017**

**DOCUMENTS RECEIVED AFTER PUBLISHED AGENDA**

**Item #4 CONS 17-120**

**Matthew Richards – Nixon Peabody LLP**



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March 20, 2017

***VIA EMAIL ONLY***

Joseph Brick (Joseph.Brick@hayward-ca.gov)  
Assistant City Attorney  
City of Hayward  
777 "B" Street  
Hayward CA, 94541

**RE: D.L. Falk Construction Inc. Bid Protest—Supplemental Response  
Hayward Fire Stations 1-5 Improvements Project**

Dear Mr. Brick:

As you know, we represent D.L. Falk Construction Inc. ("DLF") with respect to the above-captioned bid protest, timely submitted by DLF to the City of Hayward ("City") on February 14, 2017, regarding the Fire Stations 1-5 Improvements Project ("Project"). As explained in detail below, the Department of Public Works has improperly denied DLF's bid protest, and now improperly recommends that the City Council award the Project to Arntz Builders, Inc. ("Arntz"). The City Council should reject the invitation and award the Project instead to DLF, the lowest responsive, responsible bidder.

Further to our email correspondence of March 3-19, 2017, and our phone conversation of this morning regarding DLF's bid protest, I write to provide information—not included in the materials provided to the City Council with respect to Consent Calendar Agenda Item 4 (CONS 17-120)—for the City Council's consideration prior to its vote on the above-captioned Project, which I understand is scheduled for Tuesday, March 21, 2017, at 7:00 p.m. Thank you for your courtesy in agreeing on our call this morning to forward this letter and its attachments to the City Council for its review and consideration prior to that vote.

DLF is confident that the City Council desires to be fully informed prior to making important decisions like the award of the contract for the Project. Unfortunately, the Department of Public Works' Staff Report not only fails to give the City Council the full factual picture, it omits key elements of DLF's bid protest and gives unsound legal advice. See **Exhibit A**, Attachment I (Staff Report) to CONS 17-120 at 3-4. If followed, the recommendation would subject the City to, at a minimum, a writ proceeding based on the City's failure to adhere to California's Public Contract Code and to reject Arntz's materially nonconforming bid.

### Background

On February 14, 2017, DLF timely submitted a bid protest to the City regarding the Project, identifying three bases for the material nonconformity of Arntz's bid, any one of which would be fatal to the bid. *See Exhibit B*, Attachment VI (DLF Bid Protest) to CONS 17-120 at 1-5. Based on the information then available to DLF, it was clear that the bid specifications for the Project required the City to reject the bid submitted by the apparent low bidder, Arntz, as materially nonconforming.

Arntz's February 16 and 17 communications regarding the Project—provided by Arntz to the City and DLF—only reinforced the facial, material nonconformity of Arntz's bid, and the City's obligation under the California Public Contract Code to reject the bid. *See Exhibit B*, Attachment VI (DLF Bid Protest) to CONS 17-120 at 6-13.<sup>1</sup> DLF's February 23 supplemental letter to the City reiterated the materially nonconforming elements of Arntz's bid—reprinted below for ease of reference—and the reasons why those deficiencies required the City to reject the bid. *See Exhibit B*, Attachment VI (DLF Bid Protest) to CONS 17-120 at 14-16.

- Arntz's failure list subcontractors required to perform work in excess of one-half of one percent of its bid (\$34,558), which Arntz itself is not qualified to perform—roofing, drywall, plaster, tile, painting, polished concrete floors, and fence and gates scopes of work. *See* Pub. Contract Code § 4106.
- Arntz's failure to carry the specialty licenses required to self-perform roofing work (C-39), drywall work (C-9), lathing and plaster work (C-35), tile work (C-54), painting (C-33), or concrete resurfacing (C-61/D-10).
- Arntz's failure, and inability, to provide the documented experience required by the Project's Technical Specifications for the roofing (070150 Roofing Repairs, ¶ 1.5) and polished concrete flooring (033550 Polished Concrete Flooring, ¶ 1.04.A) installer.

On February 24, the Director of Public Works responded to DLF, denying the bid protest. The response failed to address DLF's third basis for the protest at all. It also failed to explain how the City could deem either of the other bases of DLF's protest to constitute nonmaterial deviations by Arntz. *See Exhibit B*, Attachment VI (DLF Bid Protest) to CONS 17-120 at 17-18.

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<sup>1</sup> Arntz's response to DLF's bid protest was telling. It did not contest *any* of the materially nonconforming elements raised by DLF. In fact, rather than provide an item-by-item response to DLF's letter, Arntz responded with a two-sentence letter, stating only: "If the City believes that [DLF] protest has merit, then we will defer to the City's position, and understand the City may award the Project to [DLF]." *Exhibit B*, Attachment VI (DLF Bid Protest) to CONS 17-120 at 6. In the competitive world of public works contracting, this was essentially an admission by Arntz that the Project must be awarded to DLF.

DLF sent a letter to Arntz on March 1, copying the City, outlining its concerns regarding Arntz's ability to perform on the Project. **Exhibit C**, DLF Letter to Arntz (Mar. 1, 2017). From March 3-19, you and I have also exchanged emails regarding DLF's bid protest, including my requests for clarification of the City's position articulated in its February 24 letter, and your supplemental response of March 19. **Exhibit D**, Richards-Brick Email Thread (Mar. 3-19, 2017). These materials are relevant to the City Council's deliberations, and should be provided for its review prior to any vote on the proposed resolutions.

### Discussion

#### 1. Deficiencies in the City's Response to DLF's Bid Protest.

DLF's letters of February 14 and 23 identified three materially nonconforming elements of Arntz's bid. The City's February 24 response failed to even acknowledge, let alone address, the third basis for DLF's protest—namely, that Arntz had not provided and could not provide the experience required by the Project's Technical Specifications necessary to self-perform the roofing (070150 Roofing Repairs, ¶ 1.5) and polished concrete flooring (033550 Polished Concrete Flooring, ¶ 1.04.A) work on the Project. Your supplemental response of March 19 addressed the issue for the first time, but dodged it, stating: "Staff has confirmed that the low bidder possesses the necessary licenses to self-perform the roofing and the concrete work." **Exhibit D**, Richards-Brick Email Thread (Mar. 3-19, 2017) at 1. This conflates Arntz's licensure status with the requirement that Arntz meet the Project's Technical Specifications. Arntz failed to list subcontractors for this work, and it has stated that it will self-perform. *See Exhibit B*, Attachment VI (DLF Bid Protest) to CONS 17-120 at 10. As such, it must provide evidence that it has the required five years of experience as a polished concrete installer or installer of the Garland roof specified for the Project called for by the Technical Specifications. The City has not provided DLF with the portion of Arntz's bid addressing the Technical Specifications' requirements, on the grounds that it constitutes confidential business information. Nevertheless, DLF is informed by the roofing subcontractor and manufacturer that Arntz has never previously self-performed an installation of a Garland roof, let alone been approved by the manufacturer to install one. Simply put, DLF played by the rules with respect to the Project's Technical Specifications. Arntz apparently did not. DLF's bid—and all bids that met the bidding requirements—suffered as a result.<sup>2</sup> Where DLF's bid increased because it listed specialty subcontractors that met the stringent requirements of the Project's Technical Specifications, Arntz stated that it would self-perform, without regard to the Technical Specifications. This is a textbook example of a material deviation from the bidding instructions, and would be a textbook example of a Public Contract Code violation by the City, should it award the bid to Arntz.

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<sup>2</sup> Small wonder, given this uneven playing field, that Arntz's bid of \$6,911,577 was 10% below the engineer's estimate, and nearly \$900,000 lower than DLF's, the lowest bid to comply with the Project's bid instructions and Technical Specifications. *See Exhibit A*, Attachment I (Staff Report) to CONS 17-120 at 3.

Arntz's failure to list subcontractors for a number of trades was also treated by the City as a nonmaterial variance in its February 24 response. This problem persists, and is, if anything, exacerbated by a material misstatement in the Staff Report: "Regarding work for which Arntz did not list subcontractors, Arntz stated that they are licensed for and intend to complete the work themselves." **Exhibit A**, Attachment I (Staff Report) to CONS 17-120 at 4. In fact, Arntz *did not* commit to doing the work itself. Arntz stated: "*We reserve the right to self-perform the Drywall, Plaster, Tile, Fencing & Gates.*" **Exhibit B**, Attachment VI (DLF Bid Protest) to CONS 17-120 at 10 (emphasis added). If Arntz typically performed the scopes of work for these trades, it would not have listed them on the bid form to be subcontracted in the first place. But Arntz's bid form, as originally prepared, assumed performance of these trades by subcontractors. DLF cannot say whether Arntz decided, upon receiving bids, that the prices were too high or that bids were lacking, only that at some point it apparently decided to find cheaper subcontractors after bid opening. Moreover, Arntz's purported reservation of rights is a textbook example of bid peddling, against which the Public Contract Code's Subcontractor Listing Law is expressly designed to protect.<sup>3</sup> Again, DLF and other bidders who played by the rules of the Public Contract Code paid a premium to meet the requirements of the Project's specifications and are penalized on price, while Arntz, by failing to list subcontractors in its bid and refusing to commit to self-performing the work, would improperly and unfairly stand to profit.

From the outset, the City has taken an extremely narrow view of what constitutes material nonconformity—essentially arguing that anything not affecting the price of Arntz's bid is immaterial. But bid price is not the sole measure of materiality. Anything giving an advantage to one bidder over another or conferring a benefit to one bidder not available to others is material under the Public Contract Code. Arntz's failure to meet the requirements of the Project's Technical Specifications is also material—not just because of the uneven playing field it creates, but because of the quality of the work provided to the City. By failing to require Arntz to satisfy the minimum technical requirements, the City would be choosing a contractor that has never installed a Garland roof or performed the kind of polished concrete work required for this Project. The diminished quality of workmanship for these critical portions of the Project, and the unavailability of Garland's manufacturer's warranty when non-approved installers like Arntz perform work, are material as well. In fact, the quality of work on the Project should be of concern to the City with respect to each trade that Arntz does not typically self-perform, but will be forced to here: drywall, plaster, tile, and fencing & gates.

## 2. Public Policy Considerations Require the City to Reject Arntz's Bid.

In its bid protest procedures for this Project, the City "reserves the right to waive any bid irregularities not affecting the amount of the bid, except where such waiver would give the low bidder an advantage or benefit not allowed to other bidders." Here, there is no question that:

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<sup>3</sup> If the City improperly awards the contract to Arntz, and the award somehow withstands DLF's legal challenge, DLF intends to monitor the Project, including requesting copies of certified payroll, to ensure that Arntz self-performs each scope of work for which it failed to identify a subcontractor.

(1) Arntz's bid is nonconforming in multiple respects; (2) the nonconformities affect the amount of the bid; and (3) the nonconformities gives the low bidder an advantage or benefit not allowed to other bidders—among other things, the potential for bid shopping or peddling. See *Ghillotti Construction Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897; *Konica Business Machines U.S.A., Inc. vs. Regents of University of California* (1988) 206 Cal. App. 3d 449, 454 (a bid is not responsive and cannot be accepted if the variance gives the bidder an advantage or benefit not allowed by other bidders or, in other words, if the variance is consequential). Thus, the City lacks discretion in this instance to waive the nonconforming aspects of Arntz's bid, or to award the bid to Arntz. Your March 19 response suggested that the City may rely upon Hayward Municipal Code § 2-8.06 to "waive any informalities or irregularities in bids received." **Exhibit D**, Richards-Brick Email Thread (Mar. 3-19, 2017) at 1. This runs directly counter not only to all known authority, which only permits public entities to waive nonmaterial nonconformities, but to the City's own bid protest procedures.

It would also be improper for the City to ignore the materially nonconforming nature of Arntz's bid simply because it might seem to be in the City's perceived, short-term financial interest to do so. I heard you say the following on our call today: although denying all bids would be the safest way for the City to proceed, and fairer under the Public Contract Code to the general contractors who bid on this Project, the City would lose out, in that the winning bid would be higher, and the City needs to weigh its economic risk in making a determination on the award of this Project. I did my best to transcribe your comments as you made them, but I nevertheless apologize if I have inadvertently omitted or failed to capture the substance of your comments on this subject. Regardless of the exact words used, I trust you would agree that the purpose of the Public Contract Code is to ensure that all bidders are operating on a level playing field, under the same set of rules; that no bidder receives an advantage or benefit unavailable to other bidders; and that the City cannot ignore the existence of an uneven playing field, even when it is to its perceived financial benefit to do so. No less than contractors and subcontractors, the City should be accountable to following the competitive bidding rules set forth in the Public Contract Code. What may seem expedient now will, unless corrected, result in either a successful legal challenge or, perhaps even worse for the City, proceeding with a bargain-basement price from a contractor inexperienced in some of the required construction methods, with the resulting heightened risk to the City as to cost, schedule, and quality.

### 3. DLF's Rights and Remedies.

As I mentioned on my call with you today, DLF believes that, as the next lowest responsive, responsible bidder, the contract for the Project should be awarded to it. While DLF also desires to work with the City, not against it, DLF is prepared to take all actions and to pursue all remedies necessary to protect its rights should the Project be improperly awarded to Arntz—including holding the City accountable to following the rules governing competitive bidding as set forth in the Public Contract Code.

Joseph Brick  
March 20, 2017  
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Conclusion

DLF thanks the City Council in advance for its attention to the materials not previously provided to the City Council with respect to Consent Calendar Agenda Item 4 (CONS 17-120), and for considering its response to the City Attorney's supplemental response of March 19. DLF looks forward to the opportunity to work with the City on this important Project.

Sincerely,

Matthew A. Richards

MAR

Attachments

cc: Hayward City Council Members (via Joseph Brick)  
Morad Fakhrai, P.E. (Morad.Fakhrai@hayward-ca.gov)  
Garrett Contreras (Garrett.Contreras@hayward-ca.gov)  
Yaw Owusu (Yaw.Owusu@hayward-ca.gov)  
Dave Hung (Dave.Hung@hayward-ca.gov)  
David Arntz (DArntz@arntzbuilders.com)  
David L. Falk (davef@dlfalk.com)  
Greg Schmidt (gregs@dlfalk.com)



D.L. Falk Construction Inc. Bid Protest—Supplemental Response  
Hayward Fire Stations 1-5 Improvements Project  
March 20, 2017

# **EXHIBIT A**



**DATE:** March 21, 2017

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT** Fire Stations 1-5 Improvements: Reject Bid Protest and Award of Construction Contract to Arntz Builders and Amendment to Professional Services Agreements with Kitchell and RossDrulisCusenbery

### RECOMMENDATION

That Council adopts the attached resolutions (Attachment II, III, IV, and V):

1. Approving Addenda Nos. 1 through 3, providing revisions to the plans and specifications for the Fire Stations 1-5 Improvements project;
2. Rejecting a bid protest and awarding the contract to Arntz Builders, Inc., in the amount of \$6,911,577, and authorize the expenditure of up to \$10,830,000 for the total project, including contingencies;
3. Authorizing the City Manager to execute an Amendment to the Professional Services Agreement with Kitchell in an amount not-to-exceed \$490,000;
4. Authorizing the City Manager to execute an Amendment to the Professional Services Agreement with RossDrulisCusenbery in an amount not-to-exceed \$800,000; and

### BACKGROUND

On June 3, 2014, voters approved Measure C which authorized the City of Hayward to increase the sales tax rate in the City by one-half cent for twenty years to restore and maintain City services and facilities, including firefighting/emergency medical services, improving police services to neighborhoods, replacing the aging library with a 21st century facility, repairing potholes and streets, updating aging neighborhood fire stations, and other City services. Based on the facility needs assessment report completed on October 10, 2014 by RossDrulisCusenbery (RDC) for Fire Stations 1-6 and the Fire Training Center, substantial upgrades are needed in these aging facilities. Fire Stations 1-5 require renovation, and are treated as separate from Fire Station 6 and the Fire Training Center since the latter facilities will be reconstructed and expanded. On October 18, 2016, staff provided an update on this project to Council.

On December 13, 2016, Council approved the plans and specifications for the Fire Stations 1-5 Improvements Project and called for bids to be received on January 24, 2017. Addenda Nos. 1 through 3 revised the drawings and specifications by adding information to the project documents that provided clarification to bidder questions, and revised the bid opening date to February 7, 2017.

## DISCUSSION

### Project Plans and Specifications

RDC completed the needs assessment of Fire Stations 1-5 and issued a final report on October 10, 2014. Based on that report, it was determined that substantial upgrades were needed in these facilities to correct problems of varying degrees.

Renovation of Fire Stations 1-5 includes seismic and safety upgrades, energy efficiency, operational, and modernization improvements.

Providing safe fire stations for the occupants and the public is one of the City's top priorities. Seismic retrofit is the priority for these stations to meet life safety structural performance levels. The buildings will be strengthened to prevent collapse and potential loss of life in a seismic event.

- Fire Stations 1 through 5 will need structural upgrades that include reinforcement of exterior and interior walls;
- Fire Stations 1 and 2 will have additional upgrades to obtain a higher seismic performance level such that, after a seismic event, these stations will sustain no significant damage and be safe to occupy, and
- Fire Stations 1, 2, and 4, which are in a liquefaction zone, require modification to the existing foundations to mitigate liquefaction-induced settlement.

Other safety improvements at the stations will include: abatement of material containing asbestos and lead; relocation of turnout gear to new turnout locker rooms; and new vestibule areas to separate exhaust fumes in the apparatus bay from sleeping quarters.

Renovation for these stations are also needed to improve energy efficiency. For Fire Stations 2-5, upgrades will include changing the internal and exterior light fixtures to LED, adding attic and wall insulation, installing new doors, double pane windows, and skylights, and replacing HVAC systems. They will have photovoltaic panels added on the roof for additional energy efficiency. These "green" improvements will offset approximately 70% or more of the existing energy consumption. Photovoltaic panels are not currently included as part of the renovation for Fire Station 1 because the building is already energy efficient with newer windows and insulated walls. Additionally, because space is limited by mechanical equipment on the roof, photovoltaic panels will need to be installed over new carport structures. This is estimated to cost an additional \$350,000, which staff will ask Council to consider at a future date if and when funds become available.

Fire Stations 1-5 include improvements for quicker response time. All stations will have improvements to the station alerting systems. The existing overhead sectional exit apparatus doors will be replaced with faster operating, low-maintenance four-fold doors. Lastly, for Fire Stations 1-4, GPS-based traffic signal pre-emption systems will be added to the stations and at the traffic signals on street intersections near these fire stations. Fire Station 5 does not require this system because there are no nearby signalized intersections.

Other renovation improvements will include:

- Necessary accessibility requirements in renovated areas, including upgrades to showers and washrooms;
- Casework replacement in the office area;
- New appliances and counter tops in the kitchens;
- Wall and floor replacement; and
- Utility upgrades, including replacing old sewer, water, gas lines and electrical panels.

Because of the extensive hazardous material abatement and renovation, the work will be disruptive to the crews working within the stations. Therefore, temporary housing arrangements must be made for the various fire stations except Fire Station 1 where there is no hazardous material abatement; personnel will occupy that station during construction. Construction at Fire Stations 1, 2, and 3 will start at about the same time. During construction, Fire Station 2 personnel and apparatus will be temporarily housed at the larger Fire Station 6. Fire Station 3 personnel and apparatus will be temporarily housed at the new Fire Station 7. When the renovation work for Fire Station 1 is completed, crews from Fire Station 5 will be temporarily housed in Fire Station 1. Similarly, when the renovation work for Fire Station 2 is completed, crews from Fire Station 4 will be temporarily housed in Fire Station 2.

On February 7, 2017, four bids were received for the project. Arntz Builders Inc. of Novato, California, submitted the low bid of \$6,911,577 which was 10% below the engineer's estimate of \$7,680,000. D.L. Falk, Inc. of Hayward, California submitted the second low bid in the amount of \$7,849,001 which was 2.2% above the engineer's estimate. The four bids ranged from \$6,911,577 to \$9,656,800 (Attachment VI).

*Bid Protest by D.L. Falk, Inc.*

On February 14, 2017, the City received a bid protest from D. L. Falk Inc., the second low bidder, alleging that Arntz Builders' bid was non-responsive because Arntz Builders, Inc. did not list subcontractors required to perform work more than one-half of one percent of its bid. D. L. Falk also claimed that Arntz is not qualified to perform the work itself. Staff, in conjunction with the City Attorney's Office, reviewed the bid protest and subsequent response from Arntz Builders, Inc. and recommends rejection of the bid protest based on the following:

- 1) The bid proposal required bidders to provide the List of All Subcontractors and Suppliers which Arntz provided. In their response to the bid protest, Arntz stated that they inadvertently did not list their painting subcontractor in the amount of \$208,000. It is the City Attorney's view that this does not change the bid total and therefore is not materially non-conforming.
- 2) Regarding work for which Arntz did not list subcontractors, Arntz stated that they are licensed for and intend to complete the work themselves. A copy of D. L. Falk's protest letter, Arntz's response to the protest, and the City's response are attached (Attachment VII).

Staff finds Arntz Builders' bid documents to be responsive and has confirmed that they have licenses appropriate for this work. Therefore, staff recommends that Council reject the bid protest and award the contract to Arntz Builders Inc. in the amount of \$6,911,577. Further, staff recommends that Council authorize the Director of Public Works to expend up to \$10,830,000 for construction, construction contingencies (Administrative Change Order, ACO), construction administration, inspection, testing, fixtures, furniture and equipment, and project design. The ACO amount is \$698,423 (or approximately 10% of the construction contract). Please see the breakdown of the project budget below under the Fiscal Impact section.

This project is categorically exempt from environmental review under section 15301 (c) of the California Environmental Quality Act guidelines for the operation, repair, maintenance, or minor alteration of existing facilities.

*Additional Services and Amendment to Professional Services Agreements*

On May 26, 2015, Council authorized the City Manager to negotiate and execute an agreement with RDC for design services for the Fire Stations 1-6 and Fire Training Center Improvement project in an amount not-to-exceed \$1,500,000. Staff also negotiated a scope of work for project management services during the design phase with Kitchell in an amount not-to-exceed \$200,000. On November 15, 2016, Council authorized the City Manager to amend the agreement with Kitchell in the amount not-to-exceed \$600,000 for overall design phase management, detailed cost estimates, and bid and award phase services for Fire Stations 1-5, the new Fire Station 6, and the Fire Training Center.

The design contracts for both RDC and Kitchell did not include construction support services for the Fire Stations 1-5 Improvements Project. An estimated \$490,000 each to RDC and Kitchell is needed for these services during the construction phase, and staff recommends that Council approve increasing RDC and Kitchell's contract by this amount for the needed services.

During the October 18, 2016 Fire Stations 1-6 and Fire Training Center Improvements Project Update presentation, Council directed staff to proceed with the full build out design of Fire Station 6 and the Fire Training Center. This design was not in the original scope of RDC's services. Staff has negotiated with RDC to provide a schematic design phase services in the amount of \$310,000. Staff also recommends that Council approve increasing RDC's contract

by this additional amount for the needed services. Staff will return to Council for approval of the remainder of the design services to complete the 100% construction documents for the new Fire Station 6 and the Fire Training Center at a later date.

### FISCAL IMPACT

The estimated project costs are as follows:

DESCRIPTION	CURRENT ESTIMATED COST
A. Construction Contract	\$6,911,577
B. Construction Contingency (ACO)	\$698,423
C. Design	\$820,000
D. Fixtures, Furniture & Equipment	\$1,000,000
E. Consultant Construction Administration (RDC and Kitchell)	\$980,000
F. Permit Fees, Inspection, Testing & Staff Construction Administration	\$420,000
<b>TOTAL</b>	<b>\$10,830,000</b>

The Adopted FY2017 CIP includes a total of \$11,020,000 for the design and construction of the Fire Stations 1-5 projects in the Measure C Fund. Additionally, there are adequate funds in the Adopted FY 17 CIP for RDC to provide a schematic design phase services for Fire Station 6 and the Fire Training Center in the amount of \$310,000 as recommended by staff in the discussion section above.

Item E in the table above includes \$490,000 each for construction administration by RDC and Kitchell as noted in the discussion section of the report.

Staff will return to the Council Budget & Finance Committee and the full Council this spring to review the current Measure C revenue and expenditure projections and for a discussion of the funding for Fire Station 6 and the new Training Center.

### SUSTAINABILITY FEATURES

1. Water: Installation of water efficient plumbing fixtures

The project includes the installation of water efficient plumbing fixtures to reduce waste in water consumption.

2. Environment: Bay-Friendly Landscaping & Storm Water Treatment.

This project will implement Bay-Friendly Landscaping techniques that use native and climate appropriate plants at the Fire Stations.

3. Energy: Replace windows, installation of LED lighting, skylights, and PV panels.

This project will install energy efficient windows, LED lighting, skylights, and PV panels providing electricity and maintenance cost savings.

### **PUBLIC CONTACT**

There has been no public contact for this project. After the construction contract is awarded, staff will distribute preliminary notices explaining the project to residents and businesses near the affected Fire Stations due to the temporary inconvenience expected from the improvement work. After construction work has been scheduled, follow-up notices will be distributed indicating the construction dates for each Fire Station.

### **NEXT STEPS**

If Council adopts the attached resolutions and awards the contract, the Fire Stations 1-5 Renovation Project Schedule is as follows:

Begin Construction	April 2017
Complete Construction	May 2018

*Prepared by:* Yaw Owusu, Assistant City Engineer

*Recommended by:* Morad Fakhrai, Director of Public Works

*Approved by:*



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Kelly McAdoo, City Manager

D.L. Falk Construction Inc. Bid Protest—Supplemental Response  
Hayward Fire Stations 1-5 Improvements Project  
March 20, 2017

# **EXHIBIT B**





## D.L. FALK CONSTRUCTION INC.

3526 INVESTMENT BLVD., HAYWARD, CA 94545 WWW.DLFALK.COM

PHONE (510) 887-6500 • FAX (510) 887-6501

February 14, 2017

City of Hayward  
777 B Street  
Hayward, CA 94541

02/14/17 15:54 CLK

Attn.: Dave Hung

Re: Bid for Hayward Fire Stations #1, 2, 3, 4, & 5

DL Falk Construction Inc. (DLF) respectfully requests that the City of Hayward reject as materially non-conforming the bid submitted by Arntz Builders, Inc. (Arntz), because Arntz has failed to list subcontractors required to perform work in excess of one-half of one percent of its bid, which Arntz itself is not qualified to perform.

The bid submitted by Arntz fails to list many of the subcontractors required to properly execute the project. The following are scopes of work where DLF and the other General Contractors that submitted a bid (JUV Inc. and Sausal Corp.) listed a subcontractor but Arntz did not, and their values:

	<u>DLF</u>	<u>JUV</u>
* Roofing	\$116,484	\$97,000
* Drywall	\$198,300	Self Perf
* Plaster	\$103,100	Self Perf
* Tile	\$114,425	\$130,000
* Painting	\$162,660	\$145,000
* Polished Concrete Floors	\$50,919	\$103,250
* Fence & Gates	\$110,221	\$113,000

As you can see each of these items far exceed the one-half of one percent of Arntz's bid (.5% of Arntz's bid is \$34,558). Reviewing JUV's website it is clear that they typically do perform drywall and plaster work and are capable of doing so, there is no such indication for Arntz on their website.

According to Public Contract Code § 4106: *"If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's bid, the prime contractor agrees that he or she is fully qualified to perform that*

*portion himself or herself, and that the prime contractor shall perform that portion himself or herself."*

The trades that Arntz has failed to list, in addition to each being well in excess of the required one-half of one percent threshold, together amount to over \$856,000 or 12% of their bid. Arntz cannot simply self-perform this work, either, for at least three reasons. First, although Arntz does possess a 'B' license which allows them to perform multiple trades, they do not carry the following specialty licenses. Arntz does not have a C-39 license to perform roofing work, a C-9 license to perform drywall work, a C-35 license to perform lathing and plaster work, a C-54 license to perform tile work, a C-33 license to perform painting work, or a C-61 (D-10) license to perform concrete resurfacing work. Yet Arntz failed to list a subcontractor to perform any of these scopes of work, and they are all well in excess of one-half of one percent of Arntz's bid.

Second, even assuming Arntz were qualified to self-perform all trades, by failing to list subcontractors for approximately \$856,000 of work on this project, Arntz has apparently indicated, pursuant to Public Contract Code § 4106, that it is *"fully qualified to perform that portion"*. Arntz may be able to perform the scopes of work it failed to list on its bid from using subcontractors, but DLF's research strongly suggests that Arntz is incapable of performing it with its own forces.

Third, the technical specifications for a number of the trades at issue require the installer/applicator to have documented experience for a number of years:

- **070150 Roofing Repairs**, ¶ 1.5.A requires the installer to be *"Roofing Manufacturer certified or approved."* ... *"Company specializing in performing roofing repairs of existing Garland roofing system, with not less than five years successful experience and a certified Pre-Approved Garland Contractor"*
- **033550 Polished Concrete Flooring**, ¶ 1.04.A requires the installer be a *"Firms with not less than five years successful experience polishing concrete using one of specified systems and acceptable to system manufacturer."*

There is no indication that Arntz, as a self-performing general contractor, has any of the requisite specialty experience or certifications indicated in the specifications. Before the contract is awarded to Arntz, at a bare minimum, the City should require Arntz to provide documentation of its specialty experience, certifications, and its ability to *self-perform* the \$856,000 of work its bid implicitly claims it can handle.

A roof warranty is a very important facet in a renovation project like this. DLF has confirmed with the Garland representative that Arntz is not certified to install Garland products and in his past experience Arntz hires roofing contractors to perform their roofing work. It is important to note that without Arntz having the required Garland certification if they self-perform the roofing work the manufacturer would not be able to provide the specified warranty.

The appropriate conclusion that the City should draw is that Arntz's bid was not responsive. For a bid to be responsive, the "bidding requirements must be strictly

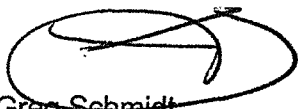
adhered to in order to avoid the potential for abuse in the competitive bidding process." *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 175-176 (citation omitted). If a bid does not confirm to the specifications, it is not responsive, and may not be accepted by the public entity. *Ghillotti Construction Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897; *Konica Business Machines U.S.A., Inc. vs. Regents of University of California* (1988) 206 Cal. App. 3d 449, 454 (a bid is not responsive and cannot be accepted if the variance gives the bidder an advantage or benefit not allowed by other bidders or, in other words, if the variance is consequential). Factors that determine whether a deviation is a substantial departure from bid requirements include "whether deviation could be a vehicle for favoritism, affect the amount of the bid, influence potential bidders to refrain from bidding, or affect the ability to make bid comparisons." *Id.* at 907. Here, Arntz's bid was not responsive in that the deviations were material and provided an unfair advantage to Arntz.

In today's competitive bidding market, it is critical that all General Contractors abide by the same requirements when bidding a project as to not allow any one bidder an unfair advantage over another. The omissions in Arntz's bid proposal as noted above are not to be considered inconsequential and are cause to disqualify Arntz as the low responsive Bidder on this project.

Accordingly, for the aforementioned reasons, and to avoid the delay and legal expense that would result from an improper bid award, the bid of Arntz should be rejected, and the Project should be awarded to DLF, the next lowest responsive and responsible Bidder.

DLF looks forward to the City of Hayward's response. If you have any questions, please contact me either via e-mail [gregs@dlfalk.com](mailto:gregs@dlfalk.com) or at (510) 887-6500 or cell (415) 559-7828.

Thank You

A handwritten signature in black ink, appearing to read "Greg Schmidt", enclosed within a hand-drawn oval.

Greg Schmidt  
Director of Operations



**D.L. Falk Construction, Inc.**

3526 Investment Blvd  
Hayward, CA 94545

Phone:510.887.6500  
Fax:510.887.6501

**TRANSMITTAL  
No. 00197**

**PROJECT:**

**DATE:** 02/14/2017

**TO:** City of Hayward  
777 B Street  
Hayward, CA 94541

**REF:** Bid Protest

**ATTN:** Dave Hung

WE ARE SENDING:	SUBMITTED FOR:	ACTION TAKEN:
<input type="checkbox"/> Shop Drawings	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Approved as Submitted
<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Your Use	<input type="checkbox"/> Approved as Noted
<input type="checkbox"/> Prints	<input type="checkbox"/> As Requested	<input type="checkbox"/> Returned After Loan
<input type="checkbox"/> Change Order	<input type="checkbox"/> Review and Comment	<input type="checkbox"/> Resubmit
<input type="checkbox"/> Plans		<input type="checkbox"/> Submit
<input type="checkbox"/> Samples	<b>SENT VIA:</b>	<input type="checkbox"/> Returned
<input type="checkbox"/> Specifications	<input type="checkbox"/> Attached	<input type="checkbox"/> Returned for Correctionss
<input type="checkbox"/> Other:	<input type="checkbox"/> Separate Cover Via:	<input type="checkbox"/> Due Date:

ITEM NO.	COPIES	DATE	ITEM NUMBER	REV. NO.	DESCRIPTION	STATUS
01	1	02/14/2017			DL Falk Protest Letter for FS 1, 2, 3, 4, & 5	NEW
02	1	02/14/2017			Check for \$500	NA

**Remarks:** Received By: \_\_\_\_\_ Date: \_\_\_\_\_

**CC:**

**Signed:** \_\_\_\_\_  
Greg Schmidt



D.L. FALK CONSTRUCTION INC.

26354

CITY OF HAYWARD

DATE: 02/14/17  
ACCOUNT: 57631

CHECK # 26354

INV DATE	JOB #	INVOICE #	BALANCE	DISCOUNT	NET PAID
02/14/17		BID DOCS	500.00		500.00

<b>TOTAL:</b>			<u>500.00</u>		<u>500.00</u>
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ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER



D.L. FALK CONSTRUCTION INC.  
3526 INVESTMENT BLVD.  
HAYWARD, CA 94545  
(510) 887-6500 LIC. #683837

California Bank of Commerce  
3595 Mt. Diablo Blvd., 2nd Fl  
Lafayette, CA 94549

26354

90-4469/1211

26354

Five Hundred and 00/100

DATE

AMOUNT

02/14/17

\$\*\*\*\*\*500.00

PAY  
TO THE  
ORDER  
OF

CITY OF HAYWARD

ATTN; ACCOUNTING DIVISION  
777 B. STREET  
HAYWARD, CA 94541



THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE DISAPPEARS WITH HEAT.

⑈026354⑈ ⑆121144696⑆1013044⑈



February 16, 2017

**City of Hayward**  
777 B Street  
Hayward, CA 94541

Attention: David Hung

**Re: D.L. Falk Protest Letter**

We have reviewed the letter submitted by D. L. Falk, Inc. If the City believes that D. L. Falk, Inc. protest has merit, then we will defer to the City's position, and understand the City may award the project to D. L. Falk, Inc.

Sincerely,

ARNTZ BUILDERS, INC.

David A. Arntz  
Vice President

Enc

cc: Greg Schmidt (D.L. Falk)



# Arntz Builders, Inc.

19 Pamaron Way, Novato CA 94949 License No. 856393 T 415-382-1188 F 415-883-3756 www.arntzbuilders.com

ATTACHMENT VII

February 16, 2017

City of Hayward  
777 B Street  
Hayward, CA 94541

Attention: David Hung

Re: **D.L. Falk Protest Letter**

The City has asked us for certain additional information. In reviewing its records, Arntz has realized that inadvertently it did not list its painting subcontractor, whose bid is in the amount of \$208,000. A copy of that bid is enclosed.

Sincerely,

ARNTZ BUILDERS, INC.

David A. Arntz  
Vice President

Enc

cc: Greg Schmidt (D.L. Falk)

# Nissim Painting Company

CA. License #797909, DIR #1000011933  
SBE (Micro) #1785596  
199 Berryessa Drive  
Napa, CA 94558  
www.nissimpainting.com  
415-566-5111 Fax: 415-566-5534  
Email: nissimpainting@yahoo.com



Date: 02/07/2017

## Bid Proposal

**Project Name: Fire Station 1-5 Improvement Project #07476, 07477, 07478, 07479, and 07480**

**Bid Submission Date: February 7<sup>th</sup>, 2017 at 2:00pm**

Our bid proposal is for painting the interiors and exteriors of the Fire Station 1-5 Improvement Project #07476, 07477, 07478, 07479, and 07480 to specifications and plans attached and reviewed. We are bidding section 099000-Painting and Coating. All materials, equipment and labor needed to finish this project are included in this bid.

- We recognize addendum:
- #1 Date: 01/11/2017
  - #2 Date: 01/19/2017
  - #3 Date: 01/31/2017

We also recognize this project as a Prevailing Wage project, with certified payroll.

**Fire Station 1-5 Improvement Project #07476, 07477, 07478, 07479, and 07480**

**Bid Prices:**

Fire Station #1	\$55,000.00
Fire Station #2	\$35,000.00
Fire Station #3	\$35,000.00
Fire Station # 4	\$35,000.00

*Wb - Powercoat  
yes - IC-caulk  
yes - WP  
YES - MASCURAS.*



**Fire Station #5 \$48,000.00**  
**Total: 208,000.00**

**Bid prices for fire stations cannot be separated, they are one bid package.**

**Any questions please call: Jack Cell Phone: (415) 637-3353**

**\*\*\*Scope of work included in our base bid pricing:**

- 1. Painting Interior and Exterior to Specs and Plans
- 2. Power-wash/Cleaning Exterior as shown on Specs and Plans

*RECOMMENDS PRESSURE WASH ONLY. BOT WILL USE PROSOLO IF REQU.*

*\*INCLUDES CAULKING, RESTORATION OF EXT. MASONRY & MASONRY WATER REPELLENT*

**\*\*\*Surfaces and elements excluded from base bid price:**

- 1. Major Wall and Ceiling Patching
- 2. Traffic Line Paint
- 3. Pre-finished items, pre-finished metal surfaces and concealed surfaces
- 4. No Removal and reinstallation work of any items. Moving of any Furniture, Desks, Cabinets, and Books
- 5. Any Enclosed Areas
- 6. Painting of Cabinets and Shelves
- 7. Floor finishing
- 8. No Powder Coating Finish

*PER JACK*

**\*\*\*Base Bid is only honored for 90 days from bid date!**

**Insurance:**

\*\*Nissim Painting will supply all general liability insurance and workman's compensation insurance for all Nissim Painting Company's employees that will work on this project.

\*\*Nissim Painting is excluded from providing any payment and performance bonds on this project.

\*\*Nissim Painting is not including Excess Liability Insurance, Contractor Pollution Liability Insurance and Builders Risk Insurance and is not in base bid. We can provide those types of insurance at an additional cost to base bid.

\*\*Nissim Painting will finish this project by professional standards. Nissim Painting Company has experience on these types of projects and knows how to finish a project of this size! As a professional painting company, we complete every project in a timely manner and strive to beat your expectations.

Submitted By: *Jack Nissim* Date: February 7<sup>th</sup>, 2017

**Dave Hung**

---

**From:** David Arntz <DArntz@arntzbuilders.com>  
**Sent:** Thursday, February 16, 2017 3:26 PM  
**To:** Dave Hung  
**Cc:** gregs@dlfalk.com; Kelsey Godfrey; Brian Proteau  
**Subject:** RE: Bid Protest from D.L. Falk Construction Inc.

Dave,

We are planning to self-perform the Roofing and Polished Concrete. We reserve the right to self-perform the Drywall, Plaster, Tile, Fencing & Gates.

Dave Arntz  
Arntz Builders, Inc.  
19 Pamaron Way  
Novato, CA 94949  
(415)382-1188  
(415)883-3756 fax  
www.arntzbuilders.com

Lic# 856393 A,B

-----Original Message-----

**From:** Dave Hung [mailto:Dave.Hung@hayward-ca.gov]  
**Sent:** Thursday, February 16, 2017 11:51 AM  
**To:** David Arntz <DArntz@arntzbuilders.com>  
**Subject:** RE: Bid Protest from D.L. Falk Construction Inc.

Dave,

Please let me know how Arntz planned to perform the following work:

- a) roofing,
- b) drywall,
- c) plaster,
- d) tile,
- f) polish concrete floors,
- g) fences & gates.

Thanks.

Dave

-----Original Message-----

**From:** David Arntz [mailto:DArntz@arntzbuilders.com]  
**Sent:** Thursday, February 16, 2017 11:13 AM  
**To:** Dave Hung <Dave.Hung@hayward-ca.gov>  
**Cc:** Brian Proteau <Brian@arntzbuilders.com>; Kelsey Godfrey <Kelsey@arntzbuilders.com>; gregs@dlfalk.com  
**Subject:** RE: Bid Protest from D.L. Falk Construction Inc.

Dave,  
See attached.

Dave Arntz  
Arntz Builders, Inc.  
19 Pamaron Way  
Novato, CA 94949  
(415)382-1188  
(415)883-3756 fax  
www.arntzbuilders.com

Lic# 856393 A,B

-----Original Message-----

From: David Arntz  
Sent: Thursday, February 16, 2017 8:52 AM  
To: 'Dave Hung' <Dave.Hung@hayward-ca.gov>  
Cc: Brian Proteau <Brian@arntzbuilders.com>; Kelsey Godfrey <Kelsey@arntzbuilders.com>; 'gregs@dlfalk.com' <gregs@dlfalk.com>  
Subject: RE: Bid Protest from D.L. Falk Construction Inc.

Dave,  
See attached.

Dave Arntz  
Arntz Builders, Inc.  
19 Pamaron Way  
Novato, CA 94949  
(415)382-1188  
(415)883-3756 fax  
www.arntzbuilders.com

Lic# 856393 A,B

-----Original Message-----

From: Dave Hung [mailto:Dave.Hung@hayward-ca.gov]  
Sent: Tuesday, February 14, 2017 7:30 PM  
To: David Arntz <DArntz@arntzbuilders.com>  
Cc: Bid <Bid@arntzbuilders.com>; Brian Proteau <Brian@arntzbuilders.com>; Kelsey Godfrey <Kelsey@arntzbuilders.com>  
Subject: FW: Bid Protest from D.L. Falk Construction Inc.

Hi Dave,

Please find attached for the bid protest from DL Falk and provide your response to the City as soon as possible. Thank you.

Dave Hung  
City of Hayward  
PW - Engineering

Senior Civil Engineer  
777 B Street  
Hayward CA 94541  
(510) 583-4752

-----Original Message-----

From: Miriam Lens  
Sent: Tuesday, February 14, 2017 4:02 PM  
To: Dave Hung <Dave.Hung@hayward-ca.gov>  
Cc: Morad Fakhrai <Morad.Fakhrai@hayward-ca.gov>; Michael Lawson <Michael.Lawson@hayward-ca.gov>  
Subject: Bid Protest from D.L. Falk Construction Inc.

Good afternoon Dave,

We are in receipt of a bid protest from D.L. Falk Construction, Inc., to the lowest bidder submitted by Arntz Builders, Inc., for the Hayward Fire Stations #1, 2, 3, 4, & 5 project.

Attached is a copy of the protest along with a copy of the check in the amount of \$500.

Please let me know if you have any questions.

Thank you,

Miriam

Miriam Lens, CMC, MPA  
City Clerk

City of Hayward | Office of the City Clerk | 777 B Street | Hayward, CA 94541 |

Phone: 510-583.4401 | Email: [Miriam.lens@hayward-ca.gov](mailto:Miriam.lens@hayward-ca.gov)

[www.hayward-ca.gov](http://www.hayward-ca.gov) | City Clerk's Blog: [www.hayward-ca.gov/cityclerk/](http://www.hayward-ca.gov/cityclerk/)

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REPLY ADVISORY: Please be advised that messages sent to me on the City of Hayward e-mail system are not confidential and may be reviewed by other persons without my knowledge. Please do not send messages or attachments that may violate the City of Hayward e-mail policy.

-----Original Message-----

From: [kba6551ci@cityofhayward.com](mailto:kba6551ci@cityofhayward.com) [mailto:[kba6551ci@cityofhayward.com](mailto:kba6551ci@cityofhayward.com)]  
Sent: Tuesday, February 14, 2017 3:55 PM  
To: Miriam Lens <[Miriam.Lens@hayward-ca.gov](mailto:Miriam.Lens@hayward-ca.gov)>  
Subject:

-----  
TASKalfa 6551ci  
[00:17:c8:28:c8:28]  
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7



## D.L. FALK CONSTRUCTION INC.

3526 INVESTMENT BLVD., HAYWARD, CA 94545 WWW.DLFALK.COM

PHONE (510) 887-6500 • FAX (510) 887-6501

February 23, 2017

City of Hayward  
777 B Street  
Hayward, CA 94541

Attn.: Dave Hung

Re: Follow-up Regarding DLF Bid Protest for Hayward Fire Stations #1, 2, 3, 4, & 5

On February 14, 2017, DL Falk Construction Inc. (DLF) timely submitted a bid protest to the City of Hayward (City) regarding the above-captioned Hayward Fire Station Renovations Project (Project). Based on the information then available to DLF, it was clear that the bid specifications for the Project required the City to reject the bid submitted by the apparent low bidder, Arntz Builders, Inc. (Arntz), as materially nonconforming. Since February 14, Arntz's communications regarding the Project—provided by Arntz to the City and DLF—have only reinforced the facial, material nonconformity of Arntz's bid, and the City's obligation under the California Public Contract Code to reject the bid.

DLF's letter identified the following nonconforming elements to Arntz's bid, any one of which would be sufficient to require the City to reject it:

- Arntz's failure list subcontractors required to perform work in excess of one-half of one percent of its bid (\$34,558), which Arntz itself is not qualified to perform—roofing, drywall, plaster, tile, painting, polished concrete floors, and fence and gates scopes of work. See Pub. Contract Code § 4106.
- Arntz's failure to carry the specialty licenses required to self-perform roofing work (C-39), drywall work (C-9), lathing and plaster work (C-35), tile work (C-54), painting (C-33), or concrete resurfacing (C-61/D-10).
- Arntz's failure, and inability, to provide the documented experience required by the Project's Technical Specifications for the roofing (070150 Roofing Repairs, ¶ 1.5) and polished concrete flooring (033550 Polished Concrete Flooring, ¶ 1.04.A) installer.

Arntz's response to DLF's bid protest has been telling. It has not contested *any* of the material nonconforming elements raised by DLF. In fact, rather than provide an item-by-item refutation of the DLF letter—as is common for apparent low bidders in bid

protests—Arntz responded three business days later, on February 16, with a two-sentence letter, stating: “If the City believes that [DLF] protest has merit, then we will defer to the City’s position, and understand the City may award the Project to [DLF].” In the competitive world of public works contracting, this is essentially an invitation by Arntz to the City to award the Project to DLF.

Later on February 16, Arntz responded to a request for additional information from the City, stated: “In reviewing its records, Arntz has realized that inadvertently it did not list its painting subcontractor, whose bid is in the amount of \$208,000.” The Public Contract Code is clear: inadvertence does not matter in this context. See Pub. Contract Code § 4104(a). The admission by Arntz that it failed to list a subcontractor performing more than one-half of one percent of the total value of its bid is dispositive, and the materially nonconformity is sufficient, standing alone, to require the City to reject the bid.

Later that same day, the City asked Arntz via email how it planned to perform the scopes of work identified in DLF’s bid protest: roofing, drywall, plaster, tile, painting, polished concrete floors, and fence and gates.

Arntz responded that it intended to self-perform the roofing and polished concrete scopes of work. Arntz has provided none of the documentation required by the Technical Specifications, nor can it. Contrary to Technical Specification 070150 Roofing Repairs, ¶ 1.5, Arntz is neither certified nor approved by Garland. Nor can Arntz satisfy the requirement of Technical Specification 033550 Polished Concrete Flooring, ¶ 1.04.A, that it have “not less than five years successful experience polishing concrete using one of specified systems and acceptable to system manufacturer.” To DLF’s point, above, Arntz has not even attempted to make these showings.

Arntz also replied that it “reserve[d] the right to self-perform” the remaining scopes. This is prohibited by the Subcontractor Listing Law. See Pub. Contract Code § 4104. Either Arntz can self-perform or it cannot. According to its bid, it not only can, it must. The attempted reservation of rights gives rise to exactly the kind of post-award bid shopping and peddling that the Subcontractor Listing Law is designed to prevent. But even if it were appropriate for Arntz to refuse to declare its intentions, Arntz has failed to provide any evidence that it possesses any of the specialty licenses required to self-perform.

The dangers to the City of accepting Arntz’s materially nonconforming bid run well beyond the costs that it will incur in excess of Arntz’s original bid. To give just one example, because Arntz claims that it will self-perform the roofing work—despite lacking the required specialty license or being certified by Garland—the City will lose the benefit of the roofing warranty it contracted for, as Garland will not provide the manufacturer’s warranty required by the Project’s specifications to a non-certified installer.

In its bid protest procedures (3-1.04A), the City “reserves the right to waive any bid irregularities not affecting the amount of the bid, except where such waiver would give the low bidder an advantage or benefit not allowed to other bidders.” Here, there is no question that: (1) Arntz’s bid is nonconforming in multiple respects; (2) the nonconformities affect the amount of the bid; and (3) the nonconformities gives the low

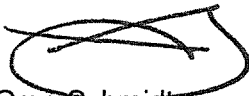
bidder an advantage or benefit not allowed to other bidders—among other things, the potential for bid shopping or peddling. See *Ghillotti Construction Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897; *Konica Business Machines U.S.A., Inc. vs. Regents of University of California* (1988) 206 Cal. App. 3d 449, 454 (a bid is not responsive and cannot be accepted if the variance gives the bidder an advantage or benefit not allowed by other bidders or, in other words, if the variance is consequential). Thus, the City lacks discretion in this instance to waive the nonconforming aspects of Arntz's bid, or to award the bid to Arntz.

Finally, DLF renews its request that the City provide a full and complete copy of the Arntz bid, as it is required to do under the California Public Contract Code.

DLF intends to avail itself of all available administrative and legal remedies should the Project be improperly awarded to Arntz. However, DLF is confident that the City will accept its bid protest and award the Project to DLF, the next lowest responsive and responsible bidder. DLF looks forward to working with the City on this important Fire Station Renovations Project.

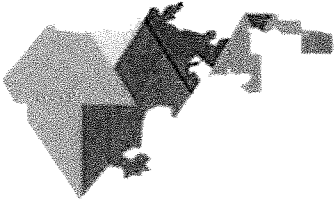
If you have any questions, please contact me either via e-mail [gregs@dlfalk.com](mailto:gregs@dlfalk.com) or at (510) 887-6500 or cell (415) 559-7828.

Thank You

A handwritten signature in black ink, appearing to read 'Greg Schmidt', enclosed within a hand-drawn oval.

Greg Schmidt  
Director of Operations





February 24, 2017

Mr. Greg Schmidt, Director of Operations  
 D.L. Falk Construction Inc.  
 3526 Investment Boulevard  
 Hayward, CA 94545

Re: DL Falk Construction Bid Protest  
 Hayward Fire Stations #1, 2, 3, 4, & 5 Project

Mr. Schmidt:

This is in response to your subject letter dated February 14, 2017. Your letter requested that the City reject Arntz Builders, Inc. (Arntz) low bid. You alleged that Arntz did not list subcontractors required to perform work in excess of one-half of one percent of its bid, and that Arntz is not qualified to perform the work itself. You also asserted that there were omissions that are material and render the Arntz's bid non-responsive. The City Attorney's Office has reviewed your letter and concluded as follows.

To the extent that your bid protest is based on omissions in the subcontractors list, the City has considered your protest on the basis of non-responsiveness. The bid proposal required bidders to provide the List of All Subcontractors and Suppliers which Arntz provided. In their response to your bid protest, Arntz stated that they inadvertently did not list their painting subcontractor in the amount of \$208,000. This does not change the bid total and therefore is not materially non-conforming.

Regarding other scope of work that Arntz has not listed subcontractors, Arntz stated that they are self-performing roofing and polished concrete floors and reserve the right to self-perform drywall, plaster, tile, fencing and gates. Arntz has both a Class "A" and "B" contractor's license and with a Class "B" General Building *"may take a prime contract or a subcontract for a framing or carpentry project. However, a general building contractor shall not take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work. A general building contractor shall not take a subcontract involving trades other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification. The general building contractor may not count framing or carpentry in calculating the two unrelated trades necessary in order for the general building*

Department of Public Works  
 Engineering and Transportation  
 777 B Street, Hayward, CA 94541

T: 510.593.4730  
 F: 510.593.3620

TTY: 510.247.3340  
[www.hayward-ca.gov](http://www.hayward-ca.gov)





*contractor to be able to take a prime contract or subcontract for a project involving other trades." (BPC §7057). The California Contractors State License Board does not limit Class "B" to self-performing as many trades as he or she may choose (with some specific exceptions such as fire protection or well drilling) and contractors may also take a general building contract and sub-contract 100% of the job as long as they use properly licensed sub-contractors for each trade or craft. If Arntz fails to self-perform as specified, Public Contract Code Section 4110 provides the City with several remedies to discourage the types of potential bid mischief D. L. Falk is concerned with.*

For the reasons stated above, staff will be recommending that the City Council reject your bid protest; waive any omissions in Arntz's listing of subcontractors as non-material; and proceed with the award to Arntz as the lowest responsible bidder.

Sincerely,

MORAD FAKHRAI, P.E.  
Director of Public Works

cc: Joseph Brick, Assistant City Attorney, City of Hayward  
Garrett Contreras, Fire Chief, City of Hayward  
Yaw Owusu, Assistant City Engineer, City of Hayward  
Dave Hung, Senior Civil Engineer, City of Hayward  
David Arntz, Vice President, Arntz Builders, Inc.

D.L. Falk Construction Inc. Bid Protest—Supplemental Response  
Hayward Fire Stations 1-5 Improvements Project  
March 20, 2017

# **EXHIBIT C**



## D.L. FALK CONSTRUCTION INC.

3526 INVESTMENT BLVD., HAYWARD, CA 94545 WWW.DLFALK.COM

PHONE (510) 887-6500 • FAX (510) 887-6501

March 1, 2017

Arntz Builders, Inc.  
19 Pamaron Way  
Novato, CA 94949

Attn.: Dave Arntz

Re: Bid for Hayward Fire Stations #1, 2, 3, 4, & 5

DL Falk Construction, Inc. (DLF) has been informed by the City of Hayward that the City is recommending rejection of DLF's protest to award to Arntz Builders, Inc. (ARNTZ) for the Hayward Fire Stations 1-5 Improvements Project (PROJECT).

As indicated in your email, ARNTZ will self-perform both the roofing and polished concrete work. This same email indicated that ARNTZ reserved its right to self-perform the drywall, plaster, tile and gates work, but because a subcontractor was not listed on the bid, ARNTZ is obligated to self-perform this work. As also noted on a previous email from you, ARNTZ failed to list a painting subcontractor on the bid, making it mandatory that ARNTZ also self-perform this scope of work.

Please note as DLF is a Hayward based contractor with our main office very close to this PROJECT, we will be monitoring their progress closely to verify that the scopes listed below are actually performed by ARNTZ employees. DLF will be requesting copies of the following certified payroll to confirm that they are being performed by ARNTZ's employees:

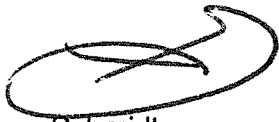
- Roofing work
- Polished concrete work
- Drywall work
- Plaster work
- Tile work
- Gate work
- Painting work

DLF will also be requesting copies of ARNTZ's qualifications related to self-performing roofing work all five stations, proof of ARNTZ's 5-years' work experience in self-performing installation of specialized Garland Roof Systems for Fire Station #2, and proof that ARNTZ has 5-years' experience on self-performing polished concrete floors.

Please be aware that DLF does not have any issues with ARNTZ as a general contractor. However, it is important to DLF that in a market like the one that exists today all general contractors are held to the same standard of compliance with bid specifications. Provided that ARNTZ complies with all of the rules, regulations, and specifications governing this PROJECT, DLF wishes you and your company the best success on it and future projects.

If you have any questions, please contact me either via e-mail [gregs@dlfalk.com](mailto:gregs@dlfalk.com) or at (510) 887-6500 or cell (415) 559-7828.

Thank You

A handwritten signature in black ink, appearing to read 'Greg Schmidt', enclosed within a large, loopy oval shape.

Greg Schmidt  
Director of Operations

D.L. Falk Construction Inc. Bid Protest—Supplemental Response  
Hayward Fire Stations 1-5 Improvements Project  
March 20, 2017

# **EXHIBIT D**

**Richards, Matthew**

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**From:** Joseph Brick <Joseph.Brick@hayward-ca.gov>  
**Sent:** Sunday, March 19, 2017 5:26 PM  
**To:** Richards, Matthew  
**Subject:** RE: City of Hayward Fire Station Nos. 1-5 Renovation Project

Mr. Richards,

The City of Hayward previously responded to your client's bid protest in a letter dated February 24, 2017. This response is meant to supplement the City's previous statement and is being offered as a courtesy in response to your request for clarification. Before addressing your specific inquiries, it will be helpful to understand the context of this project.

As you may be aware, this project involves the repair of existing City firehouses. This project is therefore a municipal affair dealing with the upgrade of critical City safety infrastructure. As such, City Charter provisions and Ordinances takes precedence over any conflicting provision of the Public Contract Code. Cal. Pub. Cont. Code § 1100.7. Under the City's Charter and Municipal Code, repairs of this nature need not be subject to the formal public bidding process rather, the use of a formal bidding process is discretionary. Hayward Municipal Code, Chapter 2, Section 8.09("HMC § 2-8.09). Moreover, pursuant to the City's Municipal Code, the City Council may waive any informalities or irregularities in bids received. HMC § 2-8.06. With this context, we will address each of the points raised below.

- Inquiry: Arntz's failure to list its painting subcontractor, and how the City can deem this failure non-material in light of Pub. Cont. Code § 4109;
  - Response: The error in not listing the painting subcontractor in this case is inconsequential. The City has confirmed with the low bidder that the failure to list the painting subcontractor was a clerical error. The error did not affect the total amount of the bid. Nor did the error give the low bidder a competitive advantage. Moreover, under the above authority, the City Council has the ability to waive this error.
- Arntz's purported "reservation of rights" to self-perform, and how the City can excuse it;
  - Response: Responsiveness should be determined from the face of the bid. *Great W. Contractors, Inc. v. Irvine Unified Sch. Dist.*, 187 Cal. App. 4th 1425 (2010), as modified (Sept. 30, 2010). The City interprets the aforementioned statement as confirmation that the low bidder will self-perform any work over ½ of 1% of the total bid. If the low bidder does not self-perform or subcontracts over the threshold amount, the Public Contract Code provides the City with an enforcement remedy under Pub. Cont. Code § 4110.
- Arntz's failure and inability to comply with the roofing and concrete polishing technical specs regarding installers, in trades it has claimed it will self-perform, and how this failure can be deemed non-material—particularly in light of the fact that Arntz's self-performance will invalidate the roofing manufacturer's warranty.
  - Response: Staff has confirmed that the low bidder possesses the necessary licenses to self-perform the roofing and concrete work. The roofing repair which involves a manufacturer's warranty only concerns one of the five firehouses. The City has not received any substantial evidence that

the low bidder will not be able to meet the bid specifications either by self-performance or with a subcontractor if the work is less than ½ of 1%. Again, any violation would subject the low bidder to the remedies listed under Pub. Cont. Code § 4110.

If you have any questions, we can discuss the issues further at our 10:00 am call tomorrow.

Sincerely,

JOSEPH BRICK | ASSISTANT CITY ATTORNEY  
O: 510.583.4457 | E: [Joseph.Brick@hayward-ca.gov](mailto:Joseph.Brick@hayward-ca.gov)



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**From:** Richards, Matthew [mailto:[mrichards@nixonpeabody.com](mailto:mrichards@nixonpeabody.com)]  
**Sent:** Wednesday, March 15, 2017 4:16 PM  
**To:** Joseph Brick <[Joseph.Brick@hayward-ca.gov](mailto:Joseph.Brick@hayward-ca.gov)>  
**Subject:** RE: City of Hayward Fire Station Nos. 1-5 Renovation Project

Joseph,

I understand that the Department of Public Works intends to award the Fire Station Nos. 1-5 Renovation Project to Arntz Builders at the March 21 City Council meeting. We need to talk immediately. DLF's serious concerns persist, including, as noted below in my email to you of March 3:

- Arntz's failure to list its painting subcontractor, and how the City can deem this failure non-material in light of Pub. Cont. Code § 4109;
- Arntz's purported "reservation of rights" to self-perform, and how the City can excuse it; and
- Arntz's failure and inability to comply with the roofing and concrete polishing technical specs regarding installers, in trades it has claimed it will self-perform, and how this failure can be deemed non-material—particularly in light of the fact that Arntz's self-performance will invalidate the roofing manufacturer's warranty.

To date, no answers have been forthcoming from the City. As I've stressed in my several voice messages to you, DLF does not want to be forced to take action unless necessary. But it will have no choice if you and I can't have a conversation, whether formally or informally, so that DLF can get the clarification it has requested on these issues prior to the next City Council meeting. Failing that, I've been instructed to prepare writ papers. I think our respective clients would be better served if we could reach an agreement, and I await your response. My direct line is (415) 984-5093.

Thanks,  
Matt



**Matthew A. Richards**  
Partner  
T 415-984-5093 | C 415-269-5247 | F 866-904-7778

---

**From:** Richards, Matthew  
**Sent:** Thursday, March 09, 2017 9:35 PM



**To:** 'Joseph Brick'  
**Subject:** RE: City of Hayward Fire Station Nos. 1-5 Renovation Project

Thanks Joseph. DLF have confirmed that they've received a portion of the Arntz bid from Public Works, but apparently not the qualifications or insurance sections. Did Arntz provide this information in its bid?

Thanks,  
Matt

---

**From:** Joseph Brick [<mailto:Joseph.Brick@hayward-ca.gov>]  
**Sent:** Thursday, March 09, 2017 12:33 PM  
**To:** Richards, Matthew  
**Subject:** RE: City of Hayward Fire Station Nos. 1-5 Renovation Project

Mr. Richards,

I have instructed public works to release the opened bid to your client.

Sincerely,

JOSEPH BRICK | ASSISTANT CITY ATTORNEY  
O: 510.583.4457 | E: [Joseph.Brick@hayward-ca.gov](mailto:Joseph.Brick@hayward-ca.gov)



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**From:** Richards, Matthew [<mailto:mrichards@nixonpeabody.com>]  
**Sent:** Friday, March 03, 2017 5:14 PM  
**To:** Joseph Brick <[Joseph.Brick@hayward-ca.gov](mailto:Joseph.Brick@hayward-ca.gov)>  
**Subject:** City of Hayward Fire Station Nos. 1-5 Renovation Project

Joseph,

Thanks for speaking with me earlier today regarding the Fire Station Nos. 1-5 Renovation Project. As I mentioned on our call, DLF has concerns about how its bid protest has been handled, and the City's non-responsiveness to the issues it raised. Specifically, DLF has concerns that the City has not explained: (1) how Arntz's failure to list a subcontractor can be deemed non-material in light of Pub. Cont. Code § 4109; (2) how Arntz's purported "reservation of rights" to self-perform can be excused; and (3) how Arntz's failure and inability to comply with the roofing and concrete polishing technical specs regarding installers, in trades it has claimed it will self-perform, can be deemed non-material—particularly in light of the fact that Arntz's self-performance will invalidate the roofing manufacturer's warranty. I would appreciate an opportunity to discuss these issues with you. Please forward a copy of Arntz's bid to me at your earliest convenience, so that DLF can fully evaluate these issues for itself. The authority you requested is below.

Authority for DLF Request for Copy of Arntz Bid

The Arntz bid, and in fact all unsealed bids, are public records within the scope of California's Public Records Act (PRA). Cal. Gov't Code § 6252(e) ("Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. 'Public records' in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975."); see *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385

ATTACHMENT VII

(definition of “public record” under PRA is broad and intended to cover every conceivable kind of record that is involved in the governmental process); *see also Poway Unified School Dist. v. Super. Ct. (Copley Press)* (1998) 62 Cal.App.4th 1496. The PRA’s general right of access, subject to exemptions (none of which applies here), places the burden on the agency to show that a particular public record is exempt from disclosure. *Sacramento County Employees’ Retirement System v. Super. Ct.* (2011) 195 Cal.App.4th 440.

There is no temporal limitation to the scope of the PRA. Thus, for example, the Attorney General rendered the attached opinion in 2006, finding that interim grading documents, including geology reports, compaction reports, and soils reports, submitted by a property owner to a city’s building department in conjunction with an application for a building permit are subject to public inspection and copying under the California Public Records Act *at the time the documents are first received by the building department*. 89 Ops. Cal. Atty. Gen. 39 (2006) (citing various authorities). Thus, although the City of Hayward apparently does not, a number of public entities with whom DLF has contracted include within their notices to bidders an express statement recognizing these legal principles. Sample language, taken from an SFUSD notice, is reprinted below:

**Public Records.** Bid Proposals and other documents responding to the Call for Bids become the exclusive property of the District upon submittal to the District. *At such time as the District opens bids pursuant to these Instructions to Bidders, all Bid Proposals and other documents submitted in response to the Call for Bids become a matter of public record and shall thereupon be considered public records, except for information contained in such Bid Proposals deemed to be Trade Secrets (as defined in California Civil Code § 3426.1) and financial information provided in response to the Statement of Qualifications.* If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a Bid Proposal deemed exempt from disclosure hereunder, the Bidder submitting the materials sought by such action or proceeding agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys’ fees arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials; the District’s sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction. (Emphasis added.)

Thanks,  
Matt



**Matthew A. Richards**  
Partner  
mrichards@nixonpeabody.com  
T 415-984-5093 | C 415-269-5247 | F 866-904-7778  
Nixon Peabody LLP | One Embarcadero Center, 18th Floor | San Francisco, CA 94111-3600  
nixonpeabody.com | @NixonPeabodyLLP

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**Item #4 CONS 17-120**

**David Miller**



David Miller <rooferscompliance@gmail.com>

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## Approved Contractor Question

2 messages

---

**Doug Clark** <dclark@garlandind.com>

Fri, Mar 10, 2017 at 2:49 PM

To: rooferscompliance@gmail.com

David,

I cant send a letter or anything but per our conversation Arntz is not currently an approved Garland Contractor.

**Doug Clark**

Territory Manager

The Garland Company

(925) 784-6701

[www.garlandco.com](http://www.garlandco.com)

<http://www.garlandco.com/building-envelope/index.html>

---

**David Miller** <rooferscompliance@gmail.com>

Fri, Mar 10, 2017 at 2:59 PM

To: Doug Clark <dclark@garlandind.com>

Thanks

David Miller

Compliance Officer

Roofers Labor-Management

[Quoted text hidden]

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**SECTION 07 01 50****ROOFING REPAIRS**

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**PART 1 - GENERAL****1.1 SUMMARY**

- A. Section Includes: Patch and repair existing roofing systems, including insulation, as required for new construction, with base and cant flashings and accessories as required for complete weathertight roof.
- B. Related Work:
  - 1. Section 07 60 00: Metal flashings.

**1.2 REFERENCES**

- A. National Roofing Contractors Association: The NRCA Roofing and Waterproofing Manual.

**1.3 ADMINISTRATIVE REQUIREMENTS**

- A. Existing Roof Analysis: Provide services of roofing consultant to analyze existing roofing system and to provide recommendations for appropriate materials for patching and repair.
  - 1. Report: Roofing consultant to prepare report indicating observations and recommendations. Report to note where testing may be necessary for verification of existing materials.
- B. Pre-Installation Meeting: Convene not less than one week prior to commencing work of this section. Require attendance of parties directly affecting work of this section.
  - 1. Review installation procedures and coordination required with related work.

**1.4 SUBMITTALS**

- A. Product Data: Provide literature for roofing system and each type of material; list each material proposed on Project.
  - 1. Provide report analyzing existing roofing system.
- B. Manufacturer Certificates: Certification materials and components furnished conform to Specification requirements and are compatible with each other, existing roof, roof substrate, and related work.

**1.5 QUALITY ASSURANCE**

- A. Installer Qualifications: Roofing manufacturer certified or approved.
  - 1. Fire Station #2: Company specializing in performing roofing repairs of existing Garland roofing system, with not less than five years successful experience and a certified Pre-Approved Garland Contractor.

- B. Supervisor: Installer to maintain full-time supervisor/foreman who is on jobsite during roofing work who is experienced in installation of roofing system specified.

1.6 PROJECT CONDITIONS

- A. Do not apply roofing membrane during inclement weather or when air temperature may fall below 40 degrees F, taking into consideration added wind chill factor.
  - 1. Do not allow materials to be exposed to moisture during transportation, storage, handling or installation.
  - 2. Mark damp or wet materials, including felts which froth or foam during installation, and remove from site within 24 hours.
- B. Do not apply roofing membrane to damp, frozen, and unsuitable deck surface.
  - 1. Allow sufficient time for moisture from previous precipitation, fog or dew to evaporate before proceeding with roofing work.
- C. Do not expose materials vulnerable to water or sun damage in quantities greater than can be weatherproofed during same day.

1.7 WARRANTY

- A. Extended Correction Period: Provide for correcting failure of system to resist damage from anticipated sources including damage from wind and water penetration. Repair system and pay for or replace damaged materials and surfaces.
  - 1. Period: Two years.
- B. Fire Station No. 2: Existing roofing is still under warranty with The Garland Company; provide materials and work with subcontractor to ensure continuation of existing roof warranty.

**PART 2 - PRODUCTS**

2.1 SYSTEMS MANUFACTURERS

- A. The Garland Co.
- B. Johns Manville Corp.
- C. GAF Building Materials Corp.
- D. CertainTeed Corporation.
- E. Original roofing system manufacturer.
- F. Substitutions: Refer to Section 01 25 00.
  - 1. Manufacturers listed under specific products are acceptable in addition to primary roofing material manufacturers.

## 2.2 MATERIALS

- A. System Description: Provide new materials are required to patch and repair existing roofing system, including insulation, as required for new construction, with base and cant flashings and accessories.
1. Materials: Provide new roofing system materials by original roof manufacturer where known, otherwise provide by a single manufacturer, except where materials of other manufacturers are specified or approved by Architect.
  2. Fire Station #2: Provide new modified bitumen roofing system materials by The Garland Co. in compliance and coordination with the existing warranty.
- B. Regulatory Requirements: Provide materials capable of achieving following.
1. Fire and Wind Resistance: Conform to California Building Standards Code requirements for Underwriters Laboratory (UL) Class A roof system, with UL Class 60 wind resistance classification.
- C. New Roofing Materials: Provide new materials matching existing material types and conforming to requirements of NRCA Roofing Manual applicable to existing system.
1. PVC Roofing Materials: Match original materials except where manufacturer recommends newer version of original materials for roofing repairs.
  2. Glass Felts: Minimum ASTM D2178, minimum Type IV; provide glass felts unless otherwise specifically recommended by roofing materials manufacturer.
    - a. Provide glass felts for patching and repair unless otherwise recommended by roofing consultant and roofing material manufacturer, even where existing roofing is organic felts.
  3. Composition Flashing System: Provide manufacturer's premium quality glass felt and asphalt base, wall, and penetration flashing system; other systems subject to Architect approval.
  4. Surfacing: Match existing using materials recommended by roofing system manufacturer and NRCA.
- D. Insulation: Match existing insulation systems to extent available; do not apply built-up roofing over plastic type insulation, where plastics used originally, cover with perlite fiber or glass fiber insulation.
- E. Cant and Edge Strips: Conform to ASTM C208.
1. Manufacturers:
    - a. Johns Manville/Fesco Cant & Edge Strips.
    - b. GAF/EnergyGuard Cant and Edge Strips.
    - c. Koppers Inc./Perlite Roof Insulation.
    - d. Substitutions: Refer to Section 01 25 00.

- F. Mechanical Fasteners: As recommended by insulation manufacturer and meeting recommendations of NRCA and specified Quality Assurance requirements for fire rating and wind blowoff resistance.

### **PART 3 - EXECUTION**

#### **3.1 EXAMINATION**

- A. Remove existing roofing as required for Project; remove only as much roofing as can be replaced in same day unless otherwise approved in advance by Architect.
  - 1. Take care not to remove materials beyond those required for new construction.
  - 2. Inform Architect and Owner where existing materials beyond those required to be removed are damaged or may be unsuitable due to moisture or deterioration.
- B. Inspect substrates and roof deck to ensure substrates and deck are clean and smooth, free of depressions, waves or projections, and are properly sloped to drains, valley, or eaves.
- C. Ensure roof openings and curbs, and pipes, sleeves, ducts or vents through roof are solidly set, cant strips and reglets in place and nailing strips located.
- D. Inspect roofing materials to ensure they are dry at time of installation.
- E. Apply roofing over clean, dry and warm surfaces during fair weather.

#### **3.2 PREPARATION**

- A. Protect surrounding surfaces against damage from roofing work.
- B. Where hoisting is necessary, hang tarpaulins to protect walls.

#### **3.3 INSTALLATION**

- A. Insulation Application: Attach insulation in accordance with insulation manufacturer's instructions and NRCA recommendations for installation of insulation on deck involved.
  - 1. Lay insulation boards to moderate contact without forcing joints.
  - 2. Cut insulation to fit neatly to perimeter blocking and around projections through roof.
  - 3. Install tapered crickets, cants and edge strips in accordance with manufacturer's instructions and NRCA recommendations.
  - 4. Leave no insulation exposed at end of day's work; apply glaze coat of hot bitumen and two plies of felt over insulation and install cut-off weathertight.
- B. Roof Membrane Application: Apply roofing membrane in accordance with manufacturer's instructions and NRCA recommendations for roof type.
  - 1. Apply roofing smooth, free from air pockets, wrinkles, fishmouths, prominent lap joints or tears.



2. Carry roofing up cant strips to vertical surfaces and secure to nailing strips and reglets.
3. Comply with manufacturer's recommendations for installation of composition type base, wall and field flashings.
  - a. Do not blanket composition flashing plys, install each ply separately with end laps staggered between plys.
  - b. Mechanically fasten and three-course seal top edge.
  - c. Cover composition flashings not otherwise covered or coated with coat of asphalt-base emulsion.
4. Install 2-ply membrane and glaze coat for cut-off at "end of day" operation; glaze exposed felts.
5. Coordinate metal flashings and counterflashing.
6. Coordinate installation of roof drains and related flashings.
7. Mop in and seal flashings and flanges of items projecting through membrane.

#### 3.4 FIELD QUALITY CONTROL

- A. Heat bitumen in accordance with manufacturer's recommendations, but do not heat asphalt to a temperature greater than 100 degrees F above its equiviscous temperature (EVT).
  1. Maintain bitumen within manufacturer and NRCA recommended EVT range at point of application.
  2. Maintain roofing equipment in proper working order.

#### 3.5 CLEANING

- A. Remove bituminous markings from finished surfaces, including bitumen run-throughs into building.
- B. In areas where finished surfaces are soiled by bitumen or other source of soiling caused by roofing work, consult manufacturer of finished surfaces for recommended cleaning methods.
- C. Leave completed roof free from debris and uniform in appearance.

#### 3.6 PROTECTION

- A. Where work must continue over finished roofing membrane, protect surface with plywood sheets.

**END OF SECTION**

**Item #9 WS 17-010**

**Scott Candell – Scott Candell & Associates**

**Cannabis**  
**Work Session**  
**Hayward City Council**

**March 21, 2017**

## Safety and Cannabis

The DEA in 1988 stated:

"Marijuana in its natural form is one of the safest therapeutically active substances known to man. By any measure of rational analysis marijuana can be safely used within the supervised routine of medical care."<sup>1</sup>

~Francis Young, Administrative Law Judge

No death from overdose of marijuana has ever been reported.

-DEA Marijuana Fact Sheet

"Cannabis has no known lethal dose, minimal drug interactions, is easily dosed via orally ingestion, vaporization, or topical absorption, thereby avoiding the potential risks associated with smoking."

-Gregory T. Carter, MD,  
Clinical Professor at the  
School of Medicine at the  
University of Washington

### Annual Deaths\*

Tobacco	480,000
Alcohol	88,000
Homicides	15,809
Prescription Opioids	15,000
Heroin	13,000
Nutritional Deficiencies	4,110
Tylenol	458
Peanuts	150
Marijuana	0

\*statistics from the CDC, Poison Control Center, and NIH

<sup>1</sup> US Department of Justice, Drug Enforcement Administration, "In the Matter of Marijuana Rescheduling Petition," [Docket #86-22], (September 6, 1988), p. 57.

## Medical Marijuana regulation does not lead to drug proliferation

### 2014 Opioid Overdose Mortality Rates and Medical Marijuana Regulation<sup>1</sup>

- **Summary:** Opioid analgesic overdose mortality continues to rise in the United States, driven by increases in prescribing for chronic pain. A time-series analysis was conducted of medical cannabis laws and state-level death certificate data in the United States from 1999 to 2010; all 50 states were included
- **Results:** States with medical cannabis laws had a 24.8% lower mean annual opioid overdose mortality rate compared with states without medical cannabis laws. Examination of the association between medical cannabis laws and opioid analgesic overdose mortality in each year after implementation of the law showed that such laws were associated with a lower rate of overdose mortality that generally strengthened over time.

**Areas with medical cannabis laws had a 24.8% lower mean annual opioid overdose mortality rate compared with areas without medical cannabis laws.**

### 2013 Effects of Medical Marijuana Laws on Adolescent Marijuana Use<sup>2</sup>

**No link between the passage of Medical Marijuana Laws on the prevalence or frequency of adolescent nonmedical marijuana use**

- **Summary:** They used data from the Youth Risk Behavior Survey and a difference-in-differences design (before---after differences in treatment vs comparison states) to evaluate the effects of passage of state Medical Marijuana Laws (MMLs) on adolescent marijuana use.
- **Results:** They found no evidence of intermediate-term effects of passage of state MMLs on the prevalence or frequency of adolescent nonmedical marijuana use in the states evaluated. A significant increase in daily marijuana use was observed for the comparison state of Delaware, which had not enacted an MML

during the years under evaluation, whereas the frequency of daily marijuana use in Montana a state with MMLs decreased. This is the opposite of what would be expected if MMLs had the deleterious effect of increasing the frequency of nonmedical marijuana use.

### 2014 Impact of State Medical Marijuana Legislation on Adolescent Marijuana Use<sup>3</sup>

- **Summary:** The study utilized data from the Youth Risk Behavioral Surveillance Survey between 1991 and 2011. Each of these states was paired with a state in geographic proximity that had not implemented the law. Chi-squared analysis was used to compare characteristics between states with and without medical marijuana use policies. The estimation sample was 11,703,100 students.
- **Results:** There were no statistically significant differences in marijuana use before and after policy change for any state pairing. In the regression analysis, we did not find an overall increased probability of marijuana use related to the policy change. In conclusion, our study of self-reported marijuana use by adolescents in states with a medical marijuana policy compared with a sample of geographically similar states without a policy does not demonstrate increases in marijuana use among high school students that may be attributed to the policies.

**No increase in marijuana use among high school students in areas that have implemented marijuana policies**

<sup>1</sup> Bachhuber MA, Saloner B, Cunningham CO, Barry CL. Medical Cannabis Laws and Opioid Analgesic Overdose Mortality in the United States, 1999-2010. *JAMA Intern Med.* 2014;174(10):1668-1673. doi:10.1001/jamainternmed.2014.4005

<sup>2</sup> Lynne-Landsman SD, Livingston MD, Wagenaar AC. Effects of State Medical Marijuana Laws on Adolescent Marijuana Use. *American Journal of Public Health.* 2013;103(8):1500-1506. doi:10.2105/AJPH.2012.301117.

<sup>3</sup> Esther K. Choo, Madeline Benz, Nikolas Zaller, Otis Warren, Kristin L. Rising, K. John McConnell, *J Adolesc Health.* 2014 Aug; 55(2): 160-166. Published online 2014 Apr 16. doi: 10.1016/j.jadohealth.2014.02.018

## The Economy and Marijuana

Calaveras County made **\$3.7 million** in application fees alone in 2016 according to Peter Maurer, Planning Commissioner.

According to the California BOE, for the period 2015-2016 **\$50,507,006** was remitted in sales and use tax and this only from the 1,023 dispensaries that had registered with the BOE and filed returns

In 2014 the BOE reported that Alameda County was able to tax **\$106,043,325** of reported medical marijuana sales.

San Francisco, for 2015-2016, made over **\$200,000** on application and license fees alone.

In Colorado the marijuana industry has had the by product of helping:

- Tourism: 30% increase in tourists and 14% increase in their spending
- Employment: 3.4% unemployment , one of the lowest rates of the country
- Real estate: Denver's retail vacancy rate fell to 5.6%, its lowest rate in nearly two decades

**Pueblo County, CO, with a population of 161,451, made more than \$4.5 million in tax revenue in the past 2 years**

For the past two (2) years, Pueblo County in Southern Colorado (equivalent population to Hayward) has made more than 4.5 million in tax revenue from marijuana.

- January to August of 2016: \$2,220,070
- 2015: \$2,162,980

Aurora (just East of Denver), in its first full year (2015) with only 14 dispensaries and 2 cultivation facilities, collected over \$2.65 million

- In 2016 they collected around \$8 million, which is more than \$2 million over their projections
- They money was used to fund many city projects, homelessness and road repair the primary benefactors.

**Aurora, CO, with only 14 retail stores and 2 cultivation facilities, made more than \$2.65 million in tax revenue in 2015**

Even areas with low population numbers are making large revenues from marijuana business. Trinidad City in Southern Colorado with a population of 9,096 generated **\$1,967,938.84** in tax revenue from Jan-Nov 2016 and \$84,380 in licensing fees.

## Medical Marijuana and Decreased Crime

2011 UCLA study: Crime & Medical Marijuana Dispensaries<sup>1</sup>

- **Summary:** An ecological, cross-sectional design was used to explore the spatial relationship between density of medical marijuana dispensaries and two types of crime rates (violent crime and property crime) in 95 census tracts in Sacramento, CA, during 2009.
- **Results:** Density of medical marijuana dispensaries was not associated with violent or property crime rates.

2014 Effect of Medical Marijuana Laws On Crime: Evidence From State Panel Data, 1990-2006<sup>2</sup>

- **Summary:** Relying on U.S. state panel data, this study analyzed the association between state Medical Marijuana Laws (MML) and state crime rates for all Part I offenses (murder and nonnegligent homicide, rape, robbery, aggravated assault, burglary, motor vehicle theft, larceny-theft, and arson) collected by the FBI.

### Medical Marijuana Laws are linked with reductions in homicide and assault rates

- **Results:** Results did not indicate a crime exacerbating effect of MML on any of the Part I offenses. Alternatively, state MML may be correlated with a reduction in homicide and assault rates, net of other covariates. The central finding gleaned from the present study was that MML is not predictive of higher crime rates. Interestingly, robbery and burglary rates were unaffected by medicinal marijuana legislation,

which runs counter to the claim that dispensaries and grow houses lead to an increase in victimization due to the opportunity structures linked to the amount of drugs and cash that are present.

2009 Denver Police Department survey<sup>3</sup>

- **Summary:** An analysis of robbery and burglary rates at medical marijuana dispensaries conducted by the Denver Police Department at the request of the Denver City Council
- **Results:** found that the robbery and burglary rates at dispensaries were lower than area banks and liquor stores and on par with those of pharmacies. Specifically, the report found a 16.8 percent burglary and robbery rate for dispensaries, equal to that of pharmacies. That's lower than the 19.7 percent rate for liquor stores and the 33.7 percent rate for banks.

**There are more burglaries and robberies at liquor stores and banks than at dispensaries.**

2010 Denver Police Department analysis<sup>4</sup>

- **Summary:** In late 2010, the Denver Police Department looked at crime rates in areas in and around dispensaries
- **Results:** The analysis showed that through the first nine months of 2010, crime was down 8.2% relative to the same period in 2009. The decrease was comparable to the city's overall drop in crime of 8.8%. The Denver Post completed a similar analysis and found that crime rates in some areas with the highest concentration of dispensaries saw bigger decreases in crime than neighborhoods with no dispensaries.

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<sup>2</sup> Morris RG, TenEyck M, Barnes JC, Kovandzic TV (2014) The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006. *PLoS ONE* 9(3): e92816. doi:10.1371/journal.pone.0092816

<sup>3</sup> John Ingold. The Denver Post. "Analysis: Denver pot shops' robbery rate lower than banks'." *The Denver Post*. N.p., 26 Jan. 2010. Web.

<sup>4</sup> Ingold, John, and Nancy Lofholm. "Medical-marijuana Dispensaries' Effect on Crime Unclear." *The Denver Post*. N.p., 21 May 2016. Web.

## Health Benefits of Cannabis

In general cannabis preparations exert numerous therapeutic effects. They have antispastic, analgesic (pain), antiemetic, neuroprotective, and anti-inflammatory actions, and are effective against certain psychiatric diseases.

"[Marijuana] is the only anti-nausea medicine that increases appetite. I could write six different prescriptions, all of which may interact with each other or the chemotherapy that the patient has been prescribed. Or I could just recommend trying one medicine."

- Donald Abrams, MD, Professor of Clinical Medicine  
at the University of California, San Francisco 2015

Cannabis has been shown to help with the following health problems:

- Migraines <sup>1</sup>
- Intestinal cramping, nausea, chronic diarrhea and inflammation <sup>2</sup>
- Nausea and vomiting <sup>3 4</sup>
- Chemotherapy related problems <sup>5</sup>
- Tumor Inhibitor <sup>6</sup>
- Skin Cancer <sup>7</sup>
- Breast Cancer <sup>8</sup>
- Multiple Sclerosis <sup>9 10</sup>
- HIV/AIDS <sup>11 12</sup>
- Anxiety & psychosis <sup>13</sup>
- Movement disorders <sup>14</sup>
- Mantle Cell Lymphoma <sup>15</sup>
- Diabetes <sup>16</sup>
- Schizophrenia <sup>17</sup>
- Glaucoma <sup>18</sup>
- PTSD <sup>19</sup>

"Marijuana lowered intraocular pressure (IOP) in people with normal pressure and those with glaucoma."

-National Eye Institute

Scientific data indicate the therapeutic value of cannabinoid drugs, primarily THC, for pain relief, control of nausea and vomiting, and appetite stimulation.

-Office of National Drug Control Policy and the Institute of Medicine

In a two different placebo-controlled, double blind trials, HIV patients who took the cannabis treatment were ~2.5 times more likely to have a 30% or more reduction in pain intensity (30% reduction in pain intensity is associated with meaningful improvement in quality of life)



## Health Benefits of Cannabis

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The Little Black Book of Billionaire Secrets

## States With Medical Marijuana Laws Have Fewer Traffic Fatalities, But Why Isn't Clear



**David DiSalvo,**

CONTRIBUTOR

*I write about science, technology  
and the cultural ripples of both.*

**FULL BIO** ✓

Opinions expressed by Forbes  
Contributors are their own.

Study Finds You Can't Believe  
Everything You See On Fitbit  
Or Other Wrist-Worn Heart Rate  
Trackers



(Photo credit should read BRENDAN SMIALOWSKI/AFP/Getty Images)

States that passed medical marijuana laws have seen an 11% reduction in traffic fatalities on average, according to a new study published in the *American Journal of Public Health*. Compared to states without medical marijuana laws, those with them had 26% fewer traffic fatalities overall. Study data was collected between 1985 and 2014.

The impact was greatest for the 25 to 44 age group, which is also the group with the highest percentage of alcohol-related traffic fatalities. In 2013, about 47% of fatally injured drivers with blood alcohol levels over the legal limit were between 24 and 44, according the National Highway Traffic Safety Administration (NHTSA). The impact was also significant for the 15 to 24 age group.

The most likely takeaway is that medical marijuana laws are helping to decrease alcohol-related traffic fatalities among the age groups at highest risk, at least in some states.

"This finding suggests that the mechanisms by which medical marijuana laws reduce traffic fatalities mostly operate in those younger adults, a group also frequently involved in alcohol-related traffic fatalities," said Julian Santaella-Tenorio, a doctoral student in Epidemiology at the Columbia University Mailman School of Public Health, in a press statement.

But other parts of this study don't neatly line up behind any single conclusion. For instance, the age group 45 and older didn't see a decrease in fatalities, and that happens to be the group "over-represented in the population of patients registered in state medical marijuana programs," according to the study.

In addition, some states with medical marijuana laws

actually saw upticks in traffic fatalities. Both California and New Mexico initially saw traffic fatality reductions (16% and 17.5%, respectively) that gradually became increases.

So what this study appears to show is at least a plausible correlation between medical marijuana laws and lower traffic fatalities, but it's not clear why this is true in some states and not others. It's possible that other factors, like stronger police enforcement and more effective public health programs targeting drunk driving, work in tandem with medical marijuana laws in some states.

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# Since marijuana legalization, highway fatalities in Colorado are at near-historic lows

By Radley Balko August 5, 2014

Since Colorado voters legalized pot in 2012, prohibition supporters have warned that recreational marijuana will lead to a scourge of “drugged drivers” on the state’s roads. They often point out that when the state legalized medical marijuana in 2001, there was a surge in drivers found to have smoked pot. They also point to studies showing that in other states that have legalized pot for medical purposes, we’ve seen an increase in the number of drivers testing positive for the drug who were involved in fatal car accidents. The anti-pot group SAM recently pointed out that even before the first legal pot store opened in Washington state, the number of drivers in that state testing positive for pot jumped by a third.

The problem with these criticisms is that we can test only for the presence of marijuana metabolites, not for inebriation. Metabolites can linger in the body for days after the drug’s effects wear off — sometimes even for weeks. Because we all metabolize drugs differently (and at different times and under different conditions), all that a positive test tells us is that the driver has smoked pot at some point in the past few days or weeks.

It makes sense that loosening restrictions on pot would result in a higher percentage of drivers involved in fatal traffic accidents having smoked the drug at some point over the past few days or weeks. You’d also expect to find that a higher percentage of churchgoers, good Samaritans and soup kitchen volunteers would have pot in their system. You’d expect a similar result among *any* large sampling of people. This doesn’t necessarily mean that marijuana caused or was even a contributing factor to accidents, traffic violations or fatalities.

This isn’t an argument that pot *wasn’t* a factor in at least some of those accidents, either. But that’s precisely the point. A post-accident test for marijuana metabolites doesn’t tell us much at all about whether pot contributed to the accident.

Since the new Colorado law took effect in January, the “drugged driver” panic has only intensified. I’ve already written about one dubious example, in which the Colorado Highway Patrol and some local and national media perpetuated a

story that a driver was high on pot when he slammed into a couple of police cars parked on an interstate exit ramp. While the driver did have some pot in his system, his blood-alcohol level was off the charts and was far more likely the cause of the accident. In my colleague Marc Fisher's recent dispatch from Colorado, law enforcement officials there and in bordering states warned that they're seeing more drugged drivers. Congress recently held hearings on the matter, complete with dire predictions such as "We are going to have a lot more people stoned on the highway and there will be consequences," from Rep. John Mica (R-Fla.). Some have called for a zero tolerance policy — if you're driving with any trace of pot in your system, you're guilty of a DWI. That would effectively ban anyone who smokes pot from driving for up to a couple of weeks after their last joint, including people who legitimately use the drug for medical reasons.

It seems to me that the best way to gauge the effect legalization has had on the roadways is to look at what has happened on the roads since legalization took effect. Here's a month-by-month comparison of highway fatalities in Colorado through the first seven months of this year and last year. For a more thorough comparison, I've also included the highest fatality figures for each month since 2002, the lowest for each month since 2002 and the average for each month since 2002.

As you can see, roadway fatalities this year are down from last year, and down from the 13-year average. Of the seven months so far this year, five months saw a lower fatality figure this year than last, two months saw a slightly higher figure this year, and in one month the two figures were equal. If we add up the total fatalities from January through July, it looks like this:

Here, the "high" bar (pardon the pun) is what you get when you add the worst January since 2002 to the worst February, to the worst March, and so on. The "low" bar is the sum total of the safest January, February, etc., since 2002. What's notable here is that the totals so far in 2014 are closer to the safest composite year since 2002 than to the average year since 2002. I should also add here that these are total fatalities. If we were to calculate these figures as a rate — say, miles driven per fatality — the drop would be starker, both for this year and since Colorado legalized medical marijuana in 2001. While the number of miles Americans drive annually has leveled off nationally since the mid-2000s, the number of total miles traveled continues to go up in Colorado. If we were to measure by rate, then, the state would be at lows unseen in decades.

The figures are similar in states that have legalized medical marijuana. While some studies have shown that the number of drivers involved in fatal collisions who test positive for marijuana has steadily increased as pot has become more

available, other studies have shown that overall traffic fatalities in those states have dropped. Again, because the pot tests only measure for recent pot use, not inebriation, there's nothing inconsistent about those results.

Of course, the continuing drop in roadway fatalities, in Colorado and elsewhere, is due to a variety of factors, such as better-built cars and trucks, improved safety features and better road engineering. These figures in and of themselves only indicate that the roads are getting safer; they don't suggest that pot had anything to do with it. We're also only seven months in. Maybe these figures will change. Finally, it's also possible that if it weren't for legal pot, the 2014 figures would be even lower. There's no real way to know that. We can only look at the data available. But you can bet that if fatalities were up this year, prohibition supporters would be blaming it on legal marijuana. (Interestingly, though road fatalities have generally been falling in Colorado for a long time, 2013 actually saw a slight increase from 2012. So fatalities are down the year after legalization, after having gone up the year before.)

That said, some researchers *have* gone so far as to suggest that better access to pot is making the roads safer, at least marginally. The theory is that people are substituting pot for alcohol, and pot causes less driver impairment than booze. I'd need to see more studies before I'd be ready to endorse that theory. For example, there's also some research contradicting the theory that drinkers are ready to substitute pot for alcohol.

But the data are far more supportive of that than of the claims that stoned drivers are menacing Colorado's roadways.

**CLARIFICATION:** I wrote that "we can test only for the presence of marijuana metabolites, not for inebriation." That isn't quite accurate. This is true of roadside tests. But a blood test taken at a hospital can measure for THC, the psychoactive ingredient in marijuana. That said, even here there are problems. Regular users can still have remnant THC in their blood well after the effects have worn off. Regular users can also have levels above the legal limit and still drive perfectly well. In Colorado, a THC level of 5 nano grams or more brings a presumptive charge of driving under the influence. However, references to "marijuana-related" accidents in studies, by prohibitionists, and by law enforcement could refer to any measure or trace of the drug. So when officials and legalization opponents talk about increases in these figures, it still isn't clear what any of this means for road safety.

#### RELATED:


The states where Americans smoke marijuana the most

D.C. voters will decide in November whether to legalize pot

**GALLERY:** Great stoner characters in American film

**View Photo Gallery** —From Cheech and Chong to Seth Rogen and James Franco in "This Is the End," cinematic characters with a predilection for White Castles, Quick Stops, surfing, bowling and lowriders. We review a few of them — and their films.



Radley Balko blogs about criminal justice, the drug war and civil liberties for The Washington Post. He is the author of the book "Rise of the Warrior Cop: The Militarization of America's Police Forces."  Follow @radleybalko

# The Wild West of weed in Silicon Valley

BY LAUREN HEPLER  
Contributor

**F**rom seed to sale, impending legalization has catalyzed an onslaught of activity in the Bay Area and its more agricultural neighbors.

Assuming you make it past the laser scanner in the bulletproof security checkpoint that will mark the entrance of their new expansion property, Bob and Lonna Blodgett envision future customers stepping into an all-in-one cannabis wonderland.

In a cavernous 20,000-square-foot Salinas industrial space with a 25-foot wood beam ceiling, Bob imagines vertical farming pods churning out 3,000 to 4,000 pounds of product a year for Monterey Bay Alternative Medicine's three (and counting) Central Coast dispensaries. On an adjacent patch of concrete, he wants to expand R&D for cannabis byproducts like oils, waxes and other specialty offerings. In the former office space up front, a new dispensary – Lonna's thinking "a little bit of optical illusion art" – would showcase the fruits of the operation.

"You have to spend some money up front and gamble in this business," explains Bob, 73, who was pre-med at Stanford when he left to plan rock concerts and build houses – among other pur-

suits – before growing cannabis in recent years. "It's actually kind of late in Monterey County now."

Up and down California's marijuana supply chain, growers, manufacturers, distributors and retailers are plotting their next moves in a period of regulatory purgatory. In the Bay Area, dense retail markets with a track record of tight dispensary rules await state guidance on reconciling medical and recreational products. A few dozen miles away on the Central Coast, the competition is already on for space primed to grow the region's new cash crop.

The Blodgetts' new Salinas building, for example, was the fifth one they scouted last spring, months before 55 percent of California voters legalized recreational marijuana under Proposition 64 in November. Even then, they had 24 hours to come up with a \$150,000 deposit, cash or check only. A year later, they're still waiting on county permits, bridging the gap with the \$30,000-a-day in sales from their flagship Del Rey Oaks dispensary alone. The store was the first in the Monterey suburb to open two years ago thanks to a deal allowing local police to set up a substation upstairs.

Now, with a new standardized state business licensing system due by Jan. 1, 2018, businesses are rushing to claim a niche as policymakers hash out plans to bring the industry above ground.

"To some extent, we will see conflicting regulation," predicts Steve DeAngelo, a luminary in



*Bob and Lonna Blodgett are the proprietors of Monterey Bay Alternative Medicine. They hope to do more research into cannabis byproducts to expand their product offerings.*

the business who founded the Harborside dispensaries in San Jose, Oakland and San Leandro. "It becomes difficult for clear communication and people to really understand what we're offering."

While runaway projections from the likes of DeAngelo's own Arcview Market Research say that legal cannabis could be a \$20 billion business in the next three years, questions abound. The recent re-emergence of staunch federal opposition to state-level drug policy change is the elephant in the room. More mundane questions also linger about things like taxation, labor automation, sales protocols and security in a cash-centric line of business.

"There's just so many side effects of legaliza-

## COVER STORY



*Jeff Brothers started out as a flower industry executive on the Central Coast, but realized the value of cultivating cannabis.*

tion that folks are having to grapple with," said Cara Martinson, who runs agriculture and cannabis policy at the California State Association of Counties. "I think that what folks don't understand is the state is not going to come in and tell you how to regulate land use."

### **I: The grow**

25 employees are already tending small clones with names like "Gorilla Blue #4" lined up four deep in 100-foot rows, plus bigger mother plants in the greenhouse next door. Within the foreseeable future, Brothers envisions hiring 100 people and investing up to \$35 million in the property.

"Just being at a scale and greenhouse space this large, we're operating as more of a nursery," said FLRish lead grower Mike Hoffman, who previously oversaw several large grows in the Emerald Triangle centered around Humboldt.

For Brothers, the green rush is also the Central Coast's chance to restore the economic luster lost with the region's once-dominant flower industry, which has been beaten recently by cheaper South American imports. In addition to ample acreage and greenhouses, he hopes economic calculus will sway policymakers to embrace the competition.

Just across the street, for example, a 10-acre parcel with a few dilapidated greenhouses recently traded hands for \$4 million.

"I truly believe this will be larger than a \$1 billion industry in Monterey County alone," Brothers says. "It's because the infrastructure is here."



tion and taxation after harvest. Front and center is the debate over whether the state should have one or two systems for regulating medical and recreational marijuana.

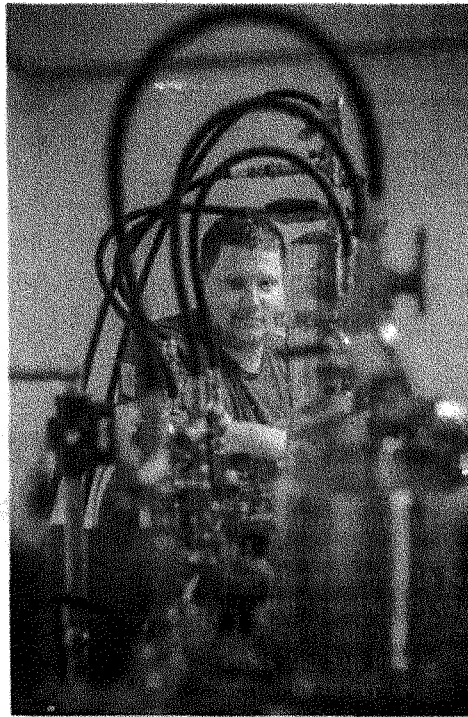
"The goal here is that we're regulating one system," Lori Ajax, California's first cannabis czar, recently told industry businesses.

Still, state agencies would have to move fast to reconcile Prop. 64 and the existing Medical Marijuana Regulation and Safety Act. As of late February, Ajax said the goal is to release new draft plans for medical marijuana this spring, followed by recreational guidance in September.

She's optimistic about hitting the Jan. 1 deadline, leaving cities to set local tax rates, lay out zoning rules and decide if and how to issue local permits for recreational sales.

In Monterey County, the rush to secure greenhouses was spurred by efforts to curb growing in nearby forests like Big Sur, and bolstered when three-quarters of local voters backed a per-foot marijuana tax plan in November. In urban markets with exorbitantly expensive real estate, however, cultivation is done indoors. To date, large cities like San Jose have pushed for growers to vertically integrate – growing, testing and selling their own product – ostensibly to keep supply chains transparent.

FLRish is one example of how Bay Area dispensaries might branch out geographically with new sister companies. At the Central Coast farm,



*Zachary Gorman, production foreman at Monterey Bay Alternative Medicine, with an extraction machine from Colorado.*

States that have legalized non-medical marijuana, along with the District of Columbia

**\$20.7 billion**

Expected nationwide legal marijuana sales by 2020

**\$1 billion**

Projected annual tax revenue from California legal marijuana sales

**150,000**

Estimated U.S. jobs in medical marijuana industry to date

**SIGNS OF THE TIMES,  
FOR SOME PERSPECTIVE:**

**30%**

Year-over-year growth in legal cannabis sales from 2015 to 2016, up to \$6.7 billion

**29%**

Compound annual growth in broadband Internet service during the 2000s

SOURCE: ARCVIEW MARKET RESEARCH, LOCAL NEWS REPORTS,  
CALIFORNIA LEGISLATIVE ANALYST'S OFFICE,  
NEW FRONTIER DATA

On a rough two-lane road in the flatlands of Monterey County, towering barbed wire greets visitors to the new agricultural outpost of Silicon Valley's biggest medical marijuana player.

Inside the 10-month-old fortress owned by Harborside cultivation offshoot FLRish is a 47-acre former ivy topiary nursery being converted into a state-of-the-art cannabis growing campus. Overseeing the project is Jeff Brothers, a 20-year veteran of the Central Coast fresh-cut flower industry who set out to master vertical farming when he stumbled into cannabis.

"I'm Mr. Conservative," says the Carmel resident and CEO of FLRish, who started Costco's flower program and worked in banking and solar energy before partnering with DeAngelo. "You can't help but want to learn about it."

As Brothers is quick to point out, there is a steep learning curve for the uninitiated – especially now, when lawmakers in Sacramento are sketching out new systems for licensing, distribu-

## II: Production

Last fall, Harold Hawkins left his job in data analytics at mega-produce purveyor Taylor Farms to take over operations for Monterey Bay Alternative Medicine. In his first few months, he's set out to professionalize their new manufacturing hub in an unmarked building outside Monterey.

"We wanted to go pretty Silicon Valley, so we got the standing desks," Hawkins says of a workspace lofted above the warehouse floor. He adds that several co-workers have left tech jobs to join MBAM, as it's known by employees.

While Blodgett and others worry about scaling growing capacity, Hawkins is setting up industrial processing facilities downstairs. From smokable wax and resin to cartridges for vape pens or new multi-use oils that concentrate terpenes that give

CONTINUED ON PAGE 6

## THE GREEN RUSH, QUANTIFIED

Both in California and the rest of the country, it's notoriously difficult to nail down the scope of the market for legal, pseudo-legal and definitely illegal marijuana products. Here's a snapshot of key estimates:

**28**

Number of states that have legalized medical marijuana

**1.2 million**

Registered U.S. medical marijuana patients

**8**

- ▶ Additional cultivation limits
- ▶ Zoning and land use restrictions on cannabis-related businesses
- ▶ New city taxes
- ▶ Enhanced enforcement of consumption



#### ▶ BY THE NUMBERS

Here's a snapshot of the global investment side of cannabis:

**\$66 million**

Venture capital invested in marijuana startups during 2016

**18 firms**

Number of cannabis-specific investment firms as of 2016.

#### CONTINUED FROM PAGE 5

marijuana its distinctive scent, the possibilities are vast.

The manufactured cannabis product sector, which also includes edible products like cookies and topical creams marketed for pain relief, is uncharted territory when it comes to regulation.

For those tasked with helping area cities navigate the sea change in the cannabis industry, the coming months will largely be defined by separating hype from reality, said the San Jose Police Department's Sergeant David Woolsey, who oversees local cannabis enforcement.

"What do these manufacturing businesses do? What do jobs in manufacturing businesses look like?" he said. "We're going to look at all of the different possibilities."

At MBAM, across from a metal table strewn with sticky spatulas and plastic containers filled with dense, yellow-ish wax, a stripped down gray modular building is the real backbone of the operation. Inside, a series of red, yellow and blue hoses snake out from the walls into a series of steel valves in a closed-loop extraction system.

The compact production space is outfitted with anti-explosive equipment, gas detectors and powerful ventilation systems. A versatile hash product used for a variety of cannabis offerings is produced by pouring liquid propane into a submarine-like head, with pressure and temperature variations doing the legwork of THC extraction.

"Basically, every step of the way we are able to analyze our products in great detail," Hawkins

online-only marketplaces such as Eaze, also offers delivery – an especially thorny point of contention in the new marijuana rulemaking process.

"That's a hard market to regulate, but it definitely needs to be regulated," Woolsey said, noting that with unlicensed providers, "You don't know what you're getting."

In addition to quality, there's also the matter of quantity.

Robert Blodgett, Bob Blodgett's son and a cannabis buyer for Monterey Bay Alternative Medicine, throws his head back and lets out a long sigh when asked how many growers approach him in an average month.

"Oh my God," the younger Blodgett says.

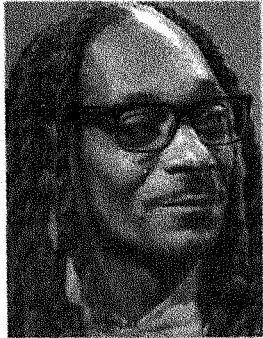
"Hundreds of growers, but thousands of strains," offers fellow buyer Nick Overdevest, who cut his teeth in merchandising at a car dealership.

The pair said one obvious looming issue is how small or even one-man shops that currently sell to dispensaries will be impacted by permitting. DeAngelo estimates that only 5 percent of current medical marijuana suppliers in the state will be able to navigate new permitting rules.

"The store is living in today's world while asking growers to think about tomorrow," Overdevest says. Monterey Bay Alternative Medicine stocks about 400 different products at a time, including 30 strains of marijuana flowers and cases upon cases of edibles, wax and cartridges.

Hand in hand with concerns about expanded black-market operations are the uniquely chaotic economics that stem from selling into a fragmented legal landscape. Due to the ongo-

including outfits backed by Snoop Dogg and Peter Thiel.



Snoop Dogg



Peter Thiel

SOURCE: AGFUNDER

says, touting an in-house tracking system currently being built and refined.

### III: The sale

If the Central Coast is poised to become a cannabis production mecca – regulations allowing – few retail markets rival the likes of San Jose and the affluent Peninsula, plus longtime leaders San Francisco and Oakland.

“The Bay Area is going to be a center of brand building and product development,” DeAngelo says. “We will see a huge increase in tourism.”

Harborside is doubling down with a cannabis product incubator in Oakland called the Cannery. The dispensary, like many competitors and

ing prohibition of marijuana at the federal level, dispensaries are cash-only businesses dealing in tens or hundreds of thousands of dollars at a time.

“The banking system is absurd for an industry that’s become legitimized,” Brothers said. “You shouldn’t have to pay your taxes in cash.”

Though the next several months will be crucial for businesses wading into the business of bud, there just might be a consumer upside to the turmoil keeping growers and dispensary operators up at night: dropping prices.

At Harborside, DeAngelo said Harborside has already lowered retail prices from \$240 an ounce or more to as low as \$150 for its post-Prop. 64 celebratory “victory ounce.”



# COVER STORY

## BRANCHING OUT

Marijuana farms and dispensaries are not the only sectors benefiting from the anticipated rise in business ever since California voters passed Proposition 64 last November, which allows the adult use of marijuana. Here are seven sectors:

**Infrastructure:** Growing the kind of weed that can command \$80 an eighth at a dispensary in the Bay Area isn't just about having a green thumb. A range of companies are selling connected greenhouses, extraction systems, robotics and precision agriculture technologies.

**Companies:** Bloom Automation, ExtractionTek Solutions, Next G3N

**Flowers:** Gone are the days of smoking whatever you can find. Growers are honing a range of new weed varieties, with some even borrowing the wine industry's idea of regional specialties, or "Appellations," suited to specific microclimates.

**Companies:** Marley Natural, Utopia Farms, area dispensaries

**Retail:** Medical marijuana dispensaries are now a Bay Area staple, but the specter of retail sales could change the market for brick-and-mortar sales outposts. Add to that a range of on-demand delivery platforms.

**Companies:** Harborside, Monterey Bay Alternative Medicine, Eaze, Sava

**Manufactured products:** Chocolate bars, potato chips, infused alcohol, topical creams, resins, massage oils... the list of products manufactured from cannabis and its extracts is already long and growing steadily.

**Companies:** KIVA Confections, Mendocino Medical, Bite Labs

**Professional services:** From legal guidance to investment outlets, real estate transactions and all manner of compliance consultants and lobbyists, the number of white-collar business services being offered to cannabis entrepreneurs is growing with legalization looming.

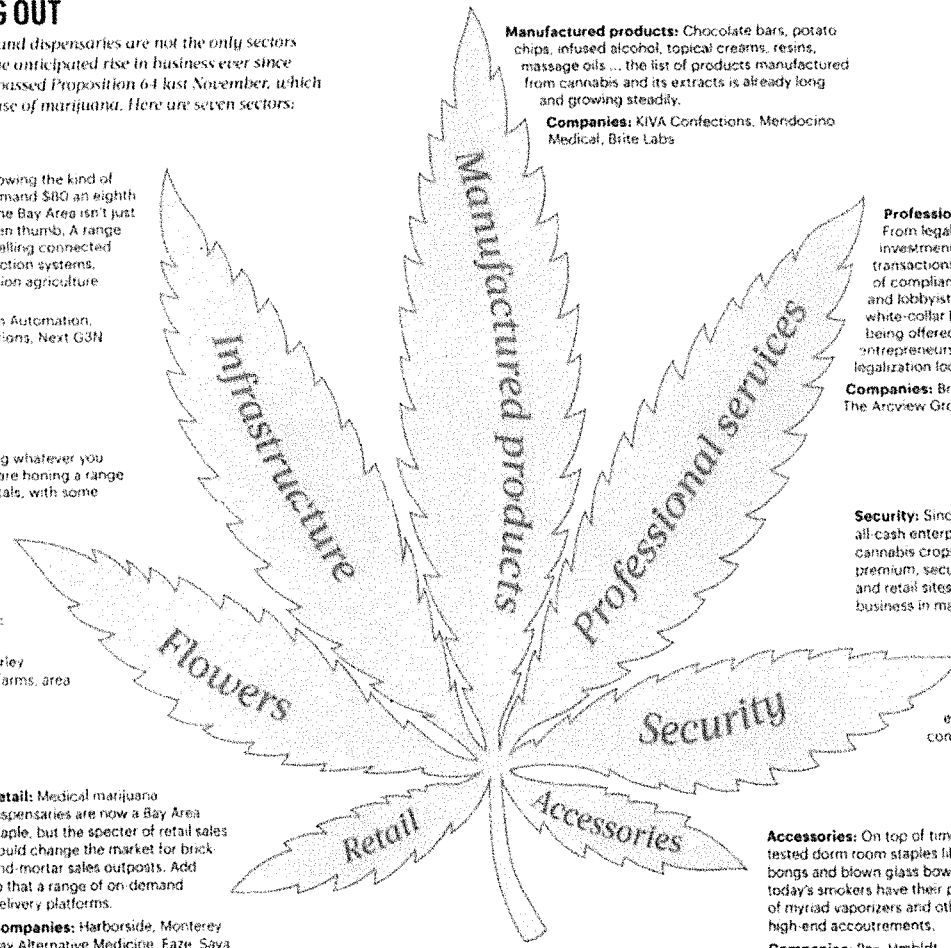
**Companies:** Brand & Branch LLP, The Arcview Group, CalCann

**Security:** Since dispensaries are all-cash enterprises and specialty cannabis crops can command a premium, security for growing and retail sites is becoming big business in marijuana.

**Companies:** CannaGuard Security, Green Shield Security, law enforcement consultants

**Accessories:** On top of time-tested dorm room staples like bongos and blown glass bowls, today's smokers have their pick of myriad vaporizers and other high-end accoutrements.

**Companies:** Pax, Hmbldt, Bloom Farms





# Growers, sellers feel out the feds

Settling up with the IRS is never fun. For entrepreneurs in the locally legal but federally banned cannabis industry, though, annual tax bills are just another example of a maze of conflicting obligations creating all kinds of headaches.

The tension came into focus late last month, when White House Press Secretary Sean Spicer announced that states that have legalized the drug should expect "greater enforcement" of federal prohibitions under the Trump administration. Spicer went on to discuss marijuana in the context of deaths related to opioid drug overdoses, though a glut of academic and government research shows that cannabis doesn't have the same types of addictive properties or overdose toxicity.

"The last thing that we should be doing is encouraging people," Spicer said at a Feb. 23 press conference. "There's still a federal law that we need to abide by."

It would be natural to assume entrepreneurs are at least considering contingency plans, but Jeff Brothers is trying to keep an even keel as the CEO of Monterey

***"When we get into interstate commerce, that's when we put up a big red flag for the federal government."***

CARA MARTINSON,  
California State Association of Counties

County cannabis cultivation outfit FLRish.

"We're doing the same thing we were doing last week," Brothers said of his company's new 74-acre farm.

Brothers' business partner, Harborside dispensary Founder Steve DeAngelo, concedes that there is "widespread anxiety" in the cannabis industry about regulatory uncertainty. Still, he insists, cannabis isn't the divisive partisan issue it's sometimes made out to be.

"We won in places like North Dakota and Arkan-

sas and Florida," DeAngelo said of medical legalization campaign results last fall. "You can go online and find groups like weed smokers for Trump."

When it comes to the ways the federal government could potentially intervene in state industry, financial management and any exports to other states are big potential targets.

As it stands, California has yet to set up any kind of state bank, leaving cannabis businesses to navigate thorny issues like managing large volumes of cash and accessing expansion capital. And despite a reputation for producing marijuana that is highly marketable elsewhere, stemming black market shipments out of state will be paramount, observers say.

"We only consume about 30 percent of what we're producing now. There is a concern," said Cara Martinson, who handles cannabis policy for the California State Association of Counties. "When we get into interstate commerce, that's when we put up a big red flag for the federal government."

**Item #9 WS 17-010**

**Denise Martellacci - Brownie Mary Democratic Club**

Dear Mayor Halliday and Council Members,

Thank you for all thoughtful questions to your city council that helped clarify your thoughts to bring positive decisions for formulating an ordinance. I was pleasantly surprised to hear this issue is finally moving forward and all your great ideas to possibly permit R&D, wine-like tasting facilities, baking, candy manufacturing, cultivation and even the idea of considering B St location! The dispensary, Barbary Coast in S.F. that Council woman Sara mentioned has a Barbary Coast classic lounge look consumption lounge attached. Goodness my ideas for years what Hayward could be as a cannabis friendly city!!

I'm looking forward to giving input to formulate your new ordinance.

Thanks!!!

Denise Martellacci  
President  
Brownie Mary Democratic Club

On Mar 21, 2017, at 2:03 PM, Denise wrote:

Dear Honorable Mayor Halliday and City Council Members,

I have attached a new section of the S. F. Chronicle by editor David Downs about medical cannabis. The feature topic is access to medical cannabis for seniors. The couple on the cover is a retired Marin high school math teacher for over 25 years, and his retired S. F. School District employee of over 25 years and partner and husband for 40 years. These are the faces of seniors using medical cannabis instead of pharmaceuticals that can have adverse effects on their health.

You all know my position on safe access to medical cannabis in Hayward. Assembly member Bill Quirk and I led a campaign for over two years back in 2008. Your objections then have now been nullified by legalization and the state having regulations in place that regulates the whole industry from seed to sale beginning in 2018.

Review the enclosed articles to get a sense of the cannabis industry. Your fears of dispensaries being crime magnets are unfounded now because of the strict safety regulations from the state, and those that a city builds into its ordinance, as well as those that operators incorporate as best business practices.

The industry has grown since 2008, and it's expected to make billions in the state. If you allow dispensaries to include adult-use as well as medical cannabis, the state will give your police department funds earmarked in Prop. 64 to help offset the perception of increased police costs to monitor the business.

The question is, do you have the compassion to support dispensaries that serve member of your community who have the need for medical cannabis? And the foresight to regulate an adult use market and bring the black market in marijuana into the regulated light of day?

We have an opportunity to bring those in the shadows out and allow the manufacturing end of the business to create products needed and tested in the industry. Hayward has a large industrial area that could serve the need for cannabis manufacturers. But if so, the dispensary model is needed as well.

I personally have given up hope that Hayward will ever have dispensaries again. As the leader of Brownie Mary Democratic Club I can only suggest what the benefits could be. As an Alternate to Assembly member

Bill Quirk on the Alameda County Democratic Central Committee, I can say it is the only Democratic choice that could be made.

For this round I will leave it to those in the industry that have the financial means to serve their best interest and they will lobby with their best efforts.

If you have any questions, please feel free to contact me.

Thank you for your considerations.

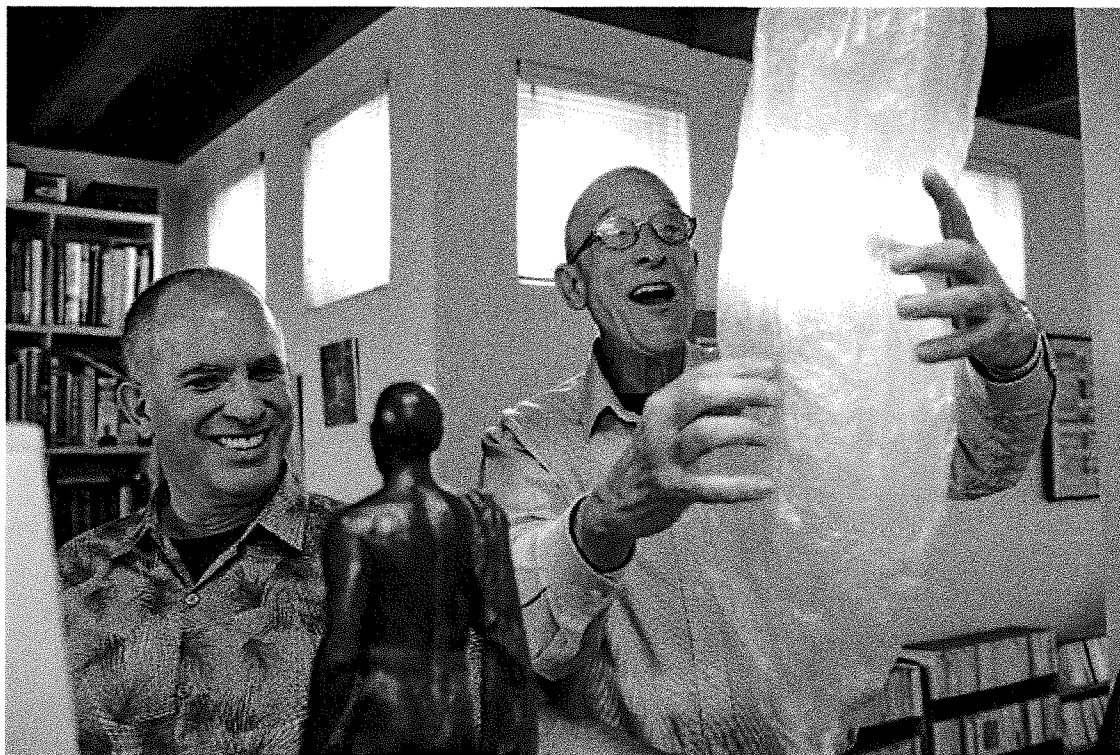
Regards,

Denise Martellacci  
President  
Brownie Mary Democratic Club

On Mar 20, 2017, at 6:01 AM, The Green State Daily Briefing <[ddowns@sfchronicle.com](mailto:ddowns@sfchronicle.com)> wrote:

***Biggest newspaper MMJ section ever; Major sweep in Colorado; Most decadent lounge in America; ...***

[View this email in your browser](#)



## **THE GREEN STATE *DAILY BRIEFING***

Essential cannabis news from the desk of David Downs | cannabis editor | *San Francisco Chronicle*  
**March 20, 2017**

***[Sponsored by [Hearst Bay Area](#) - Open For Canna-Business]***

### **TOP NEWS**

On Sunday, the *San Francisco Chronicle* might have printed a **major newspaper's biggest reader service series on medical marijuana** — ever. Online, it's called [The](#)

Senior Prescription.

Our main feature explores how — 21 years after Prop 215 — the **most likely to benefit** from medical cannabis still have the worst access to it.

Meet the **Bay Area's** first black, senior, female dispensary owner.

Read **case studies** from medical cannabis gerontology.

Learn the **basics** of how to get legal medical cannabis.

*The Chronicle* reviews **all the ways** to get a weed card.

Also, an etiquette column, a science review, an explainer on topicals, a glossary, 5 alternative modalities.

The **best dispensaries** for Boomers.

## **SURPRISING DISCOVERIES**

The most decadent pot smoking lounge in the West has opened.

*New York Times* follows **Harper's Bazaar** onto the Beboe train. ... Orlando Bloom, Sharon Stone and Justin Theroux attended was at the launch party. ... One of its co-founders used to grow weed at Cal, then became a business projects manager for Dolce & Gabbana and then ran Yoox North America, the online luxury retailer. Beboe's peers include Tetra.

*NYT* on **weed** in wine country.

A pretty large black market sweep in **Colorado** nets 16. The DEA could keep itself busy doing this for the next four years. ... The group was moving about 300-plus pounds of finished marijuana each month. About 40 weapons were seized.

## **MATTERS OF DEBATE**

No one knows if weed is **bad for your heart**. We should agree cannabis' schedule 1 designation is counter-productive.

## HIGHLY DUBIOUS

Both this **stock photo** and this alcohol substitution data. ... who is the Cannabiz Consumer Group?

**Jeff Sessions'** ideology is outdated.

Sorry for the break in Briefings -- we're back!

-dd

[Photo: David Goldman, left, and Michael Koehn laugh as the bag of their Volcano vaporizer fills up, at their home in San Francisco, CA, on Wednesday March 15, 2017. |

By Michael Short - Special To *The Chronicle*]

## ABOUT THE GREEN STATE DAILY BRIEFING (beta)

The **Green State Daily Briefing** is the cannabis world's essential daily newsletter. It's created by David Downs, cannabis editor at the *San Francisco Chronicle*. **Green State** is a new *Chronicle* initiative.

## ANNOUNCING --

The debut of  
the **Green**  
**Stateweb** site -  
**Coming in April!**

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